(which are usually few in number and take notice only of well-marked differences) are made use of within each hár if need be; and these soils, again, may be irrigated or unirrigated. Practically the homestead "hár" needs no such sub-division, as it is sure, in all cases, to be irrigated: but in the other "hárs", soils may differ, and each soil may differ again according as it is irrigated or dependent on rainfall only.

§ 8.—*Inspection of villages in order to classify soils and find out rent-rates.*

The Board's rules direct that when the settlement measurements are sufficiently advanced, the Settlement Officer shall proceed, during the field season, to inspect the villages and to mark out on his map the recognised hárs in each village, and also any soil differences that may warrant a separate classification; so that all the fields numbered in the map will come under one or other class.

Next, the Settlement Officer enquires into the prevailing rates of rent for each class of land in each zone or hár, both by local enquiry and by reference to village records; he also is required to make out tables showing the area of each class of soil in the village and the actual rents paid for that part of it which is held by tenants.

During the village inspection, all facts regarding the agricultural statistics and the revenue and general history of the village, are collected and noted down, and it is during this inspection that the Settlement Officer forms his conclusions as to circles of villages, or groups already alluded to, throughout which the rent-rates may be taken as fairly uniform for the same soil-class.

A list is now made out of all the villages in the assessment circle. Those villages are excluded which might disturb the general average, owing to the fact that they are known to be rack-rented, or to be cultivated by the proprietors, or to be held at exceptionally low rents by some favoured caste of tenants.

The list is sent into the office, and there the rent of every field in each village, as it appears in the field register, is placed under the soil-

class to which it belongs, as already known from the Settlement Officer's inspection and noting on the map. The result of this is that under each class there will be a list of different rent-rates. Abnormally high or low rents being excluded, the rest are added up and divided by the total area of the soil-class. The result gives an average rent-rate for every acre of that class of soil throughout the circle. As the classification of soils is the result of careful inspection, and the rent recorded against each field is subject to repeated testing while the field registers and the jamabandis are being prepared, the averages are accepted as true average rent-rates.

It is hardly necessary to remark, after this explanation, that two things are needed,—first, to get out of the record-room all the facts about former assessments, and whether they were collected with ease or the reverse; and, next, for the assessing officer to go himself, map in hand, and study the villages on the spot, their soil, and their circumstances, marking the wells and the limits of the different soils in his map, and keeping a note-book for all facts elicited.

The Settlement Officer keeps a manuscript book during the progress of settlement operations, and in this he causes to be transcribed (in English) all agricultural statistics connected with each village or estate at the past and present settlements. This book contains all the information which is requisite for the compilation of the "General village statements" which are made out as soon as the Board's sanction to the rates is given[6].

The pargana note-books are now preserved, though they do not form part of the formal records of the settlement. Practically, the "village statements," which are part of the record, contain, in an abstract and tabulated form, the most important information contained in the pargana books.

As soon as the rent-rates are calculated out, the rent-rate report is submitted to the Board of Revenue[7] through the usual channels.

[6] S. B. Cir., Part I, Dep. I, Rules 13 and 21.

[7] Act XIX of 1873, sections 45 and 257, under which Rules for preparing such reports are made.

This report justifies the rates, and explains the basis on which they have been ascertained, and in fact gives a full description of the whole procedure, so as to satisfy the controlling authority of the correctness of the results arrived at.

I do not propose to describe the contents of this report, as it can be learned in detail from the Board's Circulars.

§ 9.—*Classification of the revenue.*

When the rent-rates have received sanction, the village jama', or lump-sum assessment, has to be calculated.

The revenue or Government share is one-half of the rent-rates. The revenue total may therefore be the rate multiplied over the area. But in many instances there are local circumstances which demand a local reduction of rates or some modification of the total. There may be also other assets to be taken into account, such as the proceeds of fisheries or jungle produce. So that the actual jama' may be different from a mere calculation of area at the rent-rates[8]. The jama' is therefore again reported for sanction: it is then announced on a day fixed by proclamation, at the tahsil[9]. The rules as to the person settled with, and what happens if engagement is refused, will be described presently.

§ 10.—*Tracts paying grain rent.*

Even in the North-Western Provinces, I should mention, there may be tracts in which grain rents are still used; these, I understand, are dealt with by assuming a cash rent-rate, which is that of a tract of the same kind of soil and under similar conditions, for which a cash rent is known. The practice of making produce-estimates, and dealing with them as in the Panjáb, is not followed.

§ 11.—*The system in* Oudh.

The general instructions to the Settlement Officer do not differ materially from those in the North-Western Provinces, but there

[8] See S. B. Cir., Dep. I, page 9. Groves are exempt from assessment.
[9] Act XXIX of 1873, section 45.

was a material difference in the method of assessment. The method of taking lump sums for the pargana was never followed; and in general I may state that the main difference consisted in paying much less regard to average rates for the same class of soil throughout an assessment circle or a pargana, and dealing with each village separately.

A village rent-roll was prepared, and this was carefully corrected so as to attach a rental value to sír lands cultivated by the proprietors themselves, to rent-free holdings, and to lands held at privileged rents. The village rent-rates were obtained by an elaborate analysis of rents paid by the several classes of cultivators on several classes of soil, as in the homestead, middle zone, and the several kinds of soil in the outlying zone.

An appraisement was also made on culturable land not yet brought under the plough[10].

Fruit and other groves were exempted from assessment up to a total of 10 per cent. of the cultivated area. In 1879[1] the rules which directed (1) that the land occupied by a grove and exempted accordingly, should be liable to assessment on the trees being cut down, unless they were replanted within a reasonable time, and (2) that a reduction of assessment should be made on account of assessed land subsequently planted with trees, so long as the total area of revenue-free grove land did not exceed 10 per cent. of the cultivated area, were placed in abeyance. But all lands had the full benefit of the rule which exempted grove lands which existed at the time of settlement (up to the 10 per cent. limit), since all the settlements had been completed before 1879.

Thus the peculiarity of the Oudh settlement, as distinguished from that of the North-Western Provinces, is that the revenue,

[10] In Oudh also the village rent-rates were allowed to be much more affected by the *caste* of cultivators than in other parts. Thus in several of the Oudh settlements an abstract of the rental of each village has been prepared showing the principal castes (*e.g.*, Brahmans, Rájputs, Kurmis, Moráos, and "others"); the area held by each is shown, the rent paid, and the rate per acre or per bighá which this gives. Against this is shown the "proposed rate" and the rental for the village which this would give.

[1] Circular II of 1879.

generally speaking, has been assessed on the individual rental of each village, with little reference to average rates expressing the level of rents over large tracts of country. The prevalence of taluqdári tenures and the fact that the great mass of cultivation is in the hands of tenants-at-will, were circumstances peculiarly favourable to such a method of assessment. In the best cultivated parts of the province, the rents imposed by the taluqdárs represented with sufficient accuracy what the land could fairly bear. The areas held by proprietors as sír, and by under-proprietors and others at favourable rents or rent-free, were small as compared with the lands for which tenants-at-will paid full rents; and the rent-rolls were, on the whole, well kept and trustworthy documents.

In the north of the province, where cultivation was comparatively recent, and rents were not uncommonly taken in kind, the analysis of rent-rolls had to be supplemented by estimates of the value of grain-rents. If grain-rents were the exception, villages paying in kind could be assessed by applying the rent-rates found to exist in similar cash-paying villages. When grain-rents were the rule, the landlord's share of the grain, as shown in the village accounts for a series of years, was turned into money at harvest prices, and the equivalent cash-rents thus obtained were applied to the sír and privileged holdings: produce-estimates were also applied to different classes of soil, and the assessments were arrived at partly from these and partly from general considerations[2]. In Oudh, the rent-rate report, the sanction to the total jama' deduced from it, and the other procedure, are exactly the same as in the North-Western Provinces.

§ 12.—*System of assessment in the* Panjab.

Here, in the older settlements, the "aggregate to detail" method was much employed; and even now the procedure is different to what it is in the North-Western Provinces. Grain-rents are still common, and much of the land is held by cultivating proprietors[3].

[2] This is taken from Mr. Stack's Memorandum, p. 144.

[3] Only about 44 per cent. of the land is held by cultivating tenants.

It might seem to the casual reader that it is a very easy thing to turn a grain-rent into a cash-rent, by simply valuing in money the landlord's grain share, whatever it is. But this is not so. For instance, the early "summary settlements," or temporary arrangements made immediately on annexation, were made in this way; the grain-rates of the last Sikh collections were converted into money at ruling prices. But a rapid fall in prices followed, so that the demand became too high and had to be reduced.

The inspection of the villages and the collection of all facts relating to their revenue history and circumstances, is just as necessary here as in the North-West Provinces. The villages are grouped into assessment circles, and certain classes of soil have to be recognised. Tables are then drawn up showing the estimated produce of each class of soil, and if need be of each kind of crop, as its yield may be different on the different classes of soil, and on irrigated and unirrigated land: the total produce of each circle is thus arrived at. Then it is known that the landlord's share is usually so much, *e.g.*, one-third of the produce of flooded (sailába) land, one-fifth of well-irrigated land, and so on. This share is calculated after deducting certain items such as crops cut for fodder, portion of crop paid to the gatherer, &c.; it is then valued in money on the basis of an average for a number of years (20 years if possible) of the harvest price of grain. This forms the produce-estimate of "assets" of cultivated land; the revenue is to be about one-half these assets. Wherever cash-rents are paid, these are of course made use of as a standard of comparison.

The table also shows what the jama' would come to at one-sixth the gross produce, for comparison[4].

The next thing is to calculate a revenue-rate[5] *per acre* for each

[4] It is found by experience that the revenue falls at about one-sixth of the gross produce in most cases, but sometimes it falls at one-eighth or one-tenth or only one-twelfth in the drier and poorer districts.

[5] In the Panjáb they speak of revenue-rate, not of rent-rate. The North-Western Provinces enquiry being directed to the average prevailing rental of land, the rates which this shows per acre are the main features for determination; the revenue-rate is simply half this. In the Panjáb, as there are no rent-rates to be generally and widely determined, the Settlement Officer goes at once to the value of the Government share per acre, which is the *revenue-rate*.

circle and for each kind of soil it is thought necessary to distinguish. These rates can be modified till what appears a perfectly fair rate for each soil is arrived at; then multiplying the whole area of each kind of soil separately rated in the circle by the rates, the circle jama' is arrived at, which is at once comparable with, and tested by, the produce-estimate.

The revenue-rate *per acre* in the circle, here spoken of, is generally arrived at by taking *an assumed fair circle jama'*, and distributing it over the areas of each class of soil in the circle, according to the order of their relative fertility and value. Rates so obtained are tested by comparing them with rates shown by villages the assessment of which is known to be fair, and in various other ways. They are then modified and shaped till they appear true and can be justified in the assessment report. "The revenue rates and the opinions which the assessing officer has formed as to the [total] assessment which individual estates might properly bear, will thus act as a mutual check on each other . . . Other tests are furnished by rates on ploughs or on wells when the system of distributing the revenue by such rates is familiar. After determining a fair average rate for each plough or well, the total revenue which the application of such rate whould give for the assessment circle is calculated and compared with the produce-estimate[6]."

The revenue-rates have to be reported[7] in full detail and justified, in the same way as the rent-rates are in the North-Western Provinces; and various statistical statements accompany the report.

The rates being sanctioned, the Settlement Officer proceeds to distribute the revenue of the villages according to the rates. But sometimes the rates require modification for particular villages, on general considerations applicable to those villages; and even then the total jama' may be modified by the addition of certain assets and by allowances for matters which cannot be made to affect

[6] Directions (Panjáb edition).

[7] This is not specifically required by the *Act*, but it is by the Rules (head C. V. I) which are issued under section 66 (5).

average rates, consequently the total sum finally assessed has again to be reported[8]. Small changes are not explained in detail in this report; but the reason for them has to be noted in full in the "village statement" of the particular estate affected. Strictly speaking, the jama' ought not to be announced till it is sanctioned: but in practice it is so, and sometimes even realised before sanction is received. The jama' is open to a final revision by Government up to the time when Government declares the settlement sanctioned[9], which may not be for some time after the jama's have been in force[10].

[8] Act XXXIII of 1871, section 31; Rules C. V. 5.

[9] Act, sec. 18; Rules C. V. 5.

[10] I shall give two very brief examples to show how the revenue rates or assessment reports are prepared:—

The first is Mr. E. O'Brien's report of tahsil Alipur of the Muzaffargarh district, one of the dry southern districts of the Panjáb. The tahsil is situated in an angle above the junction of the Chenáb and Indus. The tract was grouped into assessment circles, one of which was cultivated by aid of the flooding of the Chenáb, the next by the flooding of the Indus (which is a separate circle, because the deposit is less fertilising and the river action more violent); the third, the southern wheat tract, Cháhi sailábas, which is irrigated by both rivers when in high flood, where there are wells and a little canal irrigation; and the fourth circle, Cháhi Nahri, is one where inundation canals (besides wells) are used.

Assessment circles.	No. of villages.	Total area. Acres.	Cultivated.	Uncultivable waste.	
1 Betchenáb . .	37	89,375	20,303	20,074	The rest being fallow or culturable waste.
2 Bet Sind . .	42	184,963	22,887	61,084	
3 Cháhi Sailába .	50	145,872	29,192	30,872	
4 Chahi Nahri .	48	148,393	48,647	27,448	

The soils of the circles are then described.

The fiscal history next occupies a chapter, in which is given an account of the Sikh collections and of the cesses they levied.

The summary settlements under British rule are also described, and here is noted the difficulty which occurred from the practice, mentioned in the text, of valuing the Government grain share in money. The share was converted into money at the rates of Rs. 1-8 and 1-12 a maund; but grain shortly afterwards fell to 0-11 and 0-12; the assessments were consequently felt to be very heavy.

The land tenures are then described, a subject I here purposely pass over. The difficulty of collecting the demands fixed at successive summary settlements is next discussed.

Irrigation has to be dealt with in the Panjáb as in some respects a separate question.

In many districts well irrigation was taken into consideration in fixing the rate for irrigated land generally; but in some districts

Part III of the report is devoted to comparative statistics, population, cultivated area, increase in number of wells, and so forth; and concludes with a table of prices of produce in four periods of 5 years each.

Part IV gives statistics of produce. No less than 640 experiments had been made in seven different "harvests," and estimates of outturn were obtained from meetings of agriculturists, and local enquiries were also made. A table is then drawn in maunds per acre for each circle, for nine chief crops; the soil varieties do not here affect the yield.

Part V approaches the subject of the rates. It is explained that the rates are to be one-half the profits.

We have then a table showing the total area for each circle; total value of its produce; amount to be deducted (consisting of crop consumed as cattle fodder, &c., and net value; the deduction for village servants and the "balance." The cultivator's customary share is then shown, and the difference between this and the balance is the proprietor's "net assets," which come to Rs. 3,36,830 for the entire tahsil of four circles, and the "half assets" are Rs. 1,68,415. That would be the assessment on a produce-estimate only.

Then acreage rates are calculated; soil differences are shown to be unimportant, instead of which six kinds of irrigation (*e.g.*, by well only, by canal by flow, by canal by lift, by well and canal, &c., &c.) are adopted as requiring different rates.

The rates proposed for each class in each circle are then at once stated; they are compared with similar rates in other tahsils. They appear to have been calculated out beforehand in the reporter's mind and manipulated till they seemed fair; that part of the process does not appear in the report. The rates are merely stated, and reasons given for believing them to be just. The jama' which would be obtained at these rates, is compared with the jama' of the last settlement, and the general incidence of rates on cultivation by the two jama's are also stated.

This tahsil has certain features of fluctuating assessment and rates on wells and canals which I purposely omit.

The rates are then shown in a general table, and these are compared with rates in other districts.

Besides the land assets in the tahsil, there is much grazing ground, and date trees also yield a revenue; the method of assessing this is described.

The total revenue obtained by these is then shown, which is lower than that by the produce-estimate; and proposals are made for dates of paying instalments.

As another specimen, I take the report by Mr. Fanshawe of Gohána tahsil, Rohtak district (1879). This is quite a different style of district; one of the old North-Western Provinces districts in the south-east corner of the province near Delhi. As usual the report opens with a description of the country. Here soils were classified. Reasons are given for making four assessment circles—western rain land (cultivation dependent chiefly on rainfall), central canal irrigated, eastern rain-

the land was first rated as if it were dry land, and then a separate rate per well, varying from Rs. 5 to Rs. 20, for the area watered by each well, was added.

Canal irrigation may also be separately treated. In some districts the land was rated at dry rates, and a "water advantage rate" added representing the increased value of the land consequent on the fact that it could be irrigated; this rate was remitted if water was not available in the canal. This rate is part of the *land* revenue, and is of course independent of the price of the water supplied by the canal department. For it is obvious that irrespective of that, the land itself can bear a higher assessment and

land, and eastern canal irrigated. The area of each circle and percentage occupied by each principal crop is then given in a table.

Next follows the fiscal history, the former settlements, and the rates at which these fell per acre. Part III gives a study of the results of the last (regular) settlement; increase of cattle, of cultivation, of irrigation by canals and wells, and so forth. Here tenants pay cash rents to some extent. So that here a table shows the rent-rates of irrigated and unirrigated land, and how much above the Government revenue per acre, it falls. Part IV is devoted to statistics of produce. Experiments were few, but local enquiries and comparison of data were many and extended: the character of seasons and the changes in the conditions of cultivation are discussed; and then, as usual, there is the calculation of nett produce, and here the valuation of one-sixth gross produce is also shown. Part V deals with proposed rates. Here much use is made of the rates which the jamas of former settlements, regular and summary, gave; these are considered in reference to changed circumstances, and compared with rates in other tahsils; a table of rates proposed is given separately for (1) canal, (2) well, (3) manured, (4) dákar and matiyar soil, (5) rausli soil, (6) bhúr soil, and (7) culturable waste or fallow. These rates are applied to the circles, and the jama' thus obtained shown in a table. It is then shown that the increase is proportioned to increase in cultivation, irrigation, population, and cattle. These revenue-rates are then compared with the rent-rates; and then the jama' by rates, with the jama' at one-sixth gross produce.

These two abstracts are intended just to show, in a brief manner, how the rates are calculated, explained, and justified.

The reports, it will be observed, do not go into the *revenue total* for each village. That is separately arranged after the *rates* have been agreed to. For some villages the total revenue may simply be the rates multiplied by the area; in others there are allowances to be made for lands spoilt by 'reh' or saline efflorescence, for the caste of the cultivators, or additions to be made for local produce of jungles, fisheries, gardens, &c.; but in general that total will come out very similar to the general estimated result by rates. I have avoided complication by not mentioning that in some cases the assessment is not taken all at once, but is progressive.

has a higher letting and selling value, if it is within reach of canal irrigation.

During the collection of information for settlement "pargana note-books" are prepared very much as they are in the North-Western Provinces. The most important entries are embodied in the Village Statements, which form part of the settlement records.

§ 13.—*Assessment in the* Central Provinces.

The following summary, which well and briefly explains the characteristics of the settlement, is taken from Mr. Stack's "Memorandum." The practice is not unlike that of the Panjáb. The backwardness of cultivation, the large extent of waste, and the generally inaccurate state of the village papers, made the determination of rent-rates an uncertain and difficult business. The rent-rolls were rarely satisfactory guides, and rates decided on after personal enquiry, could only be approximate. In the majority of districts, the plan followed was, to use circle rent-rates and produce-estimates, as a check upon each other. The former were got for the different classes of soil[1], by analysis of the rent-rolls of the villages in the circle, by personal enquiry, by returns of the rents paid in revenue-free estates, and in the later settlements, by comparison with the rates already used elsewhere; reference was made also, in most districts, to an expected rise of rents after settlement. The produce-estimates gave the outturn of each crop upon each kind of soil, the Government share being rarely above one-sixth. From these data the assessment was determined, with allowance for the circumstances and revenue history of the village, and for the other general considerations which universally guide the assessing officer.

To this method, however, there were some notable exceptions. The district of Nimár was settled on the old plan of estimating a lump jama' for the circle, and then distributing it over the villages,

[1] When these were used, there were four: (1) black soil, (2) lighter black soil, (3) light shallow soil more or less mixed with stones, (4) sandy or stony soil of poor quality. In a few districts these were used both under irrigated and unirrigated; in others, irrigated land formed a class by itself. In Nimár, land was assessed on its unirrigated aspect and a water-rate added for irrigation.

and correcting the result till it seemed satisfactory. In Seoni the assessments, arrived at by the aid of rent-rates and produce-estimates, were checked by the general assumption that the circumstances of the district warranted a revenue enhancement of 50 per cent. In Raipur, Bilaspur and Hoshangábád, the first step was to calculate a fair average revenue-rate for the district, that is, an average rate of assessment per cultivated acre. This was done by noting the incidence of existing assessments and making allowance for practicable rise of rents. Then the assessments were made with the help of soil-rates, *i.e.*, assumed rent-rates on the different classes of soil.

The jungle produce of the waste allowed to be included in each estate, was regarded as an asset, although a separate assessment for waste was not recorded. It happened, however, that jungle produce had but little value at the time when the first settlements were made; the country had not been opened up by roads and railways; there was consequently no market[2].

The new Revenue Act declares in section 47 that the principle of assessment is to be prescribed by the Chief Commissioner, with the assent of the Governor General, and also the sources of income which are to be taken into consideration in assessing the estate. It further adds, that all land in the mahál is to be taken into account, except revenue-free land and land under some other heads set forth in section 48. So that the Act virtually recognises, as the plan for future settlements, what was adopted at those already in existence.

§ 14.—*Proportion of assets taken by Government as revenue.*

The revenue is the proportion of the "net assets" which Government claims as its own. I could not avoid anticipating the subject when describing the method of assessment, and so I have already, to some extent, indicated what proportion Government takes in

[2] I am informed, however, that this was not always the case. In the Bhandára district, there are cases in which the assessment is high as compared with the cultivated area; and the increase was due to allowance for the value of the produce of the malgúzári waste. Cases, however, have been mentioned to me in which the jungle produce afterwards became so valuable as to far more than cover the entire revenue payment.

each province. But it will be convenient to recapitulate the orders on the subject in a separate paragraph.

The earliest orders fixed the proportion at about two-thirds of the average assets, but it now is almost everywhere fixed at half, and is in practice often less[3].

This, however, does not include the "cesses" for roads, patwáris, schools, or the lambardárs' allowances, which the engagement does not mention[4].

[3] In the North-West Provinces, S. B. Cir. Dep. I, page 9, §§ 22-24, deals with this subject; the proportion is not to be more than 55 per cent., nor less than 45 per cent. without sanction.

In the Panjáb, the following extract from the Administration Report of 1872-73 explains the subject well. It will also be noticed that here there is still allusion to the "gross produce," because in the Panjáb rents are so commonly taken in kind.

"The Sikh system of assessment was that the State, as proprietor-in-chief, took all that it could get, and it *did* take often as much as one-half the gross produce of an estate, besides a multitude of cesses under the name of *rasúm*, *nazarána*, &c., and exorbitant fines on succession." (I notice in the assessment or revenue-rate report for the Alipur tahsil of the Muzaffargarh district (1879), that the Sikhs in this tahsil converted their grain share into cash, by making the cultivators buy back the share at a little over the market rate: the difference was called 'zábta.') "Immediately after the first Sikh War, an assessment by British officers, on the principle of taking one-third of the gross produce, was considered light and liberal. When regular settlements were first introduced, the system in force in the North-Western Provinces was adopted, under which the State's demand was limited to two-thirds of the net assets of an estate, or about one-fourth of the average gross produce. It is now limited to one-half of the net assets, but in practice it is considerably less. It may be said never to exceed one-sixth, is frequently not more than one-eighth, one-tenth, or one-twelfth, and in some tracts where the rainfall is scanty, it is not more than one-fifteenth of the average gross produce, the value of which is calculated on the average price of produce for a period of from twenty to thirty years. In frontier districts especially, the rates are exceptionally light, and in border villages almost nominal; the people being required, in return for their light assessment, to assist actively in the defence of the frontier. The result is that there is a striking difference in the land revenue demand in British territory on the one hand, and in the territory of adjoining Native States on the other; and the new assessments, even where the increment has been considerable, have been collected with the greatest ease."

[4] Such cesses are levied under the authority of the Legislature, and have nothing to do with the land revenue, representing the ancient state rights, and now adjusted by agreement with the proprietors. See Government of India No. 276 (Home Department), dated 26th May 1871, in the official blue-book on Permanent and Temporary Settlements, North-Western Provinces, 1873.

In Oudh it was found that the separate engagement for these cesses was unadvisable, and therefore they are absorbed in the general jama', which is fixed at about 51¼ per cent.[5] Patwáris' allowances are, however, still treated separately.

In the Panjáb, the rules expressly state, and I have no doubt that it is the same elsewhere, that no mention of *cesses* is to be made in the dárkhwást-malguzári, or tender of engagement, as that is concerned with *land*-revenue (properly so called) only[6].

§ 15.—*The assessment has to be paid uniformly.*

It is a well-known feature of our modern revenue, that besides being always assessed in cash, it is understood that it has to be paid uniformly, good years and bad alike. In some cases the assessment is in itself "rasadi" or progressive; for example, to encourage clearing of waste, or bringing difficult and unproductive land under the plough, it is sometimes allowed that for the first year or first three years (or whatever is fixed) no revenue is to be charged at all; that then for five years (say) half rates are to be charged; and the full rates only to begin with (say) the tenth year. Such progressive assessments are sometimes granted where the increase in a new settlement was very considerable, and it is not deemed expedient to levy the whole increase all at once. But still the revenue, whatever it is, has always to be paid, whether the crop fails or not. If Government altogether pardons or suspends for a time its demand on account of some great flood, famine, or other calamity, that is an exception requiring special report and sanction. The theory is that the revenue being fixed so low as to represent a very moderate share indeed, a sufficient profit is left to the landowner in good years, to enable him to meet the loss on bad years without difficulty[7]. It is, however,

[5] This is really the same thing, since 50 per cent. goes to Land Revenue and 1¼ is credited to the School, Dák, and Road Funds by distribution (Digest, section V, § 26).

[6] Panjáb Rules, C. IV., 29.

[7] Of late years, it has been admitted, in some exceptional cases, that a departure from this plan is necessary. Thus, in the Panjáb, in the district of Montgomery, in

questionable whether this result is in fact, as a rule, attained. In a good year the cultivator buys more cattle or some silver for his wife or child, or carries out a betrothal or a wedding which has been deferred in hope of a good season; in a bad year he gets into debt for his instalment. It is true, in some cases, that the periodical and inexorable demand for a cash payment on a peasantry which do not know what providence and saving mean, throws them helplessly on to the village money-lender, who by his exorbitant rate of interest so keeps up his account that the peasant rarely or never clears it off, and that in bad cases the peasant becomes the slave of the money-lender, and his land is sold or hopelessly mortgaged. On the other hand, the thrifty peasantry are perhaps as numerous as the unthrifty. The question of the effect of a fixed money settlement on the condition of the peasantry is, however, obviously too large a question to be discussed in a Manual of this kind.

§ 16.—*The tender and acceptance of the Revenue Agreement.*

I have to add to this section a few remarks as to the engagement for the revenue. The form in which this is done is, that a "darkhwást-málguzári" is prepared[8], which states on the part of

which, owing to the scarcity of rainfall, cultivation is dependent upon *rainfall* or on the uncertain irrigation of inundation canals, a new system of assessment has been experimentally introduced. Instead of fixed assessment, demandable in good and bad years alike, and whether water is plentiful or scarce, the bulk of the income is taken in the form of differential crop rates, leviable after measurement in the event of the crop ripening. The result is an estimated increase of revenue, while the agriculturist is relieved of the necessity of paying revenue when his crop fails. In six districts also, forming the south-west corner of the Panjáb, with a rainfall of not more than 12 inches per annum (except in one case), and in which the crops depend on wells, inundation-canals, and the hot season floods of rivers, fluctuating assessments have also been introduced and are working with some success. (See Selections Rec. Panjáb Government, New Series, No. XVII of 1880—Fluctuating assessments).

[8] The form of this in North-Western Provinces may be seen in S. B. Cir. Dep. I, sec. 28. It contains no allusion to cesses, but engages to pay revenue on groves left free, if they are at any time cut down. Panjáb (Rules, C. IV, 29-30) also gives the form for that province, and directs that it shall contain no allusion to cesses. The order accepting this engagement states that, subject to acceptance by the Local Government, it will take effect from the kharíf following, and is payable in such and such instalments.

the persons who engage to pay the revenue, the terms on which (it has been previously decided) they are to engage. The engagees sign this paper, subject, however, to its approval by Government (as presently noticed), and they are then bound by the assessment (whether fixed or progressive) for the whole term for which the settlement holds good. This is usually for 30 years[9], a period sufficient to give the proprietors the benefit of their industry and capital expenditure, and not long enough to stereotype hardships or mistakes of policy.

In Oudh this document is spoken of as a "Kabúliyat," but though the form is somewhat different, the principle is the same. Oudh kabúliyats specify the arrangements to be made for cases of alluvion and diluvion, and stipulate that patwáris' allowances may be levied, and that chaukidárs may be provided for at the expense of the landowners[10].

In the Central Provinces the Act[1] speaks of an "acceptance" to be signed and delivered by the revenue-payer.

Government has a general power of revision of the assessment till it has confirmed it, so that the darkhwást, though binding the signer, is open to be modified by Government. This is provided for in the different Acts, as follows :—

In the **North-West Provinces** Act there is simply a power given to the Local Government to revise the assessment at any time before confirmation[2].

In **Oudh**, as the Chief Commissioner sanctions subject to the confirmation of the Governor General, he can revise at any time before that confirmation is received[3].

In the **Panjab** the Act is still more specific: it enables the Government to revise the rates of assessment, the term of settlement, or the conditions under which the settlement has been

[9] I shall not here say anything about the North-Western Provinces' proposal to make the assessment permanent. I have sufficiently indicated the scope of the correspondence in the "General view." (Book I, Chap. IV.)

[10] Digest, sections IV, § 29.

[1] Act XVIII of 1881, sec. 54.

[2] North-Western Provinces Act, sec. 92.

[3] Oudh Act, sec. 45.

engaged for[4]. This plan holds back the power to correct errors till the soundness of the Settlement Officer's proceedings has been fully considered. Until such revision or new offer is actually made, the one approved by the Financial Commissioner holds good.

The **Central Provinces** Act allows of revision at any time before confirmation by the Governor General[5]. Every mahál must be assessed in a separate and definite sum, and the Chief Commissioner can reduce this at any time[6] within ten years from the date on which the assessment takes effect.

§ 17. *The persons who engage for the revenue*—North-West Provinces.

Next we have briefly to enquire who are the persons who enter into and sign these engagement deeds.

The settlement is to be made with the proprietor or person in proprietary possession of the estate. Where there are joint proprietors, a joint settlement is made with all, or "with the representatives (styled lambardárs) elected according to the custom of the mahál[7]."

If the assessment is not accepted, then the estate can be farmed or held under direct management for a time not exceeding fifteen years, and the owner being thus kept out of the management, gets a (málikána) allowance out of the profits of the estate, of not less than 5, nor more than 15 per cent. on the assessment[8], and is allowed to continue to hold his own "sír," that is, land always retained for his own cultivation, but as a tenant on a rent, during the period of his exclusion from the estate. The Act provides what is to be done on the expiry of the period: it is unnecessary, however, to notice the subject further here[9].

[4] Panjáb Act, sections 18 and 30-34.

[5] Central Provinces Act, sections 53 and 56, and see section 18.

[6] *Id.*, sec. 46.

[7] Act XIX of 1873, secs. 43-44.

[8] *Id.*, sec. 48.

[9] In estates where there are *shares*, if there are some sharers that refuse and some that agree, the shares of the recusants are to be first offered to the others (sec. 49).

Then the question of coincident proprietary rights in the same estate has to be dealt with. This the reader will readily understand, if he has remembered what was said in the "general view" about the difficulties which arose where one person had been selected as proprietor among several who had very similar claims, as, for example, when a "taluqdár" was found to be in a position which made it necessary to declare him proprietor over the heads of the original village landowners.

When there are thus several persons possessing "separate, heritable and transferable proprietary interests" in the estate, then the Settlement Officer is to determine, under the rules in force at the time, which of the persons is to be admitted to engage; and he then makes provision for securing the rights of the others, deciding the share of the profits to which they are entitled. The inferior or original proprietor of the village was more commonly selected (except in the case of great chiefships) in the North-West Provinces settlements. In that case, the settlement with the inferior engages that he is to pay an amount of revenue which includes the sum to be received by the superior. This sum is paid to the superior through the treasury, and in fact he becomes a pensioner on the land merely. In cases where the settlement is with the superior, a sub-settlement may be (and always is) made with the inferior "on behalf of the superior," by which the inferior becomes bound to pay to the superior an amount equal to the Government revenue, together with the superior's own dues (and no more), so that both parties are equally protected[10]. Provisions follow, as to what is to be done in case either inferior or superior refuses to engage: these I need not describe. Lastly, there are cases of persons having proprietary rights, but not such as to entitle them to a settlement; the Act provides[1] for the Settlement Officer making arrangements for securing them in the "possession

[10] Act XIX of 1873, sections 53-4-5. The reader will here trace the provisions which were found so much wanted in Bengal, and were introduced in 1822. The sub-settlement is also, as will presently appear, a marked feature in the Oudh settlement procedure.

[1] *Id.*, sec. 56.

of their existing rights, or an equivalent thereto." It is not necessary to go into this subject.

§ 18.—*Procedure in the* Panjab.

Chapter III of the Revenue Act deals with the subject.

The settlement is to be made with the owner or with several owners, through a representative. The representative—the headman or "lambardár"—is appointed under the rules which the Act provides to be made.

The existence of coincident proprietary rights in the same estate, which had to be dealt with in some detail in the North-West Provinces Act, is only occasionally found in the Panjáb; the whole subject is briefly disposed of by leaving it to the Financial Commissioner to direct which class is to be settled with in any particular case, and by providing that if one class refuses, the other is to be offered the engagement. The Settlement Officer having announced the assessment he proposes, the "darkhwásts" are drawn up just as in the North-Western Provinces.

§ 19.—*Procedure in* Oudh.

As the reader is prepared to expect, having read my sketch of the history of the taluqdárs, the law provides that in taluqdári estates the settlement is to be made with the taluqdár, and in other estates with the proprietors[2]. If in an estate (not being a regular taluqdári estate) there should be found two classes of proprietors, superior and inferior, the Chief Commissioner of Oudh directs which is to be admitted to engage.

All the provisions in respect of joint estates are practically the same as in the North-West Provinces Act. The Oudh Act, however, contains further provisions[3] necessitated by the fact that in a taluqdári estate, although the estate is one, still the separate villages comprised in it need not be jointly responsible for the whole revenue. So the assessment due on each village or part of a village, as well as the total assessment, has to be declared.

[2] Act XVII of 1876, section 26.
[3] *Id.*, sec. 29, &c.

If a taluqdár refuses[4] to engage, a report is made to the Chief Commissioner, who hears the taluqdár's reasons; and if his objection proves unreasonable, he may be excluded from settlement of the estate *or* any *part* of it, for a term not exceeding fifteen years. A taluqdár cannot, however, be excluded from his *whole* taluqa without the sanction of the Governor General in Council. The estate (or the part of it) in such cases is farmed, but the farm is to be offered to a sub-proprietor of the taluqdár's, if there is one, enjoying a sub-settlement (of which presently). As usual, provision is made for a money allowance to an excluded taluqdár.

In case of refusal by proprietors, other than taluqdárs or sharers in a community of proprietors, the provisions do not materially differ from those described in the North-West Provinces: the excluded proprietor retains his own (or sír) lands as an occupancy tenant "at one-fourth less rates than would have been paid by a tenant-at-will."

§ 20.—*Sub-settlements in Oudh.*

At this point it is necessary to allude to sub-settlements. The subject is of characteristic importance in Oudh.

In the North-West Provinces, and the Panjáb, the reader will have observed that a few general provisions on the subject were sufficient, since the cases in which there happened to be several persons in coincident proprietary connection with an estate,—*i.e.*, where there was a superior and inferior proprietor,—are few and unimportant.

In Oudh, however, every taluqdár has obtained his place as proprietor over the heads of the original village landholders[5].

This grant of proprietary right was not intended to extinguish the proprietary rights of the communities or individuals who held the villages. But the degree in which the rights of the village owners were found to have survived, was not uniform; and a distinction became necessary between those whose position was

[4] Act XVII of 1876, sec. 32.

[5] See also the section on Oudh Tenures, *post*.

such as to entitle them to be recorded at settlement as *under-proprietors but to have no sub-settlement*, and those who were under-proprietors in such a position that they *had a right* to a sub-settlement. The rules stating who were entitled to a sub-settlement and what different terms applied to each different class of them, had been already legalised and republished in Act XXVI of 1866, before the Oudh Revenue Act was passed. There is no object now in giving details, because all this was done, once for all, at the settlements many years ago, and will never have to be done again.

There can be no doubt now who is to engage, and whether a village is included in a taluqa or not; whether it is entitled to a sub-settlement, or whether it is a village in single tenure by itself. It was a rule in Oudh that the Settlement Court should record a formal decree for every individual village, deciding whether it was in one position or the other[6].

The Act, however, provides that the Settlement Officer is to determine the "rent[7]" of all under-proprietors (whether entitled to a sub-settlement or not) and even of persons who hold *heritable* but *not transferable* leases at a rate not specially fixed by agreement. So that it comes to this, that persons entitled to a sub-settlement differ in position from those who are not so entitled, to this extent, that their tenures are to a greater or less degree more advantageous than the other[8], and that certain special provisions exist as to the validity of incumbrances on the sale of their right, in execution of decree[9].

Where the sub-proprietors or others whose "rent" is fixed under this section, are a joint body, there is the same joint and

[6] Digest, section IV, § 20.

[7] Act XVII of 1876, section 40. In Oudh (by the definition in the Rent Act) "Rent" is applied to *all* payments on account of the use and occupation of land, *except* payment to *Government*, when it is called Revenue.

[8] And they in common with *all* under-proprietors—sir-holders, birtyas, &c.,—are not liable to distraint, but can only be sued for arrears in the Revenue Courts. See Act XIX of 1868, section 47.

[9] See Act XIX of 1868, sections 124, 127, &c. The nature of the sub-proprietary right will be more fully explained in the section on Tenures.

several liability to the taluqdár, that there would have been to Government.

§ 21.—*Procedure in the* Central Provinces.

The engagement is made with the proprietor or with the whole body of proprietors (through their representative "lambardar") of the mahál. A mortgagee in possession is settled with in lieu of the proprietor who has mortgaged his land[10]. If there are inferior and superior proprietors, both interested *in the whole estate*, the Act provides[1] that the Chief Commissioner is to determine with whom the settlement shall be made, and how the proprietary profits are to be shared. If the superior is settled with, a sub-settlement must be made with the inferior (through representatives called "sub-lambardárs") on behalf of the superiors[2]. If the settlement is made with the inferior, the Settlement Officer determines whether the dues of the superior are to be paid to him direct by the inferiors, or through the Government treasury[3].

It will be observed that the Act[4] draws a distinction as regards sub-settlements, between estates where there are two classes of proprietors co-existing, *i.e.*, each with a certain interest covering the whole estate (as, *e.g.*, a málguzár as superior owner, and the original village owners who have yet maintained their position as inferior proprietors over the whole), and those where there is only one such class recognised as the general proprietor of the estate, but still certain individuals here and there are málik maqbúza or proprietors of their own holdings. The term "málik maqbúza" does not include inferior proprietor[5].

A peculiar provision[6] in these provinces enables the Settlement Officer to make an order in writing, that a proprietor who fails to

[10] Section 49, last clause. This is so in all provinces.

[1] *Id.*, section 49.

[2] *Id.*, section 50.

[3] *Id.*, section 51.

[4] *Id.*, section 50.

[5] See the Act; definition clause (sec. 4 No. 10). A sub-settlement *may* be made (when necessary) for málik maqbúzas (Act, section 64).

[6] *Id.*, section 55.

sign his kabúliyat, or to signify his refusal within a reasonable time, shall be deemed to have accepted.

In case of a refusal to engage, if there is only one class of proprietor, the estate may be held direct by Government, or settled with any one else; but the proprietors cannot be excluded beyond a term of thirty years[7]. If the proprietors are a body, and some refuse, the settlement of the whole may be offered to the sharers who do not refuse; and there are special provisions for making (in certain cases) the lands of the recusants into a separate estate, which is settled separately, the settlement being offered first to those sharers in the original estate who were willing to accept the assessment.

Excluded proprietors are (as usual) allowed a "málikána" of not less than 5, or more than 10, per cent., and to retain, but as occupancy tenants, their own sír land[8].

In estates with two classes of proprietors over the whole, if one refuses to engage, the settlement is offered to the other; the Act contains[9] provisions for the different conditions which arise, according as all or some refuse.

Section V.—The close of the Settlement.

Before describing the records which are the result of the settlement, I may briefly state how, legally speaking, a settlement comes to an end. All powers that can be exercised by officers in respect of certain matters *while a settlement is going on*, of course come to an end when the settlement is (legally speaking) closed.

In the North-Western Provinces it is conveniently and simply provided[10] that the settlement goes on till "another notification declaring Settlement Operations closed" is issued.

In the Oudh Act, the provision is identical[1]. So also in the Central Provinces[2].

[7] *Id.*, section 57.
[8] *Id.*, sections 61, 62.
[9] *Id.*, section 59.
[10] North-Western Provinces Act, section 37.
[1] Oudh Act, section 18.
[2] Central Provinces Act, section 39.

In the Panjáb the Revenue Act says[3] that a settlement continues in progress "till it is sanctioned by the Local Government." And it is "sanctioned" when either the "Record of Rights," or the assessment, or both, are sanctioned. Notwithstanding this, the Act enables the Local Government, on "report of the Financial Commissioner that the operations of the settlement are complete," to direct that the records be handed over to the Deputy Commissioner, and to put an end to the special powers of Settlement Officers.

Section VI.—The permanent records prepared at Settlement.

§ 1.—*Judicial powers of Settlement Officers.*

It is observed in Thomason's "Directions" that the Operations of Settlement may be divided under two great heads, one *fiscal*, the other *judicial*. And the division is quite characteristic of the "Regulation VII" or North-West System; it is not traceable in the Permanent Settlement or in a Raiyatwári Settlement.

The survey, which is preliminary, obviously concerns both branches of the work equally:—you neither can assess revenue according to the modern practice, nor determine rights, if you do not know the boundaries and the area of the land you are dealing with.

The assessment described in the preceding section, is the *fiscal* part.

Under the system we are engaged in studying, the *judicial* part is no less important; for the theory is, that Government not only undertakes to fix with moderation its own share in the profits of the land, but confers a proprietary right on the person or body whom it considers to be entitled thereto. Where the proprietor is a community or jointly responsible body, the shares and the method of dividing the burdens and profits of the estate among the co-parceners have to be determined and recorded; and customs regarding succession, and genealogical trees showing descent and relationship, may also have an important bearing on landed rights.

[3] Panjáb Act, section 17.

Not only so, but in many cases, owing to the superposition of proprietary rights, there are ancient and now secondary or subordinate interests in land, to be protected by record. Not only the security of the revenue, but the well-being of the country, is dependent on doing justice to all these claims and interests.

It is true that the ordinary Courts of Civil Justice are, in all cases, open to enable any claimant to obtain his just rights, but the North-Western Provinces Revenue system has always held this to be an insufficient security. For, in applying such a remedy, it is the person claimant who must take the initiative, and bear the burden of proof. But the rights that stand in special need of support, are just those which have been to a greater or less extent overborne by the more powerful and wealthy (who now stand forth in the superior proprietary position); in other words, they are those of the classes least able to take the initiative. Not only so, but the Courts themselves are (or rather *were* in former days) not provided with any means of judging such questions properly. The rights of villagers and the effect of village custom are not easily proved in Court: they are found out by friendly enquiry in the village itself.

If the Settlement Officer takes the initiative, the difficulty is, to some extent at least, obviated; he is on the spot, or near at hand; he enquires and ascertains what is the real state of the case. If his summary enquiry does not result in a satisfactory adjustment of all differences, he can, at least, point out clearly to claimants what they have to establish, and how they are to establish it, so that a more perfect examination of evidence and formal decision may be had in a "Regular Suit" heard under the procedure of the Civil Courts. Consequently, the Settlement Officer is required to record all rights which are ascertained on enquiry to exist; those which are disputed must of course either be supported by the production of a legal decision of court, or cannot be admitted to record.

In the old settlements, not only was the Settlement Officer empowered to make a record, he was also made the judge of land-causes of whatever description, and this enabled him practically to

make his record perfect, and to include not only rights that were not disputed, but those which were established by his own decrees as a law-court. As rights have become more defined, and the people better able to appreciate and assert them it has become less and less necessary to interfere with the jurisdiction of the ordinary courts.

The ordinary powers, therefore, of the Settlement Officer are those which are sufficient to enable him to get hold of all documentary and verbal evidence he requires, and in some cases to decide disputes on the basis of possession, or even on the merits by arbitration[4].

The other powers which he *may* have, and usually has in all provinces but the North-Western Provinces, are Civil Court powers in land cases of all kinds.

In the North-West Provinces where the districts have long been settled under a well-established system, it was thought sufficient to give the Settlement Officer the ordinary powers alluded to[5].

The Settlement Officer decides always on the ground of possession, referring claimants out of possession to the Civil Court. If it is a question of shares, it is settled according to the village custom. The Settlement Officer also decides rent questions that may arise in connection with the preparation of the "jamabandi." Power to refer to arbitration without consent of the parties is given[6].

[4] North-Western Provinces Act, sections 40-42, 238, 240; and Oudh Act, sections 181, 191 and 24 and 25; Central Provinces Act, section 30, and chapter VI; Panjáb Act, sections 23, 24, 64, 65, &c.

[5] Revenue Act, Sections 238-241; also 62, &c. At first sight this seems to militate against what was before said about the insufficiency of a remedy in the Civil Court. But that was perfectly true when the first North-West settlements were made, and still holds good for the other provinces to a great extent. It is only under this modern Act of the North-West Provinces that, the enquiries having long ago been completed, and the people being well aware (by this time) of their rights, the powers of the Settlement Officer are now restricted to what is really necessary.

[6] North-Western Provinces Act, section 220, and the procedure is laid down in sections 212-18. The Oudh Act requires consent for reference to arbitration. The Civil Provinces Act also only allows arbitration to be applied as it is in the Civil Procedure Code.

§ 2.—*Powers as Civil Courts in land cases.*

In the other provinces, as I said, the law allows of the transfer of the hearing of all land cases, while the settlement is in progress, from the Ordinary Civil Courts to the Settlement Officers specially invested with Civil Courts' powers. Such powers, of course, only last till the settlement is at an end.

In **Oudh** the Act[7] empowers the Government to confer on Settlement Officers the powers of a Civil Court, with reference to suits regarding land paying revenue; while those powers exist, the jurisdiction of the ordinary Courts is barred.

In the **Panjab**, where the backward state of the districts made very specially applicable, those considerations with which I headed this section, the settlement notification confers the "judicial powers" which the officers are to exercise[8]. These special powers are not mentioned in the Revenue Act, but are conferred under the Panjáb Courts Act[9]; they allow of the Settlement Officer being empowered to try all (or any class of) "suits and appeals relating to land, or the rent, revenue, or produce of such land," arising in the local area affected by such notification. The jurisdiction of the ordinary Courts is barred.

The advantage of this system is, that while the Settlement Officer is, in his ordinary capacity, enquiring, recording, and finding out all about the people and their rights, if he finds the matter impossible to decide by arbitration or otherwise, without a suit, he can refer the parties to a regular civil suit, and then himself hear the matter more fully and formally, and decide it, subject, of course, to such appeal as the law allows.

[7] Section 20.

[8] Act XXXIII of 1871, section 11.

[9] Act XVII of 1877, section 49. In the Panjáb the powers usually are to hear suits and appeals—

(1) under the Tenancy Act;

(2) to alter or cancel any entry in the register of names of proprietors of revenue-paying estates;

(3) under section 9 of the Specific Relief Act I of 1877, *viz.*, summary suits for remedy against being dispossessed of land, for recovery of possession only;

(4) for declaration of title in land, or the rent, revenue, or produce of land, brought by parties in possession of the rights claimed.

The student will understand that the Civil Court powers are in addition to the ordinary powers of enquiry, record and determining the question of possession, which are common to all provinces.

Central Provinces.—The Act provides[10] that a Settlement Officer may be vested with all or any of the powers of a Deputy Commissioner, regarding such class of cases as may be directed. And the Settlement Officer may be invested with certain Civil Court powers, and the Chief Settlement Officer with those of a Court of a Deputy Commissioner, to hear (during the progress of settlement) all land and rent suits as defined in section 33; and the Government may also direct either that the Civil Courts shall cease to have jurisdiction in such cases, or shall have concurrent jurisdiction. Decrees and orders of Settlement Officers with powers of Civil Courts, unless specially provided to lie to the Chief Settlement Officer or otherwise, lie not under the Revenue Act, but as ordinary civil appeals.

§ 3.—*A list of the Records of Settlement.*

The Settlement Records will then, as a whole, consist (1) of the maps and indexes; (2) the records of the revenue engagements; and (3) the records of rights. The reader will easily follow for himself the class to which the records belong in the following general list:

The documents relating to the survey and assessment are—

The **Thakbast** or boundary maps and proceedings showing how the boundaries were settled, &c.[1]

No explanation of this is necessary.

This is not mentioned as part of the North-Western Provinces Settlement Record, because this part of the business was long ago completed before the settlements now in force were made.

(2) The **Shajra** or village map.

(3) The **Khasra,** or index register to the map. It is a list showing by numbers all the fields and their areas, measurement,

[10] Central Provinces Act, secs. 30–38.

[1] Panjáb Act, section 14, Rules (head Settlement), section III, § 12.

who owns, what cultivators he employs, what crops, what sort of soil, what trees are on the land, &c.

Neither the Panjáb nor the North-West Provinces now require an abstract of this, called a "tírij" or "muntakhib asámíwár;" but in the earlier settlements of these provinces, and also the Panjáb, the Central Provinces and Oudh, this abstract was prepared. It showed the owners and the fields each holds, grouped together according to names. In the Khasra, for instance, one man may hold field No. 1, and the same man's name may not occur again till we come to No. 50, and again at No. 139, and so on. The "muntakhib" starts with the names of holders, and groups under each man's name all the different fields he holds, and adds, in a few columns, the *chief* items of information shown in the more numerous columns of the khasra.

Subordinate to the khasra may be a statement regarding irrigation by wells, canals, &c.

(4) "**The village statements.**"—These are statements showing concisely all the facts and details ascertained by the Settlement Officer and noted in his "pargana note-book" as bearing on the assessments[2]. In the Panjáb they also contain the Settlement Officer's general reasons for the assessment of the village.

(5) The "**Darkhwast malguzari,**" or the "kabúliyat," or engagement to pay revenue.

(6) The **Khewat**[3]. This document is a record of the shares and revenue responsibility of each owner or member of the proprietary body.

In the North-Western Provices and Oudh, tenants have no place in this: their holdings and the rent they pay are shown by

[2] In Oudh (Digest V, section 56), the jamabandi or rent-roll showing rents paid, as *they were at time* of survey, is kept still. In the other provinces, the use of this is confined to the Rent or Revenue-rate Report. Oudh also requires certain other statements which, in the other provinces, are confined to the "Rent or Revenue-rate Report," to be placed on the Settlement Record itself.

[3] The term *khewat* properly means share of burden or liability: it originated in Bengal, where a certain contribution had to be levied on rent-free lands in order to make up a deficit, *i.e.*, when the assessed lands could not make up their total revenue. —(*Wilson's Glossary.*)

the jamabandi (No. 7). In former days, besides the Khewat, a "khatauni" was used, which was, in fact, another abstract of the khasra, grouped according to holdings, but having a column (and herein lay its usefulness) showing how each holding was cultivated, whether by tenants, and if so, whether they had occupancy rights or not. In the North-West Provinces at present the khatauni is not maintained, as information is contained in the jamabandi.

In the Panjáb, a combined form, or khewat-khatauni, is used, which shows *both* owners and tenants, and is a record of occupancy and liabilities.

In the Panjáb, various appendices to the khewat are prescribed or allowed. They are (1) the statements of revenue-free holdings; (2) a list showing the shares and holdings of the present proprietors, and how these interests were acquired, accompanied, where necessary, by a genealogical tree; and (3) a statement of rights in wells.

In the Panjáb some of these documents have great value. The first is of no great importance; the second, however, is of very great interest, in villages held by persons descended from a common ancestor, or otherwise closely connected by blood. The genealogical tree in such cases is an important document, and on its correctness many questions of inheritance and succession may turn[4].

The third statement is necessitated by the valuable character of the irrigation from wells, and by the fact that the shares in the ownership of the well itself, are not always the same as the shares on which the land round the well is owned.

(7) The **Jamabandi**—Showing the occupancy and rents of tenants: this is not used in the Panjáb, where the combined khewat-khatauni is employed[5].

[4] Rules (head Settlement) III, § 25.

[5] The student will not confuse *this* "jamabandi" with the document called by the same name, and made use of in preparing the "Revenue-rate Report." That shows the rents *as* they *are stated to be at the time* of the survey, before the new assessment is made out. In the Settlement Record jamabandi, rents are entered according to the arrangements agreed upon by the parties, unless there has been a *decree*, according to which the rent is entered; if there is a case pending the place is left blank (see Oudh Digest, section V, § 69). For North-West Provinces see Act, sections 68-72; and S. B. Cir. Dep. I., page 13.

(8) The **Wajib-ul-'arz.**—This is the village administration paper: it contains a specification of village customs, rules of management, and everything affecting the government of the estate, the distribution of profits, irrigation, and rights in the waste.

I shall not here go into any detail, as it would take up too much space, and the student can readily refer either to the Panjáb[6] Revenue Rules, or to the North-West Provinces Circulars[7] which give a complete account, and show that the principle is the same in all provinces.

(9) The **Rubakar-akhir,** or "final proceeding," an abstract of the proceedings of settlement.

It gives a brief narrative of the settlement operations, the period occupied by each stage of them, explains what officers carried them out, the year when the assessments took effect, the year for which the *khewat* was prepared[8] and the date on which the *settlement misl* was complete[9]. The Panjáb[10] adds a statement of the Settlement Officer's judicial decisions.

(10) The English "**Settlement Report**" for the whole district. This should here also be mentioned, although it does not form part of the record deposited in the Collector's office, and which comprises the documents above described, and all in the vernacular. Every one is familiar with these reports, many of which are of great value and interest, giving information on the history, customs, geography, and natural products of the district, as well as an account of the settlement proceedings[1].

[6] See Rules, head C. III, 26.

[7] See S. B. Cir. Dep. I, § 51, page 15; see also Panjáb Rules (head Settlement), III, § 33.

[8] This will be noted afterwards; the khewat shows the rights as they existed on at a certain date: of course sales, transfers by inheritance, and so forth, modify it afterwards.

[9] S. B. Cir., Dep. I, § 55 (page 17).

[10] Rules (head Settlement) III, 39.

[1] An officer desiring to know the district in which he is employed (and this applies equally to Forest Officers) should study the *Settlement Report* as his first step. Some reports are full of the most valuable historical, sociological, and other information. Among the best may be named—Elliott's Hoshangabad; McConaghey's and Smeaton's Mainpuri; Reid's Azimgarh; Forsyth's Nimár; Benett's Gonda. Many others, however, might be mentioned as first rate.

§ 4.—*Provisions of the Acts regarding Records.*

I have thought it simplest to give this list of records, which may actually be found in every District Revenue Office, before speaking of the requirements of the Revenue Acts in respect of records.

The main records that require to be prescribed by legislative authority, as being *primâ facie* evidence, in a suit, of the facts they record, are the documents which constitute the *Record of Rights*.

The **North-Western Provinces** Act only alludes specifically to this part of the general records of settlement[2]. It therefore includes the khewat (*viz.*, a record of (*a*) all co-sharers; (*b*) all other persons having heritable and transferable interest or receiving rent; (*c*) the nature and extent of the interest; (*d*) rent-free holders) and the jamabandi. The wájib-ul-'arz may also be added, since the subjects enumerated in section 65 will find a place in that important document. Rules may be made (under section 257) for the preparation of the records.

The **Panjab** Act[3] describes, under the head of Record of Rights, not only the khewat (which it treats as a simple record of owners, supposing the tenant part of it to be shown in the khasra) and the wájib-ul-'arz; but also includes the maps, the khasra, the engagement paper, and the rubakár-ákhír[4] which hardly

[2] See Act, sections 62-65; and S. B. Cir. Rules for Settlement Officers, Dep. I, Rule 30, page 10. The entire misl or settlement record of an estate, in these provinces, is bound up in two volumes:

I. The record of rights.

II. The village map, khasra, and other papers not included in what is technically the record of rights.

[3] Section 14.

[4] It will be convenient here to quote the Panjáb Act on this subject: the record is prescribed to consist of—

(1) "Maps and measurement papers showing the boundaries of the village or place in respect of which the settlement is to be made, and the fields into which it is divided. (Thákbast proceedings and Shajra.)

(2) "A statement of the occupiers and owners of the field specified in the said maps, and of the lands occupied or owned by them, and of the terms on which they are so owned or occupied. (Khasra.)

(3) "A tender on behalf of the person or persons settled with to engage for the payment of the revenue during the term for which the settlement is made. (Darkhwást malguzárí.)

can be called Records of Rights, though they may have an important bearing on the subject.

In **Oudh** the Act leaves it to the Local Government to determine what papers shall constitute the record of rights, and what facts shall be recorded and shown in them[5].

In the **Central Provinces** the record of rights is expressly defined[6] to include the *supplementary* record of rights, that was made in some cases (before the Act) in connection with tenant right, which will be afterwards alluded to.

The Act is particularly clear on the subject. It defines all the subjects which the Settlement Officer has to investigate and decide. A record is to be made for every mahál or a group of maháls: and it is to notice the result of the enquiries made on the points described in the sections 68-78, and any other matters which the Chief Commissioner may direct to be recorded. The Chief Commissioner is also empowered to prescribe the language and form of record and the papers of which it shall consist.

Records of former settlements are treated as records made under the Act. But there are certain exceptional provisions regarding certain rights, for which the Act may be consulted[7].

(4) "A statement of the shares or holdings of the different persons settled with, and of the amount of revenue for which, as between each other, they are to be responsible; and a statement of persons holding lands free of revenue and of the lands so held. (Khewat.)

(5) "A statement of the terms on which the persons settled with agree to pay the revenue assessed, and of the customs of the village or place in respect of which the settlement is made; such statement shall be so arranged as to distinguish such customs as regulate—

(*a*) "the relations of the persons settled with to the Government;

(*b*) "the relations of the persons settled with towards one another;

(*c*) "the relations of the persons settled with the other persons. (Wajib-ul-'arz.)

(6) "An abstract of the proceedings at the settlement, which shall contain a statement of all judicial decisions passed by the Settlement Officer in the course of the settlement." (Rubakár-ákhír.)

[5] Oudh Act, section 19.

[6] Central Provinces Act, section 4. See also sections 68-80.

[7] See section 86 and sections 88, 89.

It is to be borne in mind that records of rights and existing holdings, shares, &c., can only represent the facts as they were at a given date. Such rights alter by partition, the effect of death, and inheritance, as well as by sales and transfers. Provision is made for fixing the *date* to which the facts recorded have reference. Changes occurring subsequently are recorded in proper registers; the original record of rights is never itself altered[8].

The papers, when fair-copied and properly attested, are made over to the district officer.

§ 5.—*Of the attestation and legal force of the records.*

The attestation of the papers is a matter of importance, and original documents professing to be settlement records, if produced without such attestation, may be at once suspected.

In the **North-Western Provinces**, the details are left to the discretion of the Settlement Officer[9]. I have found no specific rules on the subject in **Oudh**. Doubtless the practice is the same as in the North-Western Provinces.

In the **Panjab** the papers are attested by the patwári, the munsarim, and the Deputy Superintendent and Superintendent of Settlement. The boundary maps are signed by the patwáris and the headmen of the villages concerned. The wájib-ul-'arz is signed also by the whole of the proprietors interested. The Settlement Officer is not directed to sign the record of rights, but he is responsible for its correctness.

The "Final Rubakár or Proceeding" is signed by the Settlement Officer himself, as in fact a signature attesting the entire record[10].

It is the practice to bind the various papers into a volume (or more than one): the maps are placed in a pocket in the cover. The Superintendent signs each leaf of the record. The settlement volume is often bound in red leather, and the people speak of it as the "Lál kitáb."

[8] See S. B. Cir. Dep. I, section 31, page 10; Oudh Digest, sec. V, § 62.
[9] S. B. Cir. Dep. I. Rules for Settlement Officers, § 40.
[10] Panjáb Rules (Settlement), VII, 47.

§ 6.—*Legal effect of entries.*

In all the Provinces, entries in the settlement record are legally presumed to be a correct statement of fact[1], *i. e.*, they hold good till the contrary is proved by the party asserting it.

Entries in the record of rights can, however, be contested in a regular suit.

§ 7.—*Alteration of Records.*

The **Panjab** Act contains some special provisions. The record cannot be revised till a new settlement[2], and even then can only be revised by the entry of facts which have occurred since the date when all the judicial cases at settlement were decided, or by alterations which all the parties concur in: or by making such alterations as new maps and measurements made by order of Government, necessitate.

The **North-West Provinces** Act does not allow of the alteration of the record, except upon a regular notification ordering it; errors may be corrected, however, by consent[3].

The **Oudh** law is similar[4].

The **Central Provinces** law goes more into detail[5]. Errors may be corrected by consent, or in pursuance of a suit to correct, or that being founded on a decree or order it does not correctly represent such decree or order, or the decree or order has been reversed or modified on appeal, &c. In these provinces, also, there are special provisions enabling Government to enforce any "custom," "condition," or "specified rule" duly entered in a record of rights. Any settlement or sub-settlement holder who hereafter shall violate or neglect any such rule, custom, or condition is made liable to penalty. The penalty order can be questioned by a suit against Government.

[1] North-West Provinces Act, section 91; Oudh Act, section 17; Panjáb Act, section 16; Central Provinces Act, section 82.

[2] Panjab Act, section 19.

[3] North-Western Provinces Act, section 94.

[4] Oudh Act, section 57.

[5] Central Provinces Act, sections 120-25.

CHAPTER II.

THE LAND TENURES OF UPPER INDIA.

SECTION I.—THE TENURES OF THE NORTH-WESTERN PROVINCES.

§ 1.—*Introductory.*

I should make the preliminary observation that I am in this Section speaking only of the ordinary tenures of the plains. Special districts like Kumáon and Jaunsar Báwar are separately treated of in the appendix.

The tenures (using that term in a somewhat strict sense) that the section is concerned with are of two classes[1].

The first is where Government has granted or recognised a superior right in a given estate. There are then two classes having a proprietary interest in the soil,—the superior proprietor, and the village owners who are the "sub," or "inferior," or "under"-proprietors.

This tenure (taluqdárí), which we shall find so strongly developed in Oudh, is only occasional in the North-Western Provinces, and even there, the settlement aimed at taking the engagement from the actual soil-owners, and left the superior with the proprietary right in his own "sír" or nánkár land, and his right to his taluqdárí due or his revenue assignment, whatever it might be, which he receives through the Government treasury. But

[1] See the General view of Tenures in India, page 42, *ante*. I deal here with two classes only, for there is little occasion to mention a third, where Government itself is the sole tenure-holder, having become proprietor by escheat or forfeiture; or a fourth, where the holder is a revenue-free grantee of land of which he is sole proprietor. If an assignment or grant of the revenue of a given area is made to a person who is not proprietor, he may be only a pensioner; but in such cases the grantee usually has the right to all unoccupied land, and the right to take in hand any lands which are ownerless, and so he has, or grows into, a certain interest in the soil itself, and the estate may then be a tenure of the class mentioned in the text.

there are cases of jágirs and large estates of a more dignified character, where the settlement is with the superior, and his overlordship on the estate is recognised.

The second is where the Government deals with an entire body of cultivators occupying a known local area. It respects the rights of each member; but it deals not with each individual, as in the raiyatwárí system, but with the body—a legal unit or entity—through its representatives, styled lambardárs.

In the first kind of tenure, there are two grades of right between the Government and the actual owner of the land-share:

(1) the taluqdár, or over-lord,

(2) the legal body, the community.

In the second kind there is only one,—the legal body.

It is also obvious that there may be no village *body*; the local area of a village or other estate, may be in the hands of one man, who then unites in himself the proprietor actual, and the proprietor legal with whom Government deals. It is also obvious that in a province where no objection exists to the complete or perfect partition of lands, any joint estate or group may completely split up, and form a number of estates which may ither be each held by a number of joint-owners or by one man. Sole estates will again become joint in time, owing to the joint succession of all the sons, &c., to a sole owner on his decease.

This second class of tenure being far the most important, I shall take it first, and commence with an account of the village body or community.

§ 2.—*The North-West village.*

In an introductory chapter, I endeavoured to explain how the local groups of village landholders came to exist in their present form. I pointed out that, from whatever causes, the village now is to be found in different parts of India, in two distinct forms—

(1) where the village owners are governed by a headman, and have a staff of watchmen, menials and artizans in common, but

each owner has no right to anything but his own holding; lays no claim to any common land outside that holding, and acknowledges no responsibility for his neighbour's Government revenue. If there is any culturable waste to spare in the village, outsiders of whatever caste may come in by permission of the Government officials, only acknowledging the headman, and paying their proper Government revenue, and the dues which by custom are appropriated to the village servants. There may be some local custom connected with payment to the headman, but the outsider once admitted has exactly the same right to his holding as the oldest inhabitant.

(2) The other form also consists of a local group, but here the group has an ancestral bond of union; it claims, as a rule, to have descended from one or more original conquerors, grantees, or founders of the village. It lays claim to the entire land, waste and cultivated, inside the village limits. It admits no outsider (except rarely and under special conditions) as a shareholder, or as a member of the body. Outsiders admitted may come in on highly favourable terms, but only as privileged tenants. The governing body of the group is not a single headman, but a panchâyat or committee of elders, the headman being only distinguished by the fact that some one (or more than one if there are divisions of the group) must be the spokesman and agent in the revenue and other public business of the community.

These two forms of village I distinguished by the terms "non-united," and "united" or "joint" village. Either form of village lends itself easily to a suitable system of revenue management; and as a matter of fact, the former type of village, where it is found uniformly over large tracts of country, has in practice fallen under the raiyatwâri system[2]. It is the joint type that is especially adapted to the North-West system. The whole

[2] Except in the Central Provinces, where, in many cases, the headman was made proprietor, and the village landholders became inferior proprietors. The headman's family, succeeding him, became in time a joint body of proprietors, and they are the settlement-holders with all the usual characteristics of the North-Western system.

body is by natural constitution jointly liable to the State for the revenue, and the body can be dealt with as a whole; a lump assessment is laid on the entire area (and this the members of the group distribute according to their own law and custom); and a representative of the body, or one for each main division thereof, is the intermediary who signs the engagement, and deals with Government on behalf of the body. Where villages of the non-united type are brought under such a system, they are so in reality by changing their character: the joint responsibility is accepted by them, and a common interest in an area of adjacent waste is recognised.

Notwithstanding, however, that under the joint-village system of revenue management there is a joint responsibility, and that it is the body, not the individual, that is dealt with, each holder's separate customary right and share is secured by authoritative record. It has been, accordingly, claimed for this system, that the landholders have the principal advantages of a raiyatwárí tenure, while the Government avoids the enormous labour and risk of dealing direct with thousands of small individual holdings.

The Bengal theory of an intermediary between the cultivator and the State is also here maintained, since the "corporate body," if I may use the phrase, through its lambardár or spokesman is the required middleman: *it* engages for the revenue, and is, in accordance with the system, recognised as proprietor[3]. The body, as I said, may be reduced to one, and, again, be expanded into many; but the theory is not affected: so, too, it may split up into a number of bodies, or a number of units, but each resulting estate still is held on the same theory of right.

Speaking generally, the "united" type of village is the one with which we have chiefly to do in the North-West Provinces. At least that is the impression which a general reading of reports

[3] While, on the other hand, in the application of the theory, a wide difference results from the fact that while in Bengal the middleman proprietor was an actual individual, whose position was the result of a State recognition or grant, the middleman here is an ideal body, and has interfered with no man's rights.

gives, and it is certainly the impression which the celebrated "Directions" has stamped on the revenue literature generally not only of the North-Western Provinces but also of the Panjáb.

§ 3.—*Question whether all the North-Western Provinces villages are really joint in origin.*

I shall, however, have occasion at least to indicate that this universal "jointness" of villages[4] is very doubtful; in other words, that just as in other provinces, we have reason to believe that the oldest and most general form of Hindú landholding was not then joint, but the non-united village, and that the "village community" or joint village grew up in the midst of it, and over it, in various ways, so it is here.

Anticipating the use of terms which will be explained presently, I may say that it is very doubtful, at the best, whether many villages now called bhaíáchára and allowed an interest in "common" land, and held jointly liable (at least in theory) for the revenue, were really of the joint type according to their historical origin.

The doubt consists in this: if you assume that any given village was originally a truly joint village community; that it was really some three or four centuries ago started, say, by one man, or one family, whose descendants for a long time remembered their common descent and held land or divided the profits strictly according to ancestral shares;—if you suppose that in course of time the ancestral holdings got modified by necessity or accident, and are now held on a basis of custom, all original connection having been long forgotten, and perhaps some men of different caste or race have been in bygone years admitted into the body;—it is obviously very difficult, in its present condition, to tell whether the village had really the history I assume, or whether it was from the first a "non-united" village.

[4] Jointness, I mean, in original nature, before the effects of partition, sale, revenue default, and so forth, may have affected the constitution.

On the other hand, a village may present to the observer at the present day, a very similar existing state of things, and yet the truth may be that the village is *ab origine* of the non-united type. For the distinguishing feature—the right to the waste—may have long been obliterated, owing to its having all been appropriated, and the only waste existing being such plots for cattle-tethering and so forth as would naturally, under any form of village, be left open to the general use. Even if there is waste, which originally the villagers would not have claimed exclusively, the example of neighbouring villages, the effect of revenue systems, and the disappearance of the "Rája" who was so necessary a part of the old society, and the consequent absence of a superior claim to it, may naturally have resulted in the group getting to regard the waste as their common property, although in days long past it was not so regarded. We shall come later on to the facts which tend to show the true nature of bhaíáchára villages, but, meanwhile, it is not surprising that they should have become popularly and officially regarded without distinction as a form of joint village.

§ 4.—*Classification of villages adopted in the "Directions."*

The Directions of Mr. Thomason, then, started with the general idea that all the villages were joint: and the author regarded the various customs which now distinguish them, and invite a classification of some kind, as the result of a gradual decay or development—whichever it should be called—of the perfect joint form.

Mr. Thomason classified villages into—

(1) Zamíndárí,

"zamíndárí khális" (where there was only one owner; and where the body was as still joint and undivided, "zamíndárí mushtarka"),

(2) Pattídárí,

(3) Bhaíáchára.

The second and third classes had "mixed" or "imperfect" forms, which may be regarded as two additional classes.

These terms have become, as it were, the *shibboleth* of the North-Western revenue system, and are constantly to be found in reports, applied to tenures,—for example, in Ajmer, Kangra, and Kumáon,—with which they have in reality nothing to do.

Before going further I must make these terms intelligible to the reader by a brief explanation.

§ 5.—*Zamíndárí villages.*

The first term explains itself; here the body is still undivided: whether there is one man managing for a number of joint owners, or for himself, the features are the same. Where there are many sharers, the whole of the land pays the usual market rents, and these are thrown into a common stock, out of which the Government revenue and the other expenses are paid, the profits being distributed, according to the known shares, to each member of the body. The term, however, takes no notice of the very different principle on which these shares may depend: it merely takes note that there is a joint and undivided body regarded as proprietor of the whole estate.

It should be borne in mind that the term "zamíndárí," as here used, has not the meaning which it bears in Bengal. It is not used to signify the tenure of lands managed by a zamíndár or revenue agent who became proprietor. It indicates only the right of proprietorship over a certain group of lands or estate, including both the waste and cultivated land within its limits.

This tenure may be that of a sole individual or a joint body. In either case it implies, in revenue language, that there is no diminished or partial right, but the estate is held in full or in joint proprietorship.

It was hardly necessary to say that in some cases there may be no proprietor, in which case the Government is itself the zamíndár. As a rule, in Upper India, Government is averse to holding "khána khálí" estates (as they are often called), and a proprietor is looked for among those best entitled, who are willing to undertake the responsibility of settlement.

§ 6.—*Pattídárí.*

The second term indicates that there has been a partition of interests by separate record and allotment of the ground. The estate, as regards responsibility for Government revenue, still remains joint, and its general management is also in some respects joint; but each sharer or group of sharers has obtained a separate interest in his holding, and he alone takes all the profits and bears the cost of cultivation: he pays the share of the Government revenue and village expenses, which corresponds to his theoretical share in the estate.

There may also be an "imperfect" or mixed pattídárí estate, by reason of the fact that part only of the village has been divided, the rest still remaining joint.

In a pattídárí estate, where the ancestral connection is remembered, the typical or natural basis of division is often the fractional share which belongs to the holder from his place in the joint succession recognised by the Hindu or Muhammadan law of inheritance. Thus, supposing the founder to have four sons: each son's family share or "pattí" of the estate would be one-fourth of the whole. But these shares may be modified by circumstances; it is then no longer possible to say that the pattídárí estate is always held on legal shares; but the practical characteristic is this, that the divided share of the land corresponds (or is accepted as corresponding) to an ancestral, or modified ancestral, system of shares. When the landholding is allowed to be without reference to any system of shares, the estate is no longer to be classed as pattídárí.

§ 7.—*Bhaíáchára.*

The third or bhaíáchára form represents a division where a scheme of ancestral shares has been forgotten or never existed. The term means literally "custom of the brotherhood," *i.e.*, the divided holdings of land do not correspond to any fractional portions of the right in the estate which a law of inheritance from a supposed common ancestor would indicate; but the estate is practically a

cluster of separate holdings, the relation of which to the whole is no longer expressed by any convenient system of shares, whether theoretical (on the law of inheritance) or modified.

In bhaíáchára villages separate possession is generally recorded, but in rare cases it is not. In such cases, the estate may really be joint, only that the principle of sharing burdens and profits is different. This fact alone affords a suggestive indication that the classification of the "Directions" is not a sufficient one[5].

[5] Mr. Whiteway, who was good enough to give me valuable advice on the subject of the North-West villages, remarks of Mr. Thomason's classification :—"It is a mere office classification, and no ground for it can be found either in the language of the people or their institutions." [The vernacular terms above given are mere Revenue office translations of English terms : bhaíáchára is a true indigenous term, but it is not a term which indicates a class distinct from "zamíndárí," &c., but one that indicates a principle of distribution, which, as I shall presently show, is the true ground for classifying.] "There was a time when even such a rough division as it is may have been of use ; but with our careful record of rights, such a time has long passed away. The terms hardly even represent certain stages of development ; it is perfectly incredible that a bhaíáchára estate is a zamíndárí one, decayed or developed."

This last phrase should, I think, be understood as meaning that a bhaíáchára estate is not always the result of decay. It is easy to conceive that it is so in some cases ; the survival of the "imperfect bhaícá-chára" where the holdings are partly on custom, and ancestral shares are still remembered with regard to certain profits, lends probability to the view. Nor is it in any way difficult to understand how a joint holding should resolve itself into a several holding, and how theoretical shares should give way to practical holdings resulting from circumstances.

On the other hand, there are many estates classed as "bhaíáchára" in the official scheme which are really the non-united village form, where no ancestral connection has ever existed.

The classification, then, is defective. It is based partly, but not completely, on the degree of *separation* of the interests in the estate. But it really makes no difference to the *tenure*, in what relation the sharers in the estate stand to the whole. All tenures in the North-Western Provinces that are not taluqdárí, are really "zamíndárí," *i.e.*, however many sharers there may be, and however differently these sharers may be interested in the estate, the common feature is that the whole is regarded as one body, and the body is regarded as the middleman between the individual sharer and the State.

The attempt to separate "zamíndárí" from "pattídárí" as *different tenures* is only one of official convenience; it is a mere office matter whether we call a pattí a share of an estate or a separate estate ; for, as I remarked, the people may at once, if they choose, snap the bond, and then the separate pattís become so many separate estates, which may each of them fall into the class "zamíndárí," by reason of their being held undivided as regards their interior arrangement.

In the "imperfect" or "mixed" bhaíáchára the land is held partly in severalty, without reference to shares; while as regards some land or some profits, the ancestral shares are still remembered as a principle of division.

§ 8.—*Real classification of villages.*

Coming then to regard the North-Western Provinces villages as they now are, as one kind of tenure only, in which the sharers have different kinds of interests, we shall be able to classify the villages as follows, on the basis of the question whether legal and ancestral shares are remembered or not:—

(A) Ancestral shares are the only measure of interest.

I.—Estates in which *legal fractional shares* (depending on the law of inheritance, &c.) are the measure of the interest of the coparceners.

(Forms)

(i) The land may be held in common, all the land being rented at market rates, the proceeds being thrown into a common stock and divided by a manager (separate possession not recorded).

(ii) The estate may be divided either entirely, down to the individual holdings (khátas) or only as far as the "pattís" or minor sub-divisions, which may remain joint within themselves.

(iii) The land may be held in severalty according to fractional shares; but as these may not yield corresponding shares of the profits, the burden of the revenue demand may have to be adjusted accordingly (separate possession recorded).

(iv) Part of the land is held jointly and part in severalty ("imperfect pattidári" of the books).

The term bhaíáchára does take a certain note of the *principle* of *division*; only this principle is not made the basis of classification generally; thus two estates may both be classed as "zamíndárí," although the internal method of management may be very different.

It should, however, be borne in mind that Mr. Thomason himself never intended the classification to be other than an arbitrary one, adopted for official convenience, and based on the degree of separation as "an obvious distinction." He admits that the difference of the *rule according to which profits are shared* is a good ground of distinction. (See Directions, edition of 1849, §§ 86 and 91, pages 54-55.)

(B) Ancestral shares are known, but applied only partly,—that is, to a certain portion of the profits.

II.—Estates in which *the holdings are "customary"* (and are *de facto* holdings fixed by circumstances), *ancestral shares being still partly remembered, e.g.*, in dividing profits of "sair" (jungle, fisheries, fruit, &c.) or of common land.

(Forms)

(i) Each holds a share as "sir," or land which he manages and cultivates himself out of proportion to his ancestral share, paying a nominal or low rent to the common fund: the rest of the estate is held for the common benefit, and the profits are distributed according to ancestral shares. Here separate possession will usually be recorded in the khewat.

(ii) The same, separate possession of the holding not being recorded; this is *rare*.

(C) Ancestral shares entirely unknown or not observed in any way.

III.—Estates in which the holdings *are all customary* and any *theoretical system of fractional shares is quite unknown* (may never have existed).

(Forms)

(i) When separate possession is recorded.

(ii) When separate possession is not recorded[6].

§ 9.—*Origin of joint villages in the North-Western Provinces: dismemberment of the old Ráj.*

I may now proceed to offer some remarks on the origin and nature of these different interests in village lands.

The ways in which the estates now owned by joint communities and recognising ancestral shares arose, may be various:

[6] This is rare; but there are cases in which no separate possession of fixed holdings is found recorded in the khewat and where yearly arrangements are made for the cultivation. This is probably a survival of the forms noticed in the Chhat sgarh division (see section on Central Provinces Tenures), where the landholders interchanged lands every year, so as to give each an equal chance of profit and loss with good and bad lands.

(1) In the first place, there may be the same influence as I have indicated in the general chapter on Tenures and illustrated from the Gonda district in Oudh. Certain *powerful families*, by *usurpation* or *grant*, obtained, besides their original landholders' rights, the Rája's claim to taxes and the disposal of the waste. They divided the lands among themselves, and the men who obtained each a certain area in full right, became founders of the families which are the joint owners of the villages. Or the Rája had granted land in jágír in the same way, and the grantee's descendants form joint proprietary communities. When the Ráj itself was divided on the death of a Rája among his descendants, the tendency of the small estates so produced would be, to get smaller and more subdivided till a number of estates consisting of single joint villages resulted.

It may be hazarded that all the higher caste communities—Rájputs, Brahmans, and so forth—really originated in dismemberments of the old "Ráj" rights in this way.

§ 10.—*Settlers on waste land.*

(2) Another origin is in grants for clearing the waste. The Rája makes a waste grant on favourable terms to an enterprising man, who starts as the leader of a party of cultivators whom he collects: he establishes a group of buildings close to the best land, and himself makes a beginning by digging a well on the most fertile land, which thus becomes the nucleus of his "sír" or special holding. This sort of proceeding is distinctly traceable in the Sambalpur district of the Central Provinces, and must have originated communities in many other parts. The founder's family, in the course of time, developes into the proprietary community. The people called in to aid reside on the spot, as either "proprietors of their holding" or "tenants" on fixed tenure and favourable terms. In some cases they may have been regarded as members of the proprietary body from the first, because in these cases it is by no means always that the leader of the party gets recognised as the proprietor of the whole settlement.

§ 11.—*Descendants of Revenue-farmers.*

(3) Another origin of communities is of much later date; it is to be found in the revenue-farmer, put in by the preceding Government, or even as late as in the times of our own, to manage the village. He may have usurped the position of proprietor, reducing the original holders of land to being his tenants; his descendants now form the proprietary community in the upper stratum of landed interest[7].

He may not have displaced any one, however; he may have found the estate deserted, from famine or the vicissitudes of war: it may have been waste originally, and he founded and brought it under cultivation.

From all these sources really joint communities would arise, and whether they remained joint or separated, their ancestral or legal fractional share would be the measure of right.

§ 12.—*Settlement of tribes.*

(4) In the Panjáb we shall see that a prominent source of joint-village holdings is the local establishment of a tribe or section of a tribe which settled down in a district and divided the land among the tribesmen. Here the joint claim to an entire area is manifest, whether to the whole area occupied by the larger section, or the smaller sub-divisions assigned to individual leaders or groups of families within it.

[7] In Baréli (Settlement Report, 1874, page 21) I find it noted that there the villages had been overrun by the Rohillas, who had stamped out, or refused to allow, any rights that could be called proprietary. There were then only the two classes of *cultivators*, one resident and the other non-resident. The former were managed by a quasi-hereditary headman called *muqaddam* or *pradhán*; but he was never looked on as owner, and only paid a little less rent than his fellows, to the conquerors his landlords. At our settlement, it is curious that the proprietary right was not conferred on the whole body of resident cultivators (possibly because they were not willing to be jointly responsible), but on the individual *muqaddams* who had no sort of claim by custom. Thus the villages were at first "*sole* zamíndárí" estates, but in time became joint or in shares, when the original grantee died and left the estate to be divided among his heirs. Exactly the same thing happened in Pílibhít (Report, 1872, page 88).

The North-Western Provinces reports do not afford evidence of this origin to village communities. But it would require an examination more in detail of the prevalent castes which compose the villages, to give any final opinion on such a question. In later times, of course, the country originally occupied is not likely to consist exclusively of fellow-tribesmen; outsiders get admitted, purchases take place, revenue-farming arrangements upset the holdings, and many ancient rights disappear during famine and war. The result is a great mixture in the present inhabitants. We can now only trace the area originally peopled by one tribe, by the predominance of a certain caste or clan, and by the existence of traditions, or peculiar local names.

But in spite of this difficulty, it may be said at least with probability that tribes of the same stamp as those that settled in the Panjáb, did not extend their advance to the North-West Provinces. Throughout the Gangetic plain, the general evidence points to the whole country having been divided into "*Ráj's*," each smaller Ráj being often a member of a confederacy owing subjection to an "Adhiráj," or over-lord. Within each Ráj the villages were mere groups of separate holdigs, as already explained. It was at a later date that joint villages grew up and multiplied in the way described; and in the course of time even the remaining non-united villages came to be treated as jointly liable for the whole revenue, and as owners of the waste. These villages are now officially classed as bhaíáchára communities equally with others which were essentially of the joint or united type.

§ 13.—*Variations from the ordinary North-Western Provinces village type.*

The foregoing list of the sources to which the origin of the North-West village may be traced will apply generally to the districts of the plains. But, as might be expected, the districts nearer to Central India approach more nearly to the Central Provinces tenures. Thus in the Jhánsi and Lalitpur districts, which

border on the Ságar and Narbada territories, it would seem that the villages were originally of the non-united type, and that they have become joint, under the North-Western Provinces Settlement system, owing to the creation of a proprietary right in the headman, which is now held by a body of descendants.

The Jhánsi district[8] did not exhibit the regular type of strong proprietary communities; anything resembling a proprietary right was unknown[9]. But it is stated that this condition—the aggregation of landholders without any joint interest—was the result of the decay of a former joint constitution. The original ancestral shares had fallen into oblivion, and actual holdings alone were recognised[10]. There was a headman, called "Mihta" (or Mihté), like the Maráthá patel, and he had his lands and perquisites of office, here called "haq-mihat[1]."

The plan at settlement was to make proprietors of the Mihtas, and of all who, as members of the official families, held lands which formed part of the "haq-mihat." To these were added all who enjoyed special privileges and perquisites, and all who appeared on the merits to have been acknowledged as "sharers" in the estate in any sense. All the residue then became "tenants."

Among the occupancy tenants recognised by the law, may be noticed those called "purána jotár" or original cultivators (who paid a low rent in a lump sum (tankhá) on their entire holding). They can sell and transfer; and they can relinquish their lands, with right of re-entry on repayment of outlay to the intermediate holder.

[8] Jhánsi is a scheduled district under Act XIV of 1874 (Notification No. 687A of 9th November 1877), but the Revenue and Rent Acts apply to it, since the names of the Jhánsi division districts do not appear in the schedules attached to *those* Acts, and it is only the districts in those schedules that are exempt from the Revenue and Rent law. The list of Acts in force in Jhánsi is to be found in Government Notification No. 1148 of 29th August 1878. The old rules for Criminal and Civil Justice legalised in 1864 are now repealed.

[9] Administration Report, North-Western Provinces, 1872-73, page 14, § 23.

[10] Jhánsi Settlement Report, 1871, § 340. An attempt was made to draw up a "phánt" or list of shares, which was all wrong, but was admitted as evidence in some cases in Court and led to considerable confusion.

[1] Settlement Report, § 31.

There are also tenants at "fixed rates," and others at "customary rates," liable to enhancement if the village assessment is enhanced.

Why all the cultivators were not declared proprietors of their holdings, as they would have been under another system, can only be answered with reference to the principles of the North-West system, which will not admit of dealing direct with the actual cultivator. Even as it was, there being no natural communities, the creation of proprietors has resulted in a number of small estates, which have been since unable to make way and have become involved in debt[2].

In Lalitpur there was the same absence of cohesion in the communities, if they can properly be called such. There were, however, many villages in subjection to local chiefs called Thákurs, who held the villages in jágír or on a quit-rent by the "ubárí" tenure (see Section IV on Central Provinces Tenures). These were acknowledged as proprietors over the heads of the actual landholders[3], but in such cases the original rights of the latter were protected by making them "sub-proprietors." This settlement was carried out under the Ságar Rules of 1853, which were afterwards applied to the Central Provinces[4]. The whole district and its settlement may be regarded as answering to the description given in the section on the Central Provinces tenures.

Where there were no Thákurs, &c., the revenue-farmers or headmen[5], as the case might be, were made proprietors. This was the case with the parganas which had belonged to Sindia, and

[2] This is to be noted as a curious result of the endeavour to create proprietors. In Jhánsi there are no wells: the land is dependent on rain, and each cultivator can barely be sure of paying the revenue on his own field: a person, therefore, artificially invested with the right over, but with the consequent responsibility for, the revenue of a number of such fields, cannot bear up. The so-called proprietors have had to borrow largely to pay their revenue and have become hopelessly involved.

[3] Lalitpur Settlement Report, 1871. The Board's review gives a history of the difficulties and contentions of these chiefs. The Report, § 196, complains of their being incorrectly called taluqdári estates.

[4] Lalitpur Settlement Report, 1871; Government Review, § 15.

[5] The Report, § 193, says that the headmen were usually the descendants of the original clearers and founders of the estate ("Jharya-kath").

those of Bánpur and Maraura which had been confiscated; here proprietors *had to be found*. But in some cases where these farmers or headmen had no distinct claim, and where the original landholders had kept up a local bond of connection which could be ascertained, the community was declared proprietor[6], on the typical North-West principle. In cases where the revenue-farmer or the headman was made proprietor, the members of the original landholding families became (as usual) privileged tenants or sub-proprietors.

Forest officers will be interested in knowing the fate of waste and jungle lands.

Wherever these were in a Thákur's estate (jágír or ubárí estate) they were all held to be included in the grant. Elsewhere a rule similar to that of the Central Provinces was ultimately adopted. At first indeed (in 1865), all the considerable tracts of waste were reserved to the State, and clauses to this effect were entered in the Settlement "Wájib-ul-'arz." But in 1867 this was considered unfair; the clauses were struck out, and the waste distributed to the villages, in amounts equal to double or quadruple the cultivated area; only the surplus (about 10,900 acres) was reserved to the State[7].

§ 14.—*Details about each form.*

Returning, however, to the ordinary form of joint village, as now recognised, it remains to offer some details about their constitution: (1) as to the general features of the communities; (2) regarding the "zamíndárí" and "pattídárí" or ancestrally shared estates, and the process of the disintegration of joint estates into severalties; (3) regarding the bhaíáchára estates.

§ 15.—*General features of the North-West village.*

Whatever may be the true origin of the estates, they are now, all of them, as long as perfect partition is not granted, jointly liable for the Government revenue, and all of them claim the entire

[6] Government Review of the Settlement Report, § 16.

[7] Settlement Report, §§ 97 and 114.

area of waste and unoccupied land within the limits of the villages as "shámilát" or common property.

Affairs are managed under all forms, by a panchâyat, and there is an annual audit of accounts called "bujhárat" in which the headman or managing members account for the expenditure incurred for village purposes. In a completely undivided community, this audit will cover the entire expenditure and income, and explain the distribution to the different sharers.

Outsiders are, as a rule, not admitted into the community, but cases occur in which a family Brahman or some privileged individual has been so admitted; then, of course, the share assigned him is an exception to the general rule of ancestral or fractional division throughout the estate.

There may be occasionally in the village, persons with a full proprietorship in their holding (arázídár) or with a non-transferable ownership (farotan milkíyat) who are not members of the community. Such a status may be acquired by some old proprietor of the village whose right has been borne down in bygone days, by the proprietors now in possession; or it may be that a member of the body had thrown up his holding (having arrears of revenue which he could not pay) and he or his heir has now returned to the village: in such a case he would probably be admitted to hold land, but not to have a voice in the management, unless he paid back the arrears.

There may also be in the village, old tenants who helped the owners to clear the land originally; these, though not proprietors, still have fixed rights, and pay no more on the land than the proprietors do, towards revenue and expenses.

§ 16.—*Villages held jointly on ancestral shares.*

The simplest form of joint estate held on ancestral shares is where all the land is either wholly let out to tenants, or held partly by sharers as tenants of the body, but in any case paying full market rents. The rents and other receipts are then thrown into a common fund, and, after deducting expenses, the profits are distributed according to the shares. This process, effected by the managing

member, is tested by the assembled coparceners at the annual bujhárat or audit of village accounts. Separate possession is not, in such estates, recorded in the khewat.

But there are also cases in which separate possession is not recorded, and yet each sharer holds and manages on his own account a certain area of "sír" land at low or nominal rent; this sír being out of proportion to his theoretical ancestral share. The remainder of the land is held in common.

The proceeds of the common land and of the rental, if any, of the sír land, may suffice to cover the Government revenue and other expenses; if so, the profits of the sír are clear gain to each man according to his holding; if not, the deficit is made up according to ancestral shares.

Such an estate, as long as *no separate possession is recorded*, is still the "zamíndári mushtarka" of the text-books, as much as that first described; but it is obvious that there is a very real difference, of which the official classification takes no account. When such a method of holding is observed, it is obviously not only a step towards several holdings, but there is a material change in the principle of sharing.

In the oldest form of common holding, it is probable that a custom of periodical redistribution was observed, so as to give each sharer his turn of the bad or less profitable holdings. We shall come upon instances of such a redistribution in the Panjáb and also in the Central Provinces[8].

[8] I have not found any direct instance in the North-West Provinces of this custom of occasionally or at fixed periods *redistributing the holdings* with the object of equalising the differences which result from one holding being better or worse than another. But I am told that in Fatihgarh and elsewhere the principle is by no means unknown. It is said to be common in Bandelkhand, and under the name of "bhejbarár" excited no small discussion in Mr. Thomason's time. Section 47 of the Revenue Act acknowledges such a practice and makes provision for the Settlement Officer to deal with it. But there are occasionally village arrangements of a permanent character intended to obviate such inequalities. Thus in Mainpúri (Settlement Report, 1875, page 105) there is what is called a tanzih tenure,—that is, the land is divided into two classes, the rich *gauthán*, or homestead, and the inferior distant land, or *barkhá*; each holding is of so many "tanzih bighás," which means that each bighá is made up of a proportion of each kind of land.

§ 17.—*Villages held in severalty on ancestral shares.*

If the hitherto joint cultivators agree to a division on ancestral shares, then that moment such a division is effected, the estate becomes "pattídári;" if the division does not go by ancestral shares, but according to actual and customary holdings, the form becomes "bhaíáchára."

It is, however, obvious once more, that the mere fact that the joint holding has been divided, does not really alter the nature of the tenure, and therefore the official classification which recognises the "pattídárí" as a kind of estate, is only arbitrary.

A pattídári estate is only a zamíndári estate held on ancestral shares which have been divided out, and which are henceforth managed by each sharer on his own responsibility, he taking his fractional share of the lands, and paying the corresponding fraction of the revenue and expenses[9].

The fractional share commonly arises from the law of inheritance; thus an estate is held by a man who has four sons; one of the sons is dead and is represented by three sons; then the shares are, that three sons hold one fourth each, and the remaining fourth is again divided into three, one for each grandson. It may be also that a fractional share takes its origin from a sale or mortgage; thus one of the four sharers may sell one half with the consent of the community; then the estate is held in two fourth shares, two eighth shares, and three twelfth shares.

This division may occur in various ways. There may have been

[9] In Azamgarh (Report of 6th Settlement, § 9 of the Review) a curious form of shared estates is described, which is like the "Khetbat" in Oudh. Here, it is not the mauza or village that is divided into shares, the whole being the property of one group of families, but the whole estate extends over several villages. One "patti" or sharer of the estate will have some lands in one or two mauzas, another patti in another mauza, while all the pattís will have lands in the third. Often all pattís will have lands in all the villages. It was necessary in order to clear up this confusion to make statements called "báchh-bandi," in which each sharer's lands in all the mauzas were brought together, and the total revenue of the patti thus shown in one. When there were in any village proprietors of lands, but not belonging to any of the "pattís," they are called arázídár (Report, Chapter III, section 5, page 63).

certain original divisions of the village known as "thok" or "taraf;" these are, perhaps, the result of an original allotment of land of the village site to two or more main branches of the original founder's family.

In each taraf there may be the joint holdings of minor families, called "pattís;" or there may be no "tarafs," but the whole village may be divided at once into pattís. When an actual division of holdings takes place, the partition may extend to the several pattís only. The land inside the pattí may be still held jointly by a group. Or, lastly, the division may have gone down to individual holdings or "khátás" which may be separated off and recorded.

As long as all these varieties of division have only separate possession and record of holdings, but still form one mahál jointly responsible to Government, we have the "pattídárí estate" of the text-books.

Of course at any moment the remaining slender thread that still binds the divided holders into one estate, may at any moment be snapped by perfect partition, and then we have no longer *a* pattídárí estate, but a series of separate estates, each of which may be a sole or joint estate.

The estate may also remain, as I have noticed, in an "imperfect pattídárí" form,—part divided and part still held in common.

The causes of division may be quarrels in the family, or simply the desire of each man to have his own land to himself. The "sír" is then separated, the rest of the land being left in common to be cultivated by tenants. This imperfect form is to this day very common; the Government revenue is paid out of the common land, the proceeds of it being taken in the lump for the purpose; and each sharer gets his own "sír" profits entire. Only when the profits of the common land are not sufficient to meet the revenue, then the deficiency has to be made up by a payment in the same proportion on the several sír holdings[10].

[10] Oudh Administration Report, 1872-73, Introduction: *see* also Baréli Settlement Report, § 59, &c.

§ 18.—*Nature of the shares.*

In a pattídárí estate the shares may be the actual fractional shares which result from the law of inheritance, and the landholders placed on the genealogical tree; or they may be these shares modified by circumstance and by custom. But the characteristic is that the *correspondence between the holding* as divided on the ground *and the ancestral or modified share* is always assumed, and the produce and expenses are always divided according to these shares.

The circumstances which tend to upset the fixed theoretical shares are various. It may be, for example, that each pattídár has got an equal fourth share divided out on the ground with perfect consent and as equitably as possible under the circumstances at the time of division. But subsequently the conditions change, and it is found that though the holdings correspond to equal fourths of the Revenue demand, one holding becomes in yield and value out of proportion to the fourth of the revenue; it deteriorates and cannot pay it, while another fourth is more than able to meet the exact corresponding share.

Men's talent and capacity for agriculture also vary, and a thrifty shareholder with good land may make so much that he is able to help his neighbours in distress; then he probably takes a slice of his share in consideration of such help, and thus the old shares begin to change.

Another and probably very common cause of change arose in the days when the Government demand was excessive: it required in fact every one to cultivate all he could, in order to keep the village going at all; and so one man's means being greater than another's, he got to cultivate land beyond his legal share. Still as long as it is recognised that the owner has a special fractional interest in the whole, and his actual landholding is recognised as corresponding to the share of the expenses which he pays, the estate is still pattidárí [1].

[1] In the Panjáb, and I have no doubt elsewhere also, the shares in a pattidárí estate are rarely purely ancestral. The days before our rule were rough ones; necessity operated to modify a strict adherence to ancestral shares. The result of confusion

The estate ceases to be pattídárí when any specific share in the estate is no longer recognised. A man has a certain *de facto* holding and he pays at a certain rate *per* plough or *per* well or *per* acre on this. If an owner denies that a stated share is the measure of his ownership, the result of such a contention is either a revision of the share list or the estate is converted into a bhaíáchára one.

This process of change in the holding and ultimate abandonment of the theory of a share, may very well have been *one* origin to the "bhaíáchára" estate. Such villages may have been originally held on ancestral shares, and this origin must always be held probable when the remembrance of a common ancestor is something more than a mere fabulous tradition. It is especially probable when ancestral shares are still made use of in distributing *some* of the profits of the land. Section 46 of the Revenue Act enables the Settlement Officer to distribute the assessment over the several holdings, so that there is no hard-and-fast rule that the fractional share of the estate must bear an exactly corresponding share of the revenue demand.

§ 10.—*Bhaíáchára Estates.*

And this leads me to speak of the features of bhaíáchára estates generally. Such a type may have arisen in the manner just described out of the joint village; but the commonest origin is, that the village was never joint at all, but was from the first the non-united village of the earlier form of Hindu kingdoms; and even where there are some traces of ancestral shares as regards certain of the lands, this may be due to the rights of the headman and his family, not to any original ancestral sharing of the whole estate. For example, under what I may call the older constitution, cultivation sometimes was taken up in a new spot by a person who, as

and of misfortune was that shares got altered according to circumstances, the weak and unfortunate losing, the stronger and more fortunate gaining.

It may be, therefore, that the Government revenue is paid according to customary shares, but the division profits of waste land or "sair profits" and the holding of sir land may be according to ancestral shares. Such estates are still reckoned as "pattídárí."

headman and leader of a body of colonists, had obtained a grant from the Rája. The headman got to look on himself as the owner of whatever land was not occupied by those who came with him. They, indeed, had their right in their own plots, but newcomers were approved by the headman, and acknowledged his rights by getting him to turn the first sod of a new tank or well that was to be dug; and if such settlers abandoned their land it reverted to the headman. The headman and his descendants then came to look on themselves as entitled to the proceeds of the waste and unoccupied land, and hence shared this in fractional ancestral shares, while the rest of the land was held by the different settlers, according to the custom which has acknowledged the holding of each[2].

Thus we may have a bhaíáchára village with several holdings, and no general scheme of shares; and yet a certain body divides the profits of a certain part of the estate, by ancestral shares.

I do not say that this accounts for all cases, but it is one way in which such a state of things may arise.

In ordinary cases, the whole estate would consist of several holdings entirely unconnected; then there would be a pure bhaíáchára estate: the waste remained at the disposal of the State, though used for grazing and other purposes, and only at a later time became the village "common."

In these estates, the origin of the holding is simply what each man who joined in the original settlement was able to take in hand. This is expressed by the phrase "Kásht hasb maqdúr." Each holding is spoken of as the man's "dád illahi," or gift of God to him: and as the right in it is heritable, it is spoken of as his "wirásat" or inheritance.

It is very remarkable how this term, of Arabic origin, has spread all over India: the heritability of the land occupied and cleared being the important feature, land so taken up is described by a term equivalent to "inheritance." And this is true, whether it is the

[2] An interesting example of this will be found described in Sambalpur, Central Provinces.

land occupied in a non-united village, in Hindu States where the joint ownership of an entire village is unknown, or in the joint villages: the same term occurs, either as the "mirás" right, the "wárisi," the "wirásat," the "janmi," or some similar name. This we shall find all over India—in Kangra and the Himalayan States; in Central India, the Dakhan, South India, Malabar and Kanára.

Among the most convincing proofs that the "bhaíáchára[3]" estate may have sprung from the non-united village, is the fact that the shares in some estates are counted according to an imaginary number of ploughs or masonry wells. It is obvious that in a settlement where a number of persons join and bring land under cultivation, the area held was of little importance; especially when it is recollected that in early times there was no rent, and the State revenue, as well as the headman's perquisites and the dues of the village servants, were all provided for by deductions from the grain heap. What was of far greater moment was the fact that a man had joined with one, two, or three ploughs and the necessary cattle, or that he had sunk a well, or that two or more joined to dig one.

Very often, in bhaíáchára estates, the burden of Revenue and expenses is now borne by the whole body, by a rate applied to all cultivated land, or to the whole estate (dhárbáchh or bígha-dám), because that is, in the present age of money revenue and money rents, an obvious and easy way of settling the matter. But in many cases a distribution of expenses is still by ploughs and wells.

It may be asked: if, as described before, the original village was a mere group of isolated landholders acknowledging a headman

[3] A curious instance of the growth of a "bhaíáchára" village under the North-West system, is afforded by Mr. Barnes' Settlement of Kangra in the Panjáb. Here there was a pure old Rájput state, each villager with his "wárisi" holding, and no claim to the waste except to use it for grazing, &c., and no idea of any liability beyond that of his own grain-share to the Rája. The Settlement Officer proceeded, as a matter of course, to allot the waste to the villages, to treat them as jointly liable "bhaíáchára villages." He did not seem to think that he was doing anything at all out of the way, in dividing up the entire forest and waste among the villages; and the people seemed hardly to realise that the land was being granted to them. As to the joint liability which would result from the system, it is not even mentioned; apparently, it was thought quite a matter of course, and of no moment whatever.

and other institutions in common, but having no claim of ownership over the unoccupied land in the vicinity, and having no joint responsibility, how was it that such a group came to be amenable to the theoretical joint liability for a lump assessment, and to claim the waste in the vicinity of their holdings, and so to have a property, just like an originally joint village, over the entire area in a ring fence?

It is easy to account for the present joint condition of the bhaíáchára estate. The old Rája's interest in the unoccupied land around the village cultivation ceasing to exist, it is very natural that the whole body should have claimed it, and occupied it entirely among themselves; or in other cases, as above indicated, the headman's family and his co-settlers should claim the whole, and subsequent comers should have looked upon themselves as subordinate to the first settlers. Although, in some cases, such "tenants" may pay the sum imposed by the "dhárbáchh" at no higher rate than the others, they are looked on as "tenants" and are not admitted to a voice in the management of the affairs of the village. When, therefore, the Settlement Officer recorded the village landholders as proprietors of all land within the local limits of the village, it did not strike the villagers as anything unusual that a lump assessment should be levied on the village as a whole, since the custom by which the sum was distributed over the holdings was recorded; and the joint responsibility is itself too shadowy and remote a contingency to affect them much.

§ 20.—*Taluqdárí Tenure.*

I must now turn to the other class of tenures, where, besides the village body as proprietor, we have yet another proprietary interest between the cultivator and the State: this is called the taluqdárí tenure.

I shall make no apology for repeating that the historical changes and many vicissitudes which affected landed property in India, resulted in the survival of interests in layers, if I may use the phrase,—in the superposition of one "proprietor" over

another, and the consequent sinking of the first into a position subordinate to the second.

First, for example, let us imagine an ancient district in which we find the usual groups of land occupants under the old Hindu Rája. Then the Rája grants one or more villages to some military chief or to a member of his own family. This family becomes proprietor, and the original cultivators and land owners gradually sink into the position of tenants at privileged rates. This lasts for some years, perhaps generations, and then comes the Mughal or Marátha governor, who, not satisfied with the revenue collections, appoints a farmer over the village. This person gets a firm hold on the village, and in his turn he and his sons jointly succeeding, claim the proprietary right over the whole. There is thus a third layer; only that by this time, the lowest layer will, perhaps, have died out or disappeared altogether, and only the grantees of the second layer will appear now as "tenants," "proprietors of holdings," and so forth; the farmer's family are now the joint body of proprietors. Last of all comes some new Muhammadan State grantee, jágírdár, or taluqdár. In process of time he might have become the proprietor. But our rule succeeded, and the process was arrested; the "taluqdár" is now recognised as "superior proprietor;" and the village body is protected by a "sub-settlement" as the inferior proprietary body. In Oudh we shall see this process fully illustrated. In the North-Western Provinces it is less marked.

The double tenure is spoken of as "taluqdárí," not because there was here a defined grant called "taluqdárí," or because the superior proprietor is always a "taluqdár," but because the state of things is most analogous to the properly so-called taluqdárí tenure of Oudh, and because the term "taluqdár" is essentially indefinite and covers almost any variety of superior position in virtue of which some person may have got the management and the revenue collection and responsibility into his hands, and so succeeded to a kind of proprietary interest in the estate.

The actual position found to exist at settlement would naturally

vary, and the "taluqdár's" degree of connection with the State may vary from one closely resembling the actual proprietorship, to that of a mere pensioner on the land, who receives a certain allowance, but exercises little or no interference with the actual management. Under the North-West system, it was left to the Settlement Officer to recommend, and the controlling authorities to determine, whether the "superior" was in such a position that the settlement should be made with him, or with the original body, granting the superior a cash allowance paid through the treasury. Speaking generally, it may be said that in the North-West Provinces it has been the practice, wherever possible, to recognise the original owners, making them full proprietors, and buying out, as it were, the superior, by giving him a cash "málikána" or taluqdárí allowance of 10 per cent. on the revenue [4].

In Gorakhpur, for instance, I find the Settlement Report [5] describing what were apparently real "taluqdárí" estates held by various Rájas. Under them were found people in possession of proprietary rights in the second degree. Just as in Oudh, these were usually the rights created or confirmed by the grant called "birt;" there were cases of "jíwan-birt" or proprietary holding granted to the younger members of the Rája's family; the "murchhbandi birt," grants made on condition of service and keeping order on the borders; and "sankalp" or "birt" made to religious persons or institutions. There were also many "birtyás" (holders of birts) created (as was so common in Oudh) for the purpose of clearing waste or resuscitating old cultivation. But in those places, the North-West Provinces principle being generally as I have stated, the birtyás were made proprietors, and the Rája was not maintained as taluqdár over them, but merely as the proprietor of his own "sír," "nánkár," and other lands held by him (under the local name of "taufir"), and with the usual 10 per cent. as málikána, or commutation for superior rights besides. The

[4] This málikána is frequently fixed in perpetuity, and does not alter proportionately to the changes in the revenue demand.

[5] Settlement Report, Vol. II, page 60.

same is noticed in some of the parganas of the Cawnpore district [6]. In these cases what was left to the Rája constituted in itself a very large property.

In Azimgarh there is also mention of another kind of double tenure; here there was no Rája, but the powerful families who had become the joint owners of the villages, probably by grant of some former Rája, had in their turn granted "birts" to the descendants of the former and long ousted owners who had originally cleared and brought the estate under the plough. These persons are locally called "mushakhsidár." Sometimes these were settled with as proprietors, but sometimes, owing to the arrangements of former settlements, only as *sub*-proprietors [7].

§ 21.—*Tenants;—their position.*

What has already been said about the gradual overlaying of the original interests in land, will have prepared the student to understand that "tenancy" in land—that is, the holding of land under a proprietor—is, in these provinces, by no means a simple thing. In other words, we have not merely to deal with persons whose position on the estate is due to *contract*, but with persons who, for want of a better name, are called "tenants," but who may once have been owners themselves, and owe their position to no process of letting and hiring, but to circumstances which have reduced them to a subordinate position.

Besides, then, the modern and ordinary cases of contract tenancy, the Settlement Officers had to deal with these other classes.

In some cases it was no easy task to draw the line between proprietor and tenant, and to determine whether a particular cultivator was most appropriately classed as a tenant, or as a proprietor in some grade or other.

But supposing the line drawn, we have next to consider how the "tenants" are grouped for legal purposes.

[6] Settlement Report, 1878, page 43. So in Allahábád, but only trans-Jumna; Settlement Report, 1878.

[7] Settlement Report, § 305.

We have first tenants who anciently were proprietors. These are recognised as having a title to fixed occupancy and to fixed rent-rates[8]. Then, again, another class of tenants may be traced, whom it would be hard not to include among those whose right to some legal privilege is unquestionable. I allude to those tenants who were called in at the founding of the village, and who were given a position in the estate, which was only second to that of the proprietors themselves. In many cases, practically, these ancient tenants differed in nothing from the proprietors but in the fact that they were of a different tribe and had no voice in the management of the village or share in its *common*. In both the classes of tenants, which thus may be described as the naturally privileged, there is a right of occupancy; and the rents payable are often nominal, and in many cases do not exceed the amount levied by the Government as land revenue.

There can be no doubt that the existence of these classes of rights afforded a basis upon which our legislators proceeded to grant "a right of occupancy." But, then, it was urged that all cultivators *resident* in the village whose lands they tilled, were, by custom of the country, irremovable or not liable to ejectment. Whether this was really so in fact, I cannot pretend to determine. Certainly the question could rarely have arisen in old days, since at any time an ejectment of an obnoxious person by a powerful landowner, however arbitrary, could not have been resisted, while in all ordinary cases no question arose, since the landowners were only too anxious to get and keep tenants.

The influence of this view, together with the undoubted fact that there were many whose ancient rights might be at least partially secured from oblivion, led to the desire to secure resident

[8] There is a *modern* class of "ex-proprietary tenants" which is not to be confused with that spoken of in the text. This new class is recognised by the Rent Act, merely in view of the condition of native society. When any proprietor is dispossessed by sale, &c. (voluntarily or by process of law), he retains an "ex-proprietary tenant" right in the portion of his estate which formerly was his special holding or "sír" land.

tenants. The current of official opinion gradually set in the direction of fixing a limit of twelve years (the then usual period of limitation in India), beyond which proof of right should not be required: and the tenant who had twelve years' continuous possession was to be considered as an occupancy tenant.

§ 22.—*Opinions held about tenant-right.*

The justice of such a rule very much depends on the real history of landholding customs. In Bengal, for example, in every permanently settled estate, the zamíndári right was clearly an adventitious thing,—one which had grown up over the original landholders; it might therefore easily be admitted that the great bulk of the village cultivators were equitably entitled to a permanent position. The fixing of an arithmetical rule of limitation was no more than an equitable expedient for putting an end to strife and saving rights which were in danger of being lost through failure of technical proof. But it might be said that in other cases, where the history was different, the claims of the proprietary body were far stronger, and there was no occasion for such a general rule. That is one side of the case. On the other, it would be contended that, whatever the theory may have been, in old days tenants were practically permanent. Every one who got a plot of land on consenting to pay the Rája's grain share, was originally on an equal footing, and one could not be turned out, except by the exercise of arbitrary power, more than another. However this may be, the first Rent Act (X of 1859) granted a right of occupancy to all tenants (irrespective of facts and history) who had held the same land themselves (or by their ancestors) for twelve years [9]. There was therefore no occasion for the Act to make any allusion to the special rights of those ancient tenants whose claims I have described. They, of course, fall within the terms of a twelve years' occupancy, for their tenancy is practically coeval with the

[9] Act X appears to have been passed with very little discussion. It was at first proposed that the right of occupancy should extend to every resident cultivator, and three years' residence constituted a "resident tenant."

founding of the village. I have already in another chapter indicated the general line of argument which has been taken by the official advocates and opponents of the tenant-right law respectively. It is not likely that the controversy will ever be entirely laid at rest; there will always be something to be said on either side. There are, of course, inconveniences resulting from tenant-right when dependent on an arithmetical rule of occupation[10]. But it is to be feared that no law that can be invented will ever be free from such occasional imperfections.

Perhaps the safest solution of the difficulty is to be found in the practice and procedure of the Upper Indian Settlement. The powers which a Settlement Officer has of informal enquiry, bound by no technical rules of evidence, and the fact that he can investigate matters on the spot, as no head-quarters court of justice can, place him in a situation peculiarly favourable for deciding such questions. It may be thought, therefore, that it would be better to leave the rights of a tenant to be dependent on the enquiry of the Settlement Officer, and on the usual subsequent remedies, exactly in the same way as questions of proprietary right are.

On the same grounds it may be urged that it would have been much better to allow the Settlement Officer to fix, either for the whole term of settlement, or at a progressive rate, as justice and the circumstances warranted, the rent which a tenant was to pay in cases where his right of occupancy was also declared [1].

[10] In the Baréli Settlement Report it is noticed that non-resident cultivators (páhi) could never *by custom* have rights, yet under the twelve years' rule they got them; the result has been that when a landowner's own sons grew up, and he wished to provide for them by giving them lands to cultivate on his own estate, he could not do so, because so many cultivators originally "páhi" had by the twelve years' rule become irremovable; and he had to send his own sons off his estate to work as "páhi" cultivators in another village, and so find the means of subsistence.

[1] Among the earlier revenue authorities of the North-Western Provinces, Mr. Bird advocated the fixing of rents with great force. "I have often wondered," he says, "that those who have employed their minds to investigate the principle of landed property in India should have overlooked this one marked,

It is obvious that a definite settlement of rents is the necessary concomitant of an occupancy right, since that right would be valueless if the rent could be so raised as to compel the tenant to go rather than pay it. This proposal proceeds, of course, on the assumption that the Rent Acts do not in fact afford a very satisfactory solution to the difficulty that arises in questions of rent enhancement. This assumption may, of course, be contested, and as the object of this work is in no respect controversial, it is altogether beyond my scope to attempt to set out even the main arguments on either side. But so much is certain, that the tests to be applied by the courts are neither certain nor easy of application. How much so this is the case may be judged by the controversy in Bengal embodied in the Great Rent Case of 1865.

I must say that I have not seen any valid objection put forward to the proposed reform that tenant-right and the consequent limitation of rent should depend (like the declaration of proprie-

prevailing, uninterrupted, prescriptive usage. It is in fact the only right recorded; yet so singularly do our associations govern our opinions that many persons consider raiyats (tenants) to possess no right at all, while they hesitate not to take for granted the rights of zamíndárs and taluqdárs.

. . . . . .

"The right which our Government has conferred on these last named persons, they and their officers are bound to respect.

. . . . . .

But they are no less bound to maintain that prescriptive right of the raiyat which they have equally admitted . . . . . and which Government have declared it to be their bounden duty to uphold." (He alludes to clauses in the Regulations XXVII of 1795 and XXV of 1803.)

It is impossible not to sympathise with the writer's generous desire to support the rights of the humbler classes, but it must be confessed that the argument is open to some objection, because here we have the Western terms "right," "prescriptive," and so forth, and the question is whether there is any real feeling of *right* as we understand the term, or whether the fixity of tenure and of the rent or produce share was not a mere *custom depending solely on circumstances*, namely, the absence of the possibility of competition, and the desire of the landholders to *keep* their tenants—circumstances which have now in great measure, if not entirely, passed away. It may also be said that the argument proves too much, since *all* classes of tenants had their rents fixed, whether of twelve years' standing or not; but it might be argued that those who do not belong to the confessedly privileged classes above alluded to, have a scanty claim to maintain a fixed rent under the totally different conditions which now obtain.

tary interests) on the investigation at settlement, and in such subsequent remedies in case of errors at settlement as the law allows [2].

§ 23.—*Actual provisions of the law regarding tenants.*

Act X of 1859 has long been repealed in the North-Western Provinces; it was first replaced by the Rent Act (XVIII of 1873), but this Act effected no radical change beyond improving the Rent Courts and their procedure. It kept the twelve years' rule (section 8) and the "formula" of conditional enhancement (section 12) as before. This Act has in its turn been repealed and replaced by Act XII of 1881. This Act does not alter the principles already laid down, and may in fact be regarded as merely a new edition of the Act of 1873, the whole having been re-issued as more convenient than publishing an amending Act [3]. The consequence of

[2] Mr. Fane, Mr. Bird's colleague, puts aside this proposal with the remark that it would be a sort of half measure between a "raiyatwár" and a "mauzawár" (village community) system, and that "it would establish a state of things in regard to the occupancy of land which would have no resemblance to the relation between landlord and tenant that has heretofore existed in India or in any country in the world." But this surely is to beg the question. *Would* such an arrangement violate the relations that existed *in fact?* And what does it matter whether it would resemble tenancy relations in any other country as long as it is convenient and just?

Mr. Auckland Colvin, on the other hand, directly supports the plan in the concluding words of his admirable Memorandum:—

"The remedy will," he says, "be found in arranging at time of settlement for the fair and full valuation of rents, not by law courts and vain formulæ of enhancement, but by the only officer competent to do it, the Settlement Officer, who stands to-day in place of Akbar's Amil, and who has to guide him a mass of data which he only can effectively handle. During the term of settlement the rents so fixed I would with certain exceptions maintain,—a far larger revenue would be gained with a smaller amount of heartburning. The treasury would be satisfied, and the people become content."

[3] The changes made will be found noted in the Statement of Objects and Reasons in the *Gazette of India* for March 13th, 1880. They are nearly all matters of detail, to remove difficulties that came to light in the six years' working of the Act (since 1873). One amendment (section 9) was more a matter of principle. It affirms the non-transferability of the tenant's occupancy right, either by voluntary or involuntary transfer, except to some member of his family who is a co-sharer. Previously it had been held that the right might be attached in execution of decree and sold, if the landlord was the decreeholder. Since the section prohibiting sale was made, it was

these provisions is that in most districts there are really four classes of tenants—(1) ex-proprietary tenants who were once proprietors, but have sunk to the grade of tenants; (2) those who had special and customary recognised privileges and hold at favourable rates[4], and these are the "natural" maurúsi or permanent occupancy tenants; (3) those who have acquired rights under the twelve years' rule; and (4) tenants-at-will.

These the Rent Act deals with as follows:—

(1) In permanently-settled estates, tenants[5], who have held since the settlement at the same rate (and uniform holding for twenty years raises a presumption that the holding has been since settlement), have a right to hold always at that rate, and they are called "tenants at fixed rates;" the right is heritable and also transferable.

(2) Next, ordinary (occupancy) tenant-right is secured to all persons who, having been proprietors, lose a part with their proprietary rights; they retain the right of occupancy as tenants in their former sír land, and for the purpose of the Rent Act "sír" includes not only what is recorded at settlement as sír, or what is recognised by village custom as the sír of a co-sharer, but also land which he has continuously cultivated for twelve years for his own benefit with his own stock, and by his own servants or hired labour. Such tenants are called "ex-proprietary tenants."

(3) All tenants who have actually occupied or cultivated land continuously for twelve years have a right of occupancy. But this is qualified by the following exceptions:—

(*a*) No sub-tenant gets the right, *i.e.*, if he is a tenant holding under an occupancy, a fixed rate, or an ex-proprietary tenant.

thought, in the landlord's interest, if he waived the privilege and asked that the right be sold, he might buy it. As section 9 at first stood, there was no doubt much to be said, legally, in favour of this view.

[4] Rent Act, section 20.

[5] The Act (section 4) also takes note of subordinate tenure-holders who are not exactly tenants (like the *patni* and other *taluqs* of Bengal), and declares that if, since the permanent settlement, they have held at the same rate, such rate shall be held to be fixed.

(*b*) No tenant gets the right in the proprietor's sír land.

(*c*) Nor in any land is he allowed to cultivate in lieu of money or grain wages.

Occupancy rights are not transferable except to co-sharers; they are heritable by descendants in the direct line, but not by collaterals, unless such collateral was a sharer in the cultivation of the holding at the time of the decease of the right-holder.

All tenants can claim leases specifying the land which they hold and the terms, and are bound to give counterparts or kabúliyats. The terms on which (A) the rent of tenants not being fixed-rate tenants can be enhanced, and on which abatement can be claimed; (B) the conditions under which ejectment can be had in all cases; (C) compensation for improvements; and (D) compensation for wrongful acts are all provided for. Next (E) distress is dealt with, and then (F) the jurisdiction and procedure of Revenue Courts in all matters relating to rents and tenancy, questions of ejectment, and so forth.

The produce of land is held to be hypothecated for rent, and the rent is a first charge. Distraint of crops standing and cut, but not removed out of the homestead, is allowed after service of a written demand; the produce must be that of the land for which rent is due, and for one year's rent only, not for older arrears: sale is effected by application to a properly appointed official.

The natural distinction of tenants according to local custom, is usually into resident ("chapparband," &c.), and "páhi," those who live in other villages and come to cultivate for the sake of the wages[6].

[6] In Baréli the chapparbands were managed by a muqaddam or cultivator's headman of their own. They had to pay rent and give one day's free labour to plough the proprietor's "sir" land, to give him also certain lands of "bhúsa" (chopped straw), a gharra or jar of sugarcane juice, &c.

Certain of them belonging to the higher castes, or to the same caste as the proprietors (Settlement Report, § 23) (a matter which often influences customary rents), are called "Rakmi," and pay at slightly lower rents than the others.

In Pilibhit (Settlement Report, § 93) the occupancy tenants are spoken of as "created by law." In Azimgarh (Settlement Report, § 305) occupancy tenants were partly created by law and partly had natural rights owing to "birt" grants and relics of former proprietary standing.

Section II.—Land Tenures in Oudh.

§ 1.—*Introductory.*

In the general sketch with which I introduced the study of the revenue systems of India to the reader, I have already briefly sketched the History of Oudh, as far as it concerns the land revenue settlement. I explained that the country was (as its predominant feature) held by a number of chiefs called taluqdárs, each of whom had a right over a larger or smaller group of villages[7]. I stated that all these chiefs, except five, had joined the Mutiny, and consequently had their rights forfeited. In 1858, by proclamation, they were pardoned and restored, and were then declared the proprietors of their estates; but were bound to admit certain rights and protective conditions, to be secured by record at settlement, for the communities over which they were superior proprietors. The "Oudh Estates Act, 1869," confers this proprietary title, and lays down rules of succession and inheritance in certain cases. Our study of the Oudh tenures will lead us, therefore, to enquire (1) what is the nature of the "taluqdárí" estate, and (2) what are the natures of the tenures and rights which subsist under the taluqdár in each village.

§ 2.—*Meaning of the term "taluqdár."*

For legal purposes, a taluqdár means a person whose name is entered in a list which under section 8 of the Oudh Estates Act (1869) is provided to be prepared. But if we enquire further what a taluqdár is, we can only say that the term literally means the holder of a taluq or dependency[8]. This is very indefinite, but no attempt to define further has ever been successful.

[7] Oudh Circular 19 of 1861, page 3. In Thomason's "Directions for Settlement Officers" (page 98) it is said that in a taluqdárí estate there are two proprietary rights—a superior and an inferior; that is true as a description of what usually is found in such an estate, but it does not define the nature of the superior or taluqdárí right.

[8] The word is derived from the root "'alq," implying connection or dependence. It is properly ta'allaq, ta'alluqa, &c.

The reason of this is that the tenure was *ex origine* indefinite in itself. It was indefinite as to the extent of the power over the villages forming the estate; it was also indefinite as to the area, *i.e.*, to the number of villages which were included in it.

At the same time, though we cannot give an accurate definition of what a "taluqdár" in the abstract, or in theory, is, we can clearly ascertain the actual features observed as existing in the different taluqdárs' estates.

The typical form of the taluqdárí is simply a late modification, under Muhammadan conquerors, of the old local Rája. Muhammadan power found it convenient to leave the old chief in possession of his estate—having much of his former power, administering justice, and commanding the militia, but being obliged to pay a fixed revenue or tribute to the Lucknow treasury. Such is the origin of the "pure" taluqdárs. Several of them may now hold separate estates, formed by the division of the original estate of the ancestral chief[9]. Sometimes a revenue speculator or other person would by court favour, acquire the same position,—villages having voluntarily put themselves under his protection as being the most powerful individual in the neighbourhood. In such cases, the powerful man was very often the hereditary owner of one or more villages; and then, when a group of neighbouring villages gathered under his protection, he became taluqdár over the whole[10]. In the days of misgovernment it was almost impossible for small independent holdings to maintain their position unaided[1]. They were obliged voluntarily to place themselves under some taluqdár as "deposit villages[2]." In many cases also the taluqdárs annexed them forcibly and made the villages pay their revenue to them; and villages

[9] From one-half to three-fourths of the revenue of the different districts of Oudh is paid by taluqdárs, holding for the most part large estates (Stack's Memorandum, 1880).

[10] See *Calcutta Review*, 1866—"The Taluqdárí Tenures of Upper India;" also Sultanpur Settlement Report, 1873, page 48, &c.

[1] Digest of Oudh Settlement Circulars, section V, § 11.

[2] *Id.*, V, § 12.

passed easily from one taluqdár to another, in course of the free fights which were the order of those unsettled days.

In some cases a military chief would be sent by Government to keep order, and be allowed to take the rents of a group of villages, in order to support his army; and he became the taluqdár[3].

From this it will be clear that, as regards the origin of the estates, the taluqdárí right was sometimes merely recognised by the governing power as an existing institution (in the case of the chiefs and their descendants), and sometimes was created by a direct grant.

All taluqdárs *now* hold by grant, owing to the resumption of all titles after the Mutiny, and the restoration of estates by specific sanads in March 1858[4].

§ 3.—*Nature of the estate.*

Next as regards the nature of the proprietorship or extent of the connection which the landlord actually held with each village; this varied considerably, according to circumstances. By the time the taluqdárs were established as an institution, the revenue was paid in money; in many cases, the collection of the lump sum was arranged for by employing a lessee who engaged to make good the necessary amount, together with so much more for the taluqdár himself. Then the taluqdár had little else to do but sit at home and receive the rental or amount of the "theka," and pay in such part of it as was fixed (by custom or his grant) to the Government treasury. His virtual connection with the village was then but slight.

Still in many cases he maintained a connection in other ways. For one, if he was the old Rája of the pargana, he may have retained

[3] Bhâraich Settlement Report, page 88. In the Akona estate the taluqdárí had been acquired seventeen generations ago by a "Risáldár," and for seven generations afterwards this military title was kept up by the descendants. It passed away, therefore, some 200 years ago.

[4] Digest, V, section 15.

much of his ancient privilege of management; he administered justice, decided disputes, and, in short, was very much what he had been in old days, only that now the State revenue went to Lucknow and he had the collection of it, and probably got a good deal besides the fixed sum he was bound to remit to the treasury. Then, again, under the Native rule, he had the disposal of the waste[5],—at any rate in all villages in which a zamíndárí community had not grown up. In the course of his revenue management, he had to look out for the efficient cultivation of his lands, and no one doubted his ability (his "right"), if he was strong enough, to put in this man and turn out that, in any village-holding he pleased. It naturally follows that the closer the connection of the taluqdár, the weaker would be the surviving position of the village-owners; whereas the less he interfered, the more complete the independence of the land-holders would remain.

"It is well known[6]," says the author of the Oudh Settlement Digest, "that the rights of the inferior proprietors" (*i.e.*, the villages comprising the taluqa) "will be found in different degrees of vitality. In some the taluqdár has succeeded in obliterating every vestige of independent right and making the former proprietors forget it too. In others . . . . he has reduced them to the condition of mere cultivators. In some cases, though he had originally brought the village under his sway by force or trickery, the taluqdár has permitted the representatives of the old proprietary body to arrange for the cultivation, receive a share of the profits, and enjoy manorial rights. In some, again, he has left them in the fullest exercise of their proprietary rights, paying only through him (but at a higher rate to cover his risk and trouble) what they would otherwise have paid direct to the State. These (latter) are what are called deposit villages, the owners of which voluntarily placed themselves under the taluqdár to escape the tyranny of the Názims" (Government revenue officers).

[5] Bharaich Settlement Report, page 88.

[6] Quoted from section V, § 12, page 93.

It must be remembered that, under the Native Government, the effect of the placing of a village in a taluqa, was to strike it off the revenue-rolls of the Government. The list only took account of taluqas, and of such villages as remained unattached to taluqs[7].

§ 4.—*Local extent of taluqa estates.*

As to the local extent of the estates in old times, as already remarked, it was uncertain: it consisted of as many villages as the chief originally owned, or had conquered and could keep, or on the number of deposit villages which gathered under the protection of a local magnate.

The extent of taluqa estates is now legally set at rest by Act I of 1869. The "estate" means the property acquired or held in the manner mentioned in section 3, 4, or 5 of the Act, or conveyed by special grant of the British Government.

Section 3 includes in the estate all villages which were settled after 1st April 1858 with the taluqdár, and for which a taluqdárí sanad was granted, and which were included in his kabúliyat, or were decreed to him (even if not so included) by order of Court. Section 4 covers the case of those loyal taluqdárs (mentioned in the 2nd Schedule) whose estates were not confiscated; the kabúliyat which they executed after 1st April 1858 shows the extent of their estate. Section 5 covers the case of any special grantee.

At settlement, also, a formal decree was recorded for every village, declaring that it was, or was not, part of such and such a taluqdárí estate[8].

The taluqdárí estates are not always large, though they generally are so. Some question was consequently raised as to whether the smaller estates were to be called taluqdárí at all. This question was decided in the affirmative, provided that their real nature was taluqdárí[9].

[7] Administration Report, 1872-73, General Summary.
[8] Digest, section IV, §§ 24 and 29.
[9] Circular 19 of 1861, § 3.

§ 5.—*Other land tenures in Oudh.*

There are some small estates where there was a superior holder over the others (the result of an overriding of older rights), but *not* on a tenure analogous to the great chiefships. Here the estate was generally reduced to a single tenure estate (as we have seen was the practice in the North-Western Provinces), the superior being bought off with a cash allowance, and the settlement being made with the inferior[10].

There were also some villages in Oudh which did not come under the sway of the great taluqdárs at all, and I may dispose of them here. These remained as ordinary village estates, the settlement being with the actual proprietor.

§ 6.—*Sub-proprietors: (1) those entitled to a sub-settlement.*

The rights of the sub-proprietors or original holders under the taluqdár, were determined and provided for at settlement according to rules promulgated in 1866 and made law by Act XXVI of 1866[1].

As this has all been done long ago, it is now of no importance to the student to go into details as to the dates and periods of limitation which were fixed. I shall merely state in outline the principles followed.

The subordinate rights come under one or other of three categories—

(1) Sub-proprietor entitled to a sub-settlement.

(2) Sub-proprietor not entitled to a sub-settlement.

(3) Rights merely provided for under the head of tenant-right.

As to the rights of first order entitling to a sub-settlement, the claimant was required to show, first, that he was really proprietor over the whole of his claim[2]; and, secondly, that his proprietary

[10] Digest, section V, § 17.

[1] Called the Oudh Sub-Settlement Act, 1866.

[2] This would not be vitiated by the arbitrary seizure and alienation of a part of the land in favour of some person whom the taluqdár desired to favour: the state of the case, as a whole, would be looked to. (Digest, V, § 12, &c.)

right was recognised "pakka," as it was called, by the continuous enjoyment of a *lease* given by the taluqdár. What is meant by "continuous" was defined with reference to certain fixed dates which it is not now necessary to go into. The lease must have been connected with, and given in consequence of, the proprietary right, not as a "farm" to a mere tax-gatherer to realise certain revenues.

The right to sub-settlement might again be affected by the amount of profit which would remain to the claimant after paying the taluqdár his dues. If by the terms of the contract, the sub-proprietor got so little that, after paying the taluqdár, he had not more than 12 per cent. on the gross rental of the village, no sub-settlement would be made, and the sub-proprietor would then remain only in the second order of right. If the profits originally did not come up to 12 per cent., the under-proprietor retained his sír land, and if the profits of this were not equal to 10 per cent. of the gross rental of the estate, more land was assigned to him as "sír" so as to make up the profits to the minimum 10 per cent.

A sub-proprietor who was entitled to sub-settlement, because his profits came up to a minimum of 12 per cent., would be entitled also to have the rent payable by him under his sub-settlement fixed at such an amount as would bring his profit up to 25 per cent.; in short, *any one entitled to a sub-settlement at all, must get profits equal to 25 per cent. on the gross rental.*

§ 7.—*Sub-proprietors: (2) those not entitled to sub-settlement.*

We now come to the second order, sub-proprietors who had retained no general right over the whole of their original holdings, having no lease which recognised such right. These would usually, however, have maintained their right to some plots of land which would happen in several ways. The commonest was that the plots represented the "sír" or land which the sub-proprietor had always held as his own by inheritance, and for which he is paid either nothing or a low rent. "Sír" or nánkár[3] land was in all cases

[3] In Oudh these terms are generally synonymous.

the land which was left to the man when he was ousted from his original position[4].

Then, also, the taluqdár would make grants called "*birt*[5]" of the sub-proprietary right in certain lands. The birt was evidenced by a deed "birt-patr." It was often given for clearing or improving lands that had fallen out of cultivation[6]. The grantee might dig tanks, plant groves, and locate cultivators, and take certain dues from them. The grant was usually made for a consideration: in a few instances, however, "raiyati-birt," grants made by favour, not paid for, are found. It might be that the "birt" was created before the village came into the taluqdár's hands; these were recognised equally with those granted by the taluqdár[7]. The benefits which the grantee was allowed to get from the lands granted were various: they might be only that he was to pay nothing to the grantor, or that he was to get 10 per cent. (dah-haq) or one-fourth (haq chahárum) of the rents, the rest going to the grantor. A "sankalp" was a grant made like a "birt," only in connection with some religious or charitable object. Then also there might be "mu'áfi" or rent-free plots granted by the taluqdár, or by the State without reference to the taluqdár. Lastly, there was the proprietary holding of a plot called "marwat" (maraoti), a rent-free holding granted to the relations of retainers killed in battle.

§ 8.—*Oudh groves.*

But there is one other form of right which demands a larger notice, as it is of considerable interest, and might also give rise to a sub-proprietary right. I allude to the grove or orchard. The right

[4] Digest, V, § 20.

[5] *Id.*, V, section 22.

[6] Bharaich Settlement Report.

[7] Not so a "birt" created by a revenue lessee or rent-farmer (thekadár) of the taluqdárs, who *could* have had no proper authority to make such a grant. "Birt," it will also be remembered, is the common name for the grant made by a Rája, and many such may have existed before the taluqdár's time, or been made by the Rája in days before the taluqdárí system came into vogue.

to plant this is in itself a distinctive feature of proprietary right. A man might have neither "sír" land, nor a "birt," and yet have his right in a grove; for he might have planted it *without any one's permission*, and that shows that he must at one time have been owner at least of the land on which the grove stands.

The trees may be by custom owned separately from the land, so that if a *tenant* got permission (as he must in all cases) to plant a grove, he might own the trees, but the land would revert when the trees had died or were cut.

The following extract is taken from the Oudh Gazetteer[8]:—

"There is no village, and hardly any responsible family, which is without its plantation; and even members of the lower castes will think no effort thrown away to acquire a small patch of land on which to plant a few trees which shall keep alive their memory or that of the dearest relations to whose names they dedicate them. A cultivator who would quit his house and his fields with hardly a regret to commence life under better circumstances elsewhere, can hardly ever overcome the passionate affection which attaches him to his grove; and the landlord who gives up a small plot of barren land for this purpose to an industrious family is more than repaid by the hold he thereby gains over his tenant. As much as a thousand square miles is covered with these plantations, usually one or two acres each, but sometimes, when the property of a wealthy zamíndár, occupying a much larger area."

All these sub-proprietary rights giving a profit equal to not more than 10 per cent. of the gross rental of the estate, *viz.*, rights in sír and nánkár lands, birts, mu'áfis and other grants, and rights in groves, are recorded and secured at settlement, but no sub-settlement is made.

§ 9.—*Rights secured as "tenant-right."*

Where the occupant has not retained sub-proprietary rights, either with or without a sub-settlement, he is only recognised as a tenant.

If he could show that he was once proprietor, *i.e.*, within thirty years before February 13th, 1856 (the date of annexation), he might, however, be entitled to occupancy rights, and his tenancy would be heritable, though not transferable. He could claim a

[8] Volume I, Introduction, page 6.