§ 23.—*The non-united village.*

The villages of the **non-united** type are found chiefly, but not exclusively, in Central and Southern India. The plain country of the Dakhan districts of Bombay contains hardly any other form of village: so it is with many parts of Berár. In the Central Provinces also this type of village was prevalent, but the revenue system, as we shall afterwards see, has created a special proprietary right, so that the fact of the villages having been originally non-united, is now of no consequence. The village system of Bengal has long fallen into decay; but it is probable that the villages were of this type; and in Oudh and the North-West Provinces, wherever the dismemberment of the old Hindu kingdoms or the growth of grantees' families did not result in joint-villages, this form of landholding can clearly be traced, though at the present day, the Revenue system has made all villages equally "joint."

In Madras we meet with both types of village; but the non-united type is apparently commoner in the north and centre, while the best surviving forms of the joint community are in the southern districts. Indeed, in many countries where the non-united type of village may be said to be the generally prevailing one, there are nevertheless here and there joint-villages, which have evidently arisen among, and over, the non-united ones, or perhaps been coeval with them, owing to the causes which I have already briefly noticed, and which will again appear in more detail in the sequel.

§ 24.—*Leading features of the non-united village.*

In this non-united form of village there is, as I have said, no appearance of a village estate within which all the land cultivated as well as waste is the property of a joint body. There is nothing but an aggregate of residents, each occupying his own land, and owning no liability for his neighbour's revenue payment. In such villages it usually happens that the cultivators are of different castes

and races. In some villages it appears that originally an exchange or redistribution of holdings was enforced by custom. This does not, however, indicate that the village was held in joint-ownership, but merely that the co-settlers recognised a certain bond of union, because mutual protection and society are under any form of life necessary to mankind, and especially so in India. The bond of union centred in the recognition of a headman of the village ("patel" is one of his most widespread designations), who was partly the representative of the State and partly of the village; and whose office was practically hereditary.

The headman and his family were usually, if not always, the owners of the village site, which, in troublous times, was often walled or banked round and served as a fort[2]. A right to a house-site in this enclosed space is still the prerogative of the patel's family: outside and clustering around it, are the sites of the other village residents, the cattle stalls, and so forth.

The description given of the village accountant and the watchmen, the village artisans and menial servants in a joint-village, applies equally to the non-united village. These persons are all remunerated by customary dues,—in the early days of the community, partly by the privilege of selecting and cutting some portions of the standing crop, partly by the prior right to certain weights out of the heap of grain produce at the harvest, before the cultivator's and the ruler's shares were divided.

But in these villages the hereditary families of officials often got certain lands, which were, originally or in theory, held as remuneration for their services[3]. These often were the best lands in the village. They are called the "watan," and are looked on as one of the strongest forms of family property; for the joint succession, which

[2] It is still often spoken of as the "Garhi" or fort. See the chapter on Central Provinces Tenures (Book III, Chapter II, section 4).

[3] This did not always happen. In the Central Provinces the officials were rarely "watandár." But in Nimár and the country adjoining Bombay the institution becomes commoner. In some places even the artisans and menials had petty "watan" holdings.

is the universal feature of native law, places the whole of a patel's heirs jointly in possession of the "watan," though only one member of the family can actually exercise the official functions of headman.

The headman and the officials supervised the division of grain at harvest, and saw that every one got his due; in Maráthá times, when there was a money revenue to be paid, and a certain total was demanded from the village, it was the headman who made out the "lágán," or roll showing what share each landholder had to pay.

§ 25.—*Waste near the non-united village.*

But apart from such common allegiance to the hereditary patel, there was no other bond; each man held his own land and nothing more. There was no common land. Anybody was free, on getting permission from the State officials, to take up any bit of waste he liked and cultivate it. It is possible that the same circumstances which made the joint-village look to the waste chiefly as potentially arable land, and made it unnecessary to establish any customs of common or divided pasture, made also the landholders in the non-united village, indifferent to anything but their own cultivated holdings. Waste was abundant; it was not theirs in any sense, but still no one prevented them from grazing their cattle and cutting their wood, and that was all they wanted. In the old Hindu State, under which this form of village originated, it was the Rája who, after the villagers had satisfied their wants in wood and grass, took the rest. He it was who claimed certain rights over the timber, and who also had the right of granting the soil of the waste or forest as he pleased.

It may fairly, therefore, be argued, that at our modern settlements of such villages, there can be no claim to anything but the occupied holdings, as far as right in the soil is concerned; but that a prescriptive right to the *user* of the waste, not to its *ownership*, must be recognised.

In some places, the necessities of cultivation produced a more definite custom regarding the user of the waste than that I have

alluded to. In the Himalayan States, for example, though joint-villages are unknown, still definite customs of dividing the grass land into plots, called ghaini, ghásní or kharíta, obtain, and the villages carefully keep out fire, and cattle, cut the grass at a fixed season, and divide the hay, according to fixed custom.

In Coorg and other parts of the country exhibiting similar local features, we find a series of hills of greater or less elevation separated by level valleys; these latter are entirely devoted to rice cultivation and are watered by the streams which descend from the hill sides. This rice cultivation is carried on with the aid of manure obtained by burning branches of trees, or bamboos, weeds, and grass, and spread with or without an admixture of animal manure, on the rice-fields. This practice is spoken of in Bombay as "ráb" cultivation. In Bombay, in most cases, the want is provided for by allowing a general forest right of getting "ráb" from the Government forests for the village owners; but in Coorg and the localities I described, it became the custom that whenever a grant of rice-land was made, the grant carried with it a strip of the jungle-covered upland ("báne"), which would supply branches for manure, grazing for the plough-cattle, firewood for the household, and so forth; and so it came to be regarded as a necessary feature of every such landholding that a strip of jungle land was appendant to it.

There ought then, as a rule, to be no difficulty in finding out to whom the waste belongs; but there are cases where a serious doubt arises as to whether the village is truly a non-united one, or only a joint one which has fallen into decay, the old proprietary class having been unable to maintain its position, and the later settlers now appearing with practically equal rights; then the question is no doubt a difficult one, and must be decided as one of fact, on the best evidence available.

§ 26.—*Confusion of the different types of village.*

This reminds us that it is easy, on paper, to describe two classes or types of village, and there can be no doubt that in many districts

in India, the prevalence of one form or the other is distinctly recognisable. But it is not always so. In some districts both types may be found side by side; in others half obliterated traces of customs and claims remain, which render it doubtful in what class the villages should really be placed. This is to no inconsiderable extent due to the fact that property is an institution which is a progressive one, and is perpetually undergoing changes from one form to another, as we pass from ancient times to modern usages. It is especially so with joint and non-united villages. If we consider either form in itself, without reference to local history, it is obvious that one *may* arise out of the other and one *may change* into the other. If we commence with a joint-village managed in common, it is obvious that the owners may divide, that the shares on which they apportion their holdings, may become modified by time and circumstances, till at last each holder looks on his own fields as a separate property, and has forgotten all connection with his neighbours: the village has then become an aggregate of separate holdings, not to be distinguished from the non-united village of the Dakhan. In time, however, one of the landholders, or some outsider, gets richer than the others; he undertakes the revenue-farm of the village, and taking advantage of his position, slowly becomes the sole owner of all the lands. On his death, his sons and grandsons succeed, and as soon as the family tree throws out its branches, the estate again becomes joint, just as if it had been the original institution of one of the 'democratic' tribes of the Panjáb. If, on the other hand, you take a village, say, from an ancient Oudh kingdom,—where, as far as you can go back, you find nothing but the non-united village under the old Chhatri Rája; a powerful individual, by grant or usurpation, becomes landlord of the village and establishes a proprietary right; his descendants, claiming the whole, form a joint-village; at a later stage the family agrees to separate, and by force of circumstances the members have acquired more or less land than their legal or theoretical shares, and consequently they cease to remember, or act on, the shares; then the village is virtually non-united, even though a revenue-system classes it as bhaiáchárá, and professes to assert a joint

responsibility for the village revenue assessment. There have been, as might be expected, many discussions in Bombay, and even in Berár, as to whether the non-united villages—which, speaking generally, is the prevailing type in these countries—are not decayed villages once of the joint form. It is impossible to deny that this may be so in some cases, especially if any trace remains of an ancestral scheme of shares in distributing certain profits or dues collected in the village.

If we look, however, to the general character of the villages, we shall see in the Panjáb and other parts of India to which tribes of the same character penetrated, a general prevalence of the joint-villages,—some of them now in various stages of severalty holding, but on recognised shares; others which have long forgotten their share-system; others again which have decayed, outsiders having occupied lands in the village, and the whole seeming quite disconnected. In other provinces, we shall see reason to believe that the non-united village originally prevailed, but that joint-villages have grown up over, and among, them owing to the causes which I have endeavoured to indicate. In other districts, again, the old non-united form will be found to be quite universal, without any admixture.

If I might endeavour very roughly to classify the territories over which the different forms of village characteristically prevail, I should attempt something like the following skeleton view :—

1. *Panjáb.*—Tribal settlements in "iláqas" or groups of joint-villages, especially so in the frontier districts, but also in the Panjáb proper, where Rájputs and Játs, settled as a people, form a large proportion of the landholders. In the Hill States we have the feudal Rájput organisation, where only the ruling class is Rájput.
2. *The North-Western Provinces.*—In parts joint-tribal villages; but towards Oudh and the central districts, villages of the really non-united type, though jointly liable to Government under our Revenue law. Also throughout, many joint-villages formed by the descendants of revenue farmers and by the division of formerly ruling families.

3. *Oudh.*—Non-united villages of the old Hindu Ráj, but more or less mixed with, and in some cases superseded by, joint-villages, the result of the growth and subsequent division of leading families, &c.

4. *Central Provinces.*—Non-united villages, but the joint-form created by our settlement and tending to grow up out of Malguzárí families.

5. *Bombay.*—Non-united villages in the Dakhan. In Guzarát estates resulting from feudal Rájput organisation, and joint-villages resulting from growth of powerful families, division, &c. (as in Oudh). The Konkan—proprietary tenures of "khots" or revenue farmers or lessees (which would, but for the raiyatwárí system, tend to produce joint-villages).

6. *Bengal.*—Non-united villages, but in Bihár villages more resembling the joint type.

7. *Madras.*—Non-united villages from the older Hindu immigration; joint-villages more or less in decay in the Tamil country. Tenures resulting from Rájput feudal organisation in Malabar, &c.

8. *Ajmer.*—Purely feudal Rájput organisation; joint-villages only created by our settlement. Something similar in the Himalayan States, in the Taluqdárí estates of Ahmadábád and those of the Nairs of Malabar.

SECTION II.—THE EFFECT OF THE DIFFERENT CONQUESTS ON LAND-TENURES IN INDIA.

§ 1.—*The subject stated.*

The history of India is, in fact, the history of a series of waves of immigration and conquest which have successively spread more or less completely over the country. The remarks made in the previous section with the design of explaining the still existing division of Indian districts into villages, have in themselves contained virtually an account of the effect of early immigrations. The old

Hindu Ráj with the non-united village, and the subsequent establishment of joint-villages in parts of the country, as well as of certain feudal or quasi-feudal tenures, mark the first stages. We have yet another period of progress to study; and this forms a later stage. We have to describe the changes that resulted from the Muhammadan, Maráthá, Sikh, and British conquests. In other words, our first stage has been to ascertain the result of archaic conquest; we have now to follow out the consequences of more recent advances.

§ 2.—*Modern changes as affecting the old Hindu Rulers and their rights in the soil.*

The changes which were introduced by the conquerors of later times, touched both the rulers and the ruled. But they touched them in different ways. The village landholder did not disappear, or rather the form of holding did not change, save to the extent which has been indicated, namely, the non-united villages gave way in some cases to joint-villages, and joint-villages in their turn exhibit all sorts of varieties in the course of a transition from early to modern forms of proprietary interest.

It seems to me certain that the Ráj institutions survive longest—I mean of course in their original character—in those districts where the powerful *joint*-village communities have not been allowed to grow up. For in such cases the Ráj has been indivisible; its rights have consequently been held together, and there is no reason why, except for the accidental failure of heirs, the Ráj should not go on to the end of time. The chief has not given place to any of these estate-holders, whose power within their own limits is equal to his, and is continually growing. All the landholders are claimants of their own holdings and nothing more. If, then, the Ráj is remotely situated and has not attracted the cupidity of foreign conquerors, it survives, perhaps paying a tribute to some distant Suzerain, but that is all. It is in this way that the Himalayan States have so many of them survived. It is true that the rulers of these States are of Rájput race, but they actually

exhibit all the features of the old Hindu kingdom. To this day (in the Chamba State, for example) may be seen the Rája's headmen collecting the grain-share and storing it in the "Kothi"—the royal granary, or District Revenue and Judicial Office. The Rája takes the old taxes, makes "birt" grants for the support of temples and pious Brahmans, and claims all the waste. The villages are small, because the nature of the hilly country is unfavourable to the foundation of large ones: but the isolation of landholding is not only due to this cause; it is due to its being the ancient custom of the Hindu tribes who form the population of the country.

But this survival could not take place in the plains of India, or in the rich and well-cultivated districts that formed the prize of conquest, the battle-field of contending powers. In such, the Rája either disappeared altogether, his villages being absorbed into the general territory of the Mughal conqueror, or he reappeared as the grantee of the new State. In some cases he succeeded in retaining his country in jágír;—that as he is a grantee allowed to collect the revenue in return for maintaining a military force and keeping peace and order within his boundaries, or he was entrusted with the revenue management of the country he once ruled over, and became a revenue collector, a zamíndár, or a taluqdár.

In these cases the *quondam* State became the "pargana" or revenue sub-division of the Muhammadan 'district.' But in many other places, the Rájas disappeared altogether, and their remote descendants now only appear as the holders of small or large grants, or as the owners of a few villages.

In Central India we shall find instances of great families overcome by the Maráthá power, becoming hereditary revenue officers, and still surviving as the "watandár" proprietors of lands to which they cling desperately, holding not only the lands indicative of village and pargana headship, but also minor watans of inferior village officers, all swept into their net together.

In Rájputána, we find to this day certain estates called "bhúm," which originated partly among the older Rájput

families who had been supplanted by later Rájput houses, but had been allowed an allodial or complete right in these lands, out of feeling for their former position.

The great families are said to be very proud of this bhúm title, and even great chiefs of other states will hold bhúmiya lands[4].

The tenures in Malabar called "janmi" are (as will appear in detail when we come to speak of Madras tenures) traceable to an original division of the country among the chiefs. The chiefships have passed away, and the holders of such estates at the present day, are only proprietors of lands paying revenue to the Government. There is no doubt whatever that if the country had been suitable to the aggregation of landholdings into villages, and the customs of marriage and succession had not been quite peculiar and exceptional, all these estates would have by this time become separated into villages jointly owned by descendants of the ruling families. The Malabar landlords regarded their holdings very much as the "bhúm" estate is still regarded in Rájputána; it was a hereditary estate, against the alienation of which a strong prejudice prevailed.

§ 3.—*The Muhammadan Conquest.*

The Muhammadan tribes from the North-West, who successively overran India, though different in character, brought with them one and the same system of law and government. But they were themselves but recent converts to the Moslem faith, and consequently did not display that strict and zealous adherence to the

[4] It is a curious feature that so often princes of Indian states should be much more anxious to cling to bhúmiya lands, or "watan" lands, or to zamindári lands, according to circumstances, than to others. It seems as if they foresaw the uncertainty of their tenure as chiefs: a man might be up to-day and down to-morrow. But the peculiar feelings of the people and their strong sense of hereditary right to such estates as are alluded to in the text, would secure the holders in them. Thus, the prince, ever fearing deposition from his chiefship, would feel that he had a refuge of a permanent character in these hereditary estates, which were vested not only with the greatest degree of stability known,—the nearest approach to a proprietary title that native ideas developed,—but also with a sort of dignity in the eyes of the people which rendered them worthy of being held by chiefs.

law of the Prophet which the true Muhammadans—the Arabs—would doubtless have enforced.

The necessities, too, of a powerful, but comparatively small, body of conquerors, compelled them to deal with the institutions of the conquered people very much as circumstances dictated, and less according to the theory of their own somewhat peculiar law.

§ 4.—*Its effect on the land-tenures.*

The land-tenures of the people themselves have been affected by these conquests to a varying extent. The joint-villages have always been stronger, as a rule, than the others; they may have changed hands, one race of proprietors may have given way to another, but the form of holding has remained unchanged.

But the non-united villages fared worse. In Bengal, the land-holders have sunk to the position of tenants with or without certain privileges which will be described presently. In other parts they have been variously affected. In general it may be said that later changes in the land-tenures have been mostly changes in the family or caste which possessed the land.

There were two principal means by which proprietary holdings were affected: one, the *grants* made by the State; the other, the arrangements made for *farming the Revenue*.

The first began to take effect at a very early date. It was so easy for a ruler to put a man in possession of a tract of land, and say 'realise for yourself the Rája's share, that will support your family, or will pay for the troop or the company of foot soldiers which you have to maintain.' All Oriental Governments, whose treasury has never been very steadily replenished, have adopted this method rather than be burdened with the regular payment of a cash pension or salary. The grantee so located had means of growing into the position of owner of the land, and of crushing out the original landowner's rights, as we shall see abundantly proved in the course of our study.

Revenue-farming did not become common as long as the State Revenue consisted of a share in the actual produce. But when it

became common to take a cash revenue, then if the headmen and regular officials of the country failed to collect it, the plan easily suggested itself, of agreeing with a contractor to make good to the treasury a specified sum for each village or group of villages. Such a plan was specially characteristic of the decline of the Government; it was resorted to when its hold over the country was not very firm. Owing to the large powers necessarily entrusted to the Revenue-farmer in arranging for the cultivation, he had great opportunities for getting hold of land, and of substituting himself and his descendants as actual owners of the villages.

§ 5.—*Revenue-collecting arrangements under the Mughals.*

At first, then, the village-tenures were not affected. In the days of strong rule, a settlement was made, and a properly controlled staff of revenue officials collected the revenue assessed by the settlement authority, from village to village, through the headmen and village officers; the village communities under such a system maintained their position without difficulty. But in the course of time, as the Mughal rule became weaker and more disorganised, it was found convenient in parts of the country to change the system and place large tracts of country in the hands of officers called zamíndárs, who collected a fixed sum as revenue. In Bengal this system developed most. It may be that it was necessitated by, or at all events connected with, the decay of the village institutions; but however this may be, in Bengal the village landholdings disappeared before the zamíndár, who became owner. In Bihár, where the villages were often of the united or joint type, this result did not happen to the same extent, or, at any rate, not in the same way.

As the rise of this system is explained in the immediate sequel, which should be read as a continuation of this chapter, I shall not further allude to it. But it ended in completely obliterating the original landed rights, in the zamíndár becoming the owner, and the former owners being sub-proprietors, "dependent

taluqdárs," and permanent leaseholders, or even "tenants," without any privileged position.

In Oudh, the first result of dealing with the old petty kingdoms seems to have been that the Ráj became the pargana; and the Lucknow rulers simply sent revenue collectors to take from the villages the revenue which would originally have gone to the Rája. In other respects they did not much interfere with the dignity of the old ruler. They allowed a certain number of villages, the revenue of which still went to the Rája for his subsistence, and these lands still form what is called the sír or nánkár, and give so much clear profit. Besides this, the Rája still received tribute and cesses from the villages, administered justice among them, commanded the militia, and took as escheats, estates that had no heirs[5]. Afterwards, when the Lucknow Government grew more corrupt, and when circumstances had brought about a change from a grain revenue to a payment in cash, it became the fashion to farm out the revenues of areas called taluqas, and thus the taluqdárí system—somewhat analogous to the zamíndárí system of Bengal—came into vogue. It was very natural that in many cases the surviving representatives of the Ráj should have become recognised as taluqdárs; and these were allowed to engage for a certain rental or revenue to the State treasury, but without much or, indeed, any control as to what they took from the villagers, or how they treated them, so long as the stipulated revenue came in. These taluqdárs, under British rule, became the "owners" of the estates, but with many and complicated *provisos* regarding the rights subordinate to them.

§ 6.—*Muhammadan Jágírs and Grants.*

The grant of land, or of the Government revenue on land, was also a common feature of the Muhammadan rule. The chief form of such grant was the jágír, which was an assignment of the revenues of a tract of country for the support of the grantee and a military force with which he was bound to come to the aid of the sovereign,

[5] It was during this stage, that zamíndárí rights were sold or granted, thus creating joint estates and hastening the dismemberment of the Ráj.

on being summoned. The jágírdár might be the owner of some of the lands, originally; he may also have brought large areas of waste under cultivation at his own expense. His position, therefore, is one that is likely to grow and vary. In one place he may appear as the "owner" of the whole jágír; in another he may be only their chief, content with collecting his revenue or share in the produce. Grants called "mee'áfí" and "inám" of various kinds were also made: these were generally proprietary and involved no revenue-payment.

§ 7.—*The Maráthá Conquest.*

The Maráthá power, which arose with Sivají in the latter half of the seventeenth century, did not always affect the land-tenures. These rulers were thrifty: they did not make many State grants of land, but sometimes recognised existing revenue-free lands or "watan" holdings, but imposed a "jodi" or quit-rent on them, which was often heavy enough. When their power was well established, they recognised the advantage of dealing direct with the villagers through their hereditary headmen, and rarely employed middlemen and farmers, who, they knew, would always manage to intercept a good part of the receipts. No doubt, individual cultivators were ejected and changed, but the general customs of land-holding were, perhaps, less affected by Maráthá domination than by any other. The truth of this is proved by the exceptions; for there were districts where the Maráthá rule was never more than that of a temporary plunderer, and where it was perpetually in contest with powerful neighbours. In such districts it was necessary to farm the revenues of certain villages, and then the "málguzár" (or the "khot" of other parts), as is always the case, grew or worked himself into the position of proprietor of the village, crushing down the rights of the original landholders. There are districts in Bombay where the "khoti" tenure is to this day a regularly recognised one, being really nothing but a sort of superior right over certain areas, which has now become fixed in the families of khots or persons originally put in to manage the land and farm its revenues.

Throughout the Central Provinces, where such farmers were employed, their families constantly grew into the proprietary position, and were recognised as proprietors of the villages at our settlement.

§ 8.—*The Sikh Conquest.*

The Sikh Government cared nothing for the land-tenure, and only for its revenues. Where the village community, so universal in the Panjáb, was strong, it paid up the demand and its customs were unchanged. Nothing is commoner in Settlement Reports than to find allusions to the confusion introduced by the grinding Sikh rule into the land-tenures. This is true, however, rather of the holders of the land than of tenures. No doubt, in many districts and throughout the village estates, one man was ousted and another put in, without any regard to title, and only for the sake of getting the revenue, in the most arbitrary way. Afterwards, perhaps, the old ousted proprietors would come back, and get on to their land again as privileged tenants, or would be allowed some small rental or málikána in recognition of their lost position : and thus many cases of "sub-proprietary rights" under a superimposed new proprietary layer, and some cases of the "taluqdárí" tenure arose ; but I am not aware that any new form of land-tenure owes its origin to the Sikh dominion—anything like the growth of the zamíndárí or taluqdárí tenure under the Mughal system.

The Sikh rule became centralised under Ranjít Singh, so that all the smaller chiefs, as a rule, were absorbed, and became the proprietary holders of villages merely, or were regarded as "jágírdárs" (for the Sikh system recognised the "jágír"). Some few states survived under the suzerainty of the Maharája.

In the Cis-Sutlej States the smaller Rájas retained their independence under British protection. At first a number of these were independent or sovereign states, but they were afterwards reduced to the condition of jágírdárs.

In the Ambála division of the Panjáb, the customs of these jágírdárs as over-lords and conquerors of the original village com-

munities which survived the conquest, but became proprietors in the second grade, are curious, and have been all defined at settlement. The "jágírdár" was originally the leader or chief of a "misl" or fighting corporation; every member of the misl (misldár) is entitled to some share in the profits. In jágírdárí villages a "sirkarda" collects the rents or rights of the jágírdár and distributes them among the graduated ranks of the body, first to the chief, and next to the "zaildárs," or subordinate chiefs, whose families form so many "pattis" and receive each the proper fractional part of the zail share; below them, the "rank and file" (the tábiadár) are entitled to some still smaller fraction of the revenue.

§ 9.—*Result of the changes.*

It will now, I think, be apparent, that while the customs of village landholding were originally simple, the effect of the different forms of rule has been partly to obliterate old tenures and create new ones, and partly to introduce confusion among the persons entitled to the tenure right, by successively displacing the older proprietary bodies and allowing later and more powerful successors to take their place, the tenure in form remaining the same. In either case the result has been to leave a series of proprietary strata, in which the upper ones are, *de facto*, the proprietors, but the lower ones each in his turn have certain claims, which ought not to be ignored. When all the facts are taken into consideration, it will appear that the attempt to provide legally for the proper position of these various shades of proprietary right in our modern Indian law, is no easy task.

In some cases, we have only the direct occupant to deal with, and the interest he has in his own field or holding is defined by law without much difficulty. It has been practically and simply laid down in the Revenue Code, in Bombay, and in British Burma has also received definition, though a somewhat complicated and technical one.

It is in countries (like Bengal, Oudh, and the Central Provinces)

where we have to deal with a series of concurrent interests that the greatest difficulty arises. And it is easy to see that the different parties may have preserved very different degrees of right. In some cases the now dominant proprietor may have clearly distanced all rivals; the people under him have sunk past revival, into being tenants. But in others the claims of the present and former proprietor may be very evenly balanced, and it may not be easy to say who is really best entitled; or again, granted a clear predominance of one, there still may be so much to be said for the other, that some practical form of recognition is equitably a necessity, though under what name may be doubtful.

§ 10.—*Proprietary right in India.*

And here it will be proper to call attention to the difficulty which surrounds any legislative definition of "proprietary right" in India. In the first place, if you do find a person who is now in a position which you generalise as that of "proprietor," what are the precise characteristics of the position? The native idea had not formulated such a thing as the *status* of a "proprietor." Custom, indeed, had produced the strongest feeling on the subject of the ancestral right to hold land[6]. The people who, as accidental groups

[6] Considerable controversy has arisen as to the question whether "rights of property" did or did not exist under the Native rule. The author of a little book (published by Allen & Co., London, in 1869) called *Notes on the North-West Provinces*, tries to show that under the Native systems an idea of private property in land always subsisted. He urges—

(1) that people were notoriously attached to the land; they had definite customs of holding, and clung to their holdings most tenaciously, often in spite of all sorts of exaction and oppression;

(2) that there are vernacular words to indicate lands cultivated by an *owner* (*e.g.*, the "sír land," a man's special holding for his own benefit (not for the common stock); also the terms "wárisi" and "wirásat" and "mirás," implying hereditary right, also the terms "málik" and "málikána," indicating *ownership*;

(3) that the share of the king or the Government is in the old law (*Institutes of Manu*) fixed at one-sixth of the produce, and that it was customary to consider the rank, family, and caste of the landholder in fixing the amount of revenue. Further, that *Manu* recognises the rest as belonging to the

associated for protection, or in other parts, as fellow-tribesmen, had first settled down on the area selected, who had cleared the land with much labour, had faced all the risks and difficulties of the task, and had built their village home, were looked upon as having a strong claim; but at a later time by the force of events and in

landowner, and distinctly asserts a right of ownership in the person who first cleared the land (see Elphinstone's History of India, 6th edition, p. 79);

(4) that land was always transferable by custom, and often, if a powerful man ousted violently some customary landholder, he, by way of conscience-money or compensation, allowed him a málikána, or payment in recognition of his overridden proprietary right.

All this is perfectly true; but I do not understand that any one contends that the Native idea did not take strongly to the notion, that particular persons were by custom entitled to hold land. This is clearly proved by the fact just stated, that when a customary holder was dispossessed, he often got an allowance called málikána—a sort of acknowledgment of his right. What is meant by saying that there was no "property" under Native rule is, that no Native system of law ever defined *in what* ownership consisted, nor allowed a fixed and definite principle whereby the right could be enforced by public authority. A number of the very terms used above are of Arabic origin, and show that they do not belong to the ideas of the country. We have only to trace out the history of a village and its division of crops, as has been so admirably done by Mr. W. C. Benett, C.S., in his Gonda Settlement Report (1878, para. 83), to see how little a definite idea of private property had grown up.

Nor was the system of Government generally favourable to the development of property. The power of an Eastern sovereign is not limited, save by his own sense of right and by motives of prudence. As a matter of fact, he treated every one on the land, whether owner or tenant, exactly on the same footing. If he actually oppressed his revenue-payers beyond endurance, he killed the bird that laid the golden egg, and the people resisted or fled, as the case might be: *that* restrained him, but nothing else. It was custom, clearly defined and strongly held no doubt, that called the land which the clearer of the primeval jungle cultivated, his "wirásat" or inheritance; but that does not mean that the public mind could define, and public authority enforce, the distinction between the different classes of rights. Moreover, if the ruling power takes a revenue which is so large that it absorbs the 'rent' or the landowner's profit, then virtually there is nothing left worth calling a proprietary right in the land.

The same author is never tired of speaking of *our* Government as the "great landlord" taking rent from the actual proprietors—a position which it does not hold, nor has ever pretended to. The system of taking revenue from the land brings the Government, indeed, into close contact with the people; and Government, being the only great, at any rate the chief, capitalist in the country, undertakes many works of improvement, or grants advances to proprietors to make smaller improvements for themselves, and allows remissions of its demand in very bad times. But this it does for the welfare of the people, and for the better securing of its own revenue—not at

process of time, over the original villagers, a new interest grew up. In Bengal, for example, by the time British rule began, the villages were found to be under the complete control of certain powerful individuals whose title was incapable of any theoretical

all as a landlord. In no case is *our* revenue assessed so as not to leave a fair, if not a liberal, *rent* to the landowner.

If we look to Native sources of law, we shall find no idea of property *in our sense* of the word. In the law of Manu, for example (to go to Hindu sources), we find it stated that the land is the "property" of him who first cleared it (see Jones' translation, Chapter IX, v. 44 *et seq.*); but soon after we find that if the owner injures the land, or fails to cultivate it in due season, *the king* is to fine him heavily! The king's right to a share in the produce is accounted for by saying that it is the king's due in return for the protection he is bound to render to the cultivators; but that does not limit his practical authority.

The Muhammadan law does not give us any greater help. The sale of land is spoken of, so that some kind of exclusive occupation must have been contemplated; but then the Muhammadan law was never applied strictly in India. The Moslems, as conquerors, were obliged to take things as they found them, and be content to take their revenue, leaving the Hindu customs as they were, and not enforcing any theory of the law. The strict law contemplated imposing a land tax on conquered people, which is called "khiráj." The tax taken from believers was called by a different name, was lighter, and was only levied in respect of actual produce; whereas the khiráj was (like our revenue at the present day) levied on the land according to its capabilities, irrespective of its being fallow or productive. However, in time, the khiráj came to be taken in two different ways—in money, or in kind; in the latter case, of course, it could only be a share of the actual produce, and so was like the "believers'" tax. The khiráj levied in money was called "wazífa-khiráj," and was *par excellence* the form of tax to be imposed on conquered unbelievers. In this case the theory of the law would be, that the conqueror left the land to the conquered, being content with his tax, but resuming his right when the tax was not paid. It is said, however, that even when the share in the produce only was taken, the theory of the law still was, that the ruler was the proprietor of the land. This theory may have been of tribal and patriarchal origin, regarding in fact the Ruler, as Father of the Faithful, the head of the family of true believers, sharing the produce with them, and the land being, as it were, in his name. Whenever he commuted the share to an actual fixed tax, he gave up the relationship by which he was "proprietor." But here, again, is a theory totally unlike the Western one of ownership.

The controversy is very well summed up in the following extract:—

"The long-disputed question, whether private property in land existed in India before the British rule, is one which can never be satisfactorily settled, because it is, like many disputed matters, principally a question of the meaning to be applied to words. Those who deny the existence of property mean property in one sense; those who affirm its existence mean property in another sense. We are too apt to forget

definition perhaps, but whose power and influence were very great: there they were—a very stubborn fact indeed, and one not to be got rid of.

And then came the question to which I have already alluded—What was to be said for the lower strata of proprietary right? These could not be actually restored and the upper proprietary grade be reduced and ejected: how then were they to be dealt with?

The question would not, indeed, have been so difficult to dispose of if the different lower strata could always show proof of the rights they once held, or the practical immunities and privileges which they enjoyed. But in the great majority of cases the ancient rights had grown dim, and the means of proof were both uncertain and difficult to obtain. Ignorant agriculturists are the last people in the world to understand what is, and what is not, evidence. They may have long-cherished memories of a position that they think they ought to occupy, they may have strong moral grounds for claiming

that property in land as a transferable marketable commodity, absolutely owned and passing from hand to hand like any chattel, is not an ancient institution, but a modern development, reached only in a few very advanced countries. In the greater part of the world the right of cultivating particular portions of the earth is rather a privilege than a property,—a privilege first of the whole people, then of a particular tribe or a particular village community, and finally of particular individuals of the community.

"In this last stage land is partitioned off to these individuals as a matter of mutual convenience, but not as unconditional property; it long remains subject to certain conditions and to reversionary interests of the community, which prevent its uncontrolled alienation, and attach to it certain common rights and common burdens."

The author then goes on to remark on the important fact that conquerors, generally, cannot cultivate the whole land themselves and willingly leave the actual possession and cultivation of the land to the people who originally possessed it and are attached to it by many bonds. Hence we have a widely prevailing distinction between the levying of a revenue or customary rent for the land (asserted by the conquering State) and the privilege of occupying the soil. And in cases where the original cultivators had a recognised organisation like the village communities of Northern India, their hold on the land became such, that it is very natural to call it proprietary. (See *Sir George Campbell on Indian Tenures, in the Cobden Club Papers.*)

something, but what exactly that something is, may be extremely doubtful.

§ 11.—*Its limitations.*

The proprietary right recognised by the British law under these somewhat conflicting circumstances, is far from being absolute. But it is not only limited by the various sub-proprietary and tenant rights below, of which we have been speaking; it is necessarily limited in another direction by the Government rights above it.

All landed property, not freed by Government from payment, is held to be hypothecated to the State as security for its revenue[7]. And when land is sold under this lien, all encumbrances and mortgages on it are liable to be voided.

In some provinces all mineral rights are reserved also to the State[8].

The consequence is that the Indian "proprietary right" is a thing *sui generis*. Such a term is not used in English text-books. But I have nowhere found in Indian authorities any attempt to define this right. It has been suggested to me that the best definition would be "a transferable and heritable right to the rental of the soil." But there is, I think, notwithstanding the hypothecation to the State, a real though restricted right in the soil itself. The owner can claim compensation if it is taken up for public purposes, and that compensation will be higher according to

[7] It is so in practice, whether stated in Provincial Revenue laws or not, since the land is always saleable by order of the Revenue authorities for arrears of revenue, either at once or as the last resort, according to the law locally applicable. But the liability of the land as hypothecated is declared in so many words in Madras Act II of 1864 (section 2), and virtually so by section 56 of the Bombay Code, 1879, section 146 of the North-Western Provinces Act (XIX of 1873), and section 46 of the Burma Land and Revenue Act (II of 1876).

[8] In granting proprietary right to the Bengal zamíndárs this reservation was not made, but it is so in other cases, as expressly appears from several of the modern Revenue Acts (Panjáb Act, section 29; Central Provinces Act, section 151; Ajmer Regulation, section 3; Bombay Act V of 1879, section 69; Burma Land Revenue Act, section 8, &c.) The reservation is not mentioned in the Acts of the North-Western Provinces or Oudh, or in Madras. The subject is fully discussed in my *Manual of Forest Jurisprudence*, Chapter III.

the intrinsic value of the land, although the owner may have had no share whatever in producing or enhancing the value, as where his land has risen in price, owing to its proximity to a railway or to a town in which trade and population have largely developed. The land can also be sold and mortgaged. Under such circumstances, I do not think a definition which goes only to the rental, is sufficient. If we remember the Roman law definition of full proprietary right, we shall consider that the right in India is a *dominium minus plenum*,—an ownership limited in each case by certain circumstances which may not be the same in all parts of India, but among which the lien of Government as security for the revenue, is always one.

§ 12.—*Classification of proprietary tenures at the present day.*

In India at the present time, consequent on the super-position of proprietary interests in some districts, all proprietary tenures can be brought under one of four classes:—

I.—The Government itself may be the owner: as of waste land, which it does not sell out-and-out; of a village which has been forfeited for crime, or has lapsed for want of heirs, &c., or has been sold for arrears of revenue and bought in: here the cultivators become tenants properly so called; such estates are mostly found in Bengal, and but few in Upper India, the system there being unfavourable to the retention of such estates, as a rule.

Of course all public forests, large areas of available waste, and other public property may be brought under this class, but I am speaking of cultivated and appropriated lands, which would otherwise be in the hands of some other owner.

II.—The Government recognises *no* proprietary right between itself and the actual holder of the land (*i.e.*, it creates or allows no proprietary right in a whole area over the heads of the actual landholders). This is the simple form of raiyatwárí holding under the Bombay and Madras systems; and in Burma.

III.—Government recognises *one grade* of proprietor between

itself and the actual landholder. It settles for its revenue with this proprietor and secures the rights of the others by record.

IV.—Government recognises *two grades* of "proprietor" between the landholders and itself. This is the taluqdárí tenure[9]. In the Panjáb and North-Western Provinces the settlements get rid of this where possible, by dealing direct with the villages, and granting to the person possessing the taluqdárí or superior right a cash allowance: but the tenure exists in Oudh and elsewhere.

§ 13.—*Remarks on these classes.*

The full understanding of these forms of tenure cannot be attained till progress has been made in the study of the local development of the system in each province, but I hope that what is here said will serve to introduce, as it were, the terms which will be constantly in use in the sequel.

The *first* of these proprietary tenures is only occasional, and presents no difficulty in understanding it.

The *second* we shall meet with in Madras and Bombay, where we shall see how they grew out of the non-united village, whose constitution had never been seriously interfered with by the Maráthá and other conquerors, except in some special cases, where the second or double proprietary tenure arose in consequence.

The *third* of the classes finds its most perfect exemplification in the zamíndár of the Bengal permanent settlement[10], and in the málguzár of the Central Provinces, in both of which cases we find a new proprietor—the result of the revenue system, super-imposed on the original village-holding. The village communities of the North-West Provinces and the Panjáb are brought under this class, perhaps more theoretically than practically. Each landholder who has his share secured to him by record, or actually divided out to him in severalty (as is so often the case in these communities), is really owner of the share and pays the revenue on it, as

[9] There may be possibly more than two grades, but the case would be precisely analogous.

[10] Also in the permanently settled portions of Madras.

independently as does the "registered occupant" of a severally numbered lot or holding under the Bombay system; but the form is not the same: the Government does not settle with the individual sharer for any revenue, but agrees with the whole village for a lump sum, and regards the whole village jointly as proprietor. The several holders are only bound to pay the share which custom or personal law directs; but that is a matter of internal concern to the village, not to the Government. As regards Government and the liability for revenue, the village body is the proprietor intermediate between the individual landholders or sharers and the State.

The *fourth* form is found in its most perfect condition in Oudh, the grades being (1) the taluqdár, (2) the village proprietary body—the individual landholder.

§ 14.—*Rights subordinate to "proprietary" rights.*

I have remarked that the proprietary right recognised in India is limited in many cases by the existence of inferior rights, which are the relics of former ownership once exercised, before the days when conquest, or the exactions of some State grantee or revenue farmer brought misfortune to the village and forced the owners to fly, or to stay on their own lands in the humble position of tenants. I remarked also that the British law had to find some just method of recognising and giving effect to such rights, and that this was a difficult problem because of the want of certainty which marked the evidence as to what the original position of claimants really was.

It is, of course, a question of local circumstance and history how far, in any given village, such rights exist, and if existent, to what extent they have survived; but in many of the districts it is not difficult to find cases in which the old owners appear, clinging desperately to petty holdings or privileges, which to their minds keep up (and do indeed afford evidence of) an original connection with the soil. Some of them have made terms with the new proprietor, and appear as his permanent lessees at favourable or fixed rents; others are treated as 'hereditary tenants;' but

whatever the form, the permanent tenure and the favourable terms are to be accounted for only as relics of an originally higher position and closer connection with the land.

It follows also, that wherever a settlement was made with, and the proprietary right conferred on, some headman, zamíndár, or other individual, over the village landholders generally, there were almost sure to be some others whose rights, though in a subordinate grade, have to be taken care of. The more 'artificial' the position of the proprietor acknowledged by the settlement is, the more will this be the case.

In no form of settlement derived from Bengal, has this ever been forgotten. True, for example, that it was the object of the Permanent Settlement to concede a high position to the zamíndár; but it was never intended, for one moment, to help him to crush out any existing subordinate rights. The early Regulations do not, indeed, bring the subject as prominently forward as the later ones, merely because it was taken for granted at first, that our law courts could afford sufficient protection; that directly any attempt was made to depose a subordinate right-holder, he would complain and receive a speedy remedy. It was also intended that all such tenure rights should be registered. The Judges of the High Court of Calcutta who discussed the history of Bengal tenancy in the great rent case of 1865, all agreed in this, that, though the "zamíndár" was recognised as proprietor, his right was by no means unlimited with regard to the "raiyats" under him[1].

The great difficulty has always been to know how, logically and equitably, to define and place in due position, the rights which now appear in the lower "strata" of proprietary or quasi-proprietary interest.

In general the question has been solved by admitting some of the rights to be of proprietary *character*, but secondary *degree*; and declaring the others to be *tenancies*, but with privileges as regards

[1] "The Regulations," said one of them, "teem with provisions quite incompatible with any notion of the zamíndár being absolute proprietor." (Bengal Law Reports, Supplementary Volume of Full Bench Rulings.)

non-liability to ejectment, and with a limitation of rent charges, which is the necessary corollary to fixity of tenure. In practice it has not been always easy to draw the line between the two, with uniform accuracy; and our future enquiry into tenures will show some differences in this respect, which it is, however, very easy to account for.

§ 15.—*Sub-proprietors.*

One mark of the "proprietary character" has always been that the holder pays nothing but the Government assessment; unless indeed by custom, he also pays some feudal or other dues to a superior (which are hardly of the nature of rent). Another is that the holding should not only be heritable—for that a fixed "tenancy" always is—but also freely *alienable* by gift, sale, or mortgage.

Where all these features are observed, the tenure would be of the proprietary class, and spoken of as an "under-tenure," or "sub-proprietorship," and in the vernacular as "málik maqbúza," or other term which carries with it the indication of a "proprietary" character[2].

Who were the persons entitled to this position, depended, as I have already remarked, on the facts and on the history of the estate. In Bengal, no doubt, in a large number of instances, those who—directly the zámíndar's position was recognised by law—became "tenants" or "raiyats," were originally the soil-owners of the decayed and forgotten village groups. Among these, the most powerful and more well-to-do succeeded in securing some permanent position under the zamíndár; and although such position was designated by a new title derived from Mughal law or revenue institutions, still it practically secured something like the old landed interest.

In provinces where the village communities survive as the proprietary body, or where other forms of superior proprietorship have

[2] Extending most commonly to the individual holding only, but in some cases (as in the Central Provinces) extending to the whole village, which may be the subject of a joint sub-proprietary right under the "málguzár" proprietor.

been recognised, it will be remnants of original tribes, conquered by the ancestors of the present owners, descendants of State grantees, purchasers, settlers, and others, who constitute the sub-proprietors.

But it is obvious that these rights may be very various in character and extent. On the one hand they may rise to a right distinguishable only by insignificant features from the upper proprietary right, or on the other, may be so little proprietary as to be practically undistinguishable from "tenancies."

§ 16.—*Method of distinguishing different kinds of right.*

The early law of Bengal did not lay down any principles, nor did it prescribe any authoritative enquiry into and record of the actual incidents and customs of such rights. As I have observed already, it was thought that the easy and obvious method for solving a dispute was to go to court and prove the facts. But even if the courts were less distant, their procedure less costly, and their language less strange to the ignorant peasantry, the courts themselves had no guide, either as to the incidents of tenure to be proved, or the consequences of them when proved. A record of facts, such as could be prepared only in the field, by the Settlement Officer, was therefore as much needed as a guide to the courts as it was for the protection of the people.

How this difficulty was gradually overcome in the permanently settled districts, will be further explained in the chapter specially devoted to Bengal. With regard to other provinces, where the system of Bengal was pursued in a modified form, the law afterwards enacted that the Settlement Officer was to determine who was the actual proprietor to be settled with; and that done, he was to protect the inferior proprietary right, if necessary, by a "mufassal" or sub-settlement, and in any case, by a practically authoritative "record of rights."

In many cases, however, the necessity of providing for inferior rights does not stop with the recognition of sub-proprietors entitled to a sub-settlement, or to sub-proprietors of holdings merely recorded as such. It is obvious that, on investigating the facts in

any particular locality, the evidence in favour of former rights may be stronger or weaker, till at last it is very difficult to say whether the right to be allowed, can properly be recorded in the proprietary class at all. Practically, when it is weak, but still recognisable, the claimant is more conveniently treated as a *tenant* with privileges. And this leads me to say a few words on the subject of tenant right.

§ 17.—*Tenant Right.*

All tenant right in India arises in one of three ways. *First*, I may place the case just alluded to, of right that may really have been proprietary at some former time, but is now so faintly visible that a privileged tenancy is practically the most reasonable position that can be assigned to it. *Secondly*, there are cases of real "tenancy," but where th custom of the country, and the general feeling, assign a privileged position to the tenant. A good example of such a case is to be found in the case of village communities where the "proprietary body," being unwilling or unable to do all the work of clearing the jungle and founding the village, called in some others (possibly of a different caste or class) to help them. These persons were, of course, privileged,—in some cases so much so that some settlements have assigned them the place of sub-proprietors: but at any rate their tenure was hereditary; and the rate of rent, if it was extended at all beyond the amount of the Government revenue, was fixed and nominal. The *third* case is where our law has stepped in and provided that any tenant who has continuously held the land for twelve years (which in earlier days was the usual Indian "period of limitation") shall have a right of occupancy, *i.e.*, shall not be removable as long as he pays his rent, and shall only have his rent enhanced under certain rules and on certain fixed grounds.

The first two classes are purely natural; and I am not aware that the propriety of protecting them by law has ever been called in question. It is true that the difficulty of drawing the line between rights of this class and those previously called "sub-

proprietary" is such that there may have been some variety of practice; but this does not affect the question of admitting that the right is to be recognised. But the third class has given rise to much difference of opinion. It is perhaps needless to remark that this class of twelve years' tenants was not arbitrarily created or in pursuance of a bare theory. It arose in the North-Western Provinces and was copied [3] in Bengal.

§ 18.—*The twelve years' rule—Bengal.*

In Bengal such a rule would readily commend itself. It has been explained that the zamíndár acquired his position over the heads of the original soil-owners; so that a large proportion of those who were now "tenants" once really enjoyed permanent rights in the land. But under the influence of the Mughal rule their position was in effect not different from others who were really tenants. For in those days no question of eviction as regards the actual *cultivators* ever arose. There was no competition for land. The competition was to get and keep men to till the soil. All that were on the land, whether originally ancestral proprietors or not, were retained as a matter of course, and all paid the customary rent. In course of years the population increased, land became valuable, and then competition became possible. Then for the first time the question arose, could this or that tenant be turned out, and how could his rent be raised? The answer was to be found in searching for the facts; in the course of that enquiry the original position of some of the raiyats came to notice as being the real original village proprietors, while others appeared to have an origin which really depended only on the contract of the parties. It was then decided that it would be only equitable to confirm the position of those in whose favour these special circumstances appeared. But it is not always easy to prove facts which are nevertheless true. The peasantry were too ignorant to preserve evidence of their rights; and hence the rule was invented as one

[3] See Report of Select Committee on the Rent Act (X of 1859).

likely to do general justice, that a person who had held for twelve years—the then usual period of limitation—should be saved from the burden of further scrutiny and declared irremovable. And as a right of occupancy without a regulation of rent would be valueless, certain rules were laid down as to enhancement.

Looking to the facts of Bengal tenure, there is no reason to suppose that the twelve years' rule was unjust, or that it unfairly limited the rights and profits of the proprietors; indeed, there has been of late considerable apprehension that the protection to the cultivator is not sufficient[4]; that considering the immense difference at the present day between the permanent assessment of the estate and the actual rental of it, the people who pay those rents ought to share much more largely than they do, in the benefits which arise out of the land.

§ 19.—*In other Provinces.*

But even in the North-Western Provinces,—where this rule was first invented, and where the argument stated in the last paragraph could less commonly be applied, there was still another ground urged; and that was that *all* tenants, if of reasonably good standing, and if *resident* on the land, ought, according to the old and ancient custom of the country, to be protected from ejection at the pleasure of the landlord. This extension of the twelve years' rule is obviously more open to question, and consequently the general introduction of the rule into other parts of India has given rise to a fierce controversy.

§ 20.—*The case as stated on both sides.*

There have been always officials ready to take either side, since on either side a plausible argument may be advanced.

Those who favoured the landlord's view would urge that it was unfair to the zamíndárs and other proprietors now saddled with the responsibility, strict and unbending, for a revenue that was to come

[4] At the time I am writing a special Commission has just investigated the subject, and a draft law for Bengal is under consideration.

in good years and bad alike, to tie their hands, to refuse them permission to get the full benefit of their lands by creating an artificial right in their tenantry; such a rule would be to virtually deprive the landlord of the best share of his proprietary rights. If it was wise of Government to recognise the proprietary right at all, it must be wise also to recognise the full legal and logical consequences of that right. True it might be, that in old days tenants were never turned out, but that was the result of circumstances, not of right; and if the circumstances have changed, why not let the practice of dealing with tenants alter too? The proprietors are the people we designed to secure, in order to make them the fathers of their people, to whom we looked for the improvement of the country at large, and for the consequent increase of the general wealth. Why would we doubt that they will act fairly in their new position?

On the other side the advocate of the tenant would reply: the new landlords confessedly owe their position to the gift of Government; why should they get all? why should not the benefits conferred be equally divided between the raiyats on the soil and the "proprietors"? The raiyats are the real bread-winners revenue-makers, more quiet and peaceable, less liable to pol emotions, and more interested in the stability of things as the Many of the tenants we know to have been reduced to that dition from an originally superior status. And even if the tenan had no such original position, as far as his history can be traced, still the custom of the country is all in favour of a fixed holding. If a powerful man ousted a cultivator, it was by his mere power, not by any inherent right, or that the public opinion would have supported him in so doing. But as a matter of fact no cultivator ever was ousted; he was too valuable. In the rare cases in which he was ejected, it was either because he failed to pay or to cultivate properly (which is still allowed as a ground for ejection), or else it was to make room for some favoured individual, which of course was an act of pure oppression: why should not the law still protect the tenant from such evictions?

The question is in truth not one which can be theoretically determined, because the idea of landlord and tenant, as we conceive the terms, and the consequences which flow from it, have no natural counterpart in Indian custom.

We have the double difficulty to deal with, the vast number of "tenants," who have a valid claim to be considered, because their position does not really depend on contract, and also the case of tenants whose origin is not doubtful, but whose position has been seriously affected by the new order of things—a competition for land instead of a competition to get tenants and keep them. All we can do is to make the best *practical* rules for securing a fair protection to all parties.

The principle of Act X of 1859[5] was adopted, reasonably enough as regards the zamíndárí estates that were settled under the old Bengal system, but more doubtfully as regards the North-Western Provinces, where the village communities survived. In the Central Provinces Act X was put in force, but under certain special conditions, which will be alluded to in the sequel. In the Panjáb and in Oudh it has not been adopted. There it was sufficient to provide for the special case of those tenants who had a "natural" or customary right to be considered hereditary.

Even in the Panjáb, however, the tenant-right controversy was for a long time carried on.

In the provinces where the Government deals directly with occupants of the land, tenant right has given no trouble. But of course tenancies exist. A man may contract to cultivate land as a tenant-at-will or he may have something of a hereditary claim to till the land, as much under a raiyatwárí system as any other. But the question of subordinate rights never becomes as difficult of solution in such countries, as it does in those where the recognised proprietor is a middleman between the cultivator and the State.

[5] This Act is now generally repealed, though it survives in certain districts; but the twelve years' rule has been retained in the Acts which superseded it in the different provinces.

SECTION III.—LAND TENURES OF A TEMPORARY CHARACTER.

§ 1.—*Shifting cultivation.*

An account, however elementary of Indian land-tenures, would be incomplete without some notice of a customary holding of jungle land which is widely prevalent in parts of India, but which is of such a nature that it is very doubtful whether the term 'land-tenure' can with propriety be applied to it. I allude to the practice of temporary or shifting cultivation of patches of forest, which has in some districts proved an obstacle, or at least a source of difficulty, in the way of making arrangements for the preservation of wooded tracts as forest estates, a work which modern science recognises as essential for almost any country, and especially a great continent like India with its climatic changes and seasons of drought of such frequent recurrence.

In the jungle-clad hill country on the east and north of Bengal, in the Ghâts of the eastern and western coasts of the peninsula, in the inland hill ranges of the Central Provinces and Southern India, there are aboriginal tribes who live by clearing patches of the jungle, and taking a crop or two off the virgin soil, after which the tract is left to grow up again while a new one is attacked.

This method of cultivation seems to be instinctive to all tribes inhabiting such districts. It seems to be the natural and obvic method of dealing with a country so situated.

The details of the custom are of course various, and the names are legion. The most widespread names, however, are "júm" in Bengal[6], "bewar" (often, but incorrectly, dâhyá) in the Central Provinces, "kumri" in South India, and "toung-yá" in Burma.

In all cases the essence of the practice consists in selecting a hill side where the excessive tropical rainfall will drain off suffi-

[6] "Júm" is the general name used in official reports, but in reality this name must be entirely local. In fact no one name can be applied. In the Garo hills, in Chittagong, in Goálpára, in Santália, and no doubt in every other district where this method of cultivation is practised, there is a different local name.

ciently to prevent flooding of the crop, and on which there is a sufficient depth of soil. A few plots are selected and all the vegetation carefully cut: the larger trees will usually be ringed and left to die;—standing bare and dried, there will be no shade from them hurtful to the ripening crop. The refuse is left on the ground to dry. At the proper season, when the dry weather is at its height, and before the first rains begin and fit the ground for sowing, the whole mass will be set on fire: the ashes are dug into the ground and the seed is sown,—usually being mixed with the ashes and the whole dug in together. The plough is not used. The great labour after that consists in weeding, and it is the only labour after the first few days of hard cutting, to clear the ground in the first instance, are over. Weeding is, in many places, a *sine quâ non*, for the rich soil would soon send up a crop of jungle growth that would suppress the hill rice or whatever it is that has been sown[7].

A second crop may be taken, the following year possibly a third, but then a new piece is cut, and the process is repeated.

§ 2.—*Nature of right to which such practice gives rise.*

When the whole of the area in the locality judged suitable for treatment is exhausted, the families or tribes will move off to another region, and may, if land is abundant, only come back to the same hill sides after twenty or even forty years. But when the families are numerous, the land available becomes limited, and then the rotation is shortened to a number of years—seven or even less—in which a growth, now reduced to bamboos and smaller jungle, can be got up to a sufficient density and height to give the soil and the ash-manure necessary. In its ordinary form, this method of cultivation may give rise to some difficult questions. It obviously does not amount to a permanent, adverse occupation of a definite area of land; nor does it exactly fall in with any Western legal conception of a right of user. In some cases,

[7] But this is not always the case, where the hill land has long been subject to this treatment, or where the soil is peculiar; in the Garo hills, I am told, weeding is not required.

it may be destructive of forest which is of great use and value; in others the forest may be of no use whatever, and this method of cultivation may be natural and necessary. The progress of civilisation and the increase in the population always tend to bring this class of cultivation into the former category, and then it is very difficult to deal with. It is impossible not to feel that whatever may be the theoretical failure in the growth of a strict right, the tribes that have for generations practised this cultivation from one range of hills to another, have something closely resembling a right; they have probably been paying a Government revenue or tax—so much per adult male who can wield the knife or axe with which the clearing is effected—which strengthens their claim to consideration. In creating forest estates for the public benefit, the adjustment of "toung-yá," "kumri," or "jûm," claims has now become a matter of settled and well-understood practice. In the Western Ghâts it is becoming a subject of difficulty[8], but the discussion of the question would be foreign to my present purpose, which is merely to describe what is in fact a form of land occupation or quasi-tenure.

[8] Already, in the Konkan, whole hill sides have been reduced to sterility, while the soil washed by the heavy monsoon rains off the bare hill side, has silted up and rendered useless, streams and creeks which were once navigable. The difficulty is that the tribes are always semi-barbarous, and the task is to induce them to overcome their apathy and take to permanent cultivation. Unfortunately, sympathetic officials, properly alive to the necessity of kindly treating these tribes, are usually totally blind to the real danger of destroying the Ghât forests, or what is worse, professing to believe it, the belief has no real hold on them. To abolish this destructive cultivation, serious and sustained effort is necessary; to get the people to settle down, and to procure for them cattle, ploughs, and seed-grain, requires liberal expenditure. It is difficult to find officers who have the time or the zeal necessary for the first, and financial difficulties are likely to be in the way of the second. An easier course is to draw harrowing pictures of the suffering caused to the tribes by stopping their ancient cultivation, and to denounce the efforts of the Forest Administration as being harsh and without recognition of the "wants of the people." It is unfortunate that the very forests at the head-waters of streams, with dense growth and steep slopes, which forest economy most imperatively calls on us to preserve, are the very tracts in which this temporary cultivation is most insisted on.

§ 3.—*Peculiar customs in Burma.*

Mr. Brandis, Inspector General of Forests to the Government of India, has been the first to notice and describe a curious system of "toung-yá" cultivation found in Burma (in the hills between the Sittang and Salween rivers), where the pressure of tribal populations has confined each village or group to certain definite local areas. In these the forest is most carefully protected from fire, so as to favour the restoration of the jungle as much as possible, and the whole is worked on the toung-yá method, in a peculiar and well-devised order of cutting, which is determined strictly according to local custom by the tribal council. This will be more fully described in the chapter on Burma.

Here we have this method of cultivation developed in a manner which must in time be recognised as a regular system of land-holding.

I will now pass on to sketch the first beginning of our revenue dealings with the people which took place in Bengal, and show how the other systems gained a footing in different provinces.

As in doing so I must almost at the outset allude to village lands nd village owners, State grantees, and State revenue collectors, I t that the brief sketch of tenures now given will have been nt at least to make the passages in which such allusions elligible.

CHAPTER IV.

A GENERAL VIEW OF THE DIFFERENT LAND-REVENUE SYSTEMS IN INDIA.

SECTION I.—INTRODUCTORY.

§ 1.—*The rationale of Indian land-revenue.*

EVERY one who has been in India, even for a short time, is aware of the fact that a large portion of the Government revenue is derived from the land. In all cases that revenue is now taken in money. Under the earliest Hindu Rulers it was, and in some Native States still is, taken in kind. But whether it is grain or money, the principle is the same. A portion of the produce of every field belongs to the king;—unless the king chooses, as a favour, or as reward for services, or to support some religious institution, to forego his claim[1].

I do not propose to discuss the theory of this method of obtaining a State income. It may be admired or reprobated; but at a rate it has this advantage, that it is universally underst the people, and has the sanction of absolutely immemorial c facts of no little practical importance in a country like India.

It is therefore, when fairly assessed[2], realised without difficulty, and there is certainly no method of taxation by which, under the

[1] In which case there is a revenue-free, or "lákhiráj," grant of some kind.

[2] There have, no doubt, been many instances (almost, I may say, as a matter of course) in so vast and intricate an operation as our land settlements, in which assessments have proved excessive and have resulted in much distress; but over-assessment always can be, and always is eventually, remedied. There are also other difficulties, such as that which arises from the unbending regularity of the demand, which may cause the improvident to get into the hands of money-lenders. These, however, are questions of social economy; they have nothing to do with the revenue itself.

existing conditions of the provinces, we could raise an equal amount of revenue with equally little trouble or popular opposition.

Nor do I propose to enter on the question, how the State comes to be entitled to take a share in the produce of land. In the last chapter I sketched the position of the Hindu Rájas of early days, and indicated the changes induced by subsequent conquest. I endeavoured also to show that it is idle to discuss the question whether it is as paramount owner or landlord of the soil in India, that the State takes its share[3]. Such a question is not capable of solution, for the simple reason that at no time did the ideas which we of the West associate with the term "landlord" or "proprietor," enter into the legal system of the country, either Hindu or Muhammadan. Even in the West, the idea of "property," as we now have it, is one of gradual and slow development.

The State at all times claimed a share (often a very large share) of the produce, and at all times granted and disposed of waste lands as it pleased: often, too, it has exercised very wide powers in the location and ejectment of the actual holders of the soil. These powers, had they been exercised in Europe, might have been held to be only explainable on the ground that they were the act of a "*dominus*," or owner; but having been exercised in the East, we cannot apply these ideas to them. In the absence of any *Eastern* notion of proprietary right, we can only say that the people did as the custom, and the king did what he chose—at any rate within those limits which the nature of things sets to the exercise of arbitrary power.

From the very first our Government has wisely avoided theorising on the subject. The earliest Regulations of 1793 contented themselves with asserting just so much, and no more, as would serve for a practical basis of the system they formulated: namely, that "by

[3] In Regulation XXV of 1802 of the Madras Code it was asserted that the Native Government "had the implied right and the actual exercise of the proprietary possession of all lands whatever," and this was still more clearly stated in the Regulation XXXI of 1802, since repealed, as being vested in the Government of Fort St. George "by ancient usage of the country." The proprietary right was then *conferred* by Regulation XXXI of 1802 on all zamíndárs and other landholders.

ancient law the Government was entitled to a share in the produce of every bígha of land," that share to be fixed by itself[4].

The only other rights which Government has reserved, which may, if the reader pleases, be traced to a theory of original proprietorship, are (1) that Government in recognising or "conferring" a proprietary title (in the modern sense) on the landholders, reserved to itself the right to secure the practical interest of the other classes of persons interested in the land, by making regulations for the protection of raiyats, under-proprietors and actual cultivators of the soil[5]: in other words, that Government had power to distribute the rights in the soil and in its rental as it thought fit, consistently with facts and with the general principles of equity; (2) that Government has the right to dispose of waste lands not occupied by any one; and (3) that it has also the right to sell all lands (in the last resort) to recover arrears of revenue which cannot be got in by other means.

There are other Government rights of course,—the right to escheats, the right to mines and quarries (when not specially included in the grant of proprietary right to others), for example, but these do not concern my present purpose.

§ 2.—*Early practice in respect to land-revenue assessment.*

Under the Native Governments, the State share in the p whether represented by an actual share of the grain, or by equivalent, came to be fixed, like everything else in India custom. But the custom was from time to time affected by t necessities of the ruler, and by the interference of the agents whom he employed to assess or realise his revenues.

In India, as we have seen, the village is, as a rule, the natural unit of land-grouping. The first form in which the revenue was

[4] See preamble to Bengal Regulations XIX and XXXVII of 1793. The same phraseology has been re-adopted in modern Acts—for example, in Act XXXIII of 1871—and it holds good for all revenue systems. The Bombay Revenue Code (section 45) makes the same declaration.

[5] See section 8 of Regulation I of 1793 (first clause).

collected was by simply dividing the grain-heap at the threshing-floor, between the village servants, the cultivator, and the Rája. This I shall describe more in detail in a subsequent chapter. When this stage was passed, money revenue was assessed by valuing the Rája's share of the grain at current rates. And there were various transitional stages, caused by the difficulty of superintending the division of grain-heaps over a vast number of separate villages, which resulted in substituting an appraisement of the crop and fixing an estimated amount to be made good, and so forth. But omitting these stages, and coming to the time when the payment of revenue in cash became tolerably general, the practice of assessment varied according to circumstances. If the village was "joint," a lump sum was fixed for the whole estate, leaving the sharers to distribute the burden according to their own laws and customs. If it was a "non-united" village, either each holding was assessed, or the village headman distributed a lump assessment over the holdings separately, according to custom.

Under the strong government of Akbar, there was something not unlike a settlement of our own day. The ámil, or local superintendent of revenue in a pargana (or revenue sub-division of a district), collected a certain share of the produce, or the money rates ...ssed at the settlement. In later times, the revenue officers ... some further payments as "cesses" for particular purposes. ...illage distributed the burden of these among the different ...olders, through its managing committee or headmen, according to ancestral shares or according to local custom.

§ 3.—*Native methods of revenue collection.*

The necessity for a revenue as large and as steady as possible is one that presses not only on a Mughal Emperor and his Deputy, but on every Oriental Government; and the more so as it seeks to maintain large armies for foreign conquest, and aims at the construction of large public works,—roads, canals, and 'saráis' (or travellers' halting places)—which are usually the objects to which Oriental Governments turn their attention. As long as the Govern-

ment was firmly administered, it attained this object best by a moderate settlement and a fixed respect for the landholding customs of the country.

But the time always came when the dynasty began to decline, and then wasteful expenditure of every kind became prevalent; the necessities of the king became greater, and his hold over his agents less. Then it was that the revenue was augmented by arbitrary exactions; the original village-owners were ousted or fled. Revenue farmers got hold of the village, and either got in new tenants or mercilessly rack-rented the old village-owners. The revenue contractor got as much out of the villages, and paid as little to the treasury, as he could. The rates of the original settlement (whether Akbar's in Hindustan, or Malik' Ambar's in Central India) had become customary, and were consequently well known; but they were added to by cesses till a compromise was effected, and the result became in its turn the customary rent. In course of time new cesses were added and a new compromise effected, and so on. To what lengths such a system was carried, and in what different forms, depends very much on the locality and its institutions, and on th character of the Native rule. In Northern India, the villages we strong and often managed to hold their own; if the land ev changed hands, the village institutions survived and did not f or become absorbed in, some different kind of estate. I parts, as in Oudh, "taluqdárs" arose as the outcome of th difficulties of the State. In Bengal, again, another plan of re collecting received a wide development which was probably fa tated by the complete decay of the village institutions. However this may be, it is always the decline of the Native Government that introduces confusion, and that leads to results which have largely affected the revenue system introduced by the British Government.

Section II.—The Bengal System.

§ 4.—*The rise of the zamíndárí system.*

The great Province of "Bengal, Bihár, and Orissa" was the first to come under British rule, and it happened that these terri-

teries exemplified in a striking manner the general course of events which I stated in the last paragraph. The Mughal Government had ceased to be able to control its local agents efficiently, and the revenue suffered accordingly. In time, however, the general corruption of the revenue officials and the lack of power to control them, almost naturally led to the invention of a system whereby, instead of trying to make the collections through the agency of village officers who had ceased to have any authority, or to keep detailed accounts with local farmers and ámils who were perpetually on the watch to embezzle what they could, the State appointed certain great managers or agents, who became responsible for the realisation of the revenue of large tracts of country. An official so appointed was called a "zamíndár[6]."

[6] I hardly know whether it is best to call them "revenue agents" or "revenue farmers." On the whole I prefer the former term (though it sounds awkward) because, as a rule, they did not bid or bargain for certain terms, but the revenue of the zamíndárí was known by custom, as the result of the old "ámili" assessments; and the zamíndár rather took the responsibility (for a certain remuneration) of realising the assessment, than farmed the revenues. When the Government grew more and more corrupt and feeble, the usual consequences of declension rapidly developed. Regular revenue management under State control gave way, and the zamíndáris were put up to auction and sold in the most reckless fashion.

The reader may be put on his guard at the outset, as to the meaning of the vernacular terms used in speaking of landed interests. Zamíndár is a term likely to [illegible] him. In speaking of a Bengal settlement, zamíndár is the revenue official [illegible] proprietor" under the Bengal system) who received a "sanad" or written [illegible] f appointment to realise and make good to the State, less certain deduc- [illegible] himself, the revenues of a large tract of country.

[illegible] other parts, zamíndár ("holder of land") has come to mean the complete and exclusive proprietor of land generally; and it is so used in speaking of tenures, as, for example, "zamíndárí tenure," where we mean that the land has one man (or one body of men) as its owner. Still more generally used, zamíndár is colloquially applied to any one who gets his living from the land. If you meet a man going along a village road and ask who he is, he will probably answer—"I am a poor man, a zamíndár."

The term "ra'íyat" (raiyat) also is not precise; it means a tenant—one who pays rent to a landlord—in such phrases as the "raiyat's rights must be protected;" or it means the actual cultivator, in such a phrase as "a raiyatwárí settlement."

In its etymology it means simply "protected;" so that any inferior may colloquially describe himself as a raiyat,—"your humble servant."

Asámi is a term of the same kind. With reference to a landowner, it means his tenant; but colloquially, and speaking to a superior, it may be used by an owner of

The Government fixed a certain revenue which the zamíndár was expected to realise from a given tract of country or "estate"—often of great extent—and allowed him a tenth as his personal remuneration and some further allowances for special purposes.

In the earlier stages of the system the zamíndár was still, to a considerable extent, controlled by the superior revenue officers of the State; it was the duty of the latter to see that the people were not oppressed, and that the collections were duly accounted for to the treasury. But as the Government fell further into decline, the power and independence of the zamíndár grew apace. The late Mughal rulers now and again made desperate efforts to repress or even to get rid of the zamíndárs, but always without success.

The institution was, in Bengal, like a plant which, when it has once taken to the soil, there is no getting rid of. The zamíndár became not only indispensable to the revenue system, but he gradually took such hold on the tract of country under him, that it grew more and more, as time went on, to be looked on as "his estate," and he became, what we must call for want of a better term "the proprietor."

In fact, we have here a most striking instance of the way which the land-revenue systems of conquering Governments tend modify the land-tenures.

§ 5.—*Progress of the zamíndár.*

Let me then briefly trace the progress of this Bengal inst... which so rapidly grew at the expense of the old village soil-owne... The zamíndár was either a man of local influence, a court favourite, or a man who once was a paid revenue officer. But very often he was one of the local Rájas or Chiefs, who had been conquered or reduced to vassalage by the Muhammadan power. That the zamíndár had originally anything like a proprietary right cannot be asserted, for

himself—he is your "asámi." Etymologically it means only "such an one," for ásám is the plural of *ism*, "a name." The use of these terms may afford a significant hint how little our inherited and developed notions of a "landlord" and "tenant" have any real equivalent in Eastern speech.

this chief reason, among many, that he did not, in theory, get one farthing of rent from any one. He was bound to pay in the *whole* of what he realised from the landholders, less only the percentage, and the perquisites, which the State allowed him for his trouble and responsibility. On the other hand, the zamíndár had many ways of getting money out of the people, and many ways of getting hold, first of one field and then of another, and so gradually improving his position, *till he became* the virtual "owner" of the whole estate. A detailed account of this process I must reserve till I come to speak more particularly of land tenures in Bengal.

When the institution of zamíndárs was first originated, this conclusion was not foreseen, far less intended. At first, as I said, the zamíndár was strictly controlled. The Government maintained the official qánúngo or pargana officer to supervise and control him. Over the qánúngo, again, was the "karori" of a "sirkár" or district, or the "ámil" of a "chakla,"—according as one or other form of fiscal division was in vogue. But the same power which enabled the zamíndár to override the original rights of the village landholders enabled him soon to reduce the pargana officer to being his mere creature. When our rule began, the qánúngos existed only in name; the pargana divisions had fallen into disuse; the "zamíndár" (and the division of the district into zamíndáris) was everything.

§ 6.—*Jágírs.*

In some parts of the country there were no zamíndárs, but the right of collecting the revenue was granted to noblemen or military retainers for the support of certain military contingents. This was especially the case when the country was remote, and force likely to be required in collecting the revenue. The grantees were called "jágírdárs:" they usually were allowed to take the whole revenue themselves, and rendered an equivalent to the State by maintaining peace in their district, and by bringing to the royal standard a certain prescribed force properly equipped. In the decadence of royal power, however, this condition often fell into abeyance, and the jágírdár absorbed the lands in his jágír just as the zamíndár

did on his estate. In a few instances grantees, called taluqdárs, acquired a similar though less dignified position. In Oudh, as we shall see, the institution of taluqdárs became exceptionally developed.

§ 7.—*Early management of the East India Company.*

To the Native rule in its last stage of decrepitude, succeeded the government of the East India Company; but at first, whether owing to want of experience or other causes, no attempt was made to displace the existing system. Even when in 1770 the Company's servants did attempt to take the revenue management into their own hands, they fared no better. They tried annual settlements and farms: they put in managers of the "estates" and ousted many zamíndárs, but the revenue came in irregularly and much misery and disorder resulted. The task of improvement was not an easy one; but it is a fact worthy of notice, that even at that early date, the zamíndár had attained a position so far removed from that of a mere official, that he was able to complain loudly of being ousted, as having long since acquired a hereditary and quasi-proprietary position. This is recited in detail in the 24 Geo. III, Cap. 25, section 39, and it was the declared object of that law to *restore* the zamíndárs under such guarantees as would prevent their oppressing the "tenantry."

Consequently there was the double call to have recourse to the zamíndár: first, there was the actual *de facto* position which he had acquired; and next, there was the absolute necessity for proceeding on the plan, which had by that time been in existence for several generations, of finding some person who would be directly responsible for the revenue of each suitable group of villages.

The only alternative would have been to devise a system of dealing with each village or of collecting a revenue direct from every petty landholder. Such a system, at that date, and under the existing circumstances of Bengal, could never have even suggested itself; it was wholly foreign to the Native system of government

which preceded ours, and there was no kind of official machinery by which such a plan could have been worked[7].

The zamíndár being thus established as the necessary and natural intermediary between the State and the cultivator, the final step was to secure and declare his legal position.

Now the first object of the Government, as regards its own interests, was to secure its revenue and get it paid as regularly as possible. It was then considered that the best way to attain this object was to settle the revenue demand, at such a moderate figure that it could be paid in good seasons and bad alike, and to declare that this moderate sum was no longer liable to annual or other frequent variations, but that it should be fixed either for a term of years or for ever.

But this was not enough; the person who became responsible for this fixed demand to be paid with continuous regularity, must be secured in such a position, with reference to the land itself, that he might be willing to improve it and to expend money on works of embankment, irrigation, drainage, and the like, which would diminish the risks of failure from bad seasons, and thus at once secure the regular payment of the State share and enhance his own profits. This object required some legal action to be taken with reference to the actual tenure of the revenue-payer. He must be no longer liable to be turned out at the caprice of the Government officers, he must be attached to the land, be permitted to raise money on the credit of it, to sell it if he pleased, and pass on his interest in it by succession to his heirs.

But what was all this but to recognise a *proprietary right* in the land, and to vest it in the person who engaged to pay the revenue? The revenue share was to be moderate, and subject to no enhancement for the term of engagement; the surplus was to

[7] That such a system should afterwards have been thought of and put into practice in Southern India does not in the least invalidate what is said in the text of Bengal. Revenue systems are always the outcome of existing facts and institutions. While, for example, in Bengal the "raiyatwárí" idea was an impossibility, in Bombay the Maráthá system not only rendered it conceivable, but left it in actual existence.

be solely enjoyed by the engagee; he was to be at liberty to sell, mortgage or let, or give away the land,—to do what he liked with it in short, and to pass it on to his heirs and successors: why then he was *owner* of the land! The short word "owner" expresses or includes all this, according to our Western ideas[8]. Thus the practical history of the zamíndár's growth, and the logical necessities of the British system, both tended to the same result.

§ 8.—*The rationale of the Bengal system developed.*

The conclusion at which the Government then arrived, was that the revenue engagee must be declared the owner, and whoever is practically owner is, *vice versâ*, the person to be selected to engage for the revenue.

This principle now fixed in the every-day language of the people, wherever the Bengal settlement or a derivative system, has taken root. The terms "revenue-payer" and "owner" have become synonymous. In Upper India, to say that a man is a málguzár (literally, a payer of revenue) is to say that he is a proprietor of the land on which he pays; and to say that he "pays four annas revenue" (*i.e.*, four annas in every rupee,—one-fourth of the whole sum assessed) is exactly the same as to say that he is proprietor of one-fourth of the estate[9].

The idea, then, of recognising the zamíndár as owner of the land, in order to secure the revenue and promote the well-being of the country, is at the basis of the Bengal revenue system. Accordingly, in the Bengal Regulation II of 1793, we read that one of the fundamental measures essential to the attainment of the object of Government was to declare the property in the soil to be vested in the landholders[10]. This property was "never before formally declared to be so vested," nor were they (the landholders) "allowed to transfer such rights as they did

[8] I have already discussed in the previous chapter the nature of this proprietary right or ownership, and stated how it was limited: see page 86, *ante*.

[9] Thomason's Directions, para. 79 (= 94, Panjáb edition).

[10] Here we see the "zamíndár" = holder of land, literally translated.

possess, or raise money on the credit of their tenures, without the previous sanction of Government[1]."

§ 9.—*It is modified in being applied to other provinces.*

One of the first questions, therefore, that a Land Revenue Settlement is concerned with under this system (or its derivatives) is, who is the proper person to recognise as proprietor, and to admit to engage for the Government revenue? It will be seen in the sequel, that the different conditions and existing facts of landholding in Bengal, in Orissa, in the North-Western Provinces, and afterwards in the Central Provinces and Oudh, led to different answers being given to this question, and consequently to important variations in the Revenue and Settlement systems of these Provinces. They, however, all spring out of the Bengal system as the parent stock, following their special evolution in a manner which is eminently curious and instructive.

In Bengal, as I said, there were a few other great men—grantees of the State—who acquired a similar proprietary position and were settled with for their own estates. The "jágír" and "taluqa" grants were, however, few, the "zamíndárs" almost universal. When, therefore, Lord Cornwallis came out in 1786 as Governor General, with instructions to make a settlement which should grant a solid interest in the land to those entitled to it, and which should secure them the fruit of good management, he found nearly the whole country in the hands of the zamíndárs, and the settlement, owing to this characteristic feature, came to be spoken of as the "ZAMÍNDÁRÍ SETTLEMENT" of Bengal.

§ 10.—*Mistaken notions about the Bengal Settlement.*

It will now, I hope, be clear to the student, that the popular and oft-repeated idea of the Bengal Settlement, as carried out by Lord Cornwallis, namely, that it was a proceeding whereby the

[1] See preamble to the Regulation; also section 9, Regulation I of 1793.

"Muhammadan tax-gatherer of the country was suddenly converted into a proprietor," is very far from being accurate or sufficient[2].

It was not *as tax-gatherer* that Lord Cornwallis recognised him, but as the local magnate in the position to which he had gradually advanced, and in which he practically stood, in the end of the eighteenth century. And even if the facts had been less strongly pronounced than they actually were, there were two very weighty considerations which would have led Lord Cornwallis and his advisers to look on the zamíndár as the real proprietor.

The first is one which I have already sufficiently noticed, namely, the difficulty of adopting, or even devising, a different system. Any attempt to put back the zamíndár into his original but long outgrown position, would have ended in utter failure. It would not have harmonised with facts.

The earlier institutions of the Province were in most cases dead beyond resuscitation. There was no machinery for dealing directly with the cultivators, even if the ideas of the time had suggested such a plan as possible to the Collector. The village system had broken up, and the headmen existed only in name. As to the local revenue officers, without whose aid detailed revenue management is under any circumstances impossible, they had become useless. The whole system, originated in the palmy days of the Mughal power, was now in its last decrepitude. There was then no other course but to continue to follow, at least in its general lines, the system which we found in existence. There were the official lists of estates, and the zamíndár of each, responsible for a certain revenue. It would be possible to check his proneness to rack-rent the people and levy extra cesses; steps might be taken to secure the welfare of the "tenants," but it was impracticable to dispense with the zamíndár himself.

[2] It should always be borne in mind, in criticising the acts of our early administrators, that we now approach the subject with the accumulated experience of a century, and with the habits of looking at things and of tracing the history of institutions with which Maine and other authors have made us familiar. No such experiences were available to Lord Cornwallis and to the Court of Directors at home.

The second reason was, that the Court of Directors, no less than Lord Cornwallis himself, entertained the ideas of agricultural prosperity common to English country gentlemen of the time. Nothing, it was considered, could be better for the country than the institution of a landed aristocracy, which would possess wealth to improve the lands and keep together the tenants under a happy bond of paternal influence. The Rájas and other powerful monied men, who were the zamíndárs, seemed just to fill the place of such an aristocracy.

This feeling no doubt largely influenced the method prescribed for making the settlement. Elaborate enquiries, extending over a period of four years, were made before Lord Cornwallis would agree to sanction the Settlement. But these enquiries bore wholly on the question of the revenue assessment and extended to finding out the proper rental of the estates; no effort was made to determine the true extent of land in each estate, or whether the zamíndárs had more land than they were really entitled to; no investigation was made with a view to discovering and protecting, by any system of record or registration, the rights of the cultivators on the estate.

To interfere with the landlord by calling in question the boundaries of his estate, and by making a survey; to make inquest for possibly overridden claims; to set up the rights of tenants in open opposition to their zamíndárs,—all this seemed to be directly derogatory to such an idea of property as was entertained.

§ 11.—*Intended character of the Bengal Settlement.*

In Bengal, therefore (originally), no survey was made; no boundary marks were erected. The Collector had simply lists or registers of the zamíndárs' estates by name, and a description (often very vague) of the boundaries and of the amount of "land tax" each had been accustomed to pay: that was all[3]. He then

[3] See this further described in the chapter on the Bengal system.

settled with the zamíndárs for the amounts, and recognised them as landlords.

As to the original rights of the village land-owners, as far as they survived, there was no intention to do injustice, or to ignore them. But it was conceived that the Government moderation towards the zamíndár would immediately react to the benefit of the tenantry, and would take away all pretext for rack-renting and oppressing them. There were the Regulations directly declaring the zamíndár's incapacity to levy unauthorised dues and exactions, and the Civil Courts were open, to which every subordinate landholder could resort and claim what he conceived to be his due; but the Revenue Collector was not the person to interfere with the "sacred rights" of property. He had only to receive the fixed revenue and nothing more.

§ 12.—*Principle of a middleman between the cultivator and the State.*

Thus the historical position of the zamíndár, backed by the necessities of the position in which the Government found itself, and supported by the views natural to the time on the subject of landed rights, united to produce the Bengal Settlement of 1793. But they produced a still further result; they tended to fix the principle that the Government could only deal with the land through recognised proprietors intermediate between the "ryot" and the State. This principle, though at the present day it has little practical importance, can be traced through all the original legislative measures on which those systems were founded, and still more clearly in all the discussions which a few years later arose in connection with proposals to deal directly with the individual cultivator and establish, for certain provinces, a different revenue system.

Forty years after the settlement proclamation of 1793, when experience had been gained and those revised Regulations passed, on which our North and Central Indian Settlements are all

either directly or indirectly based, the principle was still recognised. There was not, indeed, in these provinces, any possibility of applying the idea of a great zamíndár proprietor, because no such zamíndárs existed; but the principle led to the recognition of other forms of property in land, varying according to the province, as we shall presently see, and these were equally forms of middlemen's estates with which Government dealt, over the head of the individual landholder.

It is, in fact, the distinctive feature of every form of settlement which traces its origin to the Bengal Regulations, that there must be some one to engage for the revenue *between* the numerous local cultivators or holders of fields and the State; and that person must be recognised as "proprietor," to enable him to maintain his position and secure his power of paying regularly. It was the very different selection of the person who was to occupy this position, which the different circumstances of the several provinces dictated, that led to the variety of settlement systems which we have to study.

§ 13.—*The Bengal Settlement made "Permanent."*

In thus describing the steps which led to the establishment of the "zamíndárí" revenue system, I have avoided complication by keeping out of sight, for the time, the important feature in this settlement, that the assessment was made permanent, and that in consequence of this salient feature, the Bengal Settlement has been specially distinguished as the PERMANENT SETTLEMENT. To this point I now proceed.

The fact that the settlement was made permanent does not in any way affect the considerations which I have stated. In point of fact, though permanency was aimed at, as being the ultimately necessary complement of the advantages to be secured to Government, and conferred on the landholders, by the settlement, it was so far from being essential to the system that it was not at first contemplated. The earlier despatches of the Court of Directors, while pointing to the necessity of making such a settlement as

would not necessitate constant changes, nevertheless directed that the new settlement should be for a term of ten years[4].

I mentioned that the Court of Directors were struck with two great principles which they regarded as necessary to secure alike the revenues of Government and the welfare of the people—proprietary right in the soil was to be conferred, and the Government demand was to be fixed and moderate. The first of these principles led to the selection of the Bengal zamíndár as proprietor; the second led to the settlement with him being declared permanent. The demand of Government was to be so moderate as to leave a fair share of profit to the revenue-payer, and all capricious enhancement was to be declared impossible, so as at once to make landed property secure and encourage thrift and investment of capital. It was also, perhaps, a natural consequence of the idea of creating a landed aristocracy, that the tendency should be to fix the land revenue for ever, as a *permanent land-tax*. The ten years' settlement was evidently only admitted as a compromise, possibly rendered necessary by the state of affairs, but not as a final arrangement.

[4] It must not be supposed, as some works on the Settlement would lead us to conclude, that Lord Cornwallis was the sole author of the system (which is now associated with his name because it was carried out under his supervision) or that he outran his instructions. The Court of Directors had long been dissatisfied, as well they might be, with the previous revenue administration. It had, inevitably perhaps, consisted of a series of experiments and failures, in the course of which many zamíndárs had been ousted. Had the zamíndár been, really, only a tax-gatherer, it was obvious that his retention or ejection could not have raised any question of right. But, in fact, his position was far beyond that, and consequently the terms of the 24 Geo. III, Cap. 25, section 39 (already alluded to) are not to be wondered at. There had been injustice to vested rights in the ejections, and the Court of Directors took the initiative in demanding that the zamíndárs should be restored and their position secured. At the same time the Court strongly insisted on the making of a moderate and fixed assessment, which they considered ought to be the fixed and unalterable revenue of their dominions, but which, for certain special reasons, they consented to introduce for ten years in the first instance. Lord Cornwallis, then, did not originate the idea of a zamíndárí or a permanent settlement, nor was he eager to carry it out; on the contrary, he began by cautiously making enquiries, and he continued the annual assessments for some years before he sanctioned the Decennial Settlement, and made it permanent.—See Cotton's Memorandum on the Revenue History of Chittagong (Calcutta, Bengal Secretariat Press, 1880), pages 49-50.

§ 14.—*Feeling among Bengal officers regarding permanency of the settlement.*

The officers who had made the enquiry as to the possible assessments in 1790, were all of them favourable to the grant of proprietary rights to the zamíndárs; and some of the ablest, for example, Mr. Law of Bihár (uncle of Lord Ellenborough) and Augustus Brook of Shahábád, were favourable also to a permanent settlement. But this feeling was not universal. In the course of the enquiry which preceded the settlement, the Collectors became aware of the existence of rights of other people besides the zamíndárs, which were not defined or provided for; they knew that they were truly ignorant of the real extent of the lands to be assessed, and that they had no means of testing the equality of the assessments. They were prepared to see their conclusions tried for ten years as at first ordered, but they were aghast at the idea of making "permanent" a settlement based on such imperfect data. Sir John Shore (afterwards Lord Teignmouth) was among the ablest opponents of the permanent settlement, and his weighty and well-reasoned Minutes may still be read in the "Fifth Report" to the House of Commons, which has been reprinted more than once. The despatch, however, of the Court of Directors of September 1792[5] settled the matter, and Lord Cornwallis issued his celebrated proclamation which (enacted into law as Regulation I of 1793) declared the settlement *permanent*[6].

§ 15.—*The merits of the Permanent Settlement.*

This feature has been the subject of much controversy; but the more generally received opinion is, that it was a grievous mistake to make the settlement permanent, and that the expected

[5] Despatch of 29th September 1792, to be found, I believe, in Appendix 12A of the Report of the Select Committee of the House of Commons, 1810.

[6] See Campbell's Modern India, page 305 (3rd edition). Here the author represents Lord Cornwallis as anxious to press the permanency of the settlement, and speaks of the Court of Directors as giving a "qualified and reserved" assent; but there is no reason to think that Lord Cornwallis was anxious to press the matter, as explained in a previous note.

benefits have not accrued either to the land, as regards its improvement and the development of agriculture, or to the tenants, as regards securing them moderate rents, and the opportunity for bettering their social condition. It is, however, no part of my object in this work to discuss the arguments which have been advanced on either side, or to advocate or condemn particular measures. Indeed, if this book should fall into the hands of any one whose duty it will afterwards be to introduce a settlement into some province where no system has yet been fully developed, I cannot give a more useful caution than to beg him to beware of becoming the advocate of any system whatever. By all means appreciate the facility of management which the North-West joint-community settlement undoubtedly offers; by all means admire the perfection of the Bombay survey; but do not suppose that any system is essentially perfect, as if it were a divine revelation, and that its introduction *per se* must be a blessing. To a non-Indian reader such a caution may appear strange or unmeaning; but nobody, with even a short experience of India and of official literature, can have failed to perceive the influence which systems have over the officers who administer them. The North-West system especially seems to have had this effect on officers trained under it. The history of the Central Provinces and of Ajmer, and, I may add, of Berar, should read a lesson in this respect.

We have still provinces—Assam, and the districts of Burma—where no artificial system has yet been worked out, where we have simply taken up the old customs, shorn them of their preventible abuses, but worked on their original lines as far as possible. This arrangement may not be, probably cannot be, final. But I can conceive nothing more likely to be fatal to the future well-being of such provinces, than for an administrator to become enamoured of a system as a system, and to insist on its introduction, regardless of the square pegs which will not fit, without undue forcing, into its round holes. Extreme caution, a demand for the most perfect available information and the most extended experience, a readiness to adapt and to modify, and to have no "Procrustean" beds, are the

lessons which I think an intelligent survey of the revenue history of India will enforce, with no uncertain voice, on any candid student.

I am not then to advance any kind of argument *pro* or *con* a permanent settlement, but I may offer two remarks. One is, that the permanent settlement of Bengal has been often attacked as if the policy of the selection of the *zamíndárs* and making them proprietors, and the policy of declaring the assessment *permanent* or fixed for ever without liability to enhancement, were one and the same thing, or at least necessarily and inherently connected. It is not so; either one may have been good or bad without reference to the other.

My other remark is that in considering the advisability of a permanent settlement, it is essential completely to separate the distinct questions (1) whether the fixing of the revenue is, as a *principle*, in itself right, and (2) whether in any given state of things our experience is wide enough, and our knowledge complete enough, to warrant us in introducing it. This caution may not be unnecessary, since the question of a "permanent settlement" for some of the provinces not under the old Bengal system, is not dead but only sleeping, as will appear hereafter.

§ 16.—*Origin of the other Revenue systems.*

I must now hasten to describe the circumstances that led to the adoption of the other Provincial Revenue systems. These all belong to two great classes.

The first class is that which includes the MÁLGUZÁRÍ SETTLEMENT of the Central Provinces, the VILLAGE SETTLEMENTS of the North-Western Provinces and the Panjáb, and the TALUQDÁRÍ SETTLEMENT of Oudh. In all these, the principle of a middleman between the cultivator and the State is maintained, though in the case of the village settlements, the middleman theory is, if I may use the phrase, reduced to a minimum, since the middleman is only an ideal body—the jointly responsible community. But this class is essentially, in its theory and in its history, a derivative of the earliest or Bengal system which we have just been considering.

The second class includes the RAIYATWÁRÍ SETTLEMENTS which have an altogether different history, and which are based on a totally different principle. The settlements of the Madras and Bombay Presidencies and of Berar represent this class.

It will be best to pass over, for the moment, the modifications of the Bengal system and speak first of the raiyatwárí system, since the history of this will show that it had no small influence on the direction which the modifications of the Bengal system took.

SECTION III.—THE RAIYATWÁRÍ SYSTEM.

§ 17.—*The Raiyatwárí Settlements commence in Madras.*

The raiyatwárí system really depends more on the constitutional peculiarities of agricultural society than anything else, and therefore, as regards Bombay, and to a less extent as regards Madras, it may be said not so much to have been introduced as to have existed naturally. In Bombay it was the system of the Maráthá Government which preceded ours; and although this was not the case in Madras, still in many districts the facts of land-tenure were such, that its adoption may be regarded as to some extent a necessary conclusion.

Speaking of it, however, as a British system of revenue management, the raiyatwárí settlement—historically associated with the name of Captain Munro (afterwards Sir Thomas Munro and Governor of Madras)—was finally introduced into that Presidency in 1820.

This, however, is a date considerably later than the permanent settlement of Bengal, and it is the history of the intervening years that is so instructive. It happened that the northern districts of Madras, which were among the first to come under British rule, had long been subject to Muhammadan dominion, and therefore the Mughal system of zamíndárs was firmly established and had produced its usual consequences, in obliterating the tenures by which land had been originally held. But here the zamíndárs did not manage their own lands; they invariably farmed them out. More-

over, all the land was not, as in the Bengal districts, under zamíndárs. Throughout the districts there were also lands called "haveli lands," managed direct by the Government officials. These districts came under British rule about the same time as Bengal, Bihár and Orissa did[7]; and they were at first managed by leases or short settlements of three to five years.

§ 18.—*Attempt to introduce Permanent Settlement.*

But here, as elsewhere under such a system, the management fell into confusion, and as by that time the permanent zamíndárí settlement had been introduced into Bengal, orders were issued to introduce it into Madras also. This was at first resisted, but in 1799 peremptory orders came, and the result was that the zamíndárs were accepted as settlement holders, and as for the haveli lands, they were actually parcelled out into estates called "mootahs" (muṭṭhá) and sold to the highest bidder! Madras Regulation XXV of 1802 (already alluded to) followed, and declared the zamíndárs and mootahdárs proprietors, and granted sanads or title-deeds of "milkíat-i-istimrárí" or perpetual ownership. The same result happened with regard to the "jaghire" (jágír) lands around Madras itself, which had been acquired between 1750 and 1763. In 1794 they were settled by Mr. Lionel Place. This gentleman found village communities surviving, much as they survive to this day in Northern India, and he effected joint settlements[8]. On the issue of the Permanent Settlement orders, however, these settlements were cancelled, and under the Regulation of 1802 the lands were parcelled out into "mootahs" and sold.

Meanwhile, as time went on, other districts—those to the south

[7] See the table at the end of Chapter I which gives the dates of acquisition of the different territories.

[8] All over India, and especially in Central, Western, and Southern India, the difference of the form of village community which was described in the last chapter has had an important influence on the revenue system. The joint-community naturally suggests a settlement with the body (as one) for a lump assessment on the whole village. The other kind of community—each landholder being separate—naturally also suggests a settlement with each individual cultivator.

and west—were acquired (1792-1801). Here, in some cases, lands were held by chieftains called polygars (pálegára) with whom zamíndárí settlements were concluded. But there were many other lands not so held. The tract known as the Baramahál (Salem district) formed a notable instance of this. A Commission was appointed to settle it, one of the members being Captain Munro. The village communities here had, either owing to the grinding rule of Tipú Sultán, or to natural circumstances[9], fallen into decay, if indeed they really had such a constitution at any time. The settlement was therefore made with *individual* landholders; but pursuant to the peremptory orders of 1799, these settlements were quashed, and the lands as usual parcelled out into mootahs and sold. This arrangement, however, failed so completely, that the Government was practically obliged to return to the raiyatwárí method.

But the final establishment of the system was, perhaps, due to the settlements of Malabar and Kanara; here, though circumstances prevented the growth of joint-villages, there never was anything resembling the Bengal zamíndárí system, and indeed the levy of land-revenue itself was a novelty. As Munro was engaged on these settlements, he of course adopted the individual or raiyatwárí method, of which he was the zealous and able advocate.

During all this time correspondence went on, and in some places the individual settlements were carried out, in others the joint-village settlements whereby a lump sum was paid by the village jointly, the landholders apportioning the burden according to their own customs[10]. In 1817, however, the Court of Directors came to the determination to adopt the raiyatwárí system. A visit to England made just before this by Captain Munro, probably had much to do with the decision.

Munro had already published able Minutes on the raiyatwárí system, and it had come into general favour; so that when in

[9] For details see the chapter on Madras in Book IV.

[10] In 1808 this was approved of by the Court of Directors, and at one time seemed in a fair to become a settled institution.

the spring of 1820 he became Governor, its triumph was finally secured[1].

The zamíndárí settlements that had been made were of course retained, and now about one-fifth of the Madras Presidency is under such settlements, which in all cases are permanent. For the rest, so many of the artificially created mootahs had failed that there was no difficulty in assessing the individual lands, and the joint settlements, where they had been made, in most cases gave way, by an easy process of sub-division, to the assessment of each field.

§ 19.—*Features of the raiyatwárí system.*

The essence of the raiyatwárí system is that the land is surveyed, each field or holding separately demarcated, and an assessment fixed on it; the holder of the field—the raiyat—whoever he is, holds it on the simple terms of paying the assessment to Government direct. He is under no joint liability with his neighbour for any revenue. There may of course be two or more joint-owners of any field or "survey number," but there is no joint responsibility of a *proprietary body* for the entire revenue of a village or other assessment group. Indeed, in Madras, even joint-owners are only held liable, each for his own share.

The term "raiyatwárí" settlement is not exactly satisfactory; for it is not so much that each raiyat is settled with, but that each field or "survey number" is assessed with a fixed revenue. The holder, whoever he may be, is then maintained in possession on the sole condition of paying that revenue.

No enquiry as to subordinate and superior rights is necessary. Every man in actual possession of a field is recorded as "occupant" (unless, of course, he admits that some one else is occupant, and he is either his partner or his contract-tenant or servant). If some one else considers he has a better title than the man in possession,

[1] At the same time, no Regulation was ever passed introducing the system, and there is no general land or revenue law to this day: only individual enactments authorising survey and demarcation, and providing for the recovery of revenue arrears.

he must go to court and get a decree, when the revenue officer will alter the names by a proper entry in his registers—that is all.

Even on the West Coast, where the conquering landholders had in bygone days occupied the lands and cultivated them by means of the aboriginal tribes whom they had reduced to serfdom, the Government took little note of the difference; the registered landholder might be the landlord, or might be a person paying a rent to a superior. The settlement only enquired who in fact was in possession as the payer of the assessment, and registered him accordingly.

The further peculiarities of the system, such as the liberty which it affords to any landholder to give notice and relinquish any field, and also to apply for and take up any one that happens to be vacant, will be described more in detail in the sequel.

In Madras, the occupant is regarded by custom (for there is as yet no law on the subject) as the *owner* of his holding.

The reader will not fail to remark that the practical result of this individual dealing is that those perplexing questions of sub-proprietary right and tenant right which arise under the Bengal system, are to a great extent, if not entirely, avoided.

To put the same thing in another way, since in the raiyatwárí system, the question is always with the person in actual occupation of the land, there is little room for subordinate rights; whereas under the Bengal system, as the person selected to be proprietor (whether zamíndár, taluqdár, or málguzár) is rarely or never in actual occupation, there is always a series of questions as to what is to be said for the people who *are*.

And to sum up briefly; the main characteristic—the diametrical difference—between the two systems is this, that under the one, Government will in no case deal with the cultivator direct; under the other, it will under no circumstances deal with any one else. Then also it happens that under the one system there may be a series of proprietary or quasi-proprietary titles; under the other, this is to a great extent avoided.

§ 20.—*The system as developed in Madras.*

The subsequent history of the Madras raiyatwárí settlements does not show a very favourable state of things. The system, as still worked, has not received illustration in any general law, and it is cumbrous and complicated to the last degree. Moreover, in almost every separate district different customs and practices, shrouded in a technical, and often purposeless, local nomenclature, may be found.

§ 21.—*The Bombay system.*

It is to the Bombay Presidency that we must turn for the best modern development of the raiyatwárí system. Here the survey has been perfected to a remarkable degree, and the practical working has been simplified in a manner which leaves its detail in striking contrast with that of Madras, although its underlying principle is exactly the same.

The Bombay territories came under our revenue administration many years after Bengal and Madras had become British territory. There never was any appearance of the great "zamíndárs," so that the Bengal system could not have been thought of. The bulk of the villages in the Dakhan districts were of the non-united type, while in certain parts there were a few "narwá," "bhágdári" and other estates jointly held by communities connected by a tie of descent. In Guzarát, also, the immigration of martial tribes of the Rájput type have left traces of an 'over-lord' or taluqdárí tenure over the villages, while in the Konkan 'khots' or revenue farmers of the Maráthá rule have acquired rights over the villages of a somewhat peculiar character.

A portion of these territories had originally been settled by Malik 'Ambar, the best representative of the power of the Muhammadan kings of the south in their palmy days[2]. This Minister had been at much pains to secure and acknowledge a proprietary right, and this tended to preserve the ancestral communities, where

[2] He also settled most of Berár.

they existed, since ancestral holding is, in all Eastern countries, the strongest form of connection with the soil. In his time, joint-village assessments were apparently more frequent; and although the Maráthá system had superseded that of Malik 'Ambar, and was essentially a raiyatwári system, it had not obliterated altogether the traces of the former joint-village assessments. It is therefore not wonderful that the opinion should have been advocated that, in Bombay, the existing status of the non-united villages was in many cases, if not universally, due to the decay of an original joint constitution, rather than inherent in the nature of the groups themselves.

At first, indeed, the matter did not come prominently to notice, because, during the early years of our rule, the territories were provided for by the usual tentative arrangements for farming the revenues on short leases. A short experience, however, during which grievous hardships were inflicted on the districts, sufficed to make us at once, and for ever, discard the attempt, and set about finding a better plan.

§ 22.—*Attempt to introduce a system of settlement with villages jointly.*

The raiyatwári system was then much in vogue, consequent on Sir Thomas Munro's action in Madras. But Mr. Elphinstone, the then Governor of Bombay, took the view above alluded to, about the joint system, and was anxious not only to maintain it wherever it could be found, but even to create it in the case of those communities where the connection had completely died out, securing, indeed, the rights of each cultivator by record, but establishing a joint responsibility and settling with the original "patels" or headmen of the village as *representatives of the body*.

It is no easy thing, however, to create a joint responsibility where it does not in fact exist. Although long years of custom may have taught the cultivator to submit to an annual adjustment of his individual burdens and liabilities by the headman, it has

never laid him under any responsibility in case one of his neighbours failed[3].

The plan of settling for a lump sum with the village as a body, is advocated because it is said to facilitate revenue management; it enables Government to deal with fewer units. The Bombay

[3] The account of the Bombay system in Campbell's Modern India (1858), though giving a good description of Mr. Elphinstone's views, is now too much out of date to be otherwise useful; for the Bombay system has since been altered and perfected in a way that has completely outgrown a description penned more than twenty years ago. The account is also to some extent marred by the author's apparent prejudice in favour of the joint responsibility and village settlement with which he was familiar. His objections to the Bombay system (notably the costliness of the village officials and the recognition of rights to rent-free holdings) are mere accidents of the place, and do not touch the principles of the system. As a matter of fact, many of these evils have been removed or greatly mitigated. He also speaks of the joint responsibility as if it was an easy thing to introduce. But in fact it is not so. To establish it artificially over whole districts, and tell the people "the system is convenient to your rulers, and when you are wiser you will see that it is also calculated to promote your own interest," is beset with such difficulties as to make it impracticable. The people positively decline to undertake that the solvent members shall be responsible for the defaulting ones. What becomes of your system then? I have elsewhere pointed out the futility of *comparing* revenue systems in point of inherent merit, because every system may be good or the reverse according as it fits the *facts*. But even admitting the superior facilities which the joint system offers to revenue management, the originators of the Bombay system claim for it certain counterbalancing advantages. By breaking up the land into small holdings, and allowing every occupant to keep as many of his "numbers," or give up as many, as he thinks desirable, the small farmer is enabled to contract his operations or enlarge them according to the capital and stock at his disposal. The revenue being fixed for a long term of years, the farmer gets all the benefit of a long lease without its disadvantages. Nor does the Government really lose, because taking its revenue, not from one estate, but from the whole country, that revenue must, under any system, fluctuate with the circumstances of the country at large. With farmers of large capital, the long fixed lease may answer best; but with those of small means, the risk and responsibility which have to be set-off against the security of profits, are more to be considered, and such risks are avoided by giving the villager the right of holding his land from year to year only, if he pleases.

In the North-West Provinces every village is allowed an area of waste, which it can bring under cultivation without the total assessment of the village being increased. Under a raiyatwárí system, any uncultivated number that is taken up has to be paid for, but in practice this does not interfere with the extension of cultivation; and as a matter of fact, though the North-West assessment does not increase when the waste of the village is made to yield crops, still that assessment is originally fixed after taking into consideration the capabilities of the estate, and its probable average yield for the whole term.

officers do not, however, admit that there is any difficulty in dealing with thousands of separate cultivators[4].

The difficulty only seems great to those accustomed to deal with one or a few revenue-payers. At any rate, if there is difficulty, it is obviated by a perfect survey, a clear and complete record of each lot or field and the revenue assessed on it, and a thorough control over the village accountants and revenue officers of small local sub-divisions of districts.

It was no doubt this inherent difficulty of creating a joint responsibility, where it did not, naturally or in fact, exist, that led to the abandonment of the attempt, and the universal introduction of the separate field or "raiyatwári" system. As a matter of fact, a sort of joint responsibility is kept up in certain villages where the shares have survived to this day.

§ 23.—*Progress of the system in Bombay.*

The defects of the raiyatwári system, as followed in Madras, acted as a warning to the Bombay authorities, and in 1847 three of the ablest Settlement Superintendents met and agreed on a complete scheme for the survey and assessment of the village lands. This

It is also urged that the village officers collect the revenue from each separate holder just as easily as they do from a joint body, who, though together responsible, still ultimately pay separately according to known shares; and as under the Bombay system every occupant is furnished with a receipt book, which the patwári (or páudya or kulkarní) is bound to write up, there is no room for fraud. To any one who wishes further to study the *pros* and *cons* of both systems, and the improvements which the Bombay authorities made on the Madras system to remove objections, I cannot do better than recommend the perusal of the able "Appendix I" to the "Official Correspondence on the Bombay Settlements" (reprint of 1877: Bombay Government Press).

[4] In the Bombay and Madras Presidencies the number of raiyats and average size of holdings as follows:—

Presidency.	Number of raiyats.	Average size of holding.
Madras	2,569,100	..... 8 acres
Bombay (exclusive of Sind) . .	1,382,800	Northern division 8 acres Central do. 32 „ Southern do. 23 „ } 9 „

resulted in the well-known "Joint Report" which has (1877) been reprinted in the Bombay Secretariat[5]. At first, the settlement was carried out under executive orders. It was not till 1865 that a local Act was passed specifically legalising it. This Act has in its turn been repealed; and the whole system has now been completely formulated in the Bombay Land Revenue Code (Bombay Act V of 1879). Under this system there is very little mention of a *settlement* (although the term does occur in the Code). There is really a survey and assessment only. There is no procedure like that of Upper India,—offering a certain sum as the assessment on the whole village, discussing the matter with the village proprietary body, and perhaps making a reduction and coming to terms with the representatives, who then sign an agreement to be responsible. Under the Bombay system, every acre is assessed at rates fixed on almost scientific principles, and then the occupant must pay that assessment or relinquish the land.

§ 24.—*Outlines of the Bombay system.*

The system will be described more in detail in the sequel, but here I may generally indicate the outlines of the procedure.

A certain convenient unit of division is selected to form the "survey number" or "field."

Every field or lot is surveyed, and then the work of classification begins. The soils are classified, and each field is examined, and a sort of diagram made, which shows its soil and the defects which reduce its value. It is thus ascertained for every field, what class it belongs to and what is its *relative* value, or, in other words,—taking the maximum rate for the class as one whole or sixteen annas (on the Indian method of reckoning)—whether the field can be assessed at the maximum or, at something less, at 14 annas, at 12 annas, and so on, down to a minimum. The department charged with this work becomes highly experienced in the

[5] Alluded to in the previous note.

process, so that it can be performed with the greatest accuracy and fairness. Cultivation is usually classed into wet and dry: the process just described treats land only on its dry aspect; if there is irrigation, then an additional rate may be charged, which will be higher or lower according to the goodness and value of the tank or well; the rate is only applied to such land as is really capable of irrigation from the source in question.

Next, the Settlement Officer begins his work as assessor; he has before him the facts of soil classification on its unirrigated aspect, and the details of the means of irrigation where they exist; he has to fix what are to be the full or maximum rates for dry soil, and what are to be the additional rates for irrigation. These rates he calculates with the aid of all the data he can collect, regarding former history, the general situation, climate, proximity to market, &c. The application of the rates to each field, is easily effected by aid of the fractional value assigned it by the classers.

In Bombay (just as in Madras) the occupant of such a survey number holds it on the simple terms of paying the revenue; if he admits that he is (or is proved by a decree of Court to be) holding on behalf of some one else, as a tenant, or in an inferior position, then the "superior holder's" name is entered in the register, not his: he becomes the "inferior holder," and it is the superior who is entered in the register as the "occupant" responsible for the assessed sum. Any one who is recorded as the responsible holder can simply resign (if he does not like to pay the assessment) any field in his holding. The assessment is fixed for a period of thirty years, so that a man who elects to hold continuously, knows for certain that during that long period, *all* the profit he can make will go to him.

At the beginning of each year, he can signify to the mámlatdár (or local revenue officer of a taluq sub-division) what fields he wishes to hold and what he wishes to give up; as long as he does this in proper time, he is free to do as he pleases. If he relinquishes, the fields are available for any one else; if no one applies for them, they are usually auctioned as fallow (for the right of

grazing) for the year, and so on, till some one offers to take them up for cultivation. Nothing whatever is said in the Revenue Code about the person in possession (on his own account) being "*owner*" in the Western sense. He is simply called the "occupant," and the Code says what he can do and what he cannot[6]. The occupant may do anything he pleases to *improve* the land, but may not without permission do anything which diverts the holding from agricultural purposes. He has no right to mines or minerals.

These are the facts of the tenure; you may theorise on them as you please; you may say this amounts to proprietorship, or this is a "*dominium minus plenum*;" or anything else.

The question of tenancy is just as simply dealt with. I have stated that if it appears that the occupant is in possession in behalf of some one else, that some one else is recorded as the "superior holder," and he becomes the "inferior holder." What sort of "inferior"—whether a tenant or on some other terms—is a simple question of fact and of the agreement or the custom by which he holds[7].

If an occupant dies, one (the eldest or responsible) heir must be entered as the succeeding occupant who has to pay the revenue, for there can only be *one* registered revenue-payer for each field with a separate survey number; though of course there may be several sharers (joint heirs of the deceased owner, for instance) in a number. Which of them is so entered, depends of course on consent, or on the result of a Court decree, if there is a dispute.

[6] The "right of occupancy"—*the right to be* an occupant is itself declared to be a *transferable* and *heritable property* (Code, section 73); but that is quite a different thing from saying that the occupant is the proprietor of the soil. In the official language of the Presidency, the occupant is said to hold on "the survey tenure."

[7] There is also no artificial tenant right. In Bombay, as in all other provinces, there are jágír and other "inám" holdings which are revenue-free, or only lightly assessed, and occasionally other tenures in which there may be a superior holder drawing a revenue from the estate: there the actual occupants are sub-occupants, not tenants, as they do not hold in consequence of any contract with the superior.

Sharers can always get their shares partitioned and assessed separately, as long as there is no dispute as to what the shares are.

Section IV.—The System of Upper India.

§ 25.—*Systems derived from that of Bengal.*

Such are in outline the two great rival systems of Bengal and Bombay—the system of settlement with middlemen-proprietors, and the system of settlement with individual occupants, or rather the assessment of separate fields, and the recognition of each occupant in possession, so long as he pays the assessment.

I must now return to describe briefly, and in outline, how the first of these systems (that which originated under the Bengal Regulations) branched off into several other systems, and developed successively into that of the North-Western Provinces (afterwards applied to the Panjáb), that of Oudh and that of the Central Provinces.

The permanent settlement law of 1793, which applied to Bengal Proper (Bengal, Bihár and Orissa[8]), was extended by Regulation I of 1795 to the province of Benares, so that the districts of that province (now in the North-Western Provinces and comprising the modern districts of Benares, Gházipur, Mirzapur (except the southern portion), two parganas of Ázimgarh and Jaunpur), were permanently settled like Bengal. These districts are now under the modern North-West Provinces Revenue Law, which has improved their surveys, perfected their records of rights, and improved the processes of revenue and rent collections; but this does not touch the permanency of the assessment made in 1795.

§ 26.—*System required for Ceded and Conquered Provinces.—Regulation VII of 1822.*

The necessity for some modification in the Bengal system came to notice as soon as the districts beyond Bengal were added to the British dominions.

[8] The old Orissa (1765) consisted of the present Mednipur district and part of Húglí.

The first among these were the "ceded provinces[9]," Allahabad, Gorakpur, part of Ázimgarh, &c. (1801), and the districts "conquered" during the Maráthá war (1803), Etáwa, Aligarh, and others, with part of Bandelkhand, and in Bengal, the districts of modern Orissa,—Katák, Bálásúr and Púrí.

In these there were no zamíndárs, and in many of them the original system of landholding by village communities, of the joint type, had survived. Orders were at first issued to settle these North-West districts permanently: but the Commissioners appointed to the work objected, and even resigned their appointments. Then the Home Government interfered and prohibited permanent settlements: after this, the usual plan of tentative revenue management, by farming the separate village estates, followed.

The Orissa districts had been settled, and the settlement was legalised by Regulation in 1805. In 1817 the working of the Orissa settlements was specially enquired into, and as about that time the first short settlements of the ceded and conquered districts in the North-West were falling in, the whole subject of revenue settlements was carefully re-considered, and the Regulation VII of 1822 was passed, which became the basis of the modern Upper Indian Settlement Law. The history of the settlement of the Orissa districts under the law, does not present any special features calling for notice in this preliminary sketch. Some remarks in it will be made in the chapter devoted to Bengal. Here it is more important to consider Regulation VII as the basis of the settlements of the provinces of Upper India generally.

The first of these provinces to be settled under this law was the North-Western Provinces.

§ 27.—*Features of the Regulation VII system.*

Regulation VII of 1822 was, in fact (in 1825 by Regulation IX), extended to all parts of the Presidency which had not been

[9] See Chapter I, page 17.

permanently settled; and the opportunity may be conveniently taken to state its leading features. The Regulation still went on the original principle that there was to be the recognition of a proprietary right in the land, and a settlement with the proprietor; and the assessment was to be moderate, but it was to be fixed for a term of years only, not for ever.

But it was no longer to be left to tradition, or to old Native records, to establish what were the limits of each 'proprietor's' estate: nor were rights which might exist, besides those of the persons acknowledged as proprietors, left to the chance of their being vindicated in a distant Civil Court. The three main features of the new Regulation (which have survived all changes, and have never been allowed to disappear even from the most recent Revenue Acts) are—

(1) That every estate is carefully demarcated and the fields and holdings in it (after determination of all boundary disputes) registered.

(2) That all rights are enquired into at the settlement and authoritatively recorded; not only the rights of the person considered to be proprietor, but the rights of all who are now interested in the soil or its produce, subordinate proprietors, tenants, and so forth. If there were several persons together forming a proprietary body, the principle on which the shares, or according to which the burdens and profits of the whole were distributed, had to be ascertained and described.

A record was to be drawn up (called the wájib-ul-'arz) showing all village customs affecting the way in which the persons interested in the land shared in the profits, in the village expenses and in the revenue burden; what customs affected transfers and successions in case one person on the estate sold his land, or dying, left it to his heirs; and all other matter affecting the constitution of the proprietary body.

(3) The assessment of the revenue was to be no longer a matter of tradition—a blind following of what was recorded in the revenue-rolls of the older Native Government. An enquiry was to be made

into the real yield of the lands, and a fixed share of that, valued in money, was to be taken as the Government revenue.

It is true that Regulation VII of 1822 could not be worked as it was originally framed ; the Collector was expected himself to conduct the enquiries of the settlement, and this was impossible: it became necessary to provide some further machinery. Also, the method of assessment by ascertaining the produce of each field, proved impracticable. Regulations of 1825 and 1833 were therefore passed to remove these difficulties[10], but the main principles were not altered.

§ 28.—*Character of this system in the North-Western Provinces.*

It has been observed that this Regulation intended to combine the advantages of the raiyatwárí system, at that time well known through the Minutes of Sir T. Munro, with the principles of the Bengal system. This may be to some extent true, for, probably, the provision for registering all land, and interests in it, was suggested by Munro's Minutes. But the principle of a middleman was not abandoned. It happened (as already explained) that in the districts of the North-Western Provinces the villages were of the joint type;—held by a body of cultivators many of whom remembered an ancestral connection[1]. In all such cases, the community, as a body, was declared "proprietor," and was represented by its one or more headmen or "lambardárs," who signed the engagement to pay the revenue, on behalf of the whole body, and who received a fixed percentage on the revenue, as a remuneration for their trouble and responsibility. The shareholder in the joint body is not recognised as proprietor as an individual, but only as a member of the community which is jointly responsible as a whole; so that, legally speaking, the "joint body" (as a juristical person) is proprietor between him and the State.

[10] As will be noticed more in detail in the chapter on the North-West Settlement.

[1] Many of the villages were originally joint, and the rest, if not so originally, accepted the position because of the rights in common land which it brought with it.

Of course, it occasionally happened that the community was represented by a single owner, or that there was a taluqdár, some State grantee, or other person whose position as superior proprietor could not be ignored; then if he was settled with as proprietor, the subordinate rights were secured by record. The taluqdárí or double tenure was not common in the North-Western Provinces, nor in the Panjáb, and wherever possible the Settlement Officers settled direct with the villages, and bought off, as it were, the claims of the superior, by securing to him (for life or in perpetuity according to his right) a cash payment from the village revenue.

§ 29.—*Method of assessment.*

The method of sasessing the revenue has of late years been entirely revised, and reduced to a system; but this will be best studied when we come to the study of the North-West Settlements in the chapter specifically devoted to them. The assessment in general is now based on a calculated true rental, or letting value of the land, a percentage of which represents the Government revenue. For the purpose of calculating this rental, soils are classified and rates established for irrigated and unirrigated lands in the classes. The great extension of canal irrigation, which the last half century has seen, has had of course a great effect on the land revenue[2]. In the provinces where cash rents are still uncommon, a different method of assessment has to be resorted to, and produce estimates are still much relied on.

§ 30.—*System of village accounts.*

To keep up the records prepared at settlement, and also to record changes which occur subsequently by death, sale, or

[2] Mr. H. S. Cunningham (India and its Rulers: Allen, 1881) gives the following percentages of irrigated land to total cultivated in the different provinces:—

Bombay, 1·8 per cent.	Central Provinces, 5 per cent.
Sind, 80 per cent.	Panjáb, 26·2 per cent.
Madras, 23 per cent.	N.-W. Provinces and Oudh, 32 per cent.

Berár, 1·5 per cent.

The total cultivated area in British India is 192,250,000 acres, of which 28,420,000 are irrigated more or less.

gift; also to prevent disputes by keeping accounts of the rents chargeable against tenants, and entering up all payments made in every village, it was necessary to re-organise and improve the native system of village officials, and to supervise them in the discharge of their duty by means of Native officials of conveniently small revenue sub-divisions (parganas and tahsíls). Hence the introduction of the Regulation VII Settlements was everywhere followed by the opening of local revenue offices, and the complete organisation of the subordinate staff of revenue officers.

First comes the village patwári, who is bound to record and to report all changes in the landed interests of the village, as well as to keep accounts between landlord and tenant, and of all payments on account of revenue cesses or village expenditure[3]. Then comes the qánúngo, who supervises the patwári and sees that he keeps up the records relating to the state of the village, and duly makes his report to the "tahsíl" office. Above him comes the "tahsíldár," the local Native revenue officer, who is the Collector's assistant (and representative to some extent) in the portion of the district comprised in his tahsíl.

§ 31.—*The same system extended to the Panjáb.*

Such is in very brief outline the "North-West system" of settlement and revenue management.

This system was adopted in the Panjáb with so little change that no further notice of the Panjáb settlement in this preliminary sketch is needed. The village communities were found even more generally, and in more vigorous existence, than in the North-West, so that the system was adopted as it stood. The few changes made, were in the interest of the communities, to prevent their breaking up, and concerned some other points which are purely matter of detail.

§ 32.—*Proposals for making the North-Western Settlement permanent.*

Before I pass on to describe how this system was applied to the other provinces, I must, by way of episode, make some remarks on

[3] Which, of course, the most part of the peasantry are too illiterate to keep themselves.

the proposals which were revived in 1861, for making the assessments of the North-Western Provinces "permanent."[1]

When the thirty years' settlements made under the Regulations of 1822 and 1833 began to fall in, the country was still suffering from the effects of the disorder produced by the Mutiny, and by the famine and cholera of 1860. Under such gloomy circumstances, the districts came up to be resettled for a new term. The report on the famine of 1860-61 by Colonel Baird Smith, struck the key-note of praising the moderate assessments of the past settlements, and treating them as an instalment of a gift which would be completed by making the moderate assessment *permanent*. This received, at the time, a good deal of commendation. The pendulum of general and official opinion, swings in a long course from side to side in these revenue administration questions,—permanency, tenant right, and so forth; and at that period it was again on the descent towards the permanent settlement side. Then came Lord Canning's Minute of 1861, regarding the sale of waste lands in freehold (free of revenue demand), and regarding the redemption of the land revenue, by paying up in one sum the prospective value of the revenue demand. On this, the Board of Revenue advocated a permanent settlement (for, of course, the revenue must be permanently assessed before it could be redeemed). The Secretary of State, however, in 1862, declined to allow a redemption of land revenue, but said he would listen to proposals for a permanent settlement. It was assumed that when a careful revision had been effected, and when no considerable increase of cultivation in future was probable, a permanent assessment might be practicable.

In 1864 the terms were formulated by the Government of India (and were modified at home in 1865). The condition was laid down that 80 per cent. of the culturable area should have been brought under cultivation, and then that the rate of permanent assessment need not be as low as 50 per cent. of the net assets (the

[1] I am indebted throughout to Mr. A. Colvin's admirable Memorandum on the Revision of Land Revenue in the North-Western Provinces, 1872 (Calcutta: Wyman Co.)

rate at which the revenue demand had previously been fixed by the ordinary settlement rules). In 1867 another condition was added, regarding the probability of canal irrigation being extended to the lands in the next thirty years.

Then, it seems, officers were set to work to find out what districts or parts of districts could be permanently settled under these conditions. But in 1869 some cases came up (in the course of the enquiry) in which, supposing the settlement to be made permanent,—notwithstanding that the conditions were satisfied—there would be a great prospective loss to Government. Accordingly, a third condition was recommended. The Government of India, in concurring, went so far as to say, what practically amounted (as Mr. Colvin justly puts it) to this, that a permanent settlement should be deferred so long as the land continued to improve in value by any causes which were not the direct result of the occupant's own efforts. So that at present the question is in abeyance, and no further attempt has been made to press it.

§ 33.—*The history of the North-Western Provinces revenue system resumed;—its application to Oudh.*

I may now resume the narrative of the different developments which the Regulation VII system has received in different provinces.

The Panjáb, I have said, was, when annexed in 1849, found so much to resemble the North-Western Provinces in the matter of the village communities, that the North-Western Provinces Settlement system was there adopted almost without change. Then came Oudh. When this province was annexed in 1856, the idea was to manage it on principles similar to those laid down for the Panjáb, and therefore this province also came to be settled on the North-West system, under the guidance of circular orders and directions taken from the North-West Provinces standards. But the history of landed property in Oudh had developed in a way which would not suit this attempt to copy the North-West system

exactly, and make settlements with the village communities. A large portion of the Oudh villages had, in the course of time, come to be more or less contentedly established under the management of "taluqdárs," who were the outcome of the revenue system of the Oudh kingdom, just as the zamíndárs were of the Bengal system.

It has been asserted that these taluqdárs were really officials, or grantees, of the Muhammadan power, their duty being to manage the villages and collect the rents or revenues, paying part into the Government treasury, and keeping part to remunerate them for the trouble and responsibility.

But this statement is only true to a limited extent. The origin of the institution is to be looked for in the Rájas of the old Hindu kingdoms, whose connection with the land, and whose history and decline I have already described. The Muhammadan power was content at first simply to take a revenue from each village, leaving the Rája otherwise very much in his original position. But later on the Government grew worse and worse, and the only chance of getting in the revenue was, by demanding a certain sum from each taluqa or group of villages. Naturally then the old Ráj, or more probably, the later divisions of the original Ráj, formed the estate that was now called a taluqa, and the old reigning family would furnish the person who should answer for the revenue and so keep a hold over the estate.

Here and there, no doubt, a powerful local landowner would erect himself into a similar position, neighbouring villages voluntarily putting themselves under his protection. For in those days of oppression it was actually a source of strength for the villages to belong to a taluqa, or put themselves under one. Occasionally, too, a mere revenue farmer or speculator would acquire, through the influence of his money, and the power he had of protecting weak villages, the same position.

The Oudh Government found it convenient to make terms with these powerful local magnates, and take a certain revenue from them, giving them the vague title of "taluqdár," which is

really incapable of definition, but literally means some one who is in "connection" with the land[5].

Some help to understanding the use of this title may be derived from the history of Bengal. In Bengal proper, a very few such titles were created by royal grant, in just the same indefinite position; they were not like the easily-defined zamíndár, for in Bengal in some cases they were created *inside* zamíndáris, and, according to their rank, were made either dependent on, or independent of, the zamíndár.

In Oudh it may be reasonably concluded that the title "taluqdár" was intended to recognise, in general terms, the superior protective position over the villages, in which the old Rájput Chiefs or other great men practically were, without defining the *status*, which, indeed, would be very difficult to define, because it varied partly with the natural ideas of the taluqdár, and partly with his power and necessities.

In some cases, he contented himself with the right of gathering in the revenue and paying it in to Government, after deducting his share; in others, he crushed out the rights of the original landholders altogether. Then, again, the local extent of the charge was very indefinite. Wherever these taluqdárs had not been created or had not originally existed, the villages were managed by revenue officials of districts and circles called "Názims" and "Chakládárs." When the Oudh Native Government grew more and more corrupt and feeble, as we know it did (to the extent [illegible] necessary to overthrow it altogether), the [illegible]etically withdrawn from these local officials, [illegible] oppressed the villages without stint. Then [illegible]luqdárs" stood the people in good stead: the [illegible]lves under the protection of the chief who [illegible]ms rescue them from the clutches of the the other hand, the taluqdárs would often

[illegible]n "taluqa" was commonly used in the Cis-Sutlej States [illegible]a Sikh Chief conquered and kept for himself and com- [illegible]ettlement Report, North Ambála, page 49.

annex villages of their own accord, or take them one from another in those local fights which were the standing institution and source of excitement in those troubled days[6].

§ 34.—*First Settlement of Oudh.*

When the province was annexed, the British Settlement Officials, filled with admiration for the North-West system, which made the village-community settlement to be so easily worked, attempted to set aside the taluqdárs and settle direct with the communities. Scarcely had this been done when the Mutiny broke out and threw everything into disorder. The result is remarkable; the villagers voluntarily returned to the old taluqdárs and paid them[7], affording a valuable lesson of caution in attempting to let a revenue theory override facts. The taluqdárs had, however, joined the insurgents, and by proclamation all their rights were forfeited, with an exception in favour of five loyal chiefs: thus there was a *tabula rasa* for future operations.

When the settlement operations were resumed, other counsels prevailed; the taluqdárs were pardoned by proclamation in 1858, and reinstated, and the settlement was made with them. The "sanads" given them declared them proprietors of their taluqs[8]. Then, as is inevitable under all derivative forms of the Bengal settlement, the rights subordinate to the upper proprietary title had to be protected; and a variety of somewhat complicated, but very necessary, rules were enacted for securing [illegible] village "sub-proprietors" under the talu[illegible] further described in the chapter on Oudh Ten[illegible].

So here we see the historical condition o[illegible] the same system which in the North-Western [illegible] had led to settlements with a *community*, de[illegible]

[6] Administration Report, Oudh, 1872-73, General Summ[illegible]

[7] See Introduction to the Oudh Gazetteer, and the Admini[illegible] 1872-73, General Summary.

[8] The student will observe that here again there is a [illegible] village body and the State.

ment with a chief over the heads of the community, and according to the latter a secured but secondary position as subordinate proprietors. Thus the Oudh Settlement is spoken of as the "TALUQDÁRÍ SETTLEMENT."

§ 35.—*The Settlement of the Central Provinces.—Initial difficulties*

The remaining province, which we have to touch upon as exhibiting yet another development of the Regulation VII system, is that called the Central Provinces.

These provinces[9] were only brought together in 1861, some further changes and additions being made subsequently.

Setting aside a number of hill chiefships to which no revenue system has been applied, there are the districts of the old "Ságar and Narbada" Province, those of the Nágpur Province, Nimár, and the districts to the east (more resembling Chutiya Nágpur and the Tributary Mahâls of Orissa).

The first named of these groups had been early placed under the North-West system. Indeed, the northernmost of these territories, adjoining Bandelkhand, seem to have presented very generally the North-West feature of joint-communities, where the dominant family is really the proprietor, without much artificial creation of such a character. But the western and all the Maráthá districts commonly consisted of what I have called the "non-united villages," *i.e.*, where the cultivators have no ancestral bond of union or common interest in the estate, although they are locally united under the management of quasi-hereditary village officials.

It is interesting to notice how differently matters developed in these provinces from what they did in Bombay, where a somewhat similar state of things existed.

In the Bombay Presidency, we have seen that the ultimate result was to assess each field or holding on the raiyatwárí system, and not attempt to create a joint responsibility in the community,

[9] *Vide* Chapter I, page 20, where a table is given.