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LAND SYSTEM OF BENGAL

LAND SYSTEM OF BENGAL

BY

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AUTHOR OF "LAND ACQUISITION ACTS AND PRINCIPLES OF VALUATION," "NOTES ON THE AMENDMENTS OF THE BENGAL TENANCY ACT," ETC.

FORMERLY OF THE BENGAL CIVIL SERVICE, CO-OPTED EXPERT MEMBER OF THE BENGAL LEGISLATIVE COUNCIL FOR THE AMENDMENT OF THE BENGAL TENANCY ACT IN 1923 AND 1928, AND FOR THE BENGAL CESS ACT IN 1933; PAPER-SETTER, FINAL LAW EXAMINATION OF THE CALCUTTA UNIVERSITY, ETC.



PUBLISHED BY THE
UNIVERSITY OF CALCUTTA
1940

1958

PRINTED IN INDIA
PRINTED AND PUBLISHED BY BHUPENDRALAL BANERJEE
AT THE CALCUTTA UNIVERSITY PRESS, SENATE HOUSE, CALCUTTA

Reg. No. 1233B, March, 1940—E.

CONTENTS

	Pages
Foreword	ix
Preface	xiii
Chapter I	
Introduction	1—31
Chapter II	
The Hindu Period	32—54
Chapter III	
The Pathan Period	55—66
Chapter IV	
The Mughal Period—	
Land Settlements up to 1765	67—90
Chapter V	
The Mughal Period (*contd.*)—	
Jaigirs	91—98
Ayma, Madadmash, etc.	98—100

PAGES

CHAPTER VI

The Mughal Period (*contd.*)—

The Tenantry ... ... 101—108

CHAPTER VII

The First British Period—

Acquisition of territories ... ... 109—117
Land-settlements up to 1784 ... ... 117—123

CHAPTER VIII

The Second British Period—

The Permanent Settlement ... ... 124—155
Appendix—Summary of the land-settlements in other Provinces ... ... 155—160

CHAPTER IX

The Permanent Settlement and proprietary right in land ... ... 161—184

CHAPTER X

The Permanent Settlement and the Raiyat—

Position immediately on the Permanent Settlement ... ... 185—193
Developments till 1859 ... ... 193—202
Developments since 1859 ... ... 202—226
Some general observations ... ... 226—230
Appendix—Summary of rent assessments in other Provinces ... ... 231—233

PAGES

CHAPTER XI

The Permanent Settlement and Tenure-holders—

The *Talooks* in the Regulations ... ... 234—240
Tenures as termed later ... ... 241—246

CHAPTER XII

Settlements after 1793—

General ... ... 247—252
Resumption of invalid *lakheraj* ... ... 252—257
Settlements of alluvial formations ... 257—267
Settlements of the *Sundarbans*, etc. ... 267—275
Assessment of non-agricultural lands in Government and temporarily settled estates ... 275—277

APPENDIX

List of Repealed Regulations relating to Revenue and Tenancy laws ... ... 278—292

General Index ... ... 295—300

FOREWORD

(By Sir Manmathanath Mukherjee, Kt., formerly Chief Justice of Bengal)

The system of land-holding is perhaps the most important element in the social and economic life of the masses in any country, and it is particularly so in a country like Bengal where agriculture is the chief occupation of the people and rights in land are highly valued. A study of the manner in which land has been held by various classes of persons, and wealth from land has been distributed amongst them, is thus essential to a correct appreciation of the material conditions of the people of Bengal at any stage of their past history. Judged thus, this treatise from the pen of one who has made a systematic and almost life-long study of the subjects involved, whose researches have revealed much material hitherto unknown or uncared for and whose experience in the practical field is singularly wide and varied, is bound to remove a great want. Written in no spirit of partisanship and with no motive for propaganda, the book will open up new channels for reflection and will lead to still fuller study of earlier accounts than what has been possible in its small compass. The Calcutta University is to be congratulated for having taken over the publication of the book.

Baden Powell's comparative study of the land systems in India, published in 1892, made one thing clear, *viz.*, that the land-tenures in different Provinces and even in different parts of the same Province, had not only widely varying backgrounds of origin but have developed in different ways according to political and other local circumstances. In the reading of the earlier accounts there is thus always the risk of misapplication. The author has made this abundantly clear in his book and avoided any such misapplication.

Coming down to the British Period, the author's analysis of the records of the time of the Permanent Settlement,

clarifies the objects and reasons which led to the adoption of that measure, and makes them easily intelligible to the general reader. The development of tenancy legislation since then, has also been very lucidly analysed, and should be of value to legal study.

The author has summarised also the statistics and other materials available from the reports of the cadastral survey operations which have been completed in recent years for most of the districts. These and his observations thereon, are of special value to the students of economics.

Twenty-six million acres of cultivated land cannot, the author comments, maintain thirty-three millions of people, if they have to depend on land only for their living. Furthermore, for half the number of days in the year, the author continues, the cultivator has no work. The problem is thus one of dire unemployment; and the author rightly observes that in any scheme for improving the lot of the raiyats, what is important is that work should be found for them in the shape of cottage and other industries. He enumerates the numerous indigenous industries which in earlier days helped the rural population to augment their income: and this was when an individual raiyat used ordinarily to hold 20 acres of land. To-day the average area of a raiyat's holding is only about 2 acres. There are various causes which have brought about this over-pressure on land: but one powerful cause has been the gradual ruin of village-industries.

The author's study of the earlier accounts of the land-system of Bengal, discloses one important fact, *viz.*, that the framework of *raja-praja* which had developed through centuries of political vicissitudes and from the physical conditions of the country, was not broken down either during the long period of Pathan domination or the 160 years of Mughal rule. The English conception of rights of property, has also all along abhorred any revolutionary method. This sentiment was embodied in Pitt's India Act of 1784, and gives the crux of the arrangements of 1793 by which the zemindars and talookdars were fully recognised. The author has explained that for this, the treatment of Bengal was not exceptional, but

the same policy was adopted in other Provinces as well. The fixation of the State's demand of revenue from land *permanently*, was no doubt a new feature, but from the exposition of the revenue-history of the Mughal period, it seems clear that, barring the latter part of that period when the vicious Subahdary *abwabs* came into vogue, the State-demand in Subah Bengal, was increased only twice, *viz.*, once after 76 years and next after 70 years. The increases were also very small, *viz.*, 9·2 per cent. on the first occasion and 8·7 per cent. on the second. The demand made at the Permanent Settlement was an increase of 44·53 per cent. in only 34 years. And this was done inspite of the terrible famines and pestilence which had swept away a third of the population and reduced an equal proportion of land into waste and jungle. The author has shown that, judged from the assets of the time, a proper assessment could not be more than about 167 lakhs for Bengal, but the actual assessment was about 220 lakhs. It was an exhorbitant assessment and its immediate effects were disastrous. The author explain that the authorities of the time were fully conscious of this, and their only justification was in the promise that the assessment then made would remain fixed for ever, and that the State would not at any time claim any share of the increased profits from land. Such profits would enure to the landlords and the peasantry. The author's view is that the purpose so far as the peasantry were concerned, was to a certain extent frustrated by several retrograde legislations necessitated by the anxiety of the authorities during the earlier period, to secure punctual payment of the Government-revenue which was excessive. These have been largely rectified since, and the position of the raiyat and even of the under-raiyat is now quite secure. The reader may well judge this from the author's narration of the history of these legislations. But howsoever this aspect of the permanent settlement may be criticised to-day, one effect of that measure has been that it has kept down the incidence of the raiyat's rent to a very low level. The average is only one-thirteenth part of the value of the produce while under other systems it is one-sixth to one-fourth. It has

also made it possible for the Bengal raiyat to enjoy a true property right in land which his brother-raiyats in other Provinces do not possess.

With the growing population of the Province, and the absence of outlet to suitable village-industries or other occupation, the pressure on land is growing alarmingly. The condition of the peasantry is miserable, and the distress among the smaller landlords is also acute. There is thus a widespread restlessness, and unless the helm of the administration is wisely and calmly steered, the danger is that the country may be swallowed up in the communistic abyss. The author has, however, avoided any discussion in this direction : for, that is not the purpose of his treatise.

CALCUTTA,
January 3rd, 1940

MANMATHANATH MUKHERJEE

PREFACE

The object of this book is to give a connected account of the development of the system of land-tenures in Bengal, from the earliest known times. Some of the Chapters were written over a year and a half ago, to be read as a series of lectures; but eventually it was decided to publish them in the form of a book with addition of some further matters to complete the treatise.

Mr. (Justice) C. D. Field wrote his well-known Introduction to the Regulations of the time of the East India Company, so far back as 1875. Since then, thanks to the researches by many erudite scholars, considerable advance has been made in the study of the history of the earlier periods. In fact a history has been written for almost every district of Bengal. After Rakhal Das Banerji's *Banglar Itihash,* the most notable work has been Dr. Dineschandra Sen's *Vrihat Banga,* published in 1928 by the Calcutta University, in two volumes. His other compilation, " Mymensingh Ballads," also published by the Calcutta University in several volumes, contains a mine of information about rural life during the Pathan period. This publication has given an impetus to efforts for similar compilation in other districts. Sir Henry Elliot's History of India, published in the last century, gives summaries of the writings of Muhammadan chroniclers during the Mughal and Pathan periods; but in recent years, the invaluable contributions by Prof. Sir Jadunath Sarkar, Prof. K. K. Kanango, Prof. Dr. Radhakumud Mookerji and

other learned scholars have thrown a flood of light for the study of the earlier history of our country. In 1902 a complete translation of *Seir Mutaqherin* by Syed Gholam Hossein Khan (1780), was published, and in the same year a translation of Gholam Husain Salim's History of Bengal—*Riyazu-s-Salatin* (literally Gardens of Kings), with excellent commentaries by Mr. Abdus Salam (of the Bengal Civil Service), was published by the Baptist Mission Press. Pandit Shama Sastry's translation of *Arthasastra* in 1915, has been followed by Mr. F. J. Monahan's critical study of Kautilya's Code, in his "Early History of Bengal."

Baden Powell's work published in 1892, is perhaps the first comprehensive study of the history of the land systems in different parts of British India. Unfortunately, so far as Bengal is concerned, Baden Powell did not go much beyond the Permanent Settlement of Lord Cornwallis in 1793. A few years earlier, in 1879, an un-named author had published a remarkable book in two parts, entitled "The Zemindary Settlement of Bengal," giving copious extracts from official records and authorities. The writer was apparently a friend of Sir Ashley Eden, then Lieutenant-Governor of Bengal, to whom the book was dedicated. Following Baden Powell, Mr. R. C. Dutt addressed his famous open letters to Lord Curzon in 1900-01. Mr. Dutt made a comparative study of the incidence of rent on the cultivators under the different systems of land-settlement in different Provinces, and the capacity of the tenantry to resist the effects of natural calamities. He was, however, greatly handicapped by the absence of reliable statistics for Bengal. Since then, cadastral surveys have been completed in practically all the districts of the Province. The Final Reports of these operations, furnish to-day complete statistics of tenancies and rents.

The Permanent Settlement of 1793 is the special feature of the land system of Bengal. Although many authors had written previously on this topic, Ven. W. K. Firminger's publications in 1914-15, have really placed within the reach of the general public, transcripts of the official records of the time of that measure. When employed as an officer in the Bengal Secretariat, I had myself opportunities to study other original records of that time. Some of these were printed with my marginal summaries, though for official use only.

All these and the other authorities mentioned at the appropriate places, have supplied the materials for this book; and I am indebted to all those who have helped me in the study, and particularly to Rai Bahadur J. N. Sircar and Mr. Abanikumar Sen, for many valuable suggesitons.

CALCUTTA,
January, 1940

M. N. GUPTA

CHAPTER I

INTRODUCTION

Isolated position of Bengal explains the specialities of its land system.

The Province of Bengal, as at present constituted, has an area of about 71,302 square miles (excluding Chittagong Hill Tracts and Darjeeling), of which about 1,300 square miles are covered by the several large rivers which traverse the country, and the estuaries of the Bay. The entire tract is a low plain, and in physical aspect is markedly different not only from the mountainous regions on the north and east, but also from the provinces on the west. The ranges of hills from Rajmahal to Balasore covering about three-fourths of the western boundary and inhabited mainly by the remnants of the old Kolharian tribes, isolate the greater part of the Province from the Provinces of Northern India and the Dravidian countries on the south. This natural isolation, coupled with the fact that the deltaic portion of the Province came under agriculture in comparatively later centuries when societies with territorial kingships had already been established, gives one explanation for the special features of the land system and conception of property-rights which grew up in Bengal,* at a very early period.

* The Bengal School of Law (Dayabhaga) expounded by Jimutavahana (between 13th to 15th century A.D. according to J. D Mayne, but others between 11th and 12th century), and by Raghunandana, has a basic conception of property-right quite different from the community or joint family rights which find expression in Mitakshara which prevails in the western Provinces. There is no tradition that Jimutavahana introduced an innovation under the mandate of a Ruler. His work

2. The land system which we have now in Bengal is called the " zemindari system " as opposed to the "raiyatwari system" which prevails in the greater part of Madras and Bombay. The zemindars are considered as proprietors of the land, and are responsible for the payment of the Government revenue on the lands comprised in their respective " estates," unless exempted as revenue-free. The assessed revenue may be fixed in perpetuity or it may be subject to revision at intervals of 15, 20 or 30 years. In the former case the estate is called a " permanently settled estate," and in the latter case—" temporarily settled estate."*

The Zemindary system and estates.

3. By far the larger number of estates in Bengal are permanently settled. The revenues payable to Government were fixed in perpetuity by what is known as Lord Cornwallis's Permanent Settlement of 1793.† There were also some permanent settlements subsequent to that period, mainly comprising resumed invalid *lakherajes*.‡ The lands of a permanently settled estate are not always compact but very often they are scattered in small plots in one,

Permanently settled estates—

their area and land-revenue.

must have been only a codification of the customs which had developed and was established in Bengal at the time.

Similar distinction is apparent in Bengal in her language, social manners and customs, dress, forms of religious worship and even in the versions of Pauranic and Mythological stories. The Vaishnavism realised and preached by Chaitanya, though at a much later date, is also marked with the characteristic imaginative mind of the people of Bengal.

* An " estate " literally means the quantum of rights or interests possessed in respect of any property. Technically, as used with reference to land-revenue, it is the unit of State-assessment as recognised and recorded in the Collector's office. See definition in Section 1 of Act VII (B.C.) of 1868, the Land Registration Act VII (B.C.) of 1876, Section 3 (2) as amended by Act II (B.C.) of 1906, and Section 3 (1) of the Bengal Tenancy Act VIII of 1885.

† The assessments made in 1789 and 1790 for a term of 10 years (decennial) were adopted for the permanent settlement of 1793 (see Section 2 of Regulation 1 of 1793): and hence sometimes the term " Decennial Settlement " is loosely used as meaning the same as the " Permanent Settlement."

‡ The relevant Regulations are XIX and XXXVII of 1793, LVIII of 1793, XI of 1817, II of 1819 and XIV of 1825. The revenue assessed on these lands amounted to Rs 15 lakhs (Hunter's Indian Mussalmans, 1872, p. 185) in Bengal, Behar and Orissa.

two or more " villages."* Some estates are very large, carrying a land-revenue of several lakhs of rupees: others are small, sometimes so small that the land-revenue is less than a rupee.† The total number of permanently settled estates in the Province is 93,965, with an area of 58,669 square miles, or an average of 400 acres for an estate. Excluding Chittagong, the average is 500 acres. The fixed annual Government revenue for all the permanently settled estates, is Rs. 2,15,14,560.‡ This gives an incidence of about Rs. 367 per square mile or 9 annas per acre. The incidence, however, varies widely from district to district. It is lowest, *viz.*, 0-3-4 pies in Mymensingh, and highest (Re. 1-14-10) in Howrah, while in Burdwan it is Re. 1-7-3, in Chittagong Re. 1-5-3 and in 24-Parganas Re. 1-2-4.

Temporarily settled estates—their area and land-revenue.

4. The " temporarily settled estates " number 4,235, and have an area of 4,969 square miles with a total land-revenue assessment in 1934-35, of Rs. 26,10,165 or about Rs. 525 per square mile or an average of annas 13 per acre. They comprise mainly alluvial accretions from beds of rivers on the

* A " village " is a unit area adopted for revenue purposes by the surveys called "Revenue Surveys " made in the several districts of the Province during the years 1847 to 1872. The units were subsequently modified at places during the cadastral survey operations under Chapter X of the Bengal Tenancy Act of 1885. A "village" corresponds to the older units called "mauza" and the still older "gramam" and comprises not only the inhabited portion, but also the cultivated and other lands around. The size of a village or mauza is not uniform: but generally it is about one square mile: and the entire area of a district is divided out into " villages."

While the " revenue-survey " delineated the outer boundary of the villages, another survey carried on simultaneously with less scientific method, showed the plots of land or chuks appertaining to the different estates, and their areas. This is called the " thakbust survey." The cadastral surveys made under Act VIII of 1885 and the record of rights prepared therewith, show these in fuller details. These surveys have been completed for all the districts of the Province except Rangpur, Dinajpur and Howrah where they are in progress.

† For instance, in the district of Dacca, only 111 estates pay a land-revenue of Rs. 1,000 and over, while no less than 939 estates pay less than Re. 1, and as many as 4,076 pay a revenue between Re. 1 and Rs. 5.

In the district of Chittagong there are as many as 28,449 permanently settled estates with an area of only 473 sq. miles.

‡ Land Revenue Administration Report, 1934-35. The slight variations from year to year are due mainly to acquisitions for public purposes under the Land Acquisition Act.

boundaries of permanently settled estates, resumed under Regulation II [Sections 3(1) and (2)] of 1819 read with Regulation XI of 1825, Act IX of 1847 and Act XXXI of 1858. These tempararily settled estates fall into two groups, *firstly*, those which are settled with the proprietors themselves, and, *secondly*, those which, on the refusal of the proprietors to take settlement, are farmed out to others, with a reservation of an allowance called " malikana " for the proprietors. The former class number 3,026 with an area of 3,870 square miles and a land-revenue assessment of Rs. 15,93,156 or an average of about Rs. 412 per square mile or 10 annas per acre. The latter have 1,209 estates with an area of 1,099 square miles and a land-revenue assessment of Rs. 10,17,009, giving an average of about Rs. 925 per square mile or Re. 1-7 per acre.

Estates under direct management of Government.

5. Estates held direct by Government numbered 3,600 with 5,193 square miles in 1934-35. These are mainly what are called Khash Mahals or Government Estates, but include also a few private estates under the management of Government on account of recusancy of the proprietors. The total revenue demand is Rs. 68,18,527 or an average of a little over Rs. 2 per acre. The Government estates include the valuable lands in Calcutta, and several other towns as Chinsura, Midnapore, Malda and Dacca.

Summary of different kinds of estates.

The total assessed area may thus be summarised as below :—

	Area in square miles.	Land-revenue assessed.	Incidence of land-revenue per acre.
		Rs. (lakhs)	Rs. A. P.
Permanently settled estates ...	58,669	215.15	0 9 0
Temporarily settled estates—			
(*a*) held by the proprietors ...	3,870	15 93	0 10 3
(*b*) held by farmers ...	1,099	10.17	1 7 0
Estates under direct management of Government ...	5,193	68.19	2 0 0
Total ...	68,831	309.44	

The permanently settled estates thus comprise over 85 per cent. of the total assessed area, and the land-revenue of Rs. 215·15 lakhs for these estates is the same as fixed by Lord Cornwallis in 1793, adding the assessments made subsequently on invalid *lakheraj* claims.

Besides the above areas, there is a considerable area of land (about 3,000 square miles) held as revenue-free,* *i.e.*, altogether exempt from land-revenue, under grants made, to state generally, prior to the acquisition of Dewani in 1765, and subsequently found to be valid.

6. The zemindars derive their profit mainly from the rents of the tenants† subordinate to them. There are sometimes several grades of such tenants, but at the bottom is the cultivator. The cultivator generally is the *de jure* "raiyat" as defined in the Bengal Tenancy Act; but there are also under-raiyats, sometimes of several grades. Though some raiyats pay rent in kind, *e.g.*, a share (usually half) of the actual produce, or a fixed stipulated quantity, their number is negligible,—being not more than 5 per cent., holding about 4 per cent. of the total raiyati area. Proportionately their area is highest in Faridpur where it is 8 per cent. and lowest in Tippera and Noakhali where it is less than quarter per cent.‡

The cultivator, raiyat or under-raiyat.

* Revenue-free estates in 14 districts examined number 10,062 with a total area of 1,037 square miles or an average of 66 acres for an estate. But these estates are very petty in Midnapore, Dacca and Mymensingh. In Dacca-Mymensingh they are as many as 3,565 with only about 15 acres in the average for each. In Midnapore their number is 3,866 with about 30 acres for each in the average. The remaining 12 districts have an average of about 257 acres for a revenue-free estate. Revenue-free estates, however, are most numerous in Chittagong not included in the above 14 districts. In this district they number as many as 36,319 for about 90 square miles of land : or only about 1·6 acre in the average for an estate, lesser than the average area of a raiyat's holding.

† Some of the smaller zemindars and tenure-holders have lands under their direct cultivation: the area of such lands is about 4 million acres, or 9 per cent. of the total.

‡ In 24-Parganas it is about 3 per cent. and in the western districts of Midnapore and Bankura about 1½ per cent. In Dacca it is about 3 per cent. but in Mymensingh only a little over one per cent. In Rajshahi it is again about 4 per cent and in the central districts of Jessore, Khulna and Nadia it is about 2½ per cent.

The under-raiyats.

7. The under-raiyats are a comparatively recent development. They were unknown at the time of the Permanent Settlement: and even in 1885 when the Bengal Tenancy Act was passed, their number was not such as called for special attention, though it was felt that they were growing and creating a new complication in the land-tenures of Bengal. They were left practically without any protection either in the matter of rent or security of tenure.* The amendment of the Act in 1928 has, however, given them a substantially stable position, although new under-raiyats who would cultivate on stipulation of paying a share of the actual produce (called *bargadars*, *bhag-chasis* or *adhiars*) are totally excluded from the category of "tenants," and thus deprived of any of the benefits of the Tenancy laws.

Their number and proportion.

Numerically, the under-raiyats are not inconsiderable. In Jessore and the adjoining districts they are almost as many as the raiyats: and for the whole Province they may be said to constitute about one-fifth of the number of raiyats.† They are, however, all small tenants, and the average area of an under-raiyati holding is about one-fourth that of a raiyati holding. The proportion of the quantity of land under the direct cultivation of the raiyat is thus still large, over 80 per

* The Hon'ble Sir Stuart Bayley when introducing the Bill in the Legislative Council in February, 1885, said that the question regarding under-raiyats was not then of serious importance, but he continued to observe—"as population increases it is likely to become so," and he added—"the Bill could not be said to be in any way a final settlement of the difficulties about this class of cultivators," and that "the next generation will probably have to reconsider his position." The amendment of the Act in 1928 introduced a very material change in the position of the under-raiyat: his money-rent cannot exceed one-third of the value of produce at the average of the preceding 10 years: and he is given a substantial protection against eviction.

† In Jessore under-raiyati holdings number 860 thousand against 884 thousand of raiyati holdings: in Khulna 264 thousand against 392 thousand. Barring a few other districts, the proportion is much smaller. The total number of under-raiyati holdings may be estimated at about 3 millions, or about one-fifth the number of raiyati holdings. But the average area of an under-raiyati holding is not more than one and a half to two and a half acres, *i.e.*, about one-fourth of the average area of a raiyati holding. It appears thus that a good proportion, about 80 per cent. of the lands of the raiyats is under their direct cultivation.

cent. The law preventing those who cultivate on stipulation of paying a share of the actual produce (*bargadars*, etc.) from being treated as tenants, has artificially kept down the number of *de jure* under-raiyats : while the greater security afforded to under-raiyati tenancies must have some effect in restraining subletting by the raiyat.

Reasons for subletting to under-raiyats.

The reasons why a raiyat sublets, are manifold. A raiyat is *primarily* a person who cultivates land himself or by hired labour : but only *primarily* and not *necessarily*. When a raiyat's holding is purchased by a person of the non-cultivating class, the purchaser, who continues to be the *de jure* raiyat, often finds it inconvenient to continue cultivation even with hired labour. He then sublets, and when the incidence of his own rent is low, he still finds a good margin of profit. Similarly, when too much land comes into the hands of a single raiyat, or when the raiyat is a female or minor, or when he takes to other occupations without surrendering his connection with the land, the raiyat sublets to an under-raiyat.

Still the raiyats cultivate greater portion.

But, as has been stated, the *de jure* raiyat still has over four-fifths of their lands in their own cultivation, and in all discussions the raiyat may be taken as the real cultivator.

Incidence of raiyat's rent per acre.

8. The reports of the cadastral survey and record-of-rights (commonly called District Settlement Reports) recently completed for most districts, give a mine of very valuable information regarding the rents, incidents and other particulars of various classes of landlords and tenants. The statistics given in these reports show that the general incidence of the rent of a raiyat is about Rs. 3-6 per acre.* It varies, however, from district to district, and even in different parts of the same district. It is lowest (Re. 1-13-9) in Bankura, and highest (Rs. 5-13) in 24-Parganas. In the eastern districts of

* The statistics in the District Settlement Reports of 14 districts (Midnapore, Bankura, 24-Parganas, Nadia, Jessore, Khulna, Faridpur, Dacca, Mymensingh, Rajshahi, Pabna, Bogra, Tippera and Noakhali), give a total rent of rupees 59½ million for 18¾ million acres, which give Rs. 3-6 per acre in the average.

Mymensingh and Dacca, it is Rs. 2-12, in the northern districts of Rajshahi, Pabna and Bogra—Rs. 3-12, in the central districts of Jessore, Khulna, Nadia and Faridpur—Rs. 2-11, and in Tippera-Noakhali—Rs. 3-8. The incidence of rent in the Government estates and temporarily settled estates is higher: and excluding these, the average incidence of the raiyat's rent in the permanently settled estates is Rs. 3 per acre.*

Division of the raiyati rental between the Government and the landholders.

9. In the permanently settled estates where, as already stated, the average incidence of the land-revenue paid by the zemindar to Government is 9 annas per acre, the State thus takes between one-fifth to one-sixth of the rents derived from the raiyats; and the landlords of all grades appropriate the rest, out of which they meet the cost of collection and management and make a profit. But, to be more correct, the State may be said to take just about one-fifth of the raiyati rental, because about 25 per cent. of the total zemindary area comprises unprofitable lands such as roads, paths, khals, marsh, etc. But as the incidence of rent, as also the incidence of land-revenue in the permanently settled estates, varies from district to district (and even in the different estates in the same district), the State's share also varies correspondingly. While in Birbhum, the land-revenue assessed is about 25 per cent. of the annual raiyati rental, it is 7 per cent. in Mymensingh, and in Dacca 8½ per cent.

Correct statistics of agricultural produce wanting in Bengal

10. It is a pity that no attempt has been made yet to ascertain the "average" outturn of different kinds of produce by any proper scientific method, whether by districts, tracts or for the Province as a whole. The Collectors are no doubt required to report the results of crop-cutting experiments in small fields taken casually, but their number is so inadequate, while the kinds of lands and their proportion vary so widely

* In the temporarily settled estates the average incidence of a raiyat's rent is Rs. 4·6 per acre, and in the Khash Mahals of Government—Rs. 4-11,—*vide* Statistics of the Land Revenue Commission, 1939.

that no definite conclusion can be made from them. Again, there are lands which grow two or more crops in the course of 12 months.* Some of the Settlement Officers have also attempted to " average " from experiments similarly made, supplemented by their general impressions of the varieties of soils, but this can hardly be said to be satisfactory. The Agriculture Department have also been vacillating† as to their estimates of normal yield per acre. To get a correct idea of the quantity and value of the agricultural products of the country, it is obviously necessary to have a methodical investigation on scientific basis, preferably along with a Census operation, as is done in most Western countries.‡

Approximation of the average acreage value of produce

However, according to the Agriculture Department's statistics of 1937-38, a total area of 43·395 million acres (excluding Darjeeling and Chittagong Hill Tracts, and the Forests of Jalpaiguri, 24-Parganas and Chittagong) is classified in the following manner :—

Forests	... ...	1·567	million acres
Not available for cultivation	.. ...	8·296	,, ,,
Cultivable waste other than fallow	...	4·777	,, ,,
Current fallow	... ...	4·421	,, ,,
Net cropped area	... ..	21·334	,, ,,
Total	..	43·395	,, ,,

* The statistics of the cadastral survey of the 14 districts mentioned before with about 18 million acres of net cropped area, give 4¼ million acres as cropped more than once.

† In their Season and Crop Report for the year 1937-38, the Agriculture Department have taken the normal yield per acre—12½ maunds for aman (winter) rice, and 11½ for bhadoi (autumn), 14¼ for boro (summer). These are just 1 maund per acre less than their estimates of 1932-33. Similarly for other food grains and oil seeds.

It is interesting to note here that in Ayeen-i-Akbari (1603 A.D.) the average outturn of common rice is taken at 17 maunds per bigha for the best land, 12 maunds 20 seers for the medium land, and 9 maunds 15 seers for the worst sort,—mean taken at 12 maunds 38½ seers. These estimates were for the subahs near Delhi (not Bengal) where the local bigha was a little over an English acre.

We will make a passing reference here to the mention of one-sixth in the Hindu Codes, half in Timur's and one-third in Akbar's as the share of the king's revenue.

‡ Only a few years ago, the Government of India invited Dr. Bowley and Prof. Thomson, two high experts, to suggest methods of scientific " averaging " of

Out of the net cultivated area of 24·334 million acres, 3·374 million acres or about one-eighth* yield two or more crops by seasons during the year. Of the various kinds of produce, 75 per cent. is rice of which over 60 per cent. is of the winter variety (aman).† On the whole, with the prices as in 1937-38, and taking into account that about one-eighth of the cultivated area grows more than one crop, the average value of the produce from one acre of land may be taken at about Rs. 44.‡ But for judging the incidence of the rent which a raiyat has to bear, about 10 per cent. of this average may be properly deducted to make allowances for uncultivable or fallow lands comprised in his holding. The average for him, is therefore about Rs. 40 per acre. His net profit from an acre of land may thus be exhibited as follows :—

Raiyat's income from produce.

	Rs.	A.
Gross produce	40	0
Deduct cost of cultivation§ (including his own labour) ...	20	0
Deduct rent	3	6
Net profit ...	16	10

In the permanently settled area where the average rent is Rs. 3, this net profit will be Rs. 17. It is Rs. 13-4 in the temporarily settled estates and Rs. 11-15 in the Government Khash Mahals.

outturn and values of agricultural produce, suitable to the conditions in the different Provinces of India. There recommendations, which aimed at eliminating the errors which arise in averaging from so many varying elements, deserved consideration: but nothing seems to have been done, at any rate in Bengal.

* The Land Commission of Bengal which is now sitting, estimates the net cultivated area as 28·9 million acres, apparently including the current fallow.

† The percentages of other products are other food grains 7, oil seeds 4, fibres (mainly jute) 7, and miscellaneous 7.

‡ The Land Commission's estimate is Rs. 44-5.

§ The cost of cultivation varies considerably according to the condition of the land and the kind of produce grown. For instance it is high in case of special crops such as jute, tobacco, sugar-cane, potato, etc. But on the whole one-third of the value of the produce is usually taken as fair estimate of the average excluding the labour of the cultivator and his family: and including the latter it is taken at half.

The intermediate tenures: a special feature of the Bengal system.

11. One special feature of the land system of Bengal is the existence of numerous intermediate tenures between the raiyat and the zemindar, sometimes in several grades. Although a good many of these tenures have developed after the Permanent Settlement, the system of intermediate interest as "talook" was quite in vogue during the Mughal period; and *istmurari* (heritable) and even *mukarari* (fixed rent) tenures are mentioned and dealt with in the Regulations of the Decennial Settlement of 1789-90.*

Number and grades of these tenures.

12. The grades of tenures and under-tenures do not usually exceed three, though in the district of Bakarganj they are much more numerous and sometimes form a maze of interlaced interests in the land. *Ijara* or farming-leases for a limited period are very rare, while a good proportion of tenures and under-tenures are held at fixed rent (*mukarari*) or altogether rent-free. In the district of Bakarganj, the total number of tenures and under-tenures, according to the Settlement statistics of 1900-08, is 4·6 lakhs,† of which over 67,000 or about 15 per cent. are rent-free, while the number of estates with a total area of about 3,652 square miles is 4,207. In the 14 other districts mentioned before, the total number of tenures and under-tenures is 2·126 million, of which 578 thousand are rent-free, while the total number of estates is about 62 thousand, and the total number of raiyati holdings about 9½ million. The total number of tenures and under-tenures for the whole Province may be taken at 3½ million,‡

* Tenures were called talooks subordinate to the zemindary. Some of them which had the characteristics of a practical transfer of zemindari right were then separated out from the zemindaries and admitted to direct settlement with Government (Section 5 of the Regulation VIII of 1793).

† Of these 4·6 lakhs, over 67 thousand (of which about 10,000 are rent-free) are of the first grade, *i.e.*, held directly under the zemindars, and the remainder are of various subordinate grades.

‡ The Cess revaluation statistics give over 60 lakhs of tenures: it shows the extent to which Tenancy Act raiyats are treated as tenure-holders for the purposes of the Cess Act of 1880.

while the total number of estates is 102 thousand, and the total number of raiyati holdings is 16·2 million.

Incidents of tenures.

13. The Settlement Reports do not state what is the proportion of zemindary area in which the tenure-holders intercept between the zemindar and the raiyat, or in other words, the total areas held by the first grade tenure-holders. In some districts, such as Burdwan, the bulk of the area is divided amongst the tenure-holders, while in the eastern and northern districts as well as in the smaller estates throughout, sub-infeudation is not so common. The larger tenures of the first grade are usually held on terms of Patni leases, governed by the rules in the Patni Regulation VIII of 1819. The incidents of other tenures and under-tenures are regulated by the terms of the agreement with the landlords, and in the absence of such terms, by local custom and the provisions of sections 6 to 15 of the Bengal Tenancy Act. Most tenures and under-tenures have local names as Jote, Howla, Gati, Maurushi, Darpatni, etc., and their incidents are generally well-known. Following these general customs, the Bengal Tenancy Act recognises the right of transfer for tenures which are heritable and are not held for a limited period.*

Development of these tenures in Bengal.

14. Although subordinate talooks as intermediate tenures, and farming leases existed during the Muhammadan period and even earlier, the manner in which the present-day

* These are called "permanent tenures," not necessarily with fixed rent as makarari, Sec. 3(9) of the Bengal Tenancy Act.

As a rule there is no restriction as to the right of user of land by a permanent tenure-holder, subject to the rights of raiyats and under-raiyats as are protected by law: but a tenure-holder has no right to mines or minerals unless expressly given by the zemindar in the leases under which they hold.

Every tenure-holder has, however, a right to alluvial accretions from the public domain, due to the recess of a river on the boundary, subject to payment of additional rent, unless otherwise stipulated in the lease, Sec. 4 (1) of Regulations XI of 1825.

The custom of having a security from the tenure-holder which was once in vogue when the margin of profit was low and the ordinary market-value of a tenure could not be considered as a sufficient security for an arrear of rent, has long ceased, except where artificially retained by legislation, as in the case of

tenures have developed* in Bengal is attributed, and perhaps correctly, to the Permanent Settlement of 1793. Whatever might have been the position of the zemindars at that time, whether for the purpose of extension of cultivation† in the vast areas then lying waste or as jungle, or for convenience of collection and management, many of them introduced men of substance as tenure-holders, who could lead clearance of forests and reclamation, or could be entrusted with the management of local areas. Later, many persons of the non-agricultural class, who had obtained raiyati holdings by purchase, have also come to be treated as tenure-holders by the operation of the provisions of the Bengal Tenancy Act, when they could not trace their purchases to prove the initial interest as raiyati. Similarly also, many persons originally belonging to the raiyat class who either by reason of their having come to possess large areas the bulk of which they had sublet, or by reason of their taking to other professions leaving the bulk of their lands to under-tenants, have come to be treated as tenure-holders. Howsoever these might have been, the tenure-holders, as also the bulk of the proprietors of the smaller estates, form the middle class of the population of Bengal—its *intelligentsia* and leaders in every sphere. A good portion of the rental profits derived from the raiyats is thus distributed amongst this class, and though the income per individual is not large, it has influenced to a very great extent the economic and cultural structure of the community as a whole. Opinions as to whether this has been a desirable state of things has varied.

Its economic and other effects.

Patnis. Otherwise, the right of transfer and succession by inheritance has been recognised from the earliest times: and the Regulations of 1793 and later years provided for sale of tenures of all kinds in execution of decrees for arrear of rent.

* Mr. Justice Cunningham estimated in 1882 that in the Province as then constituted, *i.e.*, including Behar and Orissa, the number of tenure-holders was then about 7½ lakhs, against which the Settlement Statistics of 14 districts only of present Bengal give 21½ lakhs.

† Good many tenures in the deltaic area between the Padma and the Bhagirathi (Hooghly) rivers, and also in the southern tracts between the Damodar and the latter river have traditions of origin in this manner.

Mr. Canning, then President of the Board of Commissioners, in a letter addressed in 1817 to the Chairman of the East India Company, stated "that the creation of an artificial class of intermediate proprietors . . . . . was highly inexpedient." This was at a time when the trend of thought in India* had changed and the consideration of State-revenue was uppermost: every interception by individuals being looked upon as detrimental to the proper resources of the Government. But the development of this class was not considered as unwelcome in later years. Field, in his Introduction, quotes the following observation from a Despatch of the Secretary of State, dated 9th July, 1862:—

> "It is most desirable that facilities should be given for the gradual growth of a Middle class connected with the land, without dispossessing the peasant proprietors and occupiers."

On this, Mr. Field remarks, with reference to Bengal conditions:

> "This class have readily availed themselves of the educational advantages of our system. The great difference between Bengal and the North Western Provinces in respect of a large educated middle class is doubtless due to the difference of the system of Settlement. Capital is necessary to the existence of a middle class; and where there is little or no trade or manufacturing industry, capital available for expenditure without diminishing the principal can only exist in the shape of an annuity derived from land or from the funds."

* This is curious, for, the prevailing idea with public economists and thinkers at this time in Great Britain, was that it was not so much the increase in the State-revenues, as to the growth of wealth with individuals to which a country should look for its real prosperity. But India at the time was still in the hands of a trading company, and an increase in the revenues of the Government meant, to a large extent, an increase in the dividends of the share-holders of the Company. We will see later on how Lord Cornwallis strongly asserted that the correct line of action was to adopt such measures as would ensure growth of wealth with individuals, and that any apparent loss to State-revenues would be more than compensated by the growth of trade and commerce which would flow from such wealth in individuals and the prosperity of the people as a whole.

There have been men of public spirit and enlightened thoughts amongst the bigger zemindars, but it cannot be gainsaid that the bulk of the *intelligentsia* in Bengal have come from this middle class. Their individual income from land has been small, and in most cases not of much direct help to capital needed for enterprises of trade and industries: but it has still a great steadying influence and gives a sense of some security in time of distress. The impetus given to education on Western lines since the time of Lord William Bentinck was readily availed of by this class. It broadened their outlook of life, and this class, almost *en masse*, resorted to other avocations, both cultural and economic.*

Population of tenure-holders and their average income from land.

15. The number of tenures and under-tenures in the Province (or to state generally the intermediate class of rent-receivers) is, as already stated, over 3½ millions. While it is true that sometimes several tenures are held by the same person, there are as a rule several co-sharers in the same tenure: and on the whole, the population of the persons holding these tenures may be taken at least at the same figure, *viz.*, 3½ millions, exclusive of dependants. Adding to these the zemindar class, the total may be taken at 4 millions, against 11 millions of persons with interests as raiyats or under-raiyats. The average income per head of the rent-receiving class thus works out to only about Rs. 55 per

* In the earlier years when the population was not as high as now and the standard of living was lower, there was not much feeling of want amongst this class. Their income from land, augmented by whatever some of the members of a family earned by services under Government, business firms and zemindars, gave a fair degree of contentment. Very few of them took to trade or business, and the field here was easily taken up by people from outside the Province. But with the increase in the facilities of communication and further progress of Western education, the outlook of life of this class widened rapidly While their individual profit from land gradually dwindled by division as the family grew, the services and the kind of professions to which this class had taken could no longer supply the demand for employment. The unemployment problem has thus become acute with this class: and it is a healthy sign that many are taking to trade and business, however small, and to enterprises in the industrial field.

annum :* but this income is augmented by resources from their other avocations which, though at first only subsidiary, are now in many cases the more substantial part.†

The average income of a raiyat.

16. Herein lies one main reason for the comparative backwardness of the cultivating class. Taking the normal net cropped area at 26 millions of acres as in the Agriculture Department's Season and Crop Report for the year 1937-38, and the value of the average gross produce from an acre at Rs. 44-5, the total value is 1,152 millions of rupees. For a population of 32 millions of the cultivating class (including dependants), it gives about Rs. 36 per head, gross. This indicates the extent of poverty of this class when there is very little other subsidiary occupation open to them, to augment their income. "The cultivator," as very truly observed by Mr. Thompson, "works fairly hard for a few days when he ploughs his land, puts down

* The calculation is as below :—

For about 31 million acres of land held by raiyats, rent @ 3-10 taking into account that some raiyats pay produce-rent	..	112·75	million rupees
For about 4 million acres of cultivated khash lands @ 22-3	...	88·75	,, ,,
For about 11 million acres of uncultivated lands yielding a small income, lump	...	16·50	,, ,,
Total	...	218	,, ,,

Dividing by 4 million separate holders, the result is Rs. 55 per holder per annum

† The population of the middle class including family members, which depent entirely or mainly on land, is estimated variously between 1½ to 2½ millions.

Mr. W. H. Thompson, Census Superintendent, 1921, gives the total number of persons dependent upon rent received from agricultural land in Bengal as 1,319,302 or 2·77 per cent. of the total population. The census of 1931 gives the corresponding figure at only 783,755. This is rather curious, for Mr. Thompson in his comparative statement shows this number as gradually increasing, *viz.*, 978,016 in 1901, 1,205,266 in 1911 and 1,319,302 in 1921. However, these figures give only that proportion of tenure-holders and zemindars, who are mainly dependent on the rents from land, that is to say, who are not enumerated under other occupations as the main sources of living. The large discrepancy between these figures and the number (4 millions) of tenure-holders, etc., indicates the extent to which these persons have taken to other avocations, probably at first subsidiary, and then their

his crops and again when he harvests them, but for the most of the year he has little or nothing to do." Mr. Thompson attributes this unemployment as due to a large extent to prejudices* and aversion to take to other occupations, even when available.†

Cultivator has no employment for greater part of the year:

It is true that although a raiyat's family is increasing, persons who have no sufficient employment in land, are not availing themselves of work in mills and factories which are thus being largely manned by recruits from up-country: but still if they did work in mills near their homes, it would not touch the fringe of the problem. The raiyat values his land, however poor his income from it, and would not take kindly to labour-work far away from his village. He needs work within his reach and near his village, and if he gets it, there is no reason to suppose that he will not take to it. "The best hope of the country lies," as Mr. Thompson concludes, "in an extension of organised industry;" but this should be such, at any rate in the beginning, as would bring work nearer the homes‡ of the raiyats than are afforded by mills and factories as now exist on the banks of the Hooghly

—absence of subsidiary occupations.

main source of income. The census of 1931 enumerated 9·9 millions ordinary cultivators and 5·3 millions tenant-cultivators, as actual workers,—total actual workers 15·2 millions.

* The progress of education amongst this class has been rather slow: and while some of those who received an education passed into the middle class of tenure-holders or took to only petty local trade or business, such avenues of service as the constabulary and the like were somehow practically closed to them: while the kind of life afforded to a workman in a mill or factory has never been attractive to Bengali sentiments.

† Mr. Thompson says that in Eastern Bengal an ordinary cultivator would not think of taking up the employment of an earth-worker and fill in part of his spare time by working as a labourer repairing road or cutting tanks. Such prejudices, he thinks, will break down in time with the increase of the pressure of the agricultural population on the soil, but the breaking will be a slow process.

‡ Spinning as a cottage industry in almost every household was at one time an important subsidiary occupation of the village-people. So also rice-husking, and along the sea-coast, salt-manufacture. See Chap. X. Country sugar afforded also an important subsidiary occupation. The Agriculture Commission of 1928 mentions the following further possibilities in rural areas—implement-manufacturing, sericulture, oil-crushing, handloom, pottery, rope-making, lac, and even paper manufacture from bamboo pulp (Report, p. 70).

river. Caste prejudices, though slowly breaking, shut out a good many from avocations in which they might otherwise find employment. There is, however, a healthy sign in some men of the cultivating class taking to small trade, though there is a greater fascination for the penman's work, when they receive some education in a school.

Area cultivable but not cultivated.

17. It is generally believed that cultivation has reached its maximum extent. The statistics of the cadastral surveys, however, show that there are still considerable areas of uncultivated lands (exclusive of current fallows) in every district. In the western districts of Midnapore and Bankura, their proportion is about one-third of the cropped area; in the eastern districts of Dacca and Mymensingh, about one-ninth; so also in the central districts of Nadia, Jessore, Khulna and Faridpur. In Rajshahi, Pabna and Bogra, it is about one-tenth, and in Tippera-Noakhali, about one-sixth. One reason for this is that in some places these lands require special arrangements of irrigation or protection from inundation which are beyond the power of individual landlords or cultivators. Where cultivable lands lie uncultivated in large tracts for this reason, they may afford pasturage for the villages near-by: but still there is scope for extension of cultivation, if some organised effort is undertaken to improve the conditions.* On the other hand, in villages not so situated, almost every bit of land which it is within the means of the cultivator to bring under the plough, is cultivated, leaving little or no ground available for grazing.†

* For examples by wider application of the Bengal Development Act of 1935.

† In England and Wales, out of about 25 millions of acres, over 15 millions are permanent pasturage lands. But sheep-breeding is an important industry, and there are over 16 millions of sheep against only 6 millions of other cattle. Six million acres are under hay. Bengal has 24 millions oxen, one million buffaloes and less than a million (·6) sheep.

In the Irish Free State with 6 million acres of cropped lands (of which 2 millions are under hay), the area of pasturage lands is as much as 8 million acres. Agri-

Is cultivation intensive enough?

18. Whether cultivation in Bengal is sufficiently intensive has been the subject of much discussion. The cattle employed in ploughing are notoriously of a poor kind, and in most places the old-fashioned ploughs are in use.* The Agriculture Department have been striving for many years to introduce good varieties of seeds and seedlings and to popularise good manuring, but much remains to be done. The average normal outturn of rice (the principal crop) per acre is 13 maunds or about 10 cwts. It is higher than the average of British India which is about 7½ cwts : but is much lower than in Italy where the yield is about 17 cwt. per acre.† On the Agriculture Department's actual for 1937-38 of 22 millions of acres under rice, the total yield is now about 275 millions of maunds for a population of 50 million, or about 18 seers per head per month. It cannot, therefore, be said that there is any great danger of over-production if outturn can be improved : and the fact remains that Bengal, the richest rice-producing Province in India, still imports a good quantity of rice from Burma and elsewhere. At the same time it is very necessary that more lands should be made available for the more valuable crops such as cotton, tobacco, sugarcane and the like, which will bring along with them a good scope for simultaneous development of industrial occupations for the rural population.

cultural cattle, including horses for the purpose, number over 4½ millions, and there are about 3½ million sheep.

In Italy, out of a total area of 72 millions of acres (after the Treaty of St. Germain), 66 millions are cropped and 6 millions are waste.

* One serious difficulty which a cultivator feels in using improved ploughs is that he cannot find a blacksmith within reach, when it is necessary to repair them.

† In 1925, the total area under rice in Italy was 355,433 acres yielding 6,294,000 cwts. of rice. The Agriculture Department's estimate of outturn of wheat in Bengal is, however, practically the same as in Italy, *viz.*, a little over 6 cwt. per acre. Australia yields over 150 million bushels of wheat from 12½ million acres of land or about the same outturn per acre, though in South Australia the acreage is about one-fourth time over. Canada yields about 19 bushels an acre, and the Irish Free State yields as high as 17 cwt. of wheat per acre.

19. The raiyats fall under three main classes, *viz.*—

Classification of raiyats.

(1) those holding at fixed rent or fixed rate of rent, commonly called *mukarari*:

(2) those with occupancy right, though liable to enhancements of rent from time to time: and

(3) those without occupancy right.

The last class is insignificant, less than even 1 in 500. As *mukarari* raiyats have also, as a rule, occupancy right, practically all raiyats thus possess this right.

Meaning of occupancy right.

"Occupancy right" literally means right to continue in occupation of the land: legally, as defined or rather explained in the Bengal Tenancy Act, it means right to hold the land comprised in the holding so long as it is not used in a manner which renders it unfit for the purpose of the tenancy or so long as the raiyat does not break a condition consistent with the provisions in the Act, on the breach of which, he is, under the terms of his contract with the landlord, liable to be ejected.* The purpose of a raiyati tenancy is agriculture, and includes all such user as are necessary or consistent with this purpose, for example, construction of a well or tank, etc., for irrigation or for the use of men and cattle employed in agriculture. So also construction of water-channels or embankments and the like. It also includes erection of dwelling house of any kind for the tenant and his family together with all out-offices as for cattle, etc.† These are indefeasible rights of the raiyat, and cannot be defeated by any term though agreed to between the landlord and the raiyat.‡ Other terms and conditions must be also consistent with the provisions in the Act for the protection of the raiyat. For example, Section 23 of the Act gives the occupancy raiyat the right to cut down trees or to plant trees and enjoy their fruits and the flowers. So also Section 26 gives him the right to

* Section 25 of the Bengal Tenancy Act, VIII of 1885.

† Section 76 of the Bengal Tenancy Act, VIII of 1885.

‡ Section 178(*d*), Bengal Tenancy Act. This applies whether the tenancy was created before or after the passing of that Act.

transfer* his holding (with the right of occupancy in it) either in whole or part, subject only to his giving a notice to the landlord at the time of the registration of the deed.

The occupancy right also devolves by inheritance. An occupancy raiyat has also the right to sublet, though there are certain disabilities imposed on the under-raiyat. The main feature of occupancy right is that it does not limit the tenancy for any term of years, and any condition in an agreement to such limitation is inoperative. The tenancy is thus "permanent," subject only to the above conditions as to user, although where it is not *mukarari*, the rent may be enhancible from time to time.

Restrictions as to enhancement.

20. This liability to enhancement† of rent is controlled by several conditions. The rent cannot be enhanced at more frequent intervals than 15 years, and that too at not more than 2 annas in the rupee. When it is sought to be enhanced by suit, the grounds can be only—(1) prevailing rate of similar lands, (2) rise in the local prices of the staple food crop, (3) improvements at the expense of the landlord increasing the productive power of the land and (4) increase in the productive power by fluvial action. The only ground which in practice operates is, however, the second ground, *viz.*, rise in prices. There is a corresponding right of the raiyat to obtain reduction when there is a fall in prices not due to a temporary

* Section 26-c of the Bengal Tenancy Act, as amended by Act VI of 1938 (B.C.).

† The basis of this right of the zemindar to enhance the rent of certain classes of raiyats in the permanently settled areas, is traced to section 52 of Regulation VIII of 1793. The Regulations of the Permanent Settlement intended that the rents of the then existing khudkast, *i.e.*, resident, raiyats would be fixed by pattas and would not be altered later. But as regards the untenanted lands in the extensive areas of waste and jungle, the zemindar was free to let them out in whatever manner they thought proper. The rate of rent was restricted, however, to the established pargana rates for similar lands, but as these rates were gradually levelled up by competition justified by rise in prices and other changed conditions, the rules of enhacement were eventually crystallised first in sec. 17 of Act X of 1859 and then in sec. 30 of the Bengal Tenancy Act of 1885. For a fuller discussion, see Chap. IX *post*: also the Great Rent Case—Thakooranee Dossee *vs.* Bishessor Mukharji, F.B. (1865), 3 W. R. Act X Rulings, p. 29.

cause. The same rules apply in temporarily settled estates and Government Khash Mahals, as in the permanently settled areas, except new alluvial formations as *churs*, and waste lands leased out for reclamation purposes under certain circumstances.*

Proportion of rent to produce.

The average incidence of an occupancy raiyat's rent in the temporarily settled areas is Rs. 4-6 per acre, and in Government Khash Mahals it is Rs. 4-11. As the value of the average gross produce from an acre is about Rs. 40, these rates represent about one-ninth and one-eighth of the gross produce, respectively. In the permanently settled estates, the average incidence of the rent of an ordinary occupancy raiyat (*i.e.*, excluding the *mukarari* raiyats, *vide* para. 23 *post*) is much lower. It is about Rs. 3-6 per acre,† and thus represents only one-twelvth part of the value of the gross produce.‡ Including the *mukarari* holdings, the average incidence is Rs. 3 or one-thirteenth part of the gross produce.

Sale for arrear rent.

21. Failure to pay an arrear of rent does not render an occupancy raiyat liable to ejectment. The landlord may institute a suit in the Civil Court for the realisation of the arrear, and if the decree obtained is not otherwise satisfied, it can be executed by selling the holding through Court, the surplus sale-proceeds going to the defaulting raiyat.

How occupancy right acquired.

22. Occupancy right is acquired by 12 years' possession of the same land.‡ But a raiyat may acquire this right in respect of any land even though held for a lesser period, if he

* Sections 180 (1) (*b*) and section 178 proviso of the Bengal Tenancy Act.

† The proportion, whether one-eighth, one-ninth or one-twelfth in Bengal, is considerably lower than the proportion which the raiyat has to pay in Provinces where the Raiyatwari or Mahalwari system prevails. The standard aimed at under those systems is about one-fourth to one-sixth. Whatever controversy there may be for the propriety of the permanent settlement in Bengal, one thing seems clear that it has kept down the rent of the raiyat to as low as one-twelfth, or if the mukarari raiyats are included, to one-thirteenth.

‡ It cannot be avoided by a purchaser at a sale of the landlord's interest at a revenue-sale or rent-sale: sec. 37 (proviso) of Act XI of 1859 and sec. 160(*d*) of the Bengal Tenancy Act, VIII of 1885.

is already a " settled raiyat " of the village, by which is meant—if he has held other lands in the village for 12 years. As occupancy right is also transferable, the effect of this is that practically every raiyat (unless he is a new settler without previously having any raiyati land in the village) has occupancy right however short his occupation.

Number and proportion of mukarari raiyati holdings.

23. In the 14 districts mentioned previously, the total number of occupancy holdings (excluding those which are *mukarari*), is 8·8 millions, with 16·8 million acres of land, or less than 2 acres per holding in the average. The *mukarari* holdings number about half a million, with one and a half million acres of land, or 3 acres per holding in the average. The *mukarari* holdings of raiyats are most numerous in 24-Parganas, Midnapore, Burdwan and Chittagong and also Noakhali. In 24-Parganas and Chittagong, they are about one-sixth of the total number of raiyats of all classes, and in Midnapore about 7 per cent. It is also high in Nadia where it is about 12 per cent. In Noakhali the proportion is over 13 per cent. It is lowest in Dacca-Mymensingh where the proportion is less than half per cent. In Rajshahi, Pabna and Bogra, it is a little over 2 per cent. and in Jessore, Khulna and Faridpur, 6 per cent.

Origin of mukarari holdings of raiyats.

24. Raiyati holdings recognised as *mukarari* are primarily those which have been held at the same rate from the time of the Permanent Settlement. Proof of uniformity of rate for 20 years raises a presumption in favour of the raiyat, and the burden of showing that the tenancy was created subsequent to the Permanent Settlement or that the rent has been enhanced since that time is then shifted to the landlord.* Some

* Section 50(1) of the Bengal Tenancy Act, 1885. But the principle has been ignored in the amendment of sec. 160(*c*) by Act II (B.C.) of 1930. This amendment makes the right of a raiyat to hold at a fixed rent or rate of rent which has not been changed for 20 years, a protected interest. It means that

mukarari holdings have also been created by the landlords, on receipt of a premium or salami or otherwise, since the Permanent Settlement, this right having been conceded so far back as 1812. The total area held by the present-day *mukarari* raiyats in these 14 districts is a little over one and a half million acres against over eighteen millions of acres held by the raiyats of all classes, *i.e.*, about 8⅓ per cent. or one-twelfth part.*

Incidents of mukarari holdings:

25. *Mukarari* raiyats, as has already been observed, possess, as a rule, also all the rights of an occupancy raiyat.† Besides this his rights of user of the land are practically unrestricted.‡ Excepting the districts of 24-Parganas, Chittagong, Midnapore and perhaps also Burdwan, which came under the management of the East India Company some years before the acquisition of Dewani in 1765, and in which the circumstances have thus been special, the incidence of

the purchaser, as a sale for an arear of rent of the landlord, cannot enhance the rent of a raiyat if it has not been changed for 20 years: in other words, the effect of 20 years' uniformity is conclusive, and not merely of presumptive value which it is open to the new landlord to rebut by proof that the rent had been changed previous to these 20 years or that the tenancy was created after the Permanent Settlement. It is not clear whether this was the intention of the amendment of 1930, for it is anomalous that the evidentiary value of 20 years' uniformity should be stronger against the purchaser at a rent-sale than against the previous landlord.

* Assuming that the quantity of land held by the khudkast raiyats at the time of the Permanent Settlement was about one-third of the total area held by raiyats to-day, we get an idea of the extent to which the original khudkast holdings have sufferred enhancement of rent since then, or having somehow ceased (as by surrender or purchase at rent-sale by the landlord) gave rise to new tenancies.

† One exception is in the matter of transfer. The *mukarari* raiyat has also the full rights in this respect, but besides giving notice to the landlord, he has to pay a transfer-fee for the landlord of 2 per cent. of the annual rent. So also in case of succession: section 18 of the Bengal Tenancy Act, read with sections 12, 13 and 15. This anomaly is being sought to be removed by fresh legislation

‡ It may be restricted by an express condition in the agreement, provided such condition is consistent with the provisions in the Act. In practice, there is rarely any such express condition even in *mukararis* created by lease after the Permanent Settlement. As for the rest there is rarely any lease at all. Pattas, where granted according to the Regulations of the Permanent Settlement, did not specify any such condition: though such pattas, few as they were, are hardly traceable now.

—incidence of their rent.

rent of the *mukarari* raiyats is low, about Rs. 2-2 per acre as against about Rs. 3-6 for ordinary occupancy raiyats. It is lowest, *viz.*, Re. 1-4 in Mymensingh, and in Jessore, it is Re. 1-6. Assuming that the bulk of these holdings has been held at the same rate from the time of the Decennial Settlement, we get from this an indication of the rate of rent which prevailed for the *khudkast* (resident) raiyats at that time.

Rent-free lands.

26. Another feature of the land system of Bengal is that there are considerable lands which are held as rent-free under the zemindars or their rent-paying tenure-holders. These consist manly of lands which were claimed at or after the Permanent Settlement as possessed by their owners as *lakheraj* (*i.e.*, exempt from *khiraj* or revenue) under grants other than those from the Badshah or the Ruling Power. All these were excluded from the assessment made for the Permanent Settlement. Under certain circumstances, the validity of some of these grants was recognised : but whether valid or invalid, where the area held under one claim was less than 50 bighas, it was left to the zemindar as part of his zemindary. Some of these were assessed to rent by the zemindar, but others, mainly those meant for religious or charitable purposes or the like, remained as " rent-free," commonly called " nishkar," with various names as *brahmottar*, *shibottar*, *pirottar*, *mahatran*, etc. The earlier Regulations prohibited the zemindars from further alienation of any land as rent-free, within their zemindaries. But when similar restrictions regarding granting leases in perpetuity on fixed rent were removed, rent-free grants made after the Permanent Settlement came to be effective to the same extent as those tenures, *viz.*, they are binding on the grantor and his successors, except in the event of the zemindary being sold for arrears of Government revenue.

In the cadastral record-of-rights, the holders of these rent-free lands have been generally treated as tenure-holders, but some of the petty ones who cultivate the lands themselves or by hired labour, have been treated as raiyats. In the 14 districts mentioned before, the area of rent-free tenures is

over 1,000 square miles, and of rent-free raiyats about 160 square miles, in a total area of about 36,000 sq. miles of permanently settled estates, or about 3·3 per cent. of this total. Rent-free lands are most extensive in Jessore where they are over 12 per cent. of the area of the permanently settled estates.

Service lands.

27. Service lands, though found in very small areas in some districts, may be said to be no longer known in Bengal.* Chakran lands allotted to village Chowkidars and to *phanridars* (keepers of outposts) have long been resumed and assessed to rent or revenue.

The Zemindar and the proprietary right

28. The Declaration of the Permanent Settlement in Regulation I of 1793, recognised the zemindars as the proprietors of the land. Whatever the controversy as to their status prior to the Permanent Settlement, it will appear from the above enumeration of the statutory rights of the tenantry that this right of the zemindar is considerably restricted and can thus be said to be only a "limited proprietary right."† Once the land has been settled with a raiyat the landlord is tied down; and by the terms of the Declaration of the Permanent Settlement, Government have reserved the power to enact such laws as may be considered necessary for the protection and welfare of the tenantry. The zemindar is required to pay the Government revenue punctually, without any excuse for draught, inundation or other natural calamity, and in case of default, his estate is liable to be sold forthwith. As proprietor he possesses full right to transfer, by sale, gift or otherwise, or raise money by mortgaging his estate : but such mortgage or any other alienation, whether as rent-free tenure

* The conditions of Chittagong Hill Tracts are distinct.

† This will be discussed more fully later on. But it may be noted here that what follows is that barring these rights of the tenants, all other rights which go to constitute ownership of land, rest with the zemindar. For instance, it has been held that rights in mines and minerals belong to the zemindar. It has also been recognised that the proprietary right extends to alluvial accretions from the public domain, though subject to additional assessment of land-revenue.

or leases* to intermediate tenures, made after the Permanent Settlement, are not binding on the purchaser at a sale for arrears of revenue.†

The zemindar or other landlord is forbidden to exact any abwabs or any sum in excess of the specified rent, and is required to grant a receipt as soon as any rent is paid: and also afford reasonable facilities to the tenants to pay their rents.‡ The old rules of distraint have been abolished, and he cannot coerce the tenant to pay an arrear except by suit in the Civil Court.§

Road and public works cess.

29. In addition to the rents which the tenants of various classes pay to their respective landlords, and the revenue which the zemindars pay whether in the temporarily settled estates or permanently settled estates, they have also to pay a cess called the road and public works cess introduced first in 1871. Under Act X of that year and then Bengal Act II of 1877, both repealed and consolidated later in Bengal Act IX of 1880, every cultivating raiyat had to pay half anna per rupee of his rent, and every landlord also half anna per rupee of the difference between his rental assets (*i.e.*, the rents payable by the tenants immediately under him *plus* a fair rent for the land held *khash* by him) and his own rent or revenue.

* There is an exception for tenures which are registered with the Collector, provided that when the estate is put up to sale as subject to such tenure, the sale-proceeds are sufficient to cover the arrear.

† See Act XI of 1859.

‡ It is unfortunate that exaction of abwabs has not yet ceased: the rule for granting a simple receipt (as opposed to final account-statement), as soon as any amount is paid as rent, is not also followed in most zemindaries. The difficulties of a raiyat to pay rent where there are several co-sharers amongst the landholders, are still unsolved. The law regarding payment of portions of the rent due or tender of arrears is still unsatisfactory. These have contributed to a large extent to the accumulation of arrears of several years: and the old question still irritates—how can a raiyat who has fallen into arrear in one year, pay it in the next?

§ The question of simplifying the procedure of realisation of arrears of rent, has been a vexed one ever since the Permanent Settlement. It was emphasised by the Secretary of State in 1885 when the Bengal Tenancy Act was passed. But it still remains unsolved, and a sore grievance of the landlords. As for the defaulting raiyat, it is noteworthy that even when a rent-suit results in an *exparte* decree, the raiyat has to pay at least 30 per cent. over his arrear. This undoubtedly is a great drain on the tenantry.

The assessments made under the Act of 1880 are being gradually replaced by assessments according to the revised procedure in Act XI of 1934. The total amount of cess (assessed partly under the Act of 1880 and partly under the amendment of 1934) which is realised by the Government is Rs. 85,17,673;* and this gives about 27·5 per cent. of the land revenue proper.

The "cultivating raiyat" whose cess is half anna per rupee of the rent under the Act of 1880, is different from "raiyat" as defined in the Bengal Tenancy Act; and means a person cultivating land and paying rent therefor not exceeding one hundred rupees per annum. All under-raiyats of the lowest grade thus came within this definition, while raiyats with rent exceeding one hundred rupees, or not cultivating the land, were excluded. The procedure of assessment was thus somewhat complex, and there was no standard for determining the valuation of *khash* lands of persons who were not treated as "cultivating raiyats." By the Cess (Amendment) Act XI of 1934, the basis of assessment has been laid down as an "acreage rate" for a district or part of a district, which is not to exceed one-fifth of the estimated value of the average gross produce, moderated further by consideration of the rates of rent generally payable by raiyats and under-raiyats of all grades. The cess to be paid by the cultivating raiyat is half anna per rupee of the difference between this acreage rate and his own rent, and the calculation for the cess to be paid by a person of any grade of landlord or tenant to his immediate landlord or by the zemindar to the Government, including his own share and that of his tenants, is also simply half anna per rupee on the difference between the "acreage rate-value" of the lands† comprised in his tenancy or estate, and the rent or revenue he pays. This procedure

* This is exclusive of the cess on mines, hats and fairs which give a total of about Rs. 1,84,000.

The administration of the entire cess is in the local authorities of District Boards.

† In this calculation certain classes of unprofitable lands are excluded, *viz.*, jungle, road, path, river, khal, graveyard, cremation-ground, mosque, temple, or any other place of public worship, unculturable waste, unculturable marsh and unculturable *bil*.

has been adopted only in a few districts since the Act was passed,* and is being gradually adopted in the rest.

The Primary Education cess.

30. The imposition of this cess was questioned as an infringement of the Permanent Settlement: but it was justified as a "local rate" intended only for certain specific local purpose,† which, as stated at the time it was introduced, was—"providing from local sources the means of extending elementary education among the masses of Bengal, and of constructing and maintaining roads and other works of public utility." As this cess is insufficient to provide for primary education to the extent to which it is needed, an Act has recently been passed for a further Primary Education Cess‡ expected to bring in a little above the same amount as the road and public works cess. It has, however, been applied only to a few districts up to now.

Other taxes on rural population.

31. To judge the burden of taxation on the rural population, two other items have to be mentioned, *viz.*, the tax for the maintenance of the village Police (called the chowkidari tax), and the tax for improvement of village roads, sanitation, etc., by the Union Boards. These taxes, however, are assessed on the circumstances of the individual, and have no relation to land, except indirectly.

* The plan of "acreage rate," gives relief to the lowest grade tenants whose rents are high, and consequently whose margin of profit is low. It also gives an automatic rule of adjustment according to the rise and fall in prices of the produce. For the landlord-class there is no difference in the incidence of the tax so far as regards the lands let out by them: but as regards their *khash* lands, it gives a definite standard, *viz.*, the acreage rate adopted for the area.

† This was explained in Secretary of State's despatch No. 5 Ed., dated the 12th May, 1870.

‡ The plan of the education cess as laid down in the Bengal (Rural) Primary Education Act VII of 1930, is that as against two pice for the road and public works cess, the cultivating raiyat will pay 7/10ths of 5 pice or three and a half pice per rupee on his rent. As regards the cess-tenure-holder (or zemindar) his share of the cess will be one and a half pice per rupee of the difference between his gross assets (*i.e.*, the rent he receives from his tenants and the valuation of his *khash* lands) and the rent (or land revenue) he pays, as against two pice in the case of road and public works cess.

Some general observations.

32. The land system of Bengal so far as it implies the existence of a class of landholders (called here zemindars) who are responsible for paying the Government revenue assessed on land, either by collecting rents from the tenants where there are tenants or where they may settle tenants, or by raising an income from the *khash* lands, is not peculiar in this Province. It exists in the same or similar form in most other Provinces in British India. Behar, parts of Orissa and Assam, the Northern Circars and the settled *poliems* of Madras, and Benares, have the same system, with the revenue fixed in perpetuity as in Bengal. In the remaining area of Orissa, in Oudh and the old N. W. Provinces, in the areas outside the Crown-lands in the Punjab, and in the Central Provinces, the system of settling the Government revenues with rajas, talookdars, malguzars and persons with similar denomination, prevail: the only difference is that the revenue is not fixed in perpetuity but is liable to revision at intervals, usually of 30 years, with resultant increase in the revenues of the Government from land at every revision. One effect of this is that there is less legal restraint on enhancement of the rents of the peasantry: and consequently the incidence of the burden from rent on the raiyats is considerably higher than in Bengal. It varies from one-fourth to one-sixth of the gross produce (as against one-twelfth, and in the case of *makarari* raiyats, one-eighteenth in Bengal), but the tendency is to reach the standard of one-fourth. Whatever controversy there may be on the permanent settlement of the State-demand in Bengal, one important effect has been that it has kept down the rent of the raiyat at a low incidence. As a result, the raiyat has a much higher market-value for his land, and a better security from it in times of need. Yet the agriculturist class are economically in a bad plight, and most of them are involved in heavy debts.* The reason has apparently to be sought

* An experiment is being tried to give them some relief by settlement of their debts through Debt Reconciliation Boards under the Agricultural Debtors Act of 1935. The strained application of this Act to persons whose main source of living

elsewhere. The gross produce from 26 million acres of land, usually cultivated in a year, is not more than Rs. 1,152 millions; and if there are 11 milions* of families of agriculturists, as the census figures indicate, this gross produce cannot give them more than only Rs. 100 per annum for a family, say of 3 persons in the average. Even if another 2 or 3 million acres were made available for cultivation, it will not solve the problem. The earnings from agriculture alone will continue to be meagre for a family of three persons, unless the family has some other employment or occupation to augment its resources.

Another effect of the Permanent Settlement in Bengal, has been that valuable property-rights have developed and have been firmly established in the various grades of intermediate holders, as well as in the raiyats at the bottom, and even the under-raiyats. This has sometimes been assailed as creating complexities in the land system: but it cannot be gainsaid that this distribution of the rental profits amongst the large body of the middle class population, has in itself a great economic value, from the point of view of the community as a whole, while the actual tiller of the soil, the raiyat or under-raiyat, has a much stabler position and enjoys greater legal protection than in places where other systems prevail.

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is not agriculture is a serious complaint: and unless stopped it is likely to affect the market-credit of all classes and prejudice the interests of the true agriculturists for whose interest the Act is intended.

* If this estimate of 11 million families be taken as the same as giving the number of active workers, it gives no more than 2·4 acres for a worker. Mr. W. H. Thompson, in his Report on the census of 1921, states that the average area of cultivated land for an agricultural worker in England and Wales is 21 acres. The cultivated area in England and Wales, he says, is just over 26 million acres, and according to the census of 1911, the number of male workers in agriculture was 1½ million. But still Mr. Thompson has missed the fact that in England and Wales the industry of cattle-breeding and cattle-grazing affords a substantial subsidiary occupation to the agriculturist. There are 4 million acres of rough grazing land and 15 million acres of permanent pasture in England and Wales.

It is interesting to note here that the standard in Kautilya's Arthasastra was an average of 64 acres for five agriculturist-families. From the Mymensingh Ballads of the Pathan times, it may be surmised that a substantial raiyat had as much as 100 "puras" (one "pura" being a little over an acre) of land, and an ordinary raiyat, from ten to twenty "puras."

CHAPTER II

The Hindu Period

No common origin for the varied land systems in different parts of India.

There is no background of a common origin from which the various land systems in different parts of India may be said to have developed. When the Aryan Hindus settled down in central Aryyavarta, and organised a system which is codified in the Institutes of Manu,* there were independent non-Aryan kingdoms not only in the Dravidian countries in Southern India and the lower valleys of the Indus, but also in the territories of the Koch extending eastwards from the upper reaches of the river Mahananda, in Pragjyotishpur (Kamrup and Tripura) and Aracan, in Audra and Kalinga, and in the several countries† which then comprised Banga-

* The text of Manu, which is now extant, may be put at about one thousand years before Christ. Sir William Jones puts it at 1200 B.C., Schlegel at 1000 B.C., and Elphinstone at about 900 B.C. Professor Williams would put it at about 500 B.C., while Max-Müller would put it as late as 200 B.C. It was no doubt a post-Vedic work, but it certainly preceded the time of Buddha (about 550 B.C.).

Aryyavarta is stated generally by Manu (Chap. II, 22) as comprising the entire country between the Himalayas (Himavat) and the Vindhya ranges, and extending as far as the oceans both towards the east and the west. But the main centres of Aryan settlement and culture were Brahmavarta and Brahmarshi. Brahmarshi comprised the countries of Kurukshetra, Matsya, Panchala or Kanyakubja and Surasena or Mathura, roughly corresponding to the old United Provinces. Brahmavarta was the country further north-west up to the old river Drisadvati, roughly identified as the country comprising and round-about the present Patiala State. Brahmavarta formed the noblest part of Aryyavarta, while the country from Vinashana (where the Saraswati vanished), down to Prayag (Allahabad) was the medium kind (Madhyadesh) : Manu, Chap. II, 17-21.

† These countries were Banga, Paundra, Suhma, Modagiri and Upa-Banga. Banga was the country between the lower reaches of the Karatoya river and the Brahmaputra, roughly the present districts of Dacca and part of Mymensingh. Paundra comprised the country between the Karatoya and the Ganges, roughly the

desh. These eastern countries from the point where the great river Ganges took a south-easterly course towards the Bay of Bengal, were cut off from the main Aryan settlements by the extensive hills of Chota Nagpur and the Santhal Parganas, where a different non-Aryan tribe, the Koharians, lived and maintained their distinctive aboriginal institutions.

Process of Aryan migration in the upper valley of the Ganges—

2. Whatever might have been the process of conquest in the western and central Aryyavarta, it would seem from the earliest accounts that the spread of Aryan supremacy or influence in the other parts of India must have proceeded on different lines. The Aryan migration took place along the Himalayan slopes in Kashmir and in the hills now forming the Chamba State and those near Simla; and their first settlement in the plains was in the Ayodhya-area.* We do not know what resistance the Aryans met with from the aboriginal people: but from all accounts these people harassed them a good deal, till they were either

present districts of Rajshahi, Pabna and Bogra and parts of Rangpur and Dinajpur. Modagiri is identified with the present district of Maldah. Suhma was the country to the west of the above and beyond the Ganges, corresponding roughly to portions of the present districts of Murshidabad, Burdwan and Hooghly. The deltaic region between the Padma and the Bhagirathi (Hooghly) or rather up to the lower reaches of the Damodar was called Upa-Banga. Midnapore was part of Kalinga and the country round Tamluk was called Tamralipti

S. C. Mitra, in his History of Jessore-Khulna, cites a reference to an ancient book called Digbijay-Prakash, in which the deltaic tract to the south and east of the river Padma, is called Upa-Banga where several rajas ruled over different parts.

* Baden-Powell, Land Systems of British India, Vol. I, p. 122. His view is that the Aryans did not descend far, if at all, into the Punjab plains and Sindh; and in support he states there are no old Hindu remains in the Punjab plains, and refers to a passage in the Mahabharata which calls this tract also "forbidden land." The people "who dwelt between the five rivers..... are those impure Bahikas who are outcast from righteousness. Let no Aryan dwell there even for two days; there dwell degraded Brahmins: they have no Veda or Vedic ceremony, nor any sacrifice."

The excavations of Harappa and Mohenjo-daro now fully confirm the existence of an earlier civilization (3250 to 2750 B.C) in the lower Indus tracts: and according to Prof. Radhakamal Mukherji the references in the Rig-Veda, to non-Aryans (Asuras, etc.) with forts and hundred cities built on stone pillars, relate to the people in these tracts: Hindu Civilization, Longmans, London, 1931, pages 13, and 29 to 32.

absorbed as Sudras or driven into the dreary hills which walled off the Dravidian and other countries south of the Vindhyas, or into the hills and plateaus of Chota Nagpur.

and expansion of influence in other parts.

Outside these limits the gradual extension of Aryan influence was a matter more or less of moral and cultural conquest than of annihilation or expulsion. There were in those places already well-established societies with kings possessing powerful armies of chariots and elephants and, in the lower plains of Bengal, also of navies of boats. The Kings lived in pomp and splendour,* and in certain respects the people were even more advanced † than the Aryan settlers. In the Ramayana,‡ Banga is described as a highly flourishing (*samriddha*) country, yielding plenty of rice and other produce. In the Mahabharata, Anga, Banga and Kalinga are described as places having beautiful buildings (*harmani ramaniyani*). The Kings of Banga, Paundra, Suhma, Modagiri, Kaushiki and Pragjyotishpur stubbornly resisted the march of the Pandavas§ in their Digvijay, with armies of chariots and elephants and navies of boats. Whether the gradual establishment of Aryan supremacy was effected by replacement

Bangadesh in Ramayana and Mahabharata.

* See the description of Ravana's Court in Ramayana: and also that of Bali's palace.

† Particularly in architecture. See the description of Subarna Lanka in Ramayana, Sundarkanda, Chap. 3. Bali's kingdom of Kiskindhya is not so well-described: but yet Bali was so powerful that he had vanquished Ravana several times.

‡ Ramayana, Ayodhyakanda, Chap. 10. The earliest mention of Banga is in Rigveda, Aitareya Aranyaka, Chap. II. Buchanan Hamilton (Vol. I, 114) says that 'Banga' meant the territory from the Karatoya to the Brahmaputra. Blochman puts it as the country to the east and beyond the delta between the Padma and the Bhagirathi.

§ Chitrasen and Samudrasen were the Kings of Banga who opposed the Pandavas: similarly also the Kings of Kausiki (Kachapati), Modagiri and Suhma, Mayuradhwaj and Niladhwaj of Tamralipti, and Kings Naraka and Bhagadatta of Pragjyotishpur also resisted them and fought valiantly with large armies.

Basudeva, King of Paundra, challenged Krishna's right to assume this name, and fought with him, with an army of 8,000 chariots, several thousand elephants and a large infantry.

of native rulers by Kings of the Aryan stock or by simple recognition, the internal arrangements of the Governments of the country were never disturbed.* The framework of the indigenous institutions was nowhere broken down: and what changes took place were by way of adaptations and assimilations, or as Baden-Powell has put—by compromises and superimposition.† The primitive form with the Aryan settlers, as outlined in Manu, also underwent changes as their own societies became more and more complex. All these circumstances explain the varieties of the forms of land-tenures in the different parts of India, and have to be borne in mind when studying the origin and gradual development of the land systems in the various Provinces or even parts of Provinces.

Aryan system in the Institutes of Manu.

3. The Aryans, who migrated into India, were a "pastoral" people. They became "agricultural" when they settled down in the wide fertile plains on the banks of the Ganges and its tributaries. At the time to which the Institutes of Manu relate, keeping of herds of cattle and carrying on of trade were considered as more commendable than agriculture.‡ But the value of products from agriculture

* See Manu, Chap. VII (201-03). The King is required to maintain the laws of the conquered countries. See also Yajnavalkya:—

"Of a newly subjugated territory, the monarch shall preserve the social and religious usages, also the judicial system, and the state of classes, as they already obtained." I, Art. 342.

† This is correct not only for the Hindu and the Buddhistic periods, but as will appear later, also for the Muhammadan period.

‡ In Chap. X, 84, Manu says—"Some are of opinion that agriculture was excellent:" but his own views were different. According to Manu, the occupations of a Vaisya, in order of merit, were—"to keep herds of cattle, to carry on trade, to land at interest and to cultivate the land:" Chap. I, 90. But commendable was "commerce or keeping herds of flocks." Chap. X, 80. A Brahmin might "apply himself in person to tillage" only as a last resort when he could not get a subsistence in any other way: Chap. X, 82. From all these Mr. N. J. Halhed (Memoir on the Land Tenures and Principles of Taxation) concludes that the actual tillage must have been done to a large extent by the servile class of Sudras or the aboriginal people who were subjugated or absorbed.

had come to be well-realised, and a share of the produce from land formed one of the sources* of the King's revenues. This share was—"an eighth, sixth or twelfth part of the grain according to the labour necessary to cultivate the land" (Manu, Chap. VII, 139).† The King might also take a sixth part of the clear increase of trees, flowers, roots, and fruits, and of gathered leaves, pot-herbs and grass (Manu, Chap. VII, 131). The land system which grew up, followed, naturally, the process by which the migration and settlements of the Aryans in those plains took place. The generally accepted theory is that a tribe or a family or a group of families, whether aided by a King of theirs or otherwise, drove away the aborigines and took possession of tracts which were later called *gramam* or villages. A good portion of these aborigines were also absorbed as Sudras or the *servile* class who could only work as labourers or slaves of the three higher castes—the Brahmins, the Kshatriyas and the Vaisyas (Manu, Ch. I, 91). The Aryan immigrants might have also found tracts which were "no man's land," and thus fully in a state of *res nullius*, and open to them to seize and own in the same manner as "the antelope of the first hunter who mortally wounded it."‡

King's share of the produce from land.

The first settlers: formation of villages.

* The other sources of the King's revenues were from cattle, gems, gold and silver added each year to the capital stock,—a fifteenth part: of the clear increase in flesh-meat, honey, clarified butter, perfumes, medicinal substances and liquids—a sixth part: so also of utensils made with leather or cane, earthen pots and all things made of stone (Manu, Chap. VII, 130-32). There were also duties on trade. These were levied on the net profit, *i.e.*, after deducting the cost of purchase, carriage and provisions for men, etc. (Chap. VII, 127-28).

† In times of war or invasion, the King might take up to one-fourth (Manu, Chap. X, 118). So also a large proportion on profit from trade (Chap. X, 120).

‡ The passage in Manu runs thus:—"Sages who know former times, consider this earth (*prithivi*) as the wife of King Prithu; and thus they pronounce cultivated land to be the property of him who cut away the wood and who cleared and tilled it; and the antelope of the first hunter who mortally wounded it:" Chap. IX, 44. This passage has been generally treated as indicating that the theory of the primary right in land of the "first clearer" was recognised in the Hindu-Aryan system. It is, however, curious that this passage appears only incidentally in a

Families in a village: not "holders-in-common."

4. It has been a subject of much controversy amongst authorities, whether a tribe or family or group of families who thus settled in a "village," formed a "joint" or "community" ownership as regards the land, or had "individual" rights.* But there is nothing in Manu which indicates a conception of "community" ownership, and the confusion of thoughts may be due to the fact that "community" ownership was found in some of the frontier tracts in the Punjab† and in some crude form amongst certain hill-tribes. It is true that Manu treats "villages" as forming territorial units, and proceeds to deal at considerable length with the question of demarcation of their limits by permanent marks and of settlement of disputes regarding village-boundaries. (Chap. VIII, 245-61): but there are also passages which definitely lay down the duties and liabilities of an individual cultivator called "owner of the field." He is required to enclose his land with a hedge of thorny plants over which a camel could not look, and stop every gap through which a dog or a boar could thrust its head (Chap. VIII, 239). Punishment is also provided where one person wrongfully (by intimidation) dispossessed another of "his house, pool, field or garden" (Chap. VIII, 261-64). The Brahmins had lands for their subsistence, and the military class also took to land as they grew in population and were not required for active service. Moreover, a group of families which settled in a

chapter which deals with the "duties of man and woman," with a view to establish the ideas in the Code about the authority of the husband over his wife and the offsprings.

* For the view that the Aryan settlers might have started with a sort of common "ownership" for all the lands of a village, see Phillips—Tagore Law Lectures. Baden-Powell definitely disagrees with Mr. Phillips and does not think that there was anything like a "joint body owning in common" as a "communate," either amongst the Aryans in Upper India or amongst the other tribes in other parts. Land Systems of British India, Vol. I, pp. 127-28.

† *E.g.*, the Punjab Frontier tribes who were converted to Muhammadanism and amongst the Jat, Gujar and other tribes. A sort of community ownership also developed amongst some conquering Aryan tribes, as amongst the descendants of the conquering chief or of his nobles; but this apparently was the natural consequence of succession by inheritance, where primogeniture was not the rule: Baden-Powell, Vol. I, pp. 107-08.

village, did not all take to cultivation. There were artisans and tradesmen, keepers of herds of flocks* and people with other occupations.

Theory of land being the property of the first clearer.

5. "Cultivated land was the property of his who cut away the wood and cleared and tilled it," just as "the antelope of the first hunter who mortally wounded it." Manu's Code does not give any further elucidation of what this right of property meant. Land, however, could never be such complete property of man, as a deer hunted down in the chase.† The analogy could apply only as regards the wood cut away and the produce grown on the land.‡ The King, however, had a right to a share not only of the crops grown, but also of trees, flowers, roots and fruits increased every year, and of leaves, pot-herbs and grass; and in return, he would protect the cultivators against aggression. There is no mention of a husbandman being liable to eviction from his land for any reason; and perhaps such question never arose as the King's share would be taken from the grain as soon as it was heaped. Similarly if he borrowed, he would repay in grain.§ Succession would follow according to the law of inheritance generally laid down in the Code: but there is no mention of transfer or mortgage, though sales and pledges of live-stock are dealt with at some

* Besides agricultural cattle, keeping of flocks of goat and sheep was an important occupation: and, as has been observed, was considered more commendable than even agriculture. There was special injunction for pasture land: a space on all sides of a village, of four hundred cubits (or three casts of a large stick) was to be reserved for pasture (Chap. VIII, 237). The question may be as to whom this land belonged.

† The deer could be taken away and killed, and its flesh eaten but the land could not be destroyed or removed.

‡ In fact this passage in Manu appears in that part of his discourse in which he deals with "the duties of man and woman" (Chap. IX, 1), and the authority of man over woman and the offsprings begotten. The idea is carried down with the same analogy: the owners of the seed and soil may be considered in this world as joint owners of the crop; also if the soil germinate by seed conveyed into it by water or wind, the plant belongs to the land-owner: and such is concerning the offspring of cows, etc. (Chap. IX, 52-55).

§ Interest on grain could be up to what would make the debt quintuple (Manu, Chap. VIII, 151); but compare the rule of *damdupat* for money-debts in the same section.

length (Chap. VIII, 143-57). Actual tillage was perhaps done largely by men of the Sudra caste or the aborigines who were absorbed, but it does not seem that accrual of any right in the land by such persons, was conceived: they were to be only labourers who, as the servile class, would get only food and clothes from those of the three higher castes whom they served.*

Contra-passages indicating that the King was the owner of the soil.

6. While on the one hand the outline given in Manu, taken generally, supports the view that so far as agriculture (including growing of trees, etc.) was concerned, the husbandman when he belonged to the three higher castes, was the owner, and the share of the produce which the King took was the "revenue" which he needed for affording protection to his subjects; on the other hand there are passages also which indicate as if the King was the lord of the soil. In Chapter VIII, when justifying the claim of the King to half of all finds of old hoards and precious minerals, Manu observes that the King is entitled to this share not simply by reason of his general protection, but also because "he was the lord paramount of the soil." It is also enjoined that the husbandman is liable to a penalty to the King if the land was injured by any fault of the former, and if he failed to sow in due time and there was a failure of crop, he was liable to pay ten or five times the produce which would have otherwise been the King's share (Chap. VIII, 39 and 243).

Disposition of waste and unoccupied lands.

7. A precise definition of the position, whether in the abstract or as a practical proposition, could not, however, be expected. Assuming that a group of families came upon a

* Manu, Chap. IV, 253. This led Mr. Halhed to make the caustic remark that the higher castes of Brahmins and Kshatriyas, while they considered it inconsistent with their dignity or purity to take to agricultural work, had no objection to appropriate the produce by imposing on their Sudra servants the labours of tillage which were designed for the Vaisyas. The same probably was the position when a Vaisya employed a Sudra for tillage. But however the orthodox class might have advocated this plan, it could not have continued long, when at the same time intermarriage amongst different castes producing innumerable sub-castes and complexities in the social structure, was permitted (Chap. X, 8-42).

tract which was absolutely in a state of *res nullius*, and delimited it in a unit called a *gramam*, with a wide strip of pasture land all around, it is not likely that they would forthwith bring under the plough every bit of land within the area. There would be wastes and jungles, or perhaps dense forests which would be left out. The disposition of these lands would be regulated by some sort of village agency or the village headman of the King or by the King himself.* There is, however, nothing in Manu which suggests the existence of landlords intermediate between the husbandman and the King. The machinery of the administration was simple. The King was to appoint a "lord" for every *gramam* or village, an over-lord for a group of ten or twenty villages: then a superior over-lord for a group of one hundred villages, and then a lord for ten such groups, *i.e.*, one thousand villages.† It is curious that the function of collecting and transmitting the King's share of the produce from the land, is not mentioned amongst the duties of these "lords" as specified in Manu. The "lord" of a village was required to certify and report to the "over-lord" just above him all robberies, tumults or other evils which arose, but which he could not suppress. Similarly would the "lord" of ten or twenty villages report to the "lord" of hundred, and the "lord" of hundred to the lord of "thousand." There was a separate organisation of military officers‡ as "protectors of the realm;" but all other matters, including administration of land, were probably in the charge of the same "lords" of villages and groups of villages who were responsible for suppressing all evils.§ The "lord" of ten villages

The administrative machinery.

* Col. Briggs' idea seems to be that all the lands of a village were divided amongst the several families in lots, each bearing the family name, that is to say not merely the land actually cultivated, but the wastes and jungles were also delimited, and each family was free to extend clearance within its lot. Land Tax in India, by Lieutenant-Colonel Briggs, pp. 35-39.

† Manu, Chap. VII, 115-17.

‡ Manu, Chap. VII, 114.

§ There was no clear cut division of civil, revenue and criminal jurisdiction, as we have now. The rules for all these branches are mixed up in Manu's Institutes, including also the moral and religious duties of individuals.

was to enjoy the produce of two plough-lands, the "lord" of twenty—of ten plough-lands, the "lord" of a hundred—that of a village, and the "lord" of a thousand—that of a large town. As for the lord of a single village, he was to receive only "such food, drink, wood and other articles, as by the law should be given each day to the King by the inhabitants," and this was to be his perquisite.*

Such simple system could not continue long.

8. A simple system like this could possibly work only when the territory of a *raja* or King was small, and social organisations were not complex. It is probable that initially the territory of a *raja* or leader of a group of parties of immigrants, was small: and where large, the tendency was to form sub-territories with the Raja as Head-chief, and then a number of minor chiefs called Thakurs, Ranas, Babus, etc.† These formed the nucleus from which the later landlord classes of Oudh and the N. W. Provinces developed.‡ The gradual intermingling§ by marriage with the Sudra or the servile class must have had a considerable effect in relaxing the original orthodox idea that a Sudra, when he tilled the land, could only be a

* Manu, Chap. VII, 118-19. The supply of food, drink, wood, etc., to the "lord" of a village, was thus an additional charge over and above the usual King's share of the produce and taxes on trade, etc.

† See Baden-Powell, Vol. I, p 130. A number of these States often united themselves in a sort of confederacy acknowledging the superiority of and lead from one more powerful amongst themselves.

A *digvijay* in the earlier days perhaps meant nothing more than this. Later, this was the law in the days of the great Kings of Kanauj and with the empire of Chandragupta. Other Kings of the confederacy would assemble at the Court of the acknowledged superior King on ceremonial occasions, and be allies in times of war or invasion. Otherwise, each was independent in his own territory. Compare *Rex gentis Anglorum* in the days of the Heptarchy in England.

‡ Baden-Powell analyses these early developments as from (1) dismemberment of old Rajas, (2) grants by Rajas to courtiers, family members, etc., (3) usurpation by revenue officials, and (4) conquests by special families: Land Systems of British India, Vol. I, pp. 130-48.

§ This must have been already very intensive at the time of Manu's Code. Chapter X gives an elaborate grouping of offsprings by castes and sub-castes from such mixed marriages.

labourer* to serve the three upper castes. The organisations within a village also grew to be more and more complex as population grew with these net-works of castes and sub-castes with allotted or mixed occupations.

Early systems in other parts of India : different from Manu's.

9. Howsoever these developments might have taken place with the Aryan settlers in Central and Western Aryyavarta, the history in the other parts of India was different. The Dravidian races in Southern India had, from an anterior period, their systems of *khunts* or allotments by which a portion of the lands in a village went to the headman, a portion to the priest and a portion as the royal farm (*majhas*). The practice of taking a grain-share from the *majha* lands grew up later.† On the Himalayan hillsides, on the western coasts of Malabar and Canara and in the dry regions of Southern Punjab, there were no divisions by units as villages‡ in the Aryan system. In some parts there was no tax or revenue at all on land till a comparatively recent period. The Kol tribes who occupied the vast area along the fringes of the Vindhya hills and the hills of Chota Nagpur, lived mainly by hunting and collecting forest-produce, and where they practised agriculture it was generally of the nature of shifting cultivation.§ The Kols united in tribal areas, each with a chief called "Manki," and under him, for smaller units or villages, headmen called "Mundas." Some of the distinctive features of their institutions have been maintained down to the present times. In Assam, the division of the population in groups called "Khels" and "Gots," and the practice of personal service to their chief or king instead of a tax, existed before the Ahom

* As such he probably got only his food and clothes (Chap. I, 91 and Chap. IV, 253). But a hired servant employed in tending cattle might get as his wages the milk of the best cow out of ten (Chap. VIII, 231).

† The "poligars" of the central and southern parts of Madras, were a later development either from the village headmen or usurpation by a strong military class.

‡ Baden-Powell, Land Systems of British India, Vol. I, p. 106.

§ Similar to *jhum* cultivation in the Chittagong Hill Tracts, in parts of Assam and in Aracan.

conquest;* but the claim asserted by the Ahom rulers to the soil as the King's property introduced considerable innovations, with more or less varying degrees, in the land systems of the country. Agriculture was precarious in the hilly tracts, and although fixed cultivation was confined to the narrow strips of country along the banks of the Brahmaputra and in Sylhet, divisions with hierarchies of nobles, etc.,† were formed and the king levied a land tax through them. In Burma, the " first clearers " of the forest had the right of possession by ancient custom, and a village consisted of a group of independent holdings: and according to *Dhammathat*, the King had a right to a share of the produce. In the hilly tracts further east, cultivation was sporadic, and there could hardly be any fixed tenure. In Orissa, two parallel systems developed, one of the primaeval tribes now mainly comprised in the feudatory states; and the other of the Uraons where they displaced the former. The primitive tribes had, and have still, the same peculiarities as the Kolharians, while the Uraons had a land system very much like that of the Dravidians further south: though modified later to a large extent by Aryan influence.‡

Bengal—

10. It was in the midst of these surroundings that Bangadesh, comprising Paundra, Suhma, Kausiki, Modagiri, Pragjyotishpur and Banga and Upabanga—was situated. Geographically it was cut off from the Aryan settlements in Upper India, by the 27,000 sq. miles of the hilly regions which are now called Chota Nagpur and the Sonthal Parganas. In these hills lived the tribes of the aboriginal people—the Kolharians—who followed their primitive manners and customs and maintained their indigenous organisa-

* The Ahoms (or Ahams) were of Shan origin and the first prince came as an adventurer from a kingdom on the valley of the Irrawaddy, about 1228 A.D.: A. J. Moffat Mills' Report on the Province of Assam (1854).

† Called Phukans, Korwas or Baruas, Bissoyas, etc.

‡ Like the practice in the Rajput Kingdoms, in Orissa the Raja occupied the level and fertile plain as his demesne, and all round were hilly frontier tracts which were held by chiefs called " Khandaits " (holders of Khanda or sword).

tions.* On the north the Koches exercised their influence so far westwards as the upper reaches of the Mahananda river. Manu treated Bangadesh as forbidden land, where the language of the people† was "barbarous," and where it was a sin for a pious Aryan Hindu to travel. He placed Paundra, Audra and other countries in Bangadesh, in the same group as Dravirh, Cambouj, Javana, China, etc., where the people were *mlechchhas*, and thus had to be shunned.‡ Yet, as has

how treated by Manu.

* Prof. Radhakamal Mookerjee in his Hindu Civilization (*ibid*), writes—"The vast region comprising the Santhal Parganas and Chota Nagpur, together with parts of the Central Provinces, Orissa and Madras, is the seat of a separate, primitive Munda or Kolarian civilization continuing through the ages in its special features such as free village communities, collective hunting and feasting, absence of caste-system, worship by each clan of its presiding spirit in trees by sacrifice, special codes of law, punishment of minor offences by fines in the shape of tribal feasts and of serious ones by expulsion, agriculture, and the like" (p. 35). He refers to Dr. Haddon, according to whom the Munda-speaking peoples belonged to a great Indonesian race which had spread up to Polynesia from its home in the Ganges valley and western Bengal.

† Ethnologically the people of Bengal are markedly distinct from those in central Aryyavarta. Risley terms the Bengali as of Mongolo-Dravidian type. Prof. Radhakamal Mookerjee is inclined to the view that the Brachy-cephalic-Alpine type is marked in Bengal, where it is associated with laptorrhimy, most in its central and deltaic parts, and in decreasing degrees in the north and east:" (Hindu Civilization, p. 40); *i.e.*, that there is a good mixture of the Alpine race who are supposed to have at one time travelled from the Pamirs eastwards, then down the Indus valley to Guzrat and thence literally towards the eastern parts of India. Dr. S. C. Guha in his Presidential Address to the Anthropological Section of the Indian Science Congress, 1928, observed that the presence of bodily hair in the Bengalis showed that there could not have been much admixture of the Mongolian tribes amongst whom absence of such hair is a marked feature. In any case, the people in Bangadesh had formed a distinct type prior to the advent of the Aryans: and maintained that type with its features in the social and political organisations not only during the Vedic period but also during the Epic period of Aryan history in India. The border countries of Magadha, Videha and Tirhut are also differentiated from the pure Aryan Aryyavarta by Manu.

‡ Manu, Chap. X, 44-45, Chap. II, 23. Similar sentiment is expressed in Devala Smriti where Banga, Sauvira, Paundra, etc., are similarly stated as forbidden countries. Baudhayana (300 B.C.), following Manu, also writes that if a pious Hindu travelled in Banga, Paundra, Sauvira, Kalinga, etc., he required expiation by performing "punastom." The general statement in Manu at one place (Chap. II, 2) that Aryyavarta extended "as far as the eastern and as far as the western oceans" (*a-samudra*), was perhaps only a poetic exaggeration: or it may be that these were the limits up to which the people, though not conforming to the ways and manners of the Aryans in upper India, could be called "respectable men."

been observed already, there were organised societies in Bangadesh, with Kings who maintained armies of chariots and elephants, and navies of boats, and had beautiful palaces. They did not concern themselves much in the feud between the Kurus and the Pandavas which led to the battle of Kurukshetra, and in which all the kings in Aryyavarta proper joined one side or the other, though one of their princes, Kurma, is said to have fought in that battle and once saved the life of Duryyodhana from an attack by Bhima.* Later, when the Pandavas went out in their *digvijay* the Kings of the various countries in Bangadesh, stubbornly resisted their march and fought valiantly.

Manu's Code throws no light on the Bengal land system.

11. Yet Manu and others write that the manners of the people of Bangadesh were "barbarous" like those of the other non-Aryan countries, and not consonant with those in the Aryan settlements round about Ayodhya and Kurukshetra. The Code of Manu represented the Aryan institutions and Aryan thought which prevailed in Brahmavarta and Brahmarshidesh, and perhaps was a model for the other countries in Madhyadesh to follow: but it cannot be said that it gives any light as to the nature of the institutions and organisations which existed at that time in his forbidden lands of Bangadesh. Nor was this otherwise probable. The Aryan culture and religion no doubt greatly influenced the developments in later years and gradually began to be coveted, but the original framework of the indigenous institutions and organisations was never destroyed. The distinctive features of Bengal in language, in thought and in conception of property-right,† and in social manners or even forms of religious

* Mahabharata, Bhisma Parva. Jarasandha of Magadha, described by Krishna as invincible, was perhaps the leader of the confederacy of kings to the east of Aryyavarta proper: but Pragjyotishpur and Kamrup exercised suzerainty over the north part of Bengal.

† The Bengal school of Dayabhaga. The conception of property-right in it is quite the opposite of the ideas of joint family rights or community rights under the Mitakshara and other schools outside Bengal. Jimutavahana, according to Prof. Jolly, wrote his Dayabhaga between the 13th and the 15th centuries A.D.: but there is no tradition that he propounded a novel conception under the mandate

worship, would strike the most casual observer even in the present times. But limiting ourselves to our subject of land system, it would seem obvious that whatever the system which developed in the earlier days in central and western Aryyavarta, it followed naturally the process of immigration and settlements of the Aryans in these places, and the nature of the country. At the time when Manu wrote, the greater part of Bangadesh was altogether deltaic, intersected with innumerable rivers, and it is very probable that almost the entire tract between the rivers Padma and Bhagirathi or rather the Damodar and the Rupnarain in their lower reaches, was dense forest infested by wild beasts on land and sharks and crocodiles in the saline water of the violent estuaries of the Bay. But in the parts which were reclaimed, societies and organisations of Kingships had formed, and the people flourished both from agriculture and trade. It was in these conditions that the process of reclamation and settlements in the greater part of Bengal had to be carried through.

Early conditions of the deltaic part of Bengal.

12. Some glimpse of this process may be had from Kabikankan's account of Kalaketu. It has no historical value, but still gives an idea of the traditions of reclamations known even at the time Mukundaram wrote.* Kalaketu had, in the first place, to be a brave huntsman, able to kill or drive away tigers and other wild animals and thus make the place safe for human habitation. He had also to be a man with considerable resources at his command, with which he was simultaneously to engage *barunias* (wood-cutters) to clear the forest. He had next to invite cultivators on attractive terms :—" Come to my lands, I shall remove your distress and give you golden ear-rings to wear : settle here, cultivate as much land as you need and pay rent in 3 years : the rent is to be one rupee per plough-land : take *patta* from me as your authority, and fear no one."

of any reformist Ruler. There can be no doubt that he only codified what were the accepted principles and practices in the countries where these are still followed.

* He wrote probably about 1577 A.D. (1499 Sak.) as is interpreted from a passage in the book.

He then brought traders, artisans, barbers, washermen, and Brahmins and others, and settled them in the village. But Kalaketu was in trouble, for he had not taken the previous permission of the Raja within whose territory the tract lay. The Raja then sent his men to seize Kalaketu and he was put in prison. Eventually there was reconciliation, the Raja recognised him and put *tilak* on his forehead in the presence of the assembled chiefs.

Probable forms of reclamation in this tract :

13. Such or similar process would seem to be only natural when colonisation of the tracts in the deltas of the Ganges and the Brahmaputra was first attempted. These tracts were exactly like the areas envisaged by Baden-Powell,* where " the most severe and protracted labour had to be undergone in getting the dense forest and jungle cleared.....and this labour had to be unremittingly continued," at least for some time. The conditions of Bengal delta in those early days (and till the natural decadence of the rivers) required special protection by embankments† to keep off floods or overflows of the saline water. " In all these cases," Baden-Powell continues, " the man (or family) whose hands and funds have effected the change, is sure, at an early stage, to regard himself, and be regarded by others, as peculiarly entitled." Kalaketu's adventure, however mythical, gives quite a natural and sensible illustration : and in understanding the system of land-tenures in these lower provinces, it would be proper to look at their origin and development in this light. The conditions were quite different from what were probably the case with the early Aryan settlers in the valleys of the Ganges down to its confluence with the Jamuna at Prayag, where perhaps a single man or a group of men might

* Land Systems of British India, Vol. I, p. 114.

† Abul Fazl in his Aycen-i-Akbari (1603 A.D.) explains that the suffix " al " in " Bangal " is derived from these embankments or *als* which were sometimes twenty cubits broad and ten cubits high, with which houses and cultivation were protected. Ghulam Husain Salim in his Riyazu-s-Salatin (1788 A.D.) says that these mounds of earth were raised by the ancient chieftains of Bengal. The lower parts of the delta (the Sundarbans) require heavy embankments even to-day.

go out each with no other resources than a hoe and an axe, plough up bits of land while simultaneously tending herds of goats and sheep, considered then more valuable, and capturing an occasional black antelope in the bush.

The northern part of Bengal.

14. Little is known or can be conjectured about the first colonisation or settlements in the northern districts of Bengal which were not exactly of the same deltaic character.* Politically, the Koches and the Kings of Kamrup and neighbouring tracts (Pragjyotishpur) on the east, used to exercise their sway as far as the upper reaches of the Mahananda to the west, and down to the river Karatoya to the south. But at the time of the Mahabharata, the rulers of these places including Paundra, appear to have had a separate confederacy with Jarasandha, the powerful King of Magadha, which was distinct from the confederacies of the Kshatriya princes who formed the main picture in the battle of Kuruksbetra; and Manu, writing several centuries later, treated these countries, as already said, in his category of barbarous lands where the language, manners and practices were different from what he depicted in his Institutes.

Meagre history after Manu's time.

15. The influence of the Aryans who had settled in Central Aryyavarta must have began at least from the time of the Mahabharata when the Pandavas had carried on a successful expedition against the Kings who ruled over the several countries in Bangadesh. But from the manner in which Manu treated these countries in his book, it is evident that the indigenous manners and customs had not much altered: far less any system of land-holding which might have been established before.

Little is known of what happened, politically or otherwise, during the several centuries which followed. The conjecture of historians is that the settled areas in Hindusthan

* Barring the valley of the Brahmaputra the character of "recent alluvial or coral formations" ceases with a line drawn (approximately) eastward from Rampur-Boalia through the district of Rajshahi and along the southern boundary of Bogra. See E. Vandenberg's Geological Maps of India (Treatise on Indian Geology).

got divided into a multitude of independent states, some monarchies and some tribal republics, owing no allegiance to any paramount power, secluded from the outer world and free to fight amongst themselves.* If correct, the fact is important as it necessarily affected the systems of land-holding and perhaps contributed to the development of the landlord classes which we find in later days.

Kautilya's Arthasastra: how to be read.

16. Much interesting information about the system followed, or at any rate advocated, during the Mauryya period is available from Kautilya's† *Arthasastra* written during the reign of Emperor Chandragupta (321 to 297 B.C.). But it has to be remembered that the *Arthasastra* contemplated the government of a relatively small state, such as Magadha was in the early period of Chandragupta's reign and before his dominions had been much extended by conquest and tributary or feudal alliance. The Mauryya empire when fully developed later, through the policy of systematic aggression outlined in the book, was of a decentralised type, each of its outlying provinces (as Bangadesh) enjoying a measure of independence.‡

New reclamations and crown lands in Arthasastra.

17. The *Arthasastra* first lays down certain rules for the reclamation of new tracts by settlement of villages. All lands are presumed to be at the disposal of the King: and he is to take active measures for the irrigation and reclamation of such areas. When the King had thus prepared the lands for cultivation (*kritakshetra*), they would be settled with tenants who would hold for life only. Lands not so reclaimed and cultivated (*akrita*), but cleared and cultivated by individuals, would not be taken away from them: and presumably would be allowed to be held on by succession so long as they

* Vincent Smith's Early History of India, Chap. II.

† Also known as Chanakya and Vishnugupta, the minister and mentor of Chandragupta.

‡ F. J. Monahan's Early History of Bengal, p. 31. An excellent synopsis of the Arthasastra is given in this book (Oxford University Press, 1925). For a full translation, see R. Shamasastry's "Kautilya's Arthasastra" with an Introductory note by Dr. J. F. Fleet (1915): Bangalore Government Press.

paid the revenue. A prescriptive right by 20 years' possession was also recognised. In either case when the land was not cultivated by the tenant, it might be taken away from him and given to others or cultivated by servants or by traders.* The traditional royal share was one-sixth of the produce of cultivated lands, but in irrigated lands the share was one-fifth to one-third. Besides these there were Crown lands which might be cultivated by hired labour or by slaves or convicts or by persons paying one-half of the produce (*ardha-sitika*). Presumably in these cases ploughs, cattle and seed would be provided to the tenant: otherwise when he was independent (*swaviryyopajivi*), he would pay one-fourth or one-fifth. Certain quantities of arable lands were conferred tax-free on religious men (*ritwik, acharyya, purohita, srotriya*), physicians (*chikitsaka*), etc., and for officers as superintendents (*adhyaksha*), accountants (*sankhyaka*), revenue-supervisors (*sthanika*), etc. Special importance is laid on measures for irrigation by methods which are followed to the present day in parts of Behar;† and then for the levy of a water-rate or irrigation-tax (*udaka-bhaga*).

Kingdoms in alliance.

18. The policy of aggressiveness advocated in *Artha-sastra*, led to special reservations for the supply of military force. Certain villages were exempted wholly or partly from land-tax as the men were to serve as soldiers (*pariharaka* and *ajudhiya*). Generally, where revenue was assessed on land,

* The word used is "Vaidehaka," and Shamasastry translates it as "traders." But the term is used as opposed to resident cultivators called "gramabhritaka," and would more properly mean "outsiders" corresponding to later pykast raiyats.

† Such irrigation from *ahars* and specially cut canals called *danrs* (as from the river Chanan) or *pains* and their sub-branches (called *singas*), and then by water-lifts or damming, etc., is still adopted in South Bhagalpur and Monghyr. The indigenous method of drawing water from the river is by insertion of palm-tree pipes into the high embankments along the sides of the river or an *ahar*. In South Bhagalpur there are over 200 such *danrs*, the largest of which is as long as 35 miles. The larger *danrs* have now modern iron sluice gates. The rights of the tenants of the different villages and estates, are regulated by customary practices now embodied in a supplementary record prepared along with the cadastral record of rights. See Final Reports on the District Settlement Operations of South Bhagalpur and Monghyr, by P. W. Murphy.

it was collected either from a village or tract as a whole and in lump (*pindakara*), or as a share at one-sixth. But all these were a model for a King who sought conquest (*vijigisu*), to organise the territories under his direct control, and not for the virtuous conqueror (*dharmavijayi*) who would make alliances by conciliation. Any part of Bangadesh which might have been subjugated, came only in the latter category during the Mauryya period. The dominions to which the *Arthasastra* applied, comprised the central government of Pataliputra (the United Provinces and Bihar), and the Viceroyalties of Takshasila, Avanti or Ujjayini, and Kalinga (Orissa including Ganjam district). Beyond this, the countries though at times united by some bonds in a great confederation of which Magadha was the head, retained their independence for all purposes of civil government and internal administration.*

* Professor Rapson's History of India, Cambridge, Vol. I, Chap. XXI. Asoka's empire (261 B.C.) extended eastwards as far as the mouths of the Ganges (Bhagirathi) where Tamralipti (Tamluk) was the principal port: and the eastern territories were governed by a viceroy stationed at Tosali, the exact position of which has not yet been ascertained (Vincent Smith, Early History of India, pp. 142-43). Samudragupta's dominion also (326 A.D.) extended to the Hooghly river on the east, the same as Asoka's, and beyond this the frontier kingdoms of the Gangetic delta as well as the southern slopes of the Himalayas were only attached to the empire by bonds of alliance (Vincent Smith, pp. 245-50). One very significant fact is that Fa-hien (405-11 A.D.), travelling from the west down to Champa (Bhagalpur), did not cross the Ganges or the Bhagirathi, but journeyed straight towards Tamralipti (50 *jojans*), at which place he stayed for two years (Samuel Beal's translation of the Travels of Fah-hien and Sung-yun, Trübner and Co., London, 1865, p. 147). Fa-hien's route as shown in the map given in this book, probably indicates the correct extent of the Magadha empire during the Buddhist period.

Mr. Monahan, referring to Greek evidence, surmises that the Ganges delta was probably included in Chandragupta's empire, as a subordinate or feudatory kingdom. He does not, however, think that the mention of *Gaura* as the birth place of Asoka's son Bindusara by the Tibetan monk Taranath signified much, as Gaura was then an undefined term, and might mean any part of north-western Bengal. On the other hand the fact that no inscription of Asoka has been found in the Bengal delta is significant. Vincent Smith does not consider that the reference to a fighting in Banga-countries on the celebrated Iron Pillar of Delhi means anything more than suppression of a rebellion. He illustrates the division, as then known, of the countries in Bangadesh in his map, showing "Vanga" as the tract between the Bhagirathi and the Chota Nagpur Hills, "Samatata"—the tract to its east up to the river Padma, "Davak"—the tract to the north of the Padma and west of Brahmaputra, and "Kamrup"—to the north-east of the last.

Bengal independent to develop its own systems.

19. It is not the purpose of this discourse to pursue the political history of Bangadesh; but references to political events are necessary to understand that Bangadesh had existed from the earliest times as a more or less detached country where its indigenous organisations such as the land system, were to a large extent left to develop on their own lines according to local circumstances and exigencies. The Chinese traveller Huen Tsang (Yuan Chwang) when travelling in Bangadesh (629-45 A.D.) found at least six* principal kingdoms with their separate capitals. Agriculture was well-advanced, and except in the territory of Kamrup, crops and fruits of all kinds were abundant.† Very little information is, however, available from his account about the land system, except that the *king's tenants* paid one-sixth of the produce as rent.‡

Absence of an overlord: and development of petty Raj-ships:

20. But after the death of Harshavardhana, Bengal had to pass through many vicissitudes. For about 150 years there was no over-lord for any considerable part of the country, and the several *rajas* asserted independence,§ and were often fighting with each other. In the riverain area to the west of the Padma, which was cut up into numerous islands, it be-

* See Thomas Watters' Yuan Chwang, Vol. II, pp. 181-96. Oriental Translation Fund, Royal Asiatic Society, 1905. These six places were (1) Pun-na-fa-tanna, identified by Cunningham as present Pabna, and by Ferguson as Rangpur: (2) Ka-ma-lu-pa, identified as Kamrup with capital at Gauhati: (5) Samatata, identified by Ferguson as Dacca with capital at Sonargaon, and by Ferguson as inclusive of Faridpur and part of Jessore: (4) Tan-mo-lihti, identified by Ferguson as the old port-city of Satgaon, and by Rajendra Lal Gupta as Tamluk: (5) Kis (Ka)-lo-na-su-fa-la-na (Karna Suvarna), identified by Ferguson as the northern part of Burdwan, the whole of Birbhum and the province of Murshidabad including parts of the districts of Krishnagar and Jessore which were then sufficiently above the waters of the Ganges to be habitable: (6) Wu-tu, identified by Ferguson as Ura or Ora-Udra or Odra with capital at Midnapore.

† In the city of Cla-li-ta-to in Wu-tu, there were resting places for sea-going traders and the city contained many rare commodities. So also in Tan-mo-lihti where "rare valuables were collected and so its people were generally prosperous."

‡ He mentions this however only in his general description of "Yin-tu," *i.e.*, India (meaning the moon), with the earlier name of "Tien-chu" or "Shen-tu."

§ See Vincent Smith's Early History of India, p. 318.

came only natural for those who led reclamations or were powerful enough to control the rest, to take the style of *raja*.* The eastern part of Mymensingh was held by petty leaders of the Rajbansi, Koch and Hajang tribes.† In the northern part at the foot of the Himalayas, the hold of the Koch had also slackened: and throughout the country petty landlord-rajas developed.

—till the time of the Pal Kings.

21. Gradually they formed into groups or confederacies, who submitted to the Pala Kings in one part, the Sura dynasty in another, and the Chandras in a third. A branch of the Chandras established also a separate *raj* in Rungpur and its neighbourhood.‡ Little is known as to how the revenues from land were realised by the over-lord or by the local *raja* through the subordinate potentates: but there was never at any time any ruler so powerful§ as to break down the structure which had developed. On the other hand there is ample evidence that further landlordships grew up from allotments to family members and favourites of the king or the *rajas*. It was particularly so during the time of the Sena Kings. The allocation of Suryyadwip (on the banks of the Kapotakshya) to one Suryya Narayan by Ballal Sena may be cited as an instance. There were also extensive grants to Brahmins and Kayasthas at this time.‖ These were not necessarily all revenue-free gifts: but many were of the nature of permits for reclamation. The Chakravartis (Brahmins) in a part

* A good account is given by S. C. Mitra in his History of Jessore-Khulna (1928), Vol. I, pp. 192, etc.

† See History of Mymensingh by Kedarnath Majumdar: and Introduction to Mymensingh Ballads by Dr. Dineschandra Sen.

‡ S. C. Mitra (*ibid*), Vol. I, p. 194.

§ Apart from his military expeditions against Mithila and Kalinga (in which his son Lakshman Sena figured prominently), Ballal Sena had troubles to subdue Bagri and perhaps Barendra also. Lakshman Sena's reign was also not as quiet as is generally believed. A copper-plate inscription found at Idilpur shows that he had to place marks of his victories (*samrajya-stambha*) on the sea-coast, in Srikshetra and near Benares: S. C. Mitra's History of Jessore-Khulna, Vol. I, p. 225.

‖ A copper plate discovered at Katwa (Burdwan) shows a grant by Ballal Sena of a village comprised in Burdwan bhukti: Rakhaldas Banerji, "Banglar Itihash," Vol. I, Chap. XI. Art and literature flourished considerably during the reign of the Sena Kings, and a mass of contemporary literature have been discovered by scholars.

of the Khulna district got their name " katani " from the fact that the Sena Kings settled them in an unreclaimed tract where they cut down (hence " katani ") the forests and brought the lands under cultivation. There are similar legends attached to the Ray Chowdhuries of Taki and many others in this part of the country.

Ballal Sena's land system.

22. Some glimpse of the land system during the period of the Sena Kings may be had from the literature of the time, particularly during the reign of Ballal Sena. The territory was divided into five grand divisions called *Bhuktis*. These were Banga, Barendra, Bagri, Rarh and Mithila, and each was sub-divided into *mandalikas* called also *bishayas* or landed properties. The territorial jurisdictions of earlier *rajas* or landholders merged into these divisions: but otherwise they continued as before. New *rajships* of landholders were created also in unreclaimed areas: and, by way of further illustration, the grant of a tract to one Suryya* of the fisherman caste, by Ballal Sena may be cited. Earlier, the Sena Kings found the entire sea-coast tract to the east of the lower reaches of the Bhagirathi, held by one Shyamlal (not the son of Bijay Sena) and he was made to pay a revenue or tribute to the king.† All these various classes and grades of landholders were styled by the common people as " *rajas* :"‡ and even to-day the relationship of landlord and tenant is called *raja-praja-sambandha*. As regards the King's share as revenue, it is probable that the rule of one-sixth§ of the gross produce had already come into vogue : at any rate it must have been the limit with the Sena Kings to whom is attributed the revival of Brahminism, and who held the *shastric* injunctions with extremely great regard.

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* The tradition of " Suryya majhi's desh " still remains.

† Samantasar's *Vaidik Kularnav*, cited by S. C. Mitra in his History of Jessore-Khulna.

‡ We find this in village folk-lores and rural ballads of Bengal.

§ The tradition of one-sixth (*sadbhag*) still persists in Bengal.

CHAPTER III

The Pathan Period

The Pathan organisation of military chiefs and nobles.

The Pathans invaded Bengal about 1200 A.D., but their conquest was not complete till about 60 years later.* Even then, northern Bengal was under the sway of Kamrup, while Bishnupur (Bankura) and Orissa (including Midnapore) were independent. The Pathan period was one of continuous fighting amongst the rulers themselves: and during the 375 years of their domination there were no less than 42 Governors and independent Sultans, the average period of each being about 9 years only. Many of them met with untimely deaths either in the hands of assassins or in open fights. The Rulers were surrounded by military chiefs, and at times these noblemen formed a sort of oligarchy and selected who should sit in the *masnad* of Bengal.† But inspite of turmoils in the upper

* The territory conquered in 1203-04 A.D. did not comprise the Eastern Bengal districts (including old Jessore): Bangadesh was still under Ballal's descendants till the end of the 13th century, when Sonargaon was occupied by the second son of the Emperor Balban (Blochman's contribution to the History and Geography of Bengal, 1873). The first attempts of the Pathans after their occupation of Nadia and Lacknauty, were towards Tibet and Kamrup in which they were repeatedly frustrated. The territory of Kamrup extended then up to the upper reaches of the Mahananda to the west, and down to the time of Hussain Shah (1488 A.D.) to "Goragat" on the borders of Bogra, to the south. The conflict with the Rajas of Eastern Bengal began from the time of Ghyesuddin I (1227 A.D.), and up till the Governorship of Jelaluddin Khan (1257-58 A.D.) there were several independent Rajas in these parts. It was not till 30 years later that Mogies Addin Toghril turned his attention to Tippera side. Bishnupur (Bankura) remained independent down to the Mughal period, while attempts against Orissa (including Midnapore) were unsuccessful time after time: Stewart's History of Bengal, 1813.

† "The Government of the Afghans in Bengal cannot be said to have been monarchical, but nearly resembled the feudal system introduced by the Goths and Vandals in Europe."—Stewart's History of Bengal.

circle, the administration of the country in the lower circles was comparatively unperturbed: and it was particularly so in the administration of land-revenue. The old arrangement of *bishayis* and *mandaliks*, generally termed by the commoners as *rajas* or *bhaumiks*, continued to form the system by which the revenues from land were realised. The main source of the State's finance was not thus much affected: and as there was no regular drain to Delhi,* the Treasury was generally in affluence.† As a consequence, many works of public utility, such as roads, caravanserais, tanks and wells were undertaken. Their special zeal for the spread of Islam also gave an impetus to the building of numerous shrines and mosques all over the country. The capital city of Gaur‡ was beautified and expanded to an extent of over 20 square miles with a population of over 600,000. Sea-going vessels came up the river Bhagirathi to Satgaon and then to this place. Of the local industries, weaving received a special impetus, and embroidery (*chikan*) work, and in particular *kusidas* for turbans became famous. It was thus that when the Mughals came later, they called Bengal§ the "Paradise of Provinces," and Abul Fazl in his Ayeen-i-Akbari (1603 A.D.) wrote that the people of Bengal were rich and brought "diamonds, emeralds, pearls, agates and cornelians from other countries to the seaports of the Subah."

The financial arrangement of the earlier land system not disturbed.

* Compare the Mughal period when almost every surplus rupee had to be sent to Delhi to provide for the pomp and splendour of the Emperor's capital.

† Muhammad Tatarkhan (1265 A.D.) had no difficulty in finding a huge sum in specie to satisfy Balin, Feroze Shah (1491-94 A.D.) on one occasion lightly ordered distribution of one lakh of rupees to the poor: and it was but a trifle part of the hoard of the royal treasury. Stewart in his History of Bengal refers to a statement by 'Faria de Souza' that during the invasion by Humayun (1538 A.D.) Sher Khan collected the hoard in the Treasury which amounted to sixty millions of gold.

‡ Compare the poor position of the Nabobs under the Mughals. For building Murshidabad, they had to bring the old bricks from the ruins of Gaur, and for the cost, had to impose again an *abwab*.

§ Humayun is said to have called Gaur "Jinnatabad," and Ghulam Hossain calls Bengal "Jinnat-ul-bilad." During Hussain Shah's reign (1489-1520 A.D.) "it was customary amongst the rich inhabitants of Bengal, to have a number of golden dishes on their tables." Stewart's History of Bengal.

Super-imposition of jaigirdars.

2. In the machinery for realisation of land-revenue, the Pathans did not, as has already been stated, disturb the pre-existing system in Bengal. On the other hand, by their practice of allotting certain districts or parts, to their military chiefs and subordinate commanders, they superadded* another class of right-holders in land. They were called "jaigirdars" and the grants to them were of the nature of assignments of what would otherwise be the State-revenue, for the maintenance of certain specific force and their personal dignity and position. They, of course, did not cultivate the lands themselves, and except where a *raja* or a *bhaumik* was dispossessed for any particular reason, such an intermediary between them and the cultivator was not disturbed. In the same manner, districts or parts might have been assigned to favourites: but otherwise the previous *rajas* and *bhaumiks* were continued. Like the many adventures during the earlier period, there were also persons amongst the Afghan immigrants who organised and led reclamation-enterprises, particularly in the deltaic districts, and became zemindars, a term which gradually came into use.

Sekundar Shah and Shere Shah's revenue settlement.

3. Sekundar Shah is said to have made a revenue settlement during his reign (1358 to 1367 A.D.): but the details are not known. A regular settlement after appraisement of the capacity of the lands is attributed to Shere Shah. The royal share was fixed at one-fourth of the value of the produce, but little is known as to what the cultivators themselves used to pay.† Excluding the *jaigir* lands, the rest (later called

* Stewart in his History of Bengal summarises the position as elicitated from the earlier Muhammadan chronicles thus:—"Bukhtyar Khiliji (Khulijy) and the succeeding conquerors made choice of a certain district as their own domain: the other districts were assigned to the inferior chiefs who sub-divided the lands amongst their petty commanders, each of whom maintained a certain number of soldiers composed principally of their relatives or dependants: these persons however did not cultivate the soil themselves."

† Rents were in money, and the common practice was probably to fix it with reference to the quantity of plough-land held by the cultivator. See the anecdote of Kalaketu already referred to. Money-rents according to plough-lands or areas

khalsa) were retained with the previous rajas, bishayis or bhaumiks or bhuiyas, who were responsible for paying the assessed revenue into the royal treasury. The division of these *khalsa* lands amongst twelve chief nobles (known as the Bara-bhuiyas of Bengal) was perhaps a gradual development.* A class of intermediate holders called "Chakladars" below the zemindar appears to have also developed during this period.†

Jaigir and Khalsa.

4. From the nature of the revenue administration through military *jaigirdars* in the areas which were allotted to them, it may well be presumed that high-handedness on the tenantry often passed unnoticed, though it might not have been to the extent as surmised by Sir W. W. Hunter.‡ By far the bulk of the country was still *khalsa* or outside the *jaigirs*, and was held under the normal separate revenue-arrangements. Ordinarily the allotments for the army division (called " Fauz "), for the maintenance of the military establishment, were separate from the allotments to particular nobles on the civil side (called Mansab-i-Ala). But in frontier tracts and the less subdued districts, the two functions, called also " Sikdar " and " Faujdar," were combined in the same person who was given a jurisdiction over a certain country.

such as " pure " (a little over an acre) and " ara," are also mentioned in the Mymensingh ballads of the Pathan times.

* Westland in his Report on Jessore refers to several such instances. But even in much later years, others who reclaimed the inaccessible islands in the forests of the Sundarbans sometimes held almost as independent *Rajas* for instance Danujmardan Deb who held Chandradwip about 1420 A.D. Compare the legend of Kalaketu already referred to in Chapter II.

† S. C. Mitra in his History of Jessore-Khulna says that while the Sena Rajas still continued to hold themselves in old Jessore and the districts further east, many of the subordinate landholders submitted to the Pathan Government and it was in this way that a number of zemindaris in Magura and Jhenidah were formed.

‡ In his " Indian Musulmans " (1872), p. 182, he suggests that these influential men would—" send out a score of troops to pillage the peasantry, levy tolls on travelling merchants, purchase exemption through a friend at court from their land-tax (presumably meaning lands outside *jaigir*), raise a revenue by local cesses on marriage, birth, harvest-season and every incident of rural life."

Precarious position of jaigirdars.

5. The peculiar feature of Pathan administration was that while certain higher offices were created for those amongst the Muhammadan immigrants who were adherants to the Ruler for the time being, the administration lower down was not disturbed.* But from the nature of these super-added functions, the position of persons, such as the *jaigirdars*, was necessarily very precarious. They had to depend on the will and pleasure of the monarch who was absolute so long as he held the *masnad*. Moreover, the *jaigirs* were really service-tenures, and while they were contingent on the proper maintenance of a specified military force available at any time, they necessarily lapsed† when a *jaigirdar* died and his natural heir was not considered competent enough.

Older landholders not disturbed.

6. But apart from these military *jaigirdars*, it would seem that the Pathans, somehow, considered it a matter of political expediency to let also the old Rajas or other local chiefs who submitted to them, retain their military force ready for use at any time of emergency while they were generally responsible for the maintenance of ordinary law and order, and exercised, perhaps irregularly, also magisterial and even civil functions over the tenantry.‡

* Or, as Sir W. W. Hunter has put it—"as haughty and careless conquerors of India, they managed the subordinate administration by the Hindus but they kept the higher appointments in their own hand:" Indian Mussalmans, p. 152.

† Prof. Jadunath Sarkar has expounded this rule of escheats which continued during the Mughal administration also. It was not only the territory allotted as *jaigir* which was escheated but often all other properties of the deceased as well. Prof. Sarkar explains that the *jaigirdars* rarely rendered their accounts, such as showing a Muster-Roll for the force they kept, and sometimes were in debts to the State. He quotes from Mirat-i-Amadi (pp. 281-82): "If the property exceeds the amount of the debt to the State, take that amount only and deliver the balance to his heir after the latter has legally established his rights." Otherwise, the rule was as in Jehangir's later ordinance—"When any infidel or Mussalman died in any part of any dominions, his property and effect come to be allowed to descend by inheritance, without interference by any one:" Mughal Administration by Prof. Jadunath Sarkar (1925), p. 48. Prof. Sarkar concludes from these that—"With the exception of Vassal Kings and Zemindars, there were no hereditary landholders in Mughal (or Pathan) India."

‡ The old Mymensingh Ballads of the time of the Pathan Rule, collected by Dr. Dineschandra Sen, give numerous instances of this. The Mughals took away

The zemindars, as these persons were then generally styled, thus continued to be powerful bodies: and it is a significant event that one of them Raja Ganesh, zemindar of pargana Bhaturia (Rajshahi), became at one time the independent Ruler of Bengal, and he and his son and grandson reigned for over 30 years (1385 to 1426 A.D.).

The Bara-bhuiyas of Bengal.

7. But the most remarkable circumstance was the development of the "Bara-bhuiyas"—the twelve chief zemindars who lorded over the smaller zemindars, chaudhuries and others. C. W. B. Rouse* writing in 1791 says that "Bengal was held by twelve 'Bhuiyas,' and five of them ruled over southern and eastern Bengal." Dr. James Wise in his well-known article† in the Asiatic Society's Journal, wrote:—"From occasional references by Mahomedan historians supplemented by traditions, we learn that they (the Bhuiyas) were independent of each other: that their rank and jurisdiction was hereditary: that they retained armed men and war-boats: that they remitted to the Governor the revenues of their districts: that they yielded a general obedience, etc." Dr. Wise then names seven of them as (1) Fazl Gazi of Bhowal, (2) Chand Rai and Kedar Rai of Bikrampur, (3) Lakhan Manik of Bhulua, (4) Kandarpa Narayan Rai of Chandradwip, (5) Isha Khan, Masnad-i-Ali of Khizrpur, (6) Raja Pratapaditya of Jessore and (7) Mukunda Ram Rai of Bhusna.‡

the power to retain any military force or maintain fortresses (see Seir Mutaquerin —*re* instructions by Emperor Akbar to his Governors), but the other powers were to a large extent allowed to be retained.

* "Dissertation concerning the Landed Property of Bengal," London, 1791, quoted by Dr. James Wise in J.A.S.B., 1874, p. 197.

† J.A.S.B., 1874, p. 199. Dr. Wise says that Bhumhar, Bhumik, Bhuiya "literally mean a landholder or occupier of land,"—the term Bhumik being still a patronymic amongst Brahmins, Baidyas and Kayasthas, and Bhuiya generally amongst the Muhammadans (p. 198).

‡ Dr. Wise mentions an account by Ralph Fitch that when he visited Sripur (in Bikrampur, Dacca) in 1586, he found "chaudhuries" under the Bhuiyas who were opposing the Mughal invasion. He also refers to similar account of 12 Bhuiyas by Jarric, 1599, and to an itinerary of Sebastian Manrique, a Spanish Monk, 1628-41. The twelve Bhuiyas were vassals to the king at Gaur, but when

Summary of the revenue-system of land-tenures during Pathan time.

8. Many scholars* have made close studies of contemporary Muhammadan literature, and these give us to-day a fair idea of the system of land-tenure in Bengal during the Pathan period. The State had little or no direct relation with the peasantry so far as regards the rents the latter had to pay for their lands. There were a host of hereditary landholders who went by various names such as bhuiyas, rajas, bhaumiks, chaudhuries, sikdars, chakladars, bishayis,† etc. The Sovereign Ruler fixed certain sums to be paid annually by the topmost holder: and where the lands were comprised in the *khalsa* area, these sums were to be paid into the royal treasury, and where they were comprised in a *jaigir*, they were appropriated by the *jaigirdar*. The amounts from the *khalsa* lands, formed the land-revenue of the State: and judging from the nature of the administration it is not surprising that they have sometimes been called "tributes" or "taxes" and the like.

Fixation of the State-revenue.

Alauddin Khiljy.

9. In determining this land-revenue, the Sovereign's share was, in theory at any rate, taken as representing a certain proportion of the value of the produce. Alauddin Khiljy (1296-1316 A.D.), the Afghan Emperor, is believed to have made a *jarib* or measurement of the lands; but such operation, if completed anywhere, was confined to the environs of his capital at Delhi† Sir H. Elliot, quot-

the rule of the Pathans was getting weakened and they were unable to resist the inraids of neighbours or the invasion of the Mughals, many of them asserted independence. Manrique adds Bishnupur (Hambir Malla of Akbar's time), Orissa and Medinipur.

* Dr. Wise, Sir H. Elliot (History of India), Stewart (History of Bengal), Prof. Jadu Nath Sarkar, Prof. Kanungoe (Sher Shah). Riyazus-Salatin or a History of Bengal, written by Ghulam Hussain Salim about 1788 A.D. gives an account of the Pathan Rule in Bengal. There is a good translation of this book by Maulvi Abdus-Salam (Baptist Mission Press, 1902) with excellent commentaries and references in the foot-notes. The old ballads of Mymensingh of the Pathan time collected by Dr. Dineschandra Sen (published by the Calcutta University) also throw considerable light on the rural life of Bengal in those days.

† Elliot, History of India, Vol. III, pp. 182-88.

ing from Zia-Barani, writes that the rule during the time of Ghaziuddin Tughlaq (1320-25 A.D.) was to "assess revenue either by guess or by computation upon the reports of informers." But a climax came during the reign of Muhammad Tughlaq (1325-51) who is said to have raised the revenue arbitrarily to ten-fold. Its repercussion on the peasantry was obvious, and it is said that they—"giving themselves up in despair fled to the jungles." Luckily, this wave did not reach Bengal: and it was practically from the time of this monarch, that Bengal became independent and for over 200 years had her own Ruler free from any control from Delhi.*

Ghaziuddin Tughlaq.

Muhammad Tughlaq.

10. Sekundar Shah (1358-67), the third independent Pathan King of Bengal, is, as has been already stated, said to have made a revenue-settlement during his reign: but the details are not known. Whatever it was, it was probably left undisturbed till the reign of Shere Shah (1539 A.D.). Tarikh-i-Shere Shah by Abbas Khan Sarwani, written about 1579 A.D., gives an account of Shere Shah's administration. Any practice, of revising the revenue-assessment by periodical measurement, if at all ever adopted, must have fallen into disuse from Ghaziuddin Tughlaq's time (1320 A.D.): for, the author of this book writes†—"Before his (Shere Shah's) time, it was not the custom to measure the land." The conflict between the Pathans and the Mughals had begun at this time, and for some years there was no settled government. Shere having

Sekundar Shah.

Shere Shah.

* Feroz Tughlaq, nephew of Muhammad Tughlaq, who succeeded the latter changed the policy of his uncle. It did not directly affect Bengal but it is interesting to note the effects as summarised by Prof. Kanungoe (Sher Shah) of Ramjas College, Delhi.—"The feuf-holders and soldier-lords wielded almost absolute political authority over their tenants.....The muquddams and chaudhuries—hereditary collectors of revenue, exercised some political authority over the cultivators. There was no direct relation between the State and the actual tillers: and military *jaigirs* become extensive."

† Elliot's History of India, Vol. IV, pp. 413-16.

first established himself in Behar, invaded Bengal which Humayun had occupied for a short time and then left, placing Jehangir Cooly Beg as Governor. Shere Shah defeated Jehangir's army and occupied Gaur in 1539 and, after staying there for a short time, left for Behar, leaving the government of Bengal to a chief named Khizer Khan. Khizer, however, rebelled, and Shere had to seize him and confiscate all his wealth. Shere then stayed for a few months in Bengal giving directions for its administration, and returned the same year, 1541. He died in 1545.

Shere Shah's Sasaram scheme—

11. This short account is necessary to understand how far the various reforms attributed to Shere Shah could have been applied to Bengal. His model scheme of settlement with the tenantry was what he had adopted in his own districts of Sasaram and Tondah (in Behar), which, as Ferid, son of Hussein Soor, he held as a *jaigir* in his younger days, and where his relation with the tenantry was direct. His scheme in Sasaram was to measure every field, estimate the probable yield and assess one-fourth share of it as the rent to be paid by the tenant. The *amin* making the measurement, would give the tenant a *patta*, and the tenant in his turn would give a *kabulyat*. The rent might be paid either in cash or in produce. The assessment would be revised every year, and besides the rent, the tenant would have to pay an extra charge for the cost of this annual measurement, called *jarib-ana*. The collection was entrusted to officers called *muquddims*, but the tenants had to pay for the costs an extra charge called *mahasil*.* The *muquddim's* cost was half the tenant's share.† His staff in each of

* Prof. Kanungoe's Sher Shah, p. 372.

† This was a heavy exaction. The direction was—"Measure the land every harvest, collect the revenue according to the measurement, and in proportion to the produce, giving one share to the cultivator, and half a share to the *muquddim*": Elliot's History of India, Vol. IV, pp. 413-14. If this half portion be taken as inclusive of the *jarib-ana*, the proportion left to the cultivator was still only three-eighths, and as much as five-eighths going out as rent and costs. It reads unbelievable, but might not have been improbable in that part of Behar where the cultivators used to pay rent by division of crops, usually at half.

the parganas, consisted of one Aumil, one Sikdar, one Treasurer, one Karkun to write accounts in Hindi and another to write in Persian. For each Sircar there was to be a chief Sikdar and a Munsif. It is to be noticed that there is no mention of Bengali : and Hindi was unnecessary for Bengal.

how far applied to Bengal.

12. It is improbable that a system which Shere Shah as *jaigirdar* in his early career could adopt for the collection of rents from his khash tenants in Sasaram, could be applied to the collection of the State-revenue in Bengal. There is a tradition that Shere Shah caused a measurement in Bengal districts : but it was perhaps only for the purpose of determining the amount which he was to demand from the zemindar or bhuya at one-fourth of the estimated produce from land. There was no *muquddim* or *aumil* in Bengal : or a chief Sikdar and Munsif for a Sircar : and the *karkun* in some of the eastern districts was only a servant of the zemindar or chakladar.* The twelve *Bhuiyas* were already established and Shere Shah recognised them in his territorial division of the Province.

Alauddin Khiliji is also said to have imposed half share of produce in the environs of his capital at Delhi. Shere Shah's plan, if the above interpretation be correct, left the cultivator with only about one-third.

* The following passage from an old Ballad (Kamala) of Mymensingh of these times, is illustrative :—

রঘুপুরে বাস করে দয়াল জমিদার ·
তার অধীনে এই মাণিক চাকলাদার ॥
তার অধীনে কারকুন করিয়া চাকরী।
মনে মনে ফন্দি আঁটে দিতে গলায় দড়ি ॥

The *karkun* wanted to marry the Chakladar's daughter; but the girl spurned him, saying :—

বাড়ীর চাকর হইয়া এত বুকের পাটা ॥
পায়ের গোলাম হইয়া শিরে উঠতে চায়।
* * * *

The whole of the story in this ballad, shows how the *karkun* was entirely a servant or accountant of the Chakladar, though he was in this instance a base intriguing fellow.

What is probable is that he fixed the State-share at one-fourth of the estimated produce, but there is no tradition that there was a measurement *year after year* for determining this share, much less for fixing the amounts of rent to be paid by the cultivator.

Resumption of jaigirs by Shere Shah.

13. Shere Shah, however, reduced the *jaigirs* to a large extent, and assessed many of them with revenue like *khalsa* lands, fixing salaries for those persons who held offices. The effect of his administration must have been to raise the cultivator's rent much above the traditional one-sixth of the produce. There were, however, still extensive areas of waste and jungle awaiting reclamation, particularly in eastern and southern Bengal, where as observed by Dr. Wise, there were vast areas of swamps and forests when the Mughal troops in Akbar's time invaded Bengal. After Shere Shah, there was no revision of assessment by the Pathan Rulers.*

Materials in village folk-lores and ballads.

14. Much interesting information about the condition of the peasantry and the nature of rural administration during the later period of Pathan Rule, may be had from the Old Ballads of Mymensingh,† collected by Dr. Dineschandra Sen and published by the Calcutta University in several volumes. Catching of birds, particularly pigeons,‡ provided a profitable occupation for many people. For women,

* It is sometimes said that the first Mughal settlement attributed to Todar Mal (1582 A.D.) only followed what Shere Shah had done (see Prof. Kanungoe's "Sher Shah," p. 372). But it is curious that if Shere Shah did complete any measurement, yet Abul Fazl's account of Todar Mal's settlement gives no figures of areas for the several parganas or sircars of Bengal, while such areas are invariably mentioned for most of the other Subahs. What probably happened was that Shere Shah commenced a methodical settlement with the zemindars of what each was to pay, and this eventually was adopted by the Mughals in a complete form.

† Similar folk-lores of other districts are being collected by research-scholars. Many of the East Bengal Ballads were composed and sung by Muhammadan authors, as for instance Pir Batasi Mussulman Gain, Nezam's ballads of Chittagong, and similar songs and stories.

‡ These were used for meat. It must have been the practice throughout: for even in recent times, most substantial people in the Bakarganj district used to cage good stocks of pigeons in their houses, for food.

spinning and husking of rice* were common occupations. A substantial raiyat had as much as one hundred " puras " (one " pura " being a little over an acre) of land : and settlements of twenty " puras " of land with individual raiyats are aften mentioned.† A *chakladar* under the zemindar, living in affluence, had forty " puras " of land under his direct cultivation. The Kazis wielded considerable power for legal processes and arrests, but it does not seem that he could disturb the possession of lands by the tenants. The zemindars had often to appease the Muhammadan Governors by costly presents.‡

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* "সূতা কাটে ধান ভানে শাশুরীরে লইয়া—মলুয়া।

Spinning and weaving were lost early in the last century. As for rice-husking, this continued as a profitable and healthy employment for the women-folk of the cultivating classes till recent times. Rice mills, scattered over the country, have crippled this occupation, and have, incidentally, deprived the cultivator of the better prices which he could get by selling finished rice.

† This corroborates Dr. Wise's view, mentioned in the last paragraph.

‡ 'হাতির দাঁতের পাটি লইল, লইল গজমতি মালা"

* * * *

"খাজনা উগাইয়া তঙ্কা লইল দশ হাজার।

গাউইয়া বাজুইয়া লইল সঙ্গে এক ঝাড়।"—কমলা।

CHAPTER IV

The Mughal Period

Settlements with the Zemindars

The conquest of Bengal by the Mughals was not complete till the reign of Emperor Akbar (d. 1605 A.D.), or rather till some years after his time. Akbar appointed Raja Man Singh as Subahdar and sent him to Bengal primarily to quell Pathan Katlu Khan and the other potentates who would not submit to Mughal supremacy. These potentates were the Bhuiyas and the Rajas, already called then zemindars also, and their subordinate chiefs with lesser territorial jurisdictions. Some of these persons submitted* to Man Singh and helped him with provisions and men, but others sternly resisted. Of those who opposed, Pratapaditya of Jessore was perhaps the foremost. Eventually when in a severe fighting lasting for several days, Pratapaditya lost the best of his commanders, there was truce. But Pratapaditya's submission was nominal: and he continued to assert his authority without much disturbance, from 1603 to 1608. Open hostilities began again when Islam Khan became Nabob. Pratapaditya was defeated in a battle at Dhumghat in 1611, and was made a captive.† The fighting however was continued by his son

The conquest of Bengal by the Mughals.

Fighting with Pratapaditya of Jessore

* *E.g.*, Bhabananda Majumdar of Krishnagar (Nadia), Mahtab Rai *alias* Mukut Rai of Chanchra, Raibir Khan of Naldanga, Raghab Siddhantabagish of Kusadaha and Lakhikanta Majumdar of the Subarna Chawdhuries of Barisha.

† When being taken to Delhi, he died on his way at Benares.

Udayaditya, who was ultimately defeated in a battle at Salikha and killed. When Man Singh was engaged with Pratapaditya, Kedar Rai of Bikrampur rose in arms, and defeated the Mughal army in a battle on the Kaliganga where the Mughal commander was killed. Man Singh then proceeded against Kedar Rai, besieged his capital at Sripur, and defeated and killed him in battle. Another Bhuiya, Mukundaram Rai of Bhusna (Fatehabad—a part of the present district of Faridpur), who was for some time in peace with Nabob Islam Khan, rose in open rebellion when the Mughals were engaged in the Arakan frontiers. He was eventually vanquished and killed in a battle. But his son Satrajit persisted in refusing to pay *peshkush* or tribute, or to do homage to the Court at Dacca. He was subdued in about 1636, and was killed. Yet another Bhuiya rebelled against the Mughals. He was Feroz Khan, great-grandson of Isha Khan of Jangalbari. After being defeated in a battle* he eventually entered into terms with the Mughals.

and with Kedar Rai of Bikrampur

and Mukundaram Rai of Bhusna

and his son Satrajit

and with Feroz Khan of Jangalbari.

2. Such disjointed resistance could not last long against the organised force of the Mughals; but it is evident that the Mughals could have no peaceful administration for a good many years after Todar Mal's invasion : and it is probable that the Province was not brought under complete control till about 1636. The border districts were still unsubdued, and it was not till about 1658 that Rangpur, Goalpara, Kamrup and

Mughal conquest not complete till 1636.

* While Feroz Khan led one portion of his army against the Mughals, his wife Sakina buckled with armour and riding on her favourite horse "Dulal" led another portion. For three days she fought with the Mughal army at Tajpur and defeated it. But just then she learnt that her husband had been defeated by the other part of the Mughal force which was helped by none else but her own father, and Feroz Khan had entered into a truce, and she fainted and succumbed : Dr. Dinesh Sen, Brihat Banga, Vol. II, p. 805. The Rani of Bhurshut (known as Rai-baghini) also fought at the head of an army during Akbar's time.

Tippera on the north-east, and portions of Orissa on the south-west, were conquered. It was also not till about this time that the several Rajas (Bishenpur, Pachet, etc.) on the frontiers of circar Madarun were made to pay *peshkush* or tribute.

Mughal policy of treating the rajas, bhuiyas, etc., then generally called zemindars.

3. The Mughals were more imperialistic and thorough in their administration than the Pathans: and one of the principal directions given by Emperor Akbar to his Fauzdars was, as mentioned in Sair Mutaquarin, to see that these potentates (rajas, bhuiyas or zemindars) were not permitted to repair their old fortresses or to collect arms and ammunition. The whole of the military or semi-military establishment was taken away from these persons—then generally called zemindars: and in pursuance of the same policy the zemindaries were, wherever possible, dismembered and split up into smaller units. As a measure, however, of expediency or reward, those zemindars who had submitted without opposition or helped the Mughals,* were permitted to retain their old estates intact: but as regards the rest, and particularly those who had violently opposed, their territories were divided† amongst a number of subordinate landholders who had tendered submission. A good portion was also taken away and distributed in *Jaigirs* amongst the military and civil officials, in lieu of pay and expenses for maintaining the necessary establishment under them. The proportion of these *Jaigirs* was very considerable and represented 40 per cent. of the total assessment on which Todar Mal's settlement‡ is supposed to have been based. There were also considerable revenue-free grants of *Ayma* and *Madadmash*, mostly in the Behar districts.

Jaigir lands—40 per cent.

* See footnote under para. 1, *ante*.

† As by parganas or portions of parganas called tarafs, and no less than 682 units of assessment were formed at the initial settlement of Todar Mal.

‡ Todar Mal, also called Torry Mal, Turry Mull or Toren Mal, was the minister of Akbar entrusted with the revenue-settlement of Subah Bengal.

4. Ayeen-i-Akbari, written by Abul Fazl Allami* in the 47th year of Emperor Akbar's reign,† gives a description of this settlement by Todar Mal or Torry Mal. Abul Fazl describes the Subah of Bengal as bounded on the north by the range of mountains, the Himalayas, on the west, the Subah of Behar, on the south and east, the sea, then the country cal'ed Arkung (Arakan) " to which the port of Chittagong properly belonged," and then the kingdom of Tipra (Tripura), the province of Coach and Kamrup. The Subah was divided into 24 grand " divisions " called *circars*‡ with as many as 789 mahals. The 24 circars included circars Poorneah with 9 mahals and Oudember with 52 mahals including Tandah, Rajmahal or Akbarnagar, the famous passes of Teria and Sicla Gurhy extending along the south-west side of the Ganges as far down as pargana of Chunacally which environed Murshidabad. The whole of circar Poorneah and the greater part of circar Oudembar are now within the reconstituted Province of Behar. The 24 circars of Emperor Akbar also included circar Sylhet with 8 mahals, on the north, and circar Jellasir or Jellasore with 28 mahals including Tamluk and Midnapore, circar Buderuck (Bhadrak) with 7 mahals, Cuttek (Cuttack) with 21 mahals, circar Kulengdunpaut with 27 mahals, and circar Raje Mahindrah with 16 mahals.

Division of circars and mahals in Ayeen-i-Akbari.

When Abul Fazl wrote, Bengal had just been conquered, or rather was still in the process of conquest, from the Pathans and the various militant chiefs and Rajas. His description of the Subah of Bengal is much longer than that of any

Bengal at the Mughal conquest.

* Abul Fazl, though better known as the historian who wrote the Akbarnamah (to which Ayeen-i-Akbari is a kind of supplement), was a vizier of Emperor Akbar. He was deputed to lead an expedition to Berar, after the recall of Prince Murad, but was murdered on his way back by a gang of bandits. This was about 1011 A.H. (1611 A.D.).

† Akbar's reign commenced in 1556 A.D.: and this gives the year of the book as 1603 A.D.

‡ Circar or Sircar, from Persian " sarkar," meaning " head of affairs " (compare Circar Ali—the most exalted State): hence a grand head or division.

other Subah, and shows a marked air of curiosity as natural when dealing with a newly known country. It was a rich country where the subjects paid their rents in mohurs and rupees, very much unlike other Subahs where they paid generally by a share or portion of the crops grown. Diamonds, emeralds, pearls, agates and cornelians were brought from other countries to the seaports of this Subah. The better class of people used elephants or a luxurious kind of conveyance called *Sookhasan*. Amongst fruits, mangoes and betelnuts are particularly mentioned. Rice is mentioned as the principal food crop. Special mention is made of fish and vegetables. Hempen carpets were so beautiful that they seemed to be made of silk; and there was extensive manufacture of cloth.

Akbar's general method modified in Bengal. See para. 7.

5. The Mughals attempted to introduce the same principle of assessment of land-revenue as had been adopted by Emperor Akbar in the northern and western Provinces* around the capital at Delhi. But there were obvious difficulties in applying that method in its entirety in Bengal. In the first place there were the zemindars, "numerous and opulent" as said by Shore,† and then there were the cultivators, who, unlike the cultivators in other parts, paid, as stated by Abul Fazl, their rent in "mohurs and rupees;" but the basic idea of Akbar's method was to fix the Sovereign's portion (the land-revenue of the State) at a share (one-third) of the produce from the land. Whether the practice of paying rent in coin before the advent of the Mughals, had ever a background of valuing the king's share, we are not sure. But the fact remained that the method of paying rent in kind was not then

* Soobahs Behar (comprising circars Behar, Mungher, Chumparun, Hajypur, Sarun, Tirhut and Rhotas), Illahabas (Allahabad), Agra, Malwa, Guzerat, Ajmeer, Delhi, Lahore and Multan. Ayeen-i-Akbari gives details of these Soobahs, with the measurements in Beegahs and Biswas. But it is noteworthy that no areas are mentioned for Soobah Bengal, although a measurement was the basis of Akbar's method. No measurements (areas) are given also for the other distant and partially subdued Soobahs of Berar, Dandus, Tatah and Kabul. Soobah is also spelt as Subah.

† Minute, dated 2nd April, 1788, by John Shore (later Lord Teignmouth) as member of the Supreme Council of Revenue.

known in Bengal, and Abul Fazl says that " His Majesty has had the goodness to confirm this custom " of payment of rent in coin, in Bengal.

Could Todar Mal himself have completed his plan in Subah Bengal?

6. It is generally believed that Todar Mal completed the assessment of Subah Bengal in 1582 to 1587, and prepared the *tukseem jumma** which is summarised by circars and parganas in Ayeen-i-Akbari. The procedure of an operation according to Emperor Akbar's plan is described in detail in Ayeen-i-Akbari. There was first to be a measurement (with a rope of defined length) of every field in a village : each field was then to be classified according to its productivity : an estimate of the quantity of produce on an average of a number of years preceding, was then to be made, and totalled village by village and then for a pargana : one-third of the average quantity was then to be taken as the king's share : and ultimately the money-value (in *dams*)† of the same was to be determined and put down as the *tukseem jumma*. It may well be questioned : Was it possible to complete such an operation over an area of 90,000 square miles within such a short time or even by 1603 when Abul Fazl wrote, particularly when the country was still in the process of conquest which was not completed till about 1636? Shore, in the second note to his minute dated 2nd April, 1788, observed that Todar Mal's " residence in Bengal was too short for so extensive and laborious an operation; but he may have prescribed the rules by which the rents of the raiyats were to be fixed and left the execution of them to others or to the zemindars." In his minute of 18th June, 1789 (paragraph 218), he said, " Whether such an operation extended to Bengal, I know not : Turry Mull is supposed to have fixed the rent payable by the raiyats, but by what rules he settled it,

* Tukseem or Tuckseem is from Arabic " taksim " meaning a division or distribution. Hence—the constituent parts of the assessment-roll or book (called tumar which in Arabic means a " roll"). Jumma is Arabic, meaning the total sum.

† A " dam " was a copper coin weighing 1 tolah, 8 mashas and 7 ruttees. Forty " dams " equalled a rupee or rupeah.

we are not certainly informed. The *assul jumma* established by him *does not anywhere exist.*"* It is a significant fact that Ayeen-i-Akbari does not give for Subah Bengal any figures of measurement† (areas) as are given for the Subahs around the capital of Delhi. If the figures in it of the amounts of assessment (*jumma*) were subsequent insertions *after* the operation had been completed, as hinted by Shore as not improbable, certainly the "measurements" (areas) would have also appeared. Were, then, the money-figures shown in Ayeen-i-Akbari, pargana by pargana, only amounts of lump assessments on the zemindars, or were they only estimates of what might be expected when the operations would be completed? The answer to this can only be left to conjecture.

What did the pargana-war figures in Ayeen-i-Akbari mean?

7. But there is another important aspect. Akbar's plan was essentially a plan for direct collection from the cultivators of the Sovereign's share of one-third of the produce. The organisation outlined in Ayeen-i-Akbari conceives local collec-

See para. 5. Internal organisation in Bengal, different.

* Assul, also written as Asil or Ausil or simply Asl, is from Arabic "asal" meaning origin or root, and hence the "original" or the main basic matter. With reference to assessment it means the amount exclusive of additions of cesses or other charges.

† It is also a significant fact that Akbar's measure of a bigha with his Illahee guz of 41 fingers, does not fit in with the official bigha in Subah Bengal even during the later Mughal period. Grant, in his Analysis dated 27th April, 1786, explained that in Bengal, 1,396 bighas made a British square mile. This gave 2·18 bighas as equivalent to an acre, or a bigha as a square with about 141·4 feet a side (see Firminger's Fifth Report, Vol. II, p. 272, where the Analysis is reproduced). Akbar's bigha was a square with 60 Illahee guz for a side (Gladwyn's "Ayeen-i-Akbari," p. 243)‡: and such a bigha would be equivalent to a full acre, if not more, a side of the square being at least 216 feet.

A further significant fact is that for the portion of Subah Behar, which was measured in Akbar's time, and for which the Ayeen-i-Akbari gives area-figures, sircar by sircar, the bigha stated by Grant is "3,600 square ells (an ell=45 inches) each or nearly an English acre:" Supplement to the Analysis dated 30th June, 1787. So also for Subah Allahabad (same Supplement). The Illahee guz (equal to 41 fingers, probably taken with a special type) would thus seem to comprise 45 inches, and an Illahee bigha equal to 50,625 square feet or one and one-sixth acre.

Previously to Akbar's innovation of Illahee guz, the official bigha with the Pathans was the Sekandar Shah's guz of 32 fingers (Gladwyn's Ayeen-i-Akbari, same, p. 243): and this gave 2·18 bighas for an acre as found by Grant in Bengal, and apparently it was this measure which continued as the official measure in Bengal, down to the time of the East India Company.

tors called "Aumils," and over them the State-officials called "Aumilguzars." Shore states that no such officers were known in Bengal. In fact this could not be, because the settlements were with the zemindars, and Shore observes with surprise that Ayeen-i-Akbari throws no light as to what was to be the profit or remuneration of the zemindar. The total assessment shown in Ayeen-i-Akbari, excluding the 5 circars of Orissa subsequently lost, was Rs. 63·4 lakhs for the zemindari lands (called *khalsa*,* *i.e.*, lands for which there would be a revenue payable at the khalsa or exchequer), comprising 682 mahals. The annual value determined for the *Jaigir* lands, for which of course no money would be received in the exchequer, was Rs. 43·5 lakhs. Both Grant and Shore (as also other later writers) took these figures for comparison with all subsequent assessments.

Todar Mal's assessment: Zemindari—63·4 lakhs: Jaigir—43·5 lakhs.

8. A settlement according to Akbar's plan would ordinarily last for 10 years: but whatever the time taken for Todar Mal's assessment of Rs. 63·4 lakhs, it remained unaltered till the revision made by Sultan Shuja in 1658, *i.e.*, 76 years after the commencement of that operation. The method adopted by Sultan Shuja is not definitely known: nor is any light thrown by Grant's Analysis or Shore's discourses; but it was believed that his assessment, having been effected during the best period of Mughal Rule in Bengal, could be taken as a good and dependable background.† Sultan Shuja's settlement resulted in an increase in the assessment of the *khalsa* (zemindari) lands to Rs. 73·3 lakhs, *i.e.*, by Rs. 9·9 lakhs or about 15 per cent. By this time certain new territories had been added by annexation or conquest, and these additions extended the limits of the Subah to

Sultan Shuja's assessment (1658): Zemindari—73·3 lakhs: New territories—14·4 lakhs: Jaigirs—43·5 lakhs.

* "Khalsa" is from Arabic "khalisah" meaning "pure," and when applied to the State, meant the revenue department or the exchequer. Compare khalsa sherefa (khalisah-i-sharifah) meaning the royal treasury.

† The English Supervisors, appointed when the Dewani was obtained in 1765, were, therefore, directed to investigate up to this period.

the Nimgiri Hills (Orissa) on the south-west, and on the north-west included the Rangpur portion of old Coach-Behar, Goalpara of Assam, and Kamrup, and on the east Tippera from Arakan. A new mahal of *peshkush* was also formed for the fixed tribute from the Rajas of Bishenpur, Pachet, Chandrakona, etc., on the hill frontiers of circar Madarun. A portion of the Sundarbans (called then Chunderbund) was also brought under assessment as a separate circar—Morad Khanah or Jerad Khanah. These additional territories gave an additional zemindari assessment of Rs. 14·4 lakhs, making a total of Rs. 87·7 lakhs. There was no increase in *Jaigir* lands. The total number of zemindari mahals (excluding *Jaigirs*) by parganas or parts of parganas (sometimes called tarafs) had become 1,350.

Changed methods by Murshid Kuli Khan, 1722-25.

9. There was again no alteration in the revenue-demand for 64 years, and the next revision was commenced during the eventful period of Murshid Kuli Khan's Subahdari (1722-25). Murshid Kuli Khan first held service in Hyderabad, when he attracted the notice of Emperor Aurangzeb. His name was then Jaffir Khan, later called Kartaleb Khan. On the death of Azim Oosan in 1712, Murshid Kuli Khan was appointed Nabob of the Subah of Bengal with the new name. He was a stern financier but not a prudent administrator. He suspected that the zemindars were making much larger profits than what was originally intended: or, in other words, substantial amounts of the rents from the raiyats, which were due to the Sovereign Power, were being clandestinely appropriated by them. This in all probability was true; for, during the long interval of about a century and a half—the best and most prosperous period of Mughal Rule—the country had improved immensely.

The "hastabood" method.

10. Murshid Kuli Khan's settlement resulted in an increase of zemindari assessment by about 14 per cent. This, judging from the lapse of time from the previous settlement of 1658, cannot be said to have been excessive. But the method adopted, or rather attempted to be adopted by him, was quite different

from the method in Akbar's code. It was called the "hastabood" method * as opposed to what may be called "produce method" of Akbar. It consisted of ascertaining what rents the zemindars were actually getting from their tenants, and then basing the State-demand on the total of such rents, after making certain allowances for costs and for profit. The allowance of costs was supposed to be the actual cost incurred, and as regards profits, these were supposed to be covered by the entire receipts from certain lands called *nankar* or *khamar*,† and, from the nature of the arrangement, included also all receipts from extensions of cultivation and improvements till the next revision.

Political situation: loss of territories.

11. But the political horizon of Hindoostan was undergoing a great change. The decline of the Great Mughal Empire had already commenced, and while the authority of the Central Government was getting weaker, there were troubles both in the interior and the frontiers of the Subah. A large portion of Orissa yielding a revenue of over Rs. 3 lakhs was lost, the *peshkush* ‡ or fixed tribute from the Rajas of Bishenpur, Pachet, etc., amounting to about half a lakh, had ceased, while there were troubles on the north-eastern frontiers. The disturbances in the Burdwan area had been quelled, but in Jessore, Sitaram Rai raised his banner of revolt.

Murshid Kuli Khan's assessment.

12. Murshid Kuli Khan's *hastabood* method was really properly done only in the Satgong area. For the rest, it was more or less summary, and has rightly been charac-

* The basis of assessment is henceforth not a "tukseem" or estimation of the capacity of the soil for produce, but "jumma kaumil" or the actual rental assets. Jaffir Khan's methods, says Grant, "first violated the constitution of India."

The term "hastabood" is from Persian "hast-o-bud" meaning what is and was. Technically it means the assets or resources of the country. "Kaumul" or "kamul" is from Arabic "kamil" meaning perfect or complete.

† The earliest mention in Grant of these terms is with reference to his analysis of the assessment of 1135 B.S. (1728-29): see paragraph 28 *post*.

‡ From Persian "pesh" meaning "from," and "kush" meaning "draw." Technically a fixed amount drawn from another State as a tribute (as opposed to revenue) in token of obeisance.

terised by later critics as arbitrary and unconstitutional. The result of his revision was an increase in the zemindari assessment by about Rs. 15·4 lakhs over the previous revenue for the corresponding territory, of about Rs. 84·4 lakhs. He also resumed about one-fourth of the *Jaigir* lands as *taufir* * or excess lands held surreptitiously by the *Jaigirdars*. The amount of revenue for these lands was Rs. 10·2 lakhs and thus his total assessment was Rs. 109·6 lakhs as against Rs. 87·7 lakhs of Sultan Shuja's assessment of 1658.

His measures for realisation of revenue.

13. But Murshid Kuli Khan's methods for realisation of the State-demand from the zemindars were harsh and unknown to the more constitutional procedure during the best period of Mughal Rule. He used to keep the defaulters in confinement, and various kinds of ill-treatment and disgrace are imputed to him. Many zemindars were dispossessed, and there was great resentment and discontent throughout. The forfeiture of such a large proportion of *Jaigir* lands also operated to alienate his own officials, the great *Jaigirdars*, who held the military forces and controlled the civil establishment. From this time the entire administration began to fall into disorder; and it was as if to consolidate his own position in those critical times, that Murshid Kuli Khan arrogated to himself the right to receive homage from the bigger zemindars, which was previously due to the Emperor. The presents received in this way amounted to over half a lakh of rupees every year. Another innovation introduced by Murshid Kuli Khan was exaction of a *nazar* or fee, on succession of and transfer by zemindars, and this brought in an extra or irregular revenue (called thus *abwab*) of no less than Rs. 14·52 lakhs.

Exaction of recognition-fee—14·52 lakhs.

Murshid Kuli Khan's methods given up by Shujauddin Khan—1728.

14. These practices of Murshid Kuli Khan and his arbitrary methods for realisation of the Government revenue had very soon to be abandoned. Murshid Kuli Khan died in

* Taufir, sometimes written as "tawfur," is Persian, meaning "increase" or new or extra, not accounted for before

1725, and the first thing done by his successor Nabob Shujauddin, was to release the zemindars who had been kept under confinement and to restore others who had been dispossessed. The exaction of *nazar* on succession or transfer was also probably given up: for no such receipt is mentioned in the analysis of the revenues of later years given by Grant.

Subahdari abwabs during 1727 to 1739.

15. But although there was, thus far, an attempt to revert to the constitutional methods of the earlier times, the device of arbitrary imposts (called *abwabs*), to augment the resources of the State, held fast, and in fact began to be resorted to in a worse form. The subahdari *abwabs** imposed on the zemindars on various pleas during the 12 years from 1727 to 1739 A.D. amounted to no less than Rs. 21·7 lakhs or over 20 per cent. of their *asal* or proper *jumma*; and by Ali Vardi Khan's time (1756), further *abwabs* amounting to Rs. 22·25 lakhs were added, making a total of Rs. 44 lakhs on an *asal*

* The Subahdari abwabs imposed between 1722 and 1756, as stated by Shore in the Appendix to his minute of 18th June, 1789, were:—

		Rupees (in thousands)	
By Jaffir Khan—			
1. Wajashat khasnovees	..	2,59	
			2,59
By Shujauddin Khan—			
2. Nuzerana mukarari	...	6,48	
3. Serf mahthout	...	1,53	
4. Mathout peelkhana	...	3,23	
5. Fauzdary abwab	...	7,91	
Total	...		19,15
By Ali Vardi Khan—			
6. Chauth Maharatta	...	15,32	
7. Ahuk or Khist Gaur	...	1,92	
8. Nuzeranah Munsoor-Gunge	..	5,02	
Total	..		22,26
Total abwabs during 1722 to 1756	...		41,00 (or Rs. 44 lakhs)

jumma of Rs. 109·6 lakhs. The worst aspect of these abwabs was that when first imposed they were held out as intended for a temporary purpose, as for example the *chauth* to bribe the Maharattas, or the charge to meet the expenses of bringing bricks from Gaur to build the city of Murshidabad : but once imposed they were never given up. The demoralising effect of this practice on the administration was obvious, and its repercussion on the tenantry was disastrous.*

16. During the period 1728 to 1756, there was no regular revision of assessment either according to Emperor Akbar's scheme or by the " hastabood method " of Murshid Kuli Khan : and all the increase obtained was by the arbitrary imposts of abwabs. By 1756, the zemindari assessment thus stood at Rs. 153·18 lakhs, and with Rs. 33·27 lakhs for *jaigir* lands, the total was Rs. 186·45 lakhs.

Cossim Ali's assessment (1762) raised the total to Rs. 256 lakhs

17. The next and last Mughal assessment was by Cossim Ali about 3 years before the acquisition of Dewani by the English East India Company. He is stated to have made a " hastabood " investigation of a number of districts (Birbhum, Dinajpur, Purneah, Dacca, Rajmahal, Rangpur and Chittagong) : and his assessment resulted in an increase of the previous zemindari assessment of Rs. 153·18 lakhs to Rs. 172·43 lakhs, and a further addition of Rs. 83·81 lakhs for supposed *taufir* (or excess land) and jaigirs, making a total of Rs. 256·24 lakhs. We will see later that this heavy increase was a mere paper-assessment which was never realised. The total increase in 40 years from Murshid Kuli Khan's assessment of Rs. 142·88 lakhs was, according to Cossim Ali's assessment, Rs. 113·36 lakhs or 80 per cent. while during the 140 years from Akbar's settlement of Rs. 106·93 lakhs to Murshid Kuli Khan's assessment of Rs. 142·88 lakhs, the increase was only Rs. 35·95 lakhs, inspite of the fact that over Rs. 14 lakhs was for additional territories acquired since Akbar's time.

* See paragraph 6 of Chapter VI *post*.

Shore's summary of Mughal assessments.

18. In Appendix No. 1 to Shore's minute of 18th June, 1789, the "Progressive Account of the Settlement of Bengal from 1582 to 1763," is summarised in the following manner :—

	Rupees (in thousands)	Total (Rupees in thousands)
Turry Mall's Settlement, 1582—		
Khalsa lands ...	63,41	
Jaigir or assigned lands ..	43,49	
		106,93
Sultan Sujah's Settlement, 1658—		
Khalsa lands, as above ...	63,41	
Increase on a hastabood in 76 years ...	9,87	
Annexation of territory ...	14,36	
Total khalsa ...	87,67	
Jaigir or assigned lands ..	43,49	
		131,16
Jaffir Khan (Murshid Kuli Khan's) Settlement, 1722—		
Khalsa land, as above according to Sultan Sujah's settlement ...	87,67	
Increase in 64 years ...	11,72	
Resumed lands from the jaigir appropriations ...	10,22	
Total khalsa ...	109,61	
Jaigir or assigned lands ...	33,27	
		142,88
Shuja Khan's Settlement, 1728—		
Khalsa lands ...	109,18	
Jaigir or assigned lands ...	33,27	
		142,45
Cossim Ali's Settlement, 1763—		
Jumma as above, according to Shuja Khan's assessment ...	142,45	
Deduct—dismembered territory, mazcoorat, Dacca, jaigir and sebandi charges ...	4,13	
Add—taxes progressively imposed from the year 1722 to 1763 ...	117,92	
		256,24

Cossim Ali's total of Rs. 2·56 crores included, however, about 9 lakhs on account of *sayer*, *i.e.*, duties on merchandise, *gunges*, *hats*, etc. The assessment on land proper was thus

Rs. 2·47 crores. It would appear also that Cossim Ali resumed practically all the jaigir lands and assessed them as khalsa. This was apparently due to the changed method of administration introduced at the instance of the Company, when Cossim Ali was made Nabob in 1760.

Cossim Ali sought to appropriate the entire rental of the raiyats :

19. But to understand the heavy increase demanded by Cossim Ali, it is necessary to know more fully the methods of assessment adopted by him. "Cossim Ali," wrote Shore (para. 45 of his minute, dated 18th June, 1789), "attempted to realise for the State nearly all that the raiyats paid * * * and at once demanded from the country, in addition to the impositions of his predecessor, Rs. 74,81,340." The amount of Rs. 247 lakhs assessed on the zemindars was thus the entire gross rental of the raiyats and left little or no margin for the zemindars : and Shore explained this further in para. 66 of the same minute, observing that "Cossim Ali reduced the stipends of intermediate agency and attempted to abolish every gradation of subjects between the Government and the cultivator."* Even in the adoption of the gross rents of the raiyats, Cossim Ali acted most arbitrarily. He assumed rents which the raiyats did not or could not pay : and by way of illustration Shore cited the instance of Dinajpur zemindari where a large body of raiyats "had been forced into desertions." The rents of these raiyats amounted to over Rs. 2⅓ lakhs (paras. 48 to 57 of the same minute).

but even in this he assumed excessive rents.

* Philip Francis, in his minutes, wrote that Cossim Ali's principle was that "whatever the raiyats paid should be the property of Government, thereby totally excluding the zemindars." Verelst attributed this to Cossim Ali's fear of the growing power of the English—observing that it was "impossible that Mir Cossim should rest the foundation of his Government upon our (of the English) support." If so, Cossim Ali must have hit upon a very wrong policy : for he alienated the English as also the great body of zemindars. However, his assessment was only a paper-assessment, which never materialised. It had, nevertheless, a very mischievous effect, as will appear later, on the ideas which actuated the revenue-settlements of the Company during their experimental period from 1770 to 1786.

Cossim Ali's assessment never realised.

20. Cossim Ali's assessment was, however, merely on paper. "That this amount was ever realised by Cossim Ali, no proof has yet been exhibited" (Shore's same minute, para. 47), and "inspite of all his skill and exertions" (para. 55), heavy arrears were accumulating. When the revenue-management was made over to Nund Coomar in 1763, the unpaid balance of previous years had amounted to Rs. 1,76,62,713 (para. 68).

The ceded lands between 1759 to 1765.

21. By this time the revenue arrangement of certain parts of Bengal had passed on to the direct authority of the English Company. A tract of country comprising twenty-four Parganas with an area of about 882 square miles * and extending as far as Kulpi, became their zemindari or super-zemindari† between the years 1757 and 1759. An assignment of the revenues of Burdwan for defraying the military expenses was obtained from Mir Cossim on 17th November, 1760.‡ In December of the same year, Mir Cossim also ceded Chittagong to the Company. Under the same grant, Midnapore also came under the Company's control, although a portion only could be occupied by 1761,§ and the rest not till the Dewani of 1765.

* This comprised only a small portion of the present district of 24-Parganas, which has an area of 4,640 square miles. The salt lakes (commencing from the suburbs of Calcutta called Dhapa) and the Sundarbans were outside.

† It was subject to a revenue of Rs. 2,22,958 to be paid to the Nabob's exchequer. The first acquisition of this zemindari was by the treaty with Mir Jafar in 1757: but later it became Clive's jaigir for 10 years, and thereafter of the Company in perpetuity. The legal position has been a subject of controversy: but since the Dewani of the entire Subah in 1765 and then the gradual accession of sovereign power, it ceased to be a matter of any importance. Calcutta itself, comprising the three villages of Gobindapur, Kalikata and Sutanati, had been purchased by the Company from the zemindars in 1698, and the land-revenue payable by them was Rs. 1,195. The treaty of 1757 further confirmed this and also ceded a further 600 yards beyond the Maharatta ditch

‡ This assignment was received really in April, 1758, but owing to opposition and obstruction by the Raja (Tilak Chand), it was renewed in 1760. The Raja, however, continued an organised resistance for some years till stopped by military force.

§ Hijli and Tamluk did not come under the Company's control till 1765.

All these areas are generally called " ceded lands " in the early records, to distinguish them from the rest of the Dewani obtained in 1765. Although not yet the Dewan of the Province, the Company appears to have exercised complete control over the revenue-management of the ceded areas, including policies and actual settlements with the subordinate landholders.*

The twenty-four Parganas.

22. The twenty-four Parganas were held by a large number of inferior landholders called chaudhuris, taluqdars, mucuddums or ijaradars.† The land-revenue assessed on them was already high, amounting to Rs. 5,35,105.‡ The Company, advised by J. Holwell, started with a novel plan of farming out in 15 lots to the highest bidders, for a term of three years, and thus their first settlement raised the assessment to Rs. 7,65,700.§ This of course meant a considerable raising of the rents of the landholders by the new " farmers," at whose mercy they were thus placed. The representation they made‖ speaks for itself. They had, they said, " with great labour and care, as well as great expense, cleared the same from jungles, removing the savage inhabitants (meaning tigers, leopards and other ferocious animals) of the woods, in order to people the lands with human species, and by an indefatigable, unwearied industry

* There was no control by the Subahdar in these matters. But apart from the circumstances under which these cessions or assignments were obtained or rather exacted, it was perhaps not a strange feature of the revenue-administration of the later Mughal period: for, in all zemindaries, such internal details, though vitally affecting the people, were left entirely to the zemindars, and what the State concerned itself with was the revenue which the latter had to pay.

† Grant's Analysis, dated 27th April, 1786. Holwell in his " Interesting Historical Events " (Long's Selections, No. 241) gives the number of these landholders 500 to 600.

‡ The asal tumary was only Rs. 2,22,958 (the same as the revenue payable by the Company), while of the balance, Rs. 83,445 comprised the abwabs, and Rs. 1,80,621 was the assessment on resumed jaigirs (Grant's Analysis, *ibid.*).

§ It is interesting to note that Holwell, who stigmatised the Bengalees as " a race of people who, from their infancy, are utter strangers to the very idea of common faith or honesty " (Interesting Historical Events, Pt. I, p. 218, Indian Tracts, p. 173, quoted in Long's Selections, No. 241), had no hesitation in bidding for and taking two of these large " farmings "—Meddunmull (with Ekaburpur) and Hathiagur (with Meydah).

‖ Long's Selections, No. 241.

of a period of years, have the happiness to see their labours rewarded and the lands flourish; for the still greater encouraging and promoting of which, their ancestors removed themselves and families and planted themselves in the heart of the new farmed lands, where they built their habitation, and by their presence and gentle treatment had the pleasure to see their tenants daily increase, etc., etc." There was much of truth in what they said, and one immediate effect of this method of contracting out the revenue-collection to auction-bidders who had no permanent interest, was that the land-holders lost their zeal in maintaining the embankments which were an absolute necessity for cultivation in a great part of this area.* Holwell's plan was not, however, repeated when the term of three years expired, and the revenue from 1762-63 to 1765-66 averaged about Rs. 7 lakhs.

Chittagong.

23. Chittagong† was not conquered by the Mughals till 1665 during the reign of Emperor Aurangzeb.‡ For some years it yielded no revenue, but all expenses, particularly for defence against the incursions of the Mughs and the Arakanese, had to be met from Dacca.§ By 1713 when Mir Hadi was Governor of Chittagong, the revenues amounted to Rs. 68,423,‖ and thereafter, the revenues seem to have increased with extraordinary strides. It was a country of petty landholders or zemindars numbering over 1,400 in an area of 2,987 square miles,¶ when the English Company obtained

* In some parts the cultivators left their lands. See James Westland's Report on the District of Jessore, 1874. The question of maintaining these bunds thus became a matter of concern to the authorities at a very early period: see Francis's Minutes, etc., pp. 133-34.

† Chittagong was famous as a port of foreign trade in the 16th century and earlier. The Portuguese called it "Porto Grande," as they called Satgaon their "Porto Piqueno." See Bengal Past and Present, Vol. II, pp. 383-84, and Vol. III, p. 18.

‡ It is curious that Abul Fazl, writing in 1603, still mentions sircar Chatgong with a revenue of 11 lakhs of dams: another instance to support the doubts about any regular settlement of Subah Bengal during Akbar's time.

§ Memorandum on the Revenue History of Chittagong, by H. J. S. Cotton, 1880.

‖ Cotton's Revenue History, *ibid.*

¶ Grant's Analysis, 27th April, 1786.

the charge of its revenue management in 1760. The revenue assessment then was Rs. 4,43,919, but as a matter of fact the Subahdars of Bengal seldom received more than two lakhs.* Henry Verelst, who was appointed Chief at Chittagong, did not follow Holwell's plan, but had direct dealings with the landholders, and the revenue receipts during the years 1762 to 1765 remained steady at about Rs. 4 lakhs a year.

Burdwan.

24. The history of Burdwan zemindari is a history of subjugation of a number of petty local zemindars or landholders, and consolidation of their lands under one head-zemindar, the Raja of Burdwan. The entire area which thus formed *chukla*† Burdwan and comprised 5,174 square miles, is believed to have been assessed by Murshid Kuli Khan at Rs. 22,51,306 to which Rs. 8,29,933 was subsequently added by *abwabs*, and Rs. 19,166 for resumed *jaigirs*, making a total of Rs. 31 lakhs in 1760. When the English Company attempted to take charge, the Raja was not in a mood to recognise them : but eventually in December, 1760, there was an agreement with the Raja's Vakil Rajchandra Ray for a net assessment of Rs. 27 lakhs.‡ This apparently proved ineffectual :

* Henry Verelst, View, etc., p. 74 cited in Firminger, Vol. I, p. cxiii.

† " Chuklas " or " chaklas " as grand territorial divisions were introduced by Murshid Kuli Khan. But chuklas as small divisions were known during the Pathan period (see Mymensingh Ballads by Dr. Dinesh Sen). It is a Bengali term, probably a corruption of Sanskrit " chakra " or circle.

‡ This was calculated as below:—

	Rs.
Khalsa, jaigir and chauth ...	26,37,937
Sundry allowances on Durbar charges etc., to the Sircar. (Q. Was it a new abwab?) ...	2,18,182
Total ...	28,56,119
Deductions—	
Pargana Bealan (Balia) belonging to the Company ...	38,750
Sutimahal (sayer or duties on cloth manufactured) abolished ...	1,16,711
Net ...	27,00,658

—Long's Selections, No. 487.

but in the first settlement the Company repeated the same mistake that they had made in dealing with the twenty-four parganas. Settlement of the different units into which this vast zemindari was divided, was made with the highest bidders for a term of three years. This fetched a paper-assessment of as much as Rs. 43,57,334. The result was disastrous. The method gave a direct inducement to " men of desperate fortunes," to bid on the off chance of extorting from the tenantry, themselves having " no method of livelihood " and risking nothing. To quote from Henry Verelst,* who later came as Superintendent at Burdwan :—

" With these views, they cared not what they bid: and while the old farmers, who had possession, perhaps from father to son for many years past, continued to rise in their offers, and probably exceeded the real value of the lands, rather than be turned out of what they had esteemed their estates and habitations, and insulted by new comers; these last always thought that they could afford something more. Thus the greatest part of the province fell into the hands of a set of rapacious wretches..... The substantial farmers who, rather than quit their habitations, had purchased at the outcry, at an exhorbitant rate, were obliged to relinquish their farms on making good the balances out of their private fortunes, by which many were ruined, whilst all the satisfaction that could be obtained from the others, was to turn them out, without hopes of ever recovering anything from them."

The consequence of this was that there were heavy arrears, and no more than an average of about 12 lakhs a year could be collected during 1760 to 1762. The position was improved no doubt by sales of other properties of defaulters and other arrangements, and yet the eventual total collection of the three years amounted to only about Rs. 78 lakhs or 26 lakhs average of a year. Verelst's method was " to engage men of substance and character with a promise that if they exerted themselves in the improvements, they should

* Verelst, View, etc., Appendix No. 131, pages 214-16.

never be dispossessed, but meet with all the encouragement and favour from the Company." As a result of this method, the revenue from Burdwan was stabilised by the year 1765-66, at about 36 lakhs. An improvement was gradually obtained by *hastabood* investigations of actual rentals, and *kefayet* or additional revenue from *baze-zemin* or lands held surreptitiously without rent. The net revenue reached was thus a little over forty and a half lakhs.*

Midnapore.

25. The Mughal Government was hardly ever in peaceful possession of any portion of the Subah of Orissa. Apart from the more intensive raids by the Maharattas, the zemindars and other chiefs in the area were a constant trouble. This was the position when the English obtained an occupation of two of the chuklas about a year after the cession in 1760. A great part of the country was covered with wild forest-growth and subject to sudden and extensive inundations, while the sea-coast area was largely used for salt manufacture. The chiefs in the jungle area were described as "rebellious free-booters" and their subjects as "bred up as much for pillage as cultivating." The zemindars were numerous, and in one pargana, Kashijora, out of 3,700 families resident therein, 1,500 men were styled *khashnabises* and their status was uncertain.† The settlement first attempted was thus more or less by way of reconciliation with a view more to establishing order than to obtaining the fullest revenue. The revenue assessed in 1761 by the Resident Mr. Johnstone, who was there with a good military force, thus amounted to Rs. 6,65,855, and the average realisation during the five years from 1760-61 to 1764-65 was about Rs. 6 lakhs only.

The Dewani lands during 1763 to 1765.

26. The remaining lands of the Subah, called then simply "Dewani lands" for distinction from "ceded lands," had an area of about 80,797 square miles, and according to Murshid Kuli Khan's settlement of 1722-25, the assess-

* Grant's Analysis, 27th April, 1786. Grant's figure, however, appears to be inclusive of pargana Balia, for which he gives Rs. 1,62,199.

† Firminger, Bengal District Records, Midnapur, Vol. I.

ment was Rs. 114 lakhs (*viz.*, Khalsa—Rs. 80 lakhs and Jaigir—Rs. 34 lakhs). The gradual imposts of subahdari abwabs had raised this amount to Rs. 146 lakhs by the time of Ali Vardi Khan (1757), *i.e.*, by over 27 per cent. Ignoring the paper-assessment of Cossim Ali, the gross amounts of the settlements during the three years immediately preceding the assumption of Dewani by the East India Company, were* :—

	Rs.
1763-64 (1170 B.S.) by Nand Coomer ...	177·05 lakhs
1764-65 (1171 B.S.) by Nand Coomer ...	176·98 ,,
1765-66 (1172 B.S.) by Md. Reza Khan	160·29 ,,

The Assessment was still considerably in excess of that in Ali Vardi Khan's time, less than 10 years before. The amounts of both Ali Vardi Khan's and the above settlements included, however, the *sayer* (internal duties) and the customs, and the land revenue proper of the Dewani lands did not exceed Rs. 152 lakhs in 1765-66. Adding the revenue assessed by the Company on the ceded lands, the total assessment of the Subah stood thus at about Rs. 209 lakhs.

Method of assessment of Dewani lands during 1763 to 1765.

27. No new abwabs were imposed during this period but apparently the assessment was being revised every year. From the manner in which the gross *jumma* and deductions are exhibited by Shore and Grant, it would seem that the method adopted was the " hastabood " method which had come into vogue, the assessment being based on actual rental assets from which deductions were made for collection and management charges (called generally *saranjami*), not calculated by a definite percentage but on what appeared to be the actuals in particular estate. Next were deducted charges for maintenance of embankments (called *poolbundi*). Then were deducted charities† such as to Brahmins, pensions or allow-

* Shore's minute of 18th June, 1789, paragraph 68.

† After the acquisition of Dewani, these items required the approval of the Government. In fact the amounts were not deducted from the assessment, but had to be drawn from the Treasury on proper authority, presumably to be accounted for. The allowances were discontinued with the Decennial Settlement. The

ances such as to Bow Begum, and certain religious expenses called *Deo kharcha*. Lastly an allowance for the subsistence or profit of the zemindar, called *nankar*, was deducted.

Nankar or zemindar's subsistence.

28. It is generally believed that the *nankar** lands represented the only profit to the zemindars during the settlements under the Mughal Rule. *Nankar* lands were extensive in Subah Behar,† where landlord's *bakast* is a burning question even to-day; but it is a striking fact that, in Bengal, the assets of these lands formed a very insignificant proportion of the gross assets or the revenue payable to the State. Grant's Analysis of Shuja Khan's settlement of Bengal in 1728 shows the total assets of *nankar* lands in the area exclusive of the later ceded lands as only Rs. 42,871, against a revenue-assessment of Rs. 106 lakhs, or much less than ·5 per cent. The maximum was in Burdwan where it was 2·2 per cent. The analysis of the assessment of Dinajpur zemindari in 1760 gave about 1·5 per cent., while the analysis of the assessment of Rajshahi in 1765 gave only ·4 per cent. During the best periods of Mughal administration, revisions of settlements in

total of these charities in 1786-87 amounted to Rs. 13,240 in the ceded lands and Rs. 73,830 in the Dewani lands: Shore's Statement of zemindari charges for 1193 B.S., appendix to minute dated 18th June, 1789.

* Nankar or Naunkar is derived from Persian term "nan" meaning "bread." Literally it means an allowance for bread or subsistence. The term is not to be confused with muscoorat or muscorat which finds mention in the old records. Muscoorat is plural of Arabic "mazkur," and literally means matters or items which are "before mentioned or specified." It is a comprehensive term which includes all items of deductions specified in the accounts, such as for charges of collection and management (saranjami) and other actual outgoings of the zemindars. It also includes nankar.

† For instance in Sircar Shahabad, the nankar lands gave 1·18 lakhs on an assessment of Rs. 6·09 lakhs, or over 16 per cent. in 1765. In Sircar Behar it was Rs. 9·64 lakhs on an assessment of Rs. 22·14 lakhs in 1750, or over 40 per cent.: Grant's Supplement dated 30th June, 1787. Shore's idea was that the proper margin of profits to the landlords should be 35 per cent. of the net land-revenue, or 23½ per cent. of the gross rental, exclusive of the costs of collection and management: Minute dated 18th June, 1789, paragraph 109. A lesser margin was bound to lead to exactions on the tenantry: and Shore suspected that with the tight assessment then made, the zemindars must have been realising from the raiyats, in one shape or other, as much as half or three-fifths of the gross produce.

Bengal took place only at long intervals, and the truth seems to be that the zemindars enjoyed all the benefits of increased assets between one settlement and another. The imposts of subahdari *abwabs* between 1725 and 1756 did not altar the position, because these were kept separate and were separately charged on the tenantry. Difficulties and discontent, therefore, arose when, from the year 1762, the novel method of annual revisions was started, in which nevertheless no more than the *nankar* lands was left for the zemindar's subsistence and profit: and it will only be natural to presume that the landlords must have been recouping as best as they could by exactions from the raiyats. This aspect of the position has to be remembered in order to realise properly the effects of the unfortunate experimental methods adopted by the Company after 1765, with which we will deal more fully in a later chapter.

CHAPTER V

THE MUGHAL PERIOD (*contd.*)

(*a*) *Jaigirs*

How the Mughal jaigirs were formed.

It nas already been observed that the *jaigirs** formed by the Mughal Rulers comprised, mainly, lands confiscated from the militant Bhuiyas, Rajas and other Zemindars who had resisted their invasion.† *Jaigirs* were also carved out of the estates of submissive zemindars, and when this was done the zemindars were compensated by an allowance called *malikana*‡—a sort of perpetual annuity for which the *jaigir* was liable. There were also instances of actual purchase when *jaigirs* were allotted.

Jaigirs were assignments of revenue.

2. The *jaigirs* were really assignments not of land but of the revenue which would otherwise be derived by the State from the lands comprising them. They were intended "for maintenance of *mansubdars* and other officers of Government,"§ and represented not only what we call now pay

* Jaigir or Jagheer is from Persian "ja" and "gir," meaning "the place of taking:" and hence technically, taking or assignment of the Government share of the revenue to an individual for service.

† For example, Bhabeswar, the ancestor of Naldanga zemindars, got for his reward parganas Syedpur, Amirpur, Muragacha and Mullickpur as *jaigir* out of the territory of rebellious Pratapaditya, with the office of *killadar*, and later invested with the title of Raja. Murshid Kuli Khan abolished this *killa* and resumed the *jaigir*, *i.e.*, annexed it to *khalsa*: Settlement Report, Jessore, by Mr. M. A. Momin, C.I.E.

‡ See Appendix 12 to Shore's Minute of 2nd April, 1788, in which he quotes authorities and instances.

§ Shore's Minute, dated 18th June, 1789, para. 12.

of an officer but also the cost of the military force or other establishment which the officer had to maintain to perform his allotted functions. The assignments of *jaigirs* thus covered the entire cost of the civil and military establishment of the Government, and presented a peculiar feature of the financial and budgetary arrangements of the Mughal administration.*

Several kinds of jaigirs—

The largest *jaigir* was that of the Subahdar himself as *Nazim*, called "Jaigir Sircar." The revenue which might otherwise be assessed on it, was estimated in Murshid Kuli Khan's time (1722) at Rs. 11,52,870 per annum,† and the *hastabood* of Cossim Ali (1763) gave Rs. 25,18,070‡ as its assets then. This was meant "to support a great part of the military for the internal defence of the country, to defray the expenses of embassies or negotiations abroad, besides the ordinary charges entire of the remainder of the civil list composed of the household and high courts of fauzdari or criminal judicature."§ A *jaigir* of this nature was perhaps a misnomer. Apart from the fact that this meant no more than allocation of receipts from a particular source for meeting particular expenses of the State,‖ the zemindars, chowdhuries and other landholders in the areas which comprised this *jaigir*, were not disturbed.

—(i) jaigir sircar

Similar to "Jaigir Sircar" was "Jaigir Dewani" or more correctly *Jaigir Bandah-i-ali Bargah*, for the dewani or revenue side of the administration. This was valued in Murshid Kuli Khan's settlement (1722) at Rs. 2,38,992: while Cossim Ali's *hastabood* (1763) gave the assets at Rs. 4,57,636.

—(ii) jaigir dewani

* We have noticed in Chapter III, that this was more or less the system during the Pathan period, till the reforms initiated by Shere Shah.

† Grant's Analysis (of Jaigir Appropriations), dated 27th April, 1786.

‡ Appendix No. 4 to Shore's Minute, dated 18th June, 1789.

§ Grant's Analysis, *ibid.* This comprised a part of Rajshahi including pargana Bhetooreah.

‖ But it may be that any surplus became the private wealth of the Nazim.

The other *jaigirs* had a different aspect and were really *jaigir*-proper. They were for *mansubdars* and other officials in charge of departments, generally termed "Jaigir Bukshee" or "Bukshian Azam," and those for the "grand commanders," including the *jaigir* originally assigned to Ameer-ul-Omrah. These *jaigirs* amounted to an assignment of a total revenue of Rs. 1,08,530, and the assets of the lands comprising them were estimated by Cossim Ali (1763) at Rs. 1,15,091.

—(*iii*) jaigir bukshee

Of a somewhat different nature were the *jaigirs* to the governors or combined military and revenue officials on the frontiers and in the turbulent tracts. These were more properly called "Mushroot Tanahjat,"* but included pensions, and also odd items such as *Mutseddian*† *khalsa* and *Nowara.*‡ The total under these heads amounted to a revenue assignment of Rs. 65,237.

—(*iv*) jaigir tanahjat

Similar to *jaigir tanahjat* were *jaigirs* to frontier landholders and mountaineers, of the nature of feudal possessions for guarding the defiles. The revenue assignment for these amounted to Rs. 52,322.

Grant mentions two personal *jaigirs* of considerable extent. One of them was for the Nabob's eldest son, Nazim-ul-Dowlah, and the other Seyf-ul-Dowlah, the second son's *jaigir*. These amounted to a revenue assignment of as much as Rs. 7,56,879.

—(*v*) personal jaigirs

All the remaining *jaigirs* for the maintenance of officers and their establishment were called by the general term "pai-baki:"§ They

—(*vi*) jaigir paibaki.

* From Persian *mashrut-i-t'hanajat*, meaning conditional appropriations of land in *jaigir* for garrisons and pensions, *e.g.*, Moshroot Akbernagur Telliagury.

† "Mutseddy" from Arabic *mutasaddi*, meaning intent upon. The term included writers, accountants, etc., in the *khalsa* office.

‡ "Nowara," a mixed term from Sanskrit "*nau*" meaning a boat. Establishment of boats or navy.

§ From Persian "pai" meaning foot and "baki" meaning balance: *i.e.*, sundry purposes under the head of "balances."

included the large " nowara " assignments* for the maintenance of a fleet of boats in the river Pudma and the other rivers in Jahangirnagar or Dacca. The revenue assignment of these sundry *jaigirs* amounted to Rs. 9,07,173.

Mixed character of the jaigirs.

3. English commentators have generally taken the view that the *jaigirs* in Bengal during the Mughal Period were only assignments of the revenue due to the Government, and not assignments of the lands which comprised the *jaigirs*. The question, however, is not free from controversy. The *jaigirdars* were allowed to settle tenants in the lands of their *jaigirs*, and deal with the subordinate holders and occupiers of land in the same way as an ordinary landholder : † and any margin between the assets (*i.e.*, rents from the tenants) and the assumed revenue due to the Government, was their private gain. Such was undoubtedly the position during the first 140 years of the Mughal Rule, from Todar Mal's settlement of 1582 to the time of Murshid Kuli Khan (1722). There was no alteration in territorial limits of the *jaigirs* during this period, and while the rental profits must have gone on increasing, the supposed assignment of revenue was kept at the same figure, *viz.*, 43,48,892. Murshid Kuli Khan resumed a considerable area of *jaigir* lands bringing in an additional revenue to the *khalsa* of about ten and a quarter lakh of rupees. But the amount of *jaigir*-assignments was also reduced to Rs. 33 lakhs odd, exactly by the same amount.‡ It would seem thus that Murshid Kuli Khan only effected an economy by abolishing some of the offices of these functionaries, and not by questioning the extra profits which the *jaigirdars* were making over and above the amounts of revenue assigned to them. From all these circumstances, the Mughal

* One of these Nowara Jaigirdars was the ancestor of the present Roy family of Rajbari (Banibaha). Like other *jaigirs*, his *jaigir* was also resumed and formed into zemindari during the time of Cossim Ali.

† Perhaps with greater license owing to their privileged position.

‡ Resumptions by Murshid Kuli Khan included also what were called " taufir " lands, which literally meant excess lands over what were originally granted.

jaigirs would perhaps be more properly described as service-tenures,* free from any revenue charge, but conditional on certain specified services being rendered, and certain specified establishment, military or civil, being maintained. But grants not coming within this description were also irregularly described as *jaigir*. For instance the grants to the first and second sons of the Nabob could hardly be called *jaigirs*. There might have been similar grants to favourites without any condition of particular service. " A regular *jaigir*," writes Grant in his Analysis, " consists of two parts, —*first*—the *Mansubdar* rank of the person enrolled on the Omrahs, with a suitable number of horse attached to the dignity supposed to be kept in constant pay, for the eventual service of the State; and *second*—the Zimm, particulars of an assignment in land, or stated allowance in money, for the support of the personal and military establishment of the *jaigirdar*." The description of " zimm " or charge is not exhaustive, for it will have appeared that *jaigirs* were not confined to military purposes only. Shore in his minute on the " Rights and Privileges of Jaigirdars," dated 2nd April, 1788, gives a full description of *jaigirs*. A regular *jaigir* is called " conditional " where it was granted to the principal servants of the Emperor in order to meet the expenses of a particular office. It is called " unconditional " where it was independent of any office, and was personal grant for the maintenance of a dignity, a suitable number of attendants and the effective troops which the *mansubdar* or *jaigirdar* was bound to keep in readiness. The former class of *jaigirdars* was liable to perform the required services and render account therefor, and the latter class was also liable to render account of what effective troops they kept in readiness. Both the classes were thus in one sense " conditional," and though ordinarily the grants were for the life-time of the grantee, failure to perform these conditions necessarily entailed removal or displacement. Only the grants of land

* Another name for *jaigir* is " akta," a Persian term meaning " assignment of lands."

which were made to favourites without any condition, could strictly be called "unconditional" though some of such grants were called *jaigirs* irregularly, as has been stated before. One distinction between these latter and a *lakheraj* (revenue-free) grant was that they were only life-grants, while *lakheraj* grants were perpetual and passed from father to son.*

All jaigirs resumed in Cossim Ali's time:

4. Whatever was the nature of *jaigir*, one common incident was that its continuance depended on the will and pleasure of the Sovereign: and *jaigirs* were always resumable as circumstances changed. From their nature they could not be transferable. When, after the treaty with the Nabob, the charge of military defence was taken over by the Company, and a new form of administration with a different financial system was introduced, all these *jaigirs* automatically ceased.† Cossim Ali in his estimates of revenue ignored these *jaigirdars* and his plan contemplated a complete resumption of all these various kinds of *jaigirs*. The resumption of these *jaigirs*, however, did not mean that the *jaigirdars* were all deprived of their lands. Some of them were treated as ordinary zemindars, liable to pay the revenue assessed on their lands, and relieved of the special obligations for which the *jaigirs* were granted. *Jaigirs* thus ceased to be a practical question from the time of the Dewani of 1765.

—and converted to ordinary zemindaries.

Jaigir had not the same meaning in all Provinces:

5. The term "jaigir" was not perhaps used in the same sense in all Provinces during the Muhammadan period. For instance the "jaigir" of Fort St. George (Madras) which was obtained by the English Company from the Nabob

* See section 5 of Regulation XXXVII of 1793 where a *jaigir* is stated as a "life-grant." Field in his Introduction (p. 53) observes that "there were no hereditary dignities in the Mughal Empire."

† The only exception was probably of those which were personal grants either as pensions or otherwise, irregularly called *jaigirs* and which were later dealt with under section 5 of Regulation XXXVII of 1793.

of Arcot in the years 1750 and 1763, was a grant in lieu of the services already rendered by the Company to the Nabob and his father.* A curious feature of this *jaigir* was that it was rented in its entirety again to the same Nabob : and this continued till after the war in 1780 when the English took the management into their own hands. But whether during the Nabob's time or afterwards, the numerous zemindars and other landholders in the *jaigir*-area were not disturbed : and eventually in 1802, a permanent settlement was made with them on the lines of Bengal.

—jaigir Fort St. George

Firminger in his " Sylhet District Records " describes the Fauzdar of Sylhet during the Mughal period as a *jaigirdar*. Here, not only was no revenue taken for the State, but considerable sums of money had to be remitted from the seat of Government for its defence against the incursions of the hill-people.

—jaigir fauzdar, Sylhet.

6. The grant to Clive of the 24-parganas adjoining Calcutta has sometimes been called Lord Clive's *jaigir* : but this, from the nature of the grant, or at any rate, of the authority actually exercised, was a misnomer. The grant from Mir Jaffir, dated 20th December, 1757, was of the nature of a " parwana " or proclamation for the information of all landholders and tenants that a new zemindari had been formed in favour of the United East India Company, and they were to submit to the authority of the Company and pay their rents and tributes to them. The Company as zemindar were to pay a revenue of Rs. 2,22,958. On 13th July, 1759, a new kind of *jaigir sunnad* was granted to Lord Clive per-

Clive's jaigir of the 24-parganas round Calcutta.

* The *jaigir* to the English Company originated from special circumstances. But in this part of the country also the same essential features were the general rule. In the Fifth Report of 1812, relating to Fort St. George, the Committee observed, " With regard to the *jaigirs* granted by the Muhammadans, either as marks of favour or as rewards for public services, they generally, if not always, reverted to the State on the decease of the grantee, unless continued to his heir under a new sunnad."

sonally, assigning to him the whole of this revenue otherwise payable to the *khalsa*. There was no condition attached, and the only consideration seems to have been that it was a reward for " the eminent personal services he was considered to have rendered to the actual *Subahdar*."* But what was particularly novel was that the *sunnad* carried with it " all the sovereign proprietary uses of the soil." In 1765, the *Subahdar* issued a *parwana*, restricting the grant (called then *jaigir*) to Lord Clive personally, for a term of ten years, but thereafter it was to pass to the Company in perpetuity. This was confirmed later, on the 12th August of the same year, by the Emperor, stamped with the royal red seal, and thus called *altamga*.

(*b*) *Ayma, madadmash, etc.*

Ayma, madadmash and altamga.

7. There is no mention of revenue-free grants in Ayeen-i-Akbari. It was, however, customary for the Muhammadan Rulers to make revenue-free grants to learned and religious Moslems, or for Moslem religious purposes. These were called " ayma " or " madadmash."† There was another kind of grants, sometimes revenue-free, which were called *altamga*.‡ Grants of land, revenue-free, went by the general term *lakheraj*, *i.e.*, free from *kheraj* or revenue. The main point of distinction between these *lakheraj* grants and a *jaigir* was that the former were perpetual and transferable, and passed by succession and inheritance and no condition of service was attached to them.

* Grant's Analysis, dated 27th April, 1786.

† " Ayma " from Arabic " aimah " meaning learned or religious men. " Madadmash " is abbreviation of Persian " madad-i-maash," meaning " aid for subsistence." The difference between a *madadmash* and *ayma* grant is not always very clear : see *Jewan Lal vs. Shah Kabiruddin*, 2 M.I.A. 290.

‡ " Altamga " was a superior kind of Royal grant, so called from two Turkish words signifying " red " and "seal," such grants having been formerly sealed with a red seal. The Dewani grant of the East India Company was called an altamga, *vide* para. 6 *ante*.

Similar revenue-free grants to learned or respectable Hindus were called *brit*,* and comprised *brahmottar*, *mahatran*† and the like. Such grants by the previous Hindu Rajas appear to have been generally recognised or expressly confirmed by the Muhammadan Emperors.‡

Brit—brahmottar, mahatran.

The larger grants of *Madadmash* and *altamga*§ were probably independent of the zemindaries within the limits of which the lands were situated, but the other grants were treated as included in the zemindari accounts. Where they were so treated, the revenue otherwise derivable from the lands was deducted (under the general head "muscoorat") in fixing the *jumma* or revenue to be paid by the zemindar.

All these various kinds of revenue-free lands were called *baze-zemin* in later documents, and in English records translated as "alienated lands." An investigation which was made during the time of Grant and Shore, disclosed that the total area of these revenue-free lands in Subah Bengal was about three million acres.‖ Estimating at Rs. 2 an acre, this amounted to an alienation of a public revenue of about Rs. 60 lakhs.

Extent of revenue free grants.

There was another kind of lands included within the zemindaries which were not charged to any revenue. These were called *chakeran* lands and comprised mainly grants for

Chakeran.

* From Sanskrit 'vritti'

† Probably from Sanskrit "mahat," from which "mahat-tara"—meaning a superior person: the suffix "an" being used to signify plural.

‡ As for instance a Brahmottar of a considerable area of land was confirmed by Emperor Aurangzeb. Murshid Kuli Khan, however, refused to recognise the royal sanction.

§ *Madadmash* and *altamga* were extensive in Subah Behar, but not so in Subah Bengal.

‖ Shore's Minute, dated 18th June, 1789, paragraph 111. The investigation was made only in some districts, giving 44 lakhs of bighas equivalent to about 2 millions, and one million acre was an estimate for the remaining districts. These figures exclude *chakeran* lands.

The total area of revenue-free estates in Bengal to-day is about two million acres. But Shore's estimate included several districts which are now in Behar, Orissa and Assam.

the police and semi-police establishment for which the zemindars were responsible. As in the case of *lakheraj* lands, a deduction was made for these lands also when fixing the net *jumma* or revenue to be paid by the zemindar. The total area of these lands, at the time of the Dewani, was about 800 thousand acres.*

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* Same investigation as in the last footnote on p. 99.

CHAPTER VI

THE MUGHAL PERIOD (*contd.*)

The Tenantry

Internal administration during the Mughal Rule:

In order to understand the condition of the tenantry, it will be well to try to visulise, as far as possible, the arrangements of internal administration during the Mughal Rule in Bengal. There was first a general division between—

I. the *Nazim*, the head of the criminal administration; and

II. the *Diwan*, the head of the civil and revenue administration.

Under each there was a Deputy. The Deputy Nazim (called *Darogah-Adalat-al-Alia*) was the Fauzdar or officer of Police and Judge of all crimes not capital. There were then the *Kotwals* or Police officers for watch and ward. The *Kazi* decided claims of inheritance or succession, and he was aided by the *Mufti* who expounded the law. A separate officer called *Muhtasib* dealt with cases of drunkenness, vending of spirituous liquor and intoxicating drugs, and cases of false weights and measures.

—generally concerned round about Murshidabad.

2. But the operation of these courts, as observed by Justice Field, was mostly confined to the circle round about Murshidabad; and there was no organised system of Circuit-Courts or local Kazis for dealing with cases in the interior. "The apprehension of thieves, murderers and other violators of the laws was amongst the assigned duties of the zemindars," and the maintenance of internal law and order was in their hands.* The *thanadars* or Police officers at different centres, their armed constabulary and the village watchmen were em-

* Shore's Minute of 2nd April, 1788.

ployed by the zemindars (perhaps only the bigger ones) and paid with assignments made by them of lands out of their respective zemindaries.* The hosts of ordinary zemindari *paiks* were also liable to be called in aid of the Police, when required.† The semi-military functions of the previous Bhuiyas or Rajas, during the Pathan and earlier periods, were taken away, but the police and magisterial functions were retained in them.‡

Police functions of the Zemindars:

3. There was another function of the zemindar which was a source of considerable authority, though indirect, over the tenantry—*viz.*, the function of levying and realising the indefinite miscellaneous revenues which went by the name of *sayer*.§ Grant in his Analysis enumerates the infinite varieties of this levy. It comprised taxes on shops, bazars, licenses for vending spirituous liquor, etc., duties on exports of raw silk and piece goods, customs or tolls of established gunjes or granaries, bridges, ferries, passes, duties on betel-nuts, tobacco, etc.

—and of collecting the sayer.

4. The zemindars, armed with all these manifold powers, for good or for evil, exercised their function of fixing the rents of millions of raiyats and enforcing realisation of those rents almost in their own way. That still some vestiges of what may be called "rights" of the raiyat, persisted, was perhaps due to the fact that population was sparse and there were more lands than men to cultivate them. The zemindars

Effect of these on the tenantry.

* The rentals of these lands were deducted in the calculation of the net *jumma* to be paid by the zemindar into the *khalsa* and was an item in the *muscoorat* deductions.

† Fifth Report, 1812, in which by way of illustration it is stated that the zemindars of Burdwan had thus to maintain 2,400 armed constables and no less than 19,000 zemindari *paiks*. The expenses on account of *paiks* and *sebundi* (the irregular soldier), employed in service, were deducted in calculating the zemindari net *jumma*.

‡ The contrast with the Mughal administration in the Provinces round the capital of Delhi was thus very marked.

§ From Arabic "sair" meaning "to walk" or "move about." Hence a variable impost primarily on movement of commodities, and then extended to bazars, shops and houses connected therewith.

could not, in their own interest, afford very much to ill-treat the cultivator. Shore states that whenever the terms or treatment of a zemindar were unfavourable, the raiyat simply repaired to some other zemindary, and this was easy.

Akbar's method meant constantly fluctuating rent.

5. Nor was the method outlined in Akbar's Code conducive to any security to the raiyat, in the condition of things in Bengal. According to this Code assessment on the raiyat varied every year, as the class of land and the kinds of crop grown were changed,* and it thus left ample scope for harassment and exaction. The rules in Akbar's Code were fully applicable only where rents were paid in kind, as by division or appraisement of crops actually grown : but rents in Bengal, even before the advent of the Mughals, were, as has already been observed, paid in coin (mohurs and rupees as Abul Fazl puts it), and it is probable that whatever might have been the background in some by-gone time, these money-rents were based on certain rates or *nirikhs* per bigha, understood easily both by the cultivator and the landlord. It is a matter only of conjecture whether and how far these rates were affected by

Were there recognized rates in Bengal?

* According to Akbar's Code, the best kind of land called *poolej*, and the next kind called *perwoty*, were to pay at one-third of the gross produce of an average of the preceding 9 years : for the next kind of land called *chachar*, which had to be left fallow for 3 or 4 years, there was to be progressive proportion of 2/15ths in the first year, 3/15ths in the 2nd year, 4/15ths in the 3rd and 4th years; and full 1/3rd thereafter. In addition to the above a charge of 5 per cent. and a duty of one *dam* per bigha were to be paid in the 3rd year. For the fourth kind of land called *bunjer*, the rent for the first 8 years would be assessed at a progressive scale according to a table given, varying with different kinds of crops grown. The method thus meant continuous investigation by the *amins* or measurers, followed by continuous variation in the amount or quantity. Even for *poolej* and *perwoty* lands, the assessment was to change when the species of crop was changed and a more valuable crop grown.

In addition to the above there was to be a further levy of "ten seers of grain for every bigha of land," the object stated being to erect granaries from where the cattle employed by the State would be provided with subsistence, and also to give relief to indigent husbandmen, the grain being sold in time of scarcity at a low price limited to quantities proportionate to the absolute necessities of the purchaser (Gladwin's translation of Ayeen-i-Akbari, p. 189).

This practice of levying ten seers per bigha for reserve provision, does not appear to have ever been intended in Bengal : and it is interesting to note that the descriptions *poolej*, *perwoty*, *chachar* and *bunjer* are not known in the Bengal districts.

the theory of a third of the produce, laid down in Akbar's Code: but recognised pargana-rates were apparently well-understood. What happened in practice was that there were varying rates according to classification of the land as *aul* (first class), *doem* (2nd class), *soem* (third class), *chaharan* (4th class) and so forth. The classification was sometimes very elaborate, with rates widely varying, presenting a bewildering jigsaw puzzle to the cultivator.* But the worst feature of the system was that this classification changed from year to year as the crops changed: and it is easy to imagine how helplessly the raiyat was placed in the hands of the zemindar's officers.

Rates varying according to class.

6. But whatever the *asal* or original rates or *nirikhs*, they must have all been obliterated in practical effect when from the time of Murshid Kuli Khan (1725) arbitrary increases as *Subahdari Abwabs*† began to be imposed on the zemindars, without any investigation as to the capacity of the soil or the rents which raiyats were paying. The demoralisation permeated the zemindars, taluqdars and farmers—and additions were made on the raiyat's rent in double or even higher measure. Grant by way of illustration cites two instances from Rajshahi. In one an *asal* rent of Rs. 24 was added to by Rs. 47-5-6 g. for the various *abwabs*, making a total of Rs. 71-5-6 g. In another case the *asal* rent of Rs. 18-7-17 g. was raised by Rs. 30-11-4 g., making a total of Rs. 49-3-1 g.

Rates obliterated by abwabs.

* Probably in Bengal proper these sub-classifications were not so bewildering as for certain parganas in the Behar districts (of Subah Bengal) where money rent had come to be introduced. For instance the Collector Mr. Davis, reporting on 11th August, 1790, stated that in the Nuckdey portion (*i.e.*, with money-rent) of Mouja Moholey in Pargana Monghyr, the *do-fasli* land was classified into no less than 22 classes with *asal* rates varying from 8 annas to Rs. 5-8 per bigha, the *ek-fasli* land in no less than 5 classes with rates from 8 annas to Re. 1-2 per bigha.

† Shore, in the third note to his Minute of 2nd April, 1788, observes that *abwabs* had been in vogue even before Murshid Kuli Khan's time, probably soon after the settlement of Todar Mal. He cites the assessment of Parganah Akbar Shahi, Sircar Oudumber, in 1098 B.S. (1691 A.D.) in which a number of imposts (*abwabs*) totalling about 27 p.c. of the *asal jumma* was added. In certain *kanango*-papers (Behar) he found various items of charges for the *kanango*, including even the paper used, added to the *asal jumma*.

As one *subahdari abwab* was added to another, the increase in the raiyat's rent by the former *abwab* was often amalgamated, raising the *asal* rent itself to the higher figure. Shore cites, by way of illustration, an instance in which such an amalgamated rent of Rs. 14-0-8 g. was further raised to Rs. 24-14-12 g. on account of a new *subahdari abwab*.

Incidence of raiyat's rent.

7. Grant, in his " Analysis " of 27th April, 1786, states that the general incidence of the raiyat's rent in Bengal, inclusive of *abwabs*, was about Re. 1 per bigha or Rs. 2-3 per acre (one acre being equivalent to 2·18 bighas of the time). In the Company's zemindari round Calcutta the rate had been raised by that time to Rs. 1-8 per bigha or Rs. 3-5 per acre, but during the Mughal period the general incidence of rent throughout Bengal was about Re. 1 per bigha or Rs. 2-3 per acre. This is interesting in another way. By the latter part of the Mughal Rule, the price of rice had risen to about 8 annas per maund; and assuming that the average yield of rice, per acre of cultivated land, was about 13 maunds as is now the estimate, the money-value of the gross produce was about Rs. 6-8. A rent of Rs. 2-3 thus represented just about one-third of the gross-produce, the proportion which was concieved in Akbar's plan as fair and reasonable.

Realisation of rent:

8. As to what exactly was the authorised procedure for realisation of rents from the raiyats by the zemindars and taluqdars in Bengal, during the Mughal Period, there is no clear account. Abul Fazl rests content by saying that the raiyats were obedient and used to bring their rents in coin to the places appointed for payment. But with an assessment of as much as one-third of the gross produce and the necessity of marketing the grain before money could be had, there must have been heavy arrears at times, however obedient and submissive the tenantry might have been.* Considerable light is, however, thrown by the reference to previous practice

* In fact the legislations in 1793 and for some time afterwards do not show that rents were very readily paid.

given in the Preamble to Regulation XVII of 1793. It is characterised as having been severe and extortionate. The zemindars had the full power to seize, of their own accord, the crops or the personal effects of the raiyat, and even to confine them and use physical coercion.* This was perhaps what would only be expected from the nature of the internal administration which has been outlined at the beginning of this chapter. There was perhaps one safety. It was not unusual for zemindars to get remissions in years of drought or inundation causing failure of crops. A good landlord probably passed a portion at least of this favour to the tenantry. However, seizure of crops was perhaps the usual and the lightest of the coercive measures : for, the raiyat could not sell or mortgage his lands. In any case, with a rent as high as one-third of the produce, his lands could have little market-value, and it is difficult to see how, unless his crops during the year were seized, he could be expected to pay that year's arrear in the next.†

—seizure of crops, confinement and physical coercion.

9. From the above description of the nature of the administration, it is not to be expected that the raiyats, from their position, could maintain any " rights " properly so called, except so far as were suffered by the landlords out of their own interest. Shore, in his several Minutes,‡ gives a fair description of the privileges which the raiyats might be said to possess, excluding matters which were of the nature of irregular oppression. The raiyats fell into two groups, *viz.*, the *khudkast*§ or resident raiyats, meaning those who were of the nature of permanent cultivators permanently living in the village in which they

Other incidents of a raiyat's holding:

—khudkast and paikast raiyats.

* This is not surprising when the zemindars themselves were sometimes kept under confinement and subjected to humiliation and coercion.

† A similar observation was made by Lord Cornwallis with reference to the zemindar, in support of his contention that it was a necessity for the security of the Government revenue that a zemindari should have a good market-value, and the assessment should be such as gave it such value.

‡ See Minutes dated 18th June, 1789 and 2nd April, 1788.

§ From Persian " khud " meaning " self " and " kastan " meaning " sowing

held their lands: and the *paikast** raiyats, meaning temporary cultivators who came from outside, either for a season or for a definite short period. The former were recognised as having a right to hold on by succession, so long as they paid their rent, but they could not transfer,† or even change the species of the crop, without the sanction of the landlord. They could not even relinquish their lands: and their only alternative, if they did not find the cultivation of the land profitable enough or if the landlord was too exacting, was to abandon the land and the village, and repair to another zemindari. This, Shore says, they found easy in the circumstances of the times when, even in the best periods of Mughal Rule, population was sparse while lands were ample.‡ It automatically afforded a certain amount of protection to the raiyat; for, ordinarily the landlord could not afford to lose a cultivator. The *paikast* raiyats were merely tenants-at-will and had no right of succession.

Cultivation only was conceived.

10. Growing of crops from "surface-cultivation" was the only function of the raiyat conceived in Akbar's Code. The question of right to build a hut to live in was never considered as of any importance: and in fact the landlords often allowed the raiyats to hold their homestead without any rent,§ particularly when it was their own interest to encourage

seed." Literally thus a tenant who cultivates himself, but technically confined to a raiyat resident in the village to which the land appertained.

* From Persian "pai" meaning "foot," *i.e.*, subordinate, and kastan" meaning "sowing the seed." Literally thus an inferior person brought in by the tenant to cultivate the land, corresponding to what we call now "under-raiyat." Technically it meant a person of another village who was employed to cultivate the land: and hence a temporary tenant without any permanent interest in the village.

† With a rent as much as one-third or one-half the gross produce, they had in fact very little margin which could possibly give any market-value or even security for a loan by mortgage.

‡ The position had become more acute after the famines of 1770, 1784, 1786 and 1787, which swept away over one-third of the population and reduced a vast area into waste and jungle infested by 'wild beasts.' But in all probability this devastation had commenced during the period of semi-anarchy and constant Maharatta raids which preceded the Dewani of the English Company.

§ In many parts of Behar, homestead lands are even now held as *belagan*. The position might have been different in Bengal districts, and there were probably "rates" for homestead lands also: or they were grouped into the class of culti-

outsiders to come and settle in the village for the purpose of bringing lands under cultivation. The only source of rent was the crop from the cultivated lands. A masonry building or a brick-field for a raiyat was not dreamt of then.*

Taluqs (Talooks) or tenures.

11. Middlemen between the raiyat and the zemindar also existed during the Mughal Period. In fact farmers were very common.† But it is curious that there were even permanent tenures. The Regulations of 1793 make mention of such tenures as *istimrari* (heritable and not for a limited time) and even *makarari* (*i.e.*, at rent fixed in perpetuity). They were sometimes called *taluqs*, and such of them as appeared to be, to all intents and purposes, transfers of zemindari, were treated as independent estates during the Decennial Settlement.‡ What profits these tenure-holders made and how, there is no clear account:§ but it is undoubted that many of them were the heirs or successors of those who had led the original reclamation. The larger zemindars also introduced such middlemen of substance to organise clearance of forests and build *bundhs* and induce raiyats to cultivate the lands. In these latter cases there were agreements with the zemindar, a practice which extended gradually to the former class also, and, to state generally, the incidents of these *taluqs* were regulated by the terms of these agreements.‖

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vable high lands. Hence the term "bashaori," or "bhita" or "bari" in some places.

* "Fishery" in Akbar's Code was a separate item as "sayer." Shops, and bazars became, in later periods of Mughal Rule, also items of *sayer*. We find no mention of mines and minerals.

† Particularly in large zemindaries, as for example, Burdwan.

‡ Sections 5-8 of Regulation VIII of 1793.

§ Both Grant and Shore, when referring to previous assessments (whether the "hastabood" method since Murshid Kuli Khan's time, or the previous "produce-share" method), calculate on the capacity of the soil, or in other words, the raiyat's rental.

‖ That the zemindars were bound by these agreements even after the Permanent Settlement, was generally enjoined by Regulation VIII of 1793, Sections 16-19, 48-50 and 60.

CHAPTER VII

First British Period (up to the Regulating Act of 1784)

(*a*) *Acquisition of Territories*

First farman for free trading in Bengal: Surgeon Boughton (1634-52).

We will not go here into the earlier periods when the English East India Company established Factories in Surat and elsewhere in India for trading purposes. In the Lower Provinces they obtained their first *farman* or Royal Patent from Emperor Shah Jehan in 1634. By this *farman* they were permitted to bring their ships up the river Hooghly, so far as Pipli. It was due to a medical officer of the Company, Surgeon Gabriel Boughton, that, 8 years later, permission was obtained for unlimited trade in Bengal free of customs, subject only to an annual payment of Rs. 3,000. Surgeon Boughton had the good fortune of an opportunity to treat and cure certain members of the Royal family: and as a reward for his good services, instead of receiving a private benefit, he besought and secured this valuable privilege for his countrymen. Later, Surgeon Boughton had another opportunity of a successful cure in the family of Shah Shuja, son of the Emperor, who was then the Subahdar of Bengal. As a reward for this he obtained the permission from the Nabob to establish a factory at Hooghly where the Portuguese had already established a fortified settlement. This was in 1652.

Aurangzeb's reign: Shaista Khan's demand of 3½ p.c. duty: Company abandons Bengal.

2. But when, after the death of the Emperor, dissensions arose amongst his sons, and Shah Shuja had to flee to Arakan where he was murdered, the position of the Company

was considerably altered. Shaista Khan, a maternal uncle of Aurangzeb, became the Subahdar of Bengal, and he demanded a duty of 3½ per cent. on all merchandise of the Company. In consequence of the hostilities which thus developed, the Company were forced to abandon their occupation in Bengal for some time.

Reconciliation with Aurangzeb.

3. These hostilities, which, during the early part of Emperor Aurangzeb's reign, were by no means confined to Bengal only, had their repercussions in other directions. Aurangzeb soon found that the Company were in a position to prevent the pilgrimage of pious Moslems to Mecca by sea: and there was a reconciliation. The English Company were permitted to resume their trade in Bengal, and in August, 1690, Job Charnock returned to Sutanuti, and laid the foundation of Calcutta. Eight years later the Company purchased from the Zemindars* the 3 villages of Calcutta (Kalikata), Sutanuti and Gobindapur, and the recognition of the Subahdar was obtained on stipulation of an annual payment of Rs. 1,195 as revenue.

Foundation of Calcutta, 1690.

Right of free trade from Emperor Furruk Sher, 1717: Surgeon Hamilton.

4. But they had to pay the duties† on their merchandise and there were difficulties in the internal trade as well. It was again to the credit of another medical officer of the Company that special privileges were obtained. Furruk Sher was then the Emperor at Delhi, and Surgeon Hamilton had the good fortune of curing him of an illness. He besought the revival of the privilege of free trade which had once been granted by Shah Jehan. This was granted, and permission was also given to the Company to purchase from the zemindars and talookdars 38 villages adjacent to Calcutta. This was in 1717.

* These villages were comprised in the zemindari of Krishnagar (Nadia) and it is noteworthy that an yearly payment of *malikana* was allowed to the Raja. This probably represented all that might be said to be the purchase-price.

† The duty was probably 2½ per cent. as stated by Grant in his Analysis.

5. But the Subahdar, Nabob Murshid Kuli Khan, was in no mood to respect the Royal mandates. He permitted the privilege of free trade, but would not allow the zemindars to sell their landed properties to the English Company. The decline of the Great Mughal had by this time become marked :* the voice of the Emperor had become feeble, and he had little power to enforce his own orders, not having himself the power to protect his Subah from the constant inroads of the Maharattas and other hostilities in the frontiers. Murshid Kuli Khan's own policy with regard to the zemindars was, as will have appeared from the preceding discussions, autocratic : and this gave him a good occasion to assert this autocracy.

Emperor's gift disregarded by Murshid Kuli Khan.

6. Murshid Kuli Khan died in 1725, and was succeeded by his son-in-law Shujauddin. The Maharattas continued their raids, and the properties of the Company, like those of the subjects in general, were very insecure. In 1741, permission was obtained from the Nabob, to dig an entrenchment† round the possessions of the Company in Calcutta.

The Mahratta Ditch, 1741.

* To understand this, it is only necessary to follow the history of the decline of the Great Mughal Empire since the death of Aurangzeb, and the gradual weakening of the central authority at Delhi. The canker of family dissensions, fomented by intrigues amongst the officials seeking power, which got its root during the dying days of Shah Jehan, but was kept subdued by the watchful eye of Aurangzeb, began to work after his death. His son Shah Alam (Bahadur Shah) had to fight his way to the throne. When he died in 1712, the most powerful person was the Commander-in-Chief Julfiker Khan and it was with his help that his son got to the throne. But Jehander Shah was soon overthrown and killed by his nephew Furruk Sher who was set up by the Syeds of Barhur. Julfiker was assassinated, and Furruk Sher ruled till 1719, when he was in turn murdered. What with the independence of the Maharattas, and the rising of the Sikhs, the Jaths and the Rajputs, these family dissensions accelerated the rapid decline of the Mughal Power. Little wonder that any mandate from the Emperor was treated with scant regard by a Provincial Governor. There is a story how a *sanad* to a Brahmin granted by the Emperor was torn off by Murshid Kuli Khan as a mere scrap of paper. It has already been mentioned how Murshid Kuli Khan arrogated the Royal privilege of receiving homages from the potentates: and how along with it he exacted heavy *nazars* for what he called " renewal-*sanads* " of zemindars. The departure which he made in the method of revision of assessment and his arbitrary imposts had no sanction from the Emperor at Delhi.

† This is known as the Mahratta Ditch, a part of which is now the Circular Road of Calcutta.

7. Shujauddin was succeeded by his son Sarferaj Khan. But the Central Authority having become still feebler, the Subahdari fell an easy prey to might. Ali Vardy Khan Mohabat Jung, who had made himself in a manner independent in his Neahbat* of Behar, rose against Sarferaj Khan, killed him in battle, and then proceeded to Delhi to obtain a *sanad* from the Emperor for the Subahdari of Bengal, Behar and Orissa. He took possession of the Subah in 1740, and was Subahdar till his death in 1756, when he was succeeded by his grandson Siraj-ud-Daulah.

Political feuds and changes in Subahdari to 1756.

8. In the meantime, the breakdown of the Great Mughal Empire was proceeding fast in the rest of Hindustan. The Maharattas had asserted independence, and there were rising in the Sikh and the Jat territories, and amongst the Rajputs. Nadir Shah, the Turcoman ruler of Persia (1736-47), swept down through the Khybar Pass, and met with no organised opposition in his march of massacre and loot, till he was within 100 miles of Delhi. He captured and sacked Delhi, and carried off an enormous booty. Northern India was so utterly broken that in the next twenty years there were no less than six other plundering raids from Afghanistan. For a time the Maharattas fought with the Afghans for the rule of North India ; then the Maharatta power broke up into a series of principalities—Indore, Gwalior, Baroda and others. This was the India, once the glorious empire of the Great Mughal, into which, says H. G. Wells, the French and the English were thrusting during the eighteenth century.

Breakdown of the Mughal Empire.

9. Siraj-ud-Daulah was openly unfriendly towards the English, and the hostilities which began, ended with the battle of Plassey in 1757. After this victory, the English really became the dictators for the Subahdarship of Bengal. They

Battle of Plassey, 1757: Mir Jafar made Nabob: Cession of 24-Parganas.

* Neahbat was an office subordinate to the Subah.

made Mir Jafar, Subahdar: and it was arranged by a treaty with him that the Company should be the zemindars for the lands within the Mahratta Ditch and also 600 yards beyond, and the lands lying to the south of Calcutta as far as Kulpi. The zemindari thus obtained was made up of twenty-four *parganas*,* and had a total area of about 882 square miles. The revenue fixed was Rs. 2,22,958.

Emperor's opposition and defeat, 1760: Col. Calliaud.

10. There was opposition from the Emperor Alamgir II, but it was quelled by Clive's army at Patna. The Emperor was later assassinated by Ghazi-ud-din, in 1760, after which his son Muhammad Ali Gohur ascended the throne of Delhi with the name of Shah Alam II. Shah Alam also opposed the English with a military force, but was defeated by Col. Calliaud in February, 1760. It was then found necessary to depose Mir Jafar, and accordingly Mir Kasim (Cossim Ali), his son-in-law, was made Subahdar by the English. By a treaty concluded with him on 27th September, 1760, the three districts of Burdwan, Midnapore and Chittagong, yielding about a third of the total revenue of the Province, were assigned† to the Company "to meet the charges of the army and provisions for the field."

Mir Jafar deposed: Mir Kasim made Subahdar: Cession of Burdwan, Midnapore and Chittagong, 1760.

Control of the Army.

Further opposition by the Emperor and his defeat, 1761: Major Carnac.

11. There was, however, opposition from the Emperor again, and his troops were defeated by the English under the command of Major Carnac in 1761. This was followed by overtures of peace, with the ultimate result that the Emperor invested Mir Kasim with the *Subahdari* of Bengal, Behar

* Hence the name of the district "Twenty-four Parganas." The present district of 24-Parganas extending to the Bay of Bengal has about 3 times this old area.

† Grant, in his Analysis, names these with the 24-Parganas as the "Ceded Lands," as opposed to the rest of the Province called "Dewani Lands" after the Dewani of 1765. But sometimes the two are mixed up and taken together.

and Orissa, on condition of his paying Rs. 24 lakhs as annual revenue. There was at this time also an offer of the Dewani of the three Provinces, to the Company: but this did not mature till 4 years later. In the meantime, Kasim Ali rose against the English, and on his defeat and flight to Oudh, Mir Jafar was re-instated in the Subahdari. In July, 1763, Mir Jafar confirmed the cession of the three districts of Burdwan, Midnapore and Chittagong made by Mir Kasim.

Kasim Ali's revolt: Mir Jafar restored and cession of the 3 districts confirmed by him.

12. There was still further opposition. In 1764, the Nabob Vizier of Oudh invaded Behar, but was decisively defeated in the battle of Buxar. This practically ended all military oppositions from the side of the Emperor or his adherents: and on 12th August, 1765, he formally granted the Dewani of Bengal, Behar and Orissa to the Company, subject to an annual revenue of Rs. 26 lakhs. In the meantime Mir Jafar died and was succeeded in the Subahdari by his son Nadjam-ud-Daulah who, by a treaty dated the 25th February, 1765, confirmed all previous grants to the Company and made over to them the military defence of the country.*

Opposition by Nabob Vizier of Oudh: Battle of Buxar, 1765.

The grant of Dewani, 1765.

* This was how the foundation of the British Empire was laid in India. There is considerable truth in what Rudyard Kipling wrote:—

"Once two hundred years ago the trader came meek and tame,
Where his timid foot just halted there he stayed,
Till mere trade
Grew to Empire and he sent his armies forth,
South and North:
Till the country from Peshawar to Ceylon
Was his own;
As the fungus sprouts chaotic from its bed,
So it spread,
Chance directed, chance erected, laid and built
On the silt,
Palace, byre, hovel—poverty and pride
Side by side."

But what is overlooked is that all this happened without any financial burden on the British people, while the Company still continued to make good profits. Bengal had to bear the "sinews of war" in the territorial campaigns in other

13. The *farman* by Emperor Shah Alam, granting the Dewani, ran thus :—

The Farman:

" We have granted them the Dewani of Bengal, Behar and Orissa from the beginning of the *fasl-i-rabi* of the Bengali year 1172, as a free gift and *altamga* without the association of any other persons, and with an exception from the payment of the customs of the Dewani which used to be paid by the Court. It is requisite that the said Company engage to be security for the sum of 26 lakhs of rupees a year, for our royal revenue, which sum has been appointed from the Nabob Nadjam-ud-Daulah Bahadur, and regularly remit the same to the Royal Sarkar; and in this case, as the said Company are obliged to keep up a large army for the protection of the Provinces of Bengal, etc., we have granted them whatsoever may remain out of the revenues of the said Provinces, after remitting the sum of 26 lakhs of rupees to the Royal Sarkar and providing for the expenses of the Nizamat."

—its import.

Such was the brief document by which the English exacted the surrender, by the Mughal, of the most important functions of the Government in Bengal. As Dewan, the Company was the Head of the Civil and Revenue administration of the Province. It was not only the authority to collect the revenues from all sources, but also to determine the amounts and the methods of fixing such amounts that devolved on them : for, that was also the authority exercised by the previous Subahdars for over half a century. The responsibility of defence was to be theirs; and they were to maintain the necessary army and military force. The administration of civil justice was also a part of the Dewani. Though the

parts of India by which the Empire grew. The Company found from the revenues of Bengal large sums of money not only for the development of their own trade, but also for meeting the deficits in other parts of their possessions in India and for their territorial campaigns, and even to assist outside as far as St. Helena and in the wars in Europe: see Dr. P. N. Banerjea's " Indian Finances in the days of the Company," Macmillan, London, 1928.

functions of the magistrate and the judge in the administration of criminal justice were retained by the Nazim, the entire Police establishment for the maintenance of law and order was part of the Dewani: for, the thanadars, the constabulary and the village chowkidars, were maintained then by the bigger zemindars with lands from their respective zemindaries, and the assets of these lands went into their revenue accounts. The sinews of war outside and of order within were in the hands of the Dewan: and while the administration of criminal justice was with the Nazim, the Nizamat had to look to the Dewani for funds to meet its expenses. And there was no controlling authority to regulate the two. Such an anomalous arrangement could not last, and as a matter of fact did not last long.

Company formally Dewan, but practically complete Subahdar.

14. While the Company became the Nawab Dewan, Nadjam-ud-Daulah continued as the Nawab Nazim. The Emperor's *farman* provided simply that an adequate allowance should be made for the support of the Nizamat. By an agreement between the Company and the Nazim, dated the 30th September, 1765, an annual sum of Rupees 17,78,854 was fixed for the household expenses of the Nazim, and Rs. 36,07,277 for the rest of the Nizamat. There was no instrument of instruction as to how succession to the office would follow, and who was to determine this; and when Nadjam-ud-Daulah died in 1766, his brother Syef-ud-Daulah was elevated by the Company to the vacant office. By an agreement dated 19th May, 1766, between him and the Company, the household allowance was continued at the same amount, but the other allowance was reduced to Rs. 24,07,277. Syef-ud-Daulah died on 10th March, 1770, and his brother Mobarak-ud-Daulah, a minor, was made Nawab-Nazim. By an agreement, dated the 21st March of the same year, the household allowance was reduced to Rs. 15,81,991, and the other allowance for the Nizamat further reduced to Rs. 16,00,000, total Rs. 31,81,991. Under the orders of the Court of Directors, dated 10th April, 1771, this total was

Position of the Nazim.

further reduced to Rs. 16 lakhs altogether, during the minority of the Nazim. This account is important, as it illustrates that the grant of the Dewani meant in effect a grant of the Subahdari to the Company in perpetual succession, *i.e.*, the entire Government of the Province, subject only to the payment of an annual tribute of Rs. 26 lakhs to the Emperor at Delhi.

(*b*) *Revenue Settlements from* 1765 *to* 1784

15. This was the stage on which the East India Company, a body of traders little conversant with the art of Government, found themselves called upon to play the part of administrators amongst people whose language, manners, customs and susceptibilities were still not sufficiently known to them. The background was a period of semi-anarchy of over half a century, during which the Provincial Governors, the Subahdars, received no guidance, far less any support from the Central Authority, while the country was invaded by the Maharatta freebooters time after time. Though the terrible Nadir Shah did not penetrate so far down as Bengal, the massacre and havoc he perpetrated almost unchecked in northern Hindustan, carried the message throughout the length and breadth of the country, how utterly powerless the Mughal at Delhi had become. The Royal family was torn by family dissensions, intrigues and mad craze for power; and these had their repercussions in the distant Province of Bengal. There were visible signs of disloyalty and even open revolt: and the Governors (the Subahdars) had at times to resort to arbitrary measures—which are now characterised as simply oppressive and humiliating. In the matter of revenue-assessment, it was impossible to follow the old constitutional methods, which, though perhaps hardly suitable for the system of zemindari settlement in Bengal, implied full co-operation of all concerned, from the petty cultivator of the soil up to the biggest zemindar, and the host of State-employees. Murshid Kuli Khan had devised a more

The position of the Company at the stage it got the Dewani.

summary, but not altogether unsatisfactory, method of assessment on " hastabood " but even this could not be carried through. The period was a period of emergencies, and the device of arbitrary imposts, such as the Subahdari Abwabs, were probably, at any rate at the beginning, of the nature of emergency measures only. There can be no doubt that these had a highly demoralising effect on the whole body politic, and while these arbitrary imposts were carried down with double measure to the poor peasantry, necessity must have forced the latter also to occasional fraud and concealment. It is no wonder, therefore, that the officers of the English Company began to look at every matter and every information supplied with extreme suspicion, and smelt chicanery and fraud (terms which frequently appear in contemporary records) where probably none existed.

Assessment in 1765-66 —Rs. 209 lakhs:

16. The Company's management of the districts of 24-Parganas, Chittagong, Burdwan and Midnapore commenced some years before they obtained the Dewani in 1765: and as has been seen in Chapter IV, paras. 21-26, by the year 1765 a very substantial improvement was effected in the assessment of the land-revenue of these districts. In 1765-66, the total assessment of the entire Subah (Dewani and Ceded lands) stood at Rs. 209 lakhs, exclusive of customs of the port of Calcutta and the Salt lands.*

—continued during the first 5 years.

17. The first five years of the Dewani were a period of watching and enquiry, or as has been called by Mr. Ascoli,† a period of hesitation. The existing system was not disturbed and the charge of collection of revenue was continued in the hands of Muhammad Reza Khan: but certain officials called " Supervisors " were appointed in the districts " to

* The customs and the Salt lands yielded in 1760 only about Rs. 3 lakhs: but by improved arrangements of the Company, the receipts under these heads rose to as much as Rs. 27·37 lakhs: Grant's Analysis, dated 27th April, 1786, Firminger, Vol. II, p. 260.

† Early Revenue History of Bengal, by F. D. Ascoli, M.A., I.C.S. (1917).

enquire into the history of the provinces not earlier than Shuja Khan."

18. What the reports of these Supervisors were we need not go into; but the measure taken when the period was about to expire was as unfortunate as it was novel. Contrary to the advice of Muhammad Reza Khan, settlements were made by local auction* with the highest bidders for a term of five years. The ostensible object was to ascertain in this manner the maximum capacity of the country for revenue; and it was thought that the "natives" coming up to bid would know more about the yields of an estate than what the Company's officials could find out. It was perhaps better than arbitrary increase of revenue in the name of "abwab:" but the other serious consequences which might follow from such a system of auction were altogether overlooked. It was overlooked that such a method of settlement might result in arbitrary dispossession of many zemindars and talookdars: it was also overlooked that other zemindars, naturally anxious to retain their ancestral property, would make impossible bids:† and that on the whole the result was bound to lead to arbitrary enhancements of the rents of the tenants and oppressive exactions from them. It was unfortunate that the Directors of the Company did not sufficiently notice the fact that the assessment of Rs. 209 lakhs was still about 12 per cent. over the assessment of Rs. 186·15 lakhs in 1756, only 14 years earlier. The high increase which they had obtained in the ceded districts during 1760-65 must have lured them, and they were deluded by false hearsays that there were hidden resources and that the people were all a bad lot.‡

Settlement by auction in 1769-70.

—its mistakes.

* Four junior members were appointed to form a committee of circuit for this purpose.

† For instance, in the Dacca Province the bids went up to Rs. 38 lakhs, against Rs. 19¼ lakhs. In one pargana the zemindar, to retain his property, bid up to such an enormous increase that in two years the arrears exceeded the annual demand which was about Rs. 1·34 lakhs (Ascoli's Early Revenue History of Bengal, p. 33).

‡ The Council filled with the impression of fraud, chicanery and corrupt practices of the subordinate staff busied themselves with plans for centralisation of the

19. The effect of these auction settlements was disastrous. The assessment of Bengal probably came up to about Rs. 228 lakhs* exclusive of Customs and Salt lands. To what extent and in what manner the brunt of this heavy increase fell on the cultivators, there is no account. But it certainly created a grave apprehension of insecurity in the tenures of all classes of landed interests: and there was widespread discontent. Financially too, the net gain for the Company was not what the gross amounts of the settlements showed. The zemindars who could not reach the highest bid, and who were thus dispossessed of their management, had to be paid a "malikana" allowance (called also "moshaira" in Bengal) at 5 to 10 per cent. of this assessment, during the period of their dispossession,† and the total of these allowances was considerable.‡

Assessment of Subah Bengal reached 247 lakhs.

20. But what was particularly unfortunate was that this measure of settlement by auction synchronised with the famine of 1770. This terrible famine was of such extreme severity that even to the present day it is a household expression of terror in the rural areas of Bengal.§ It swept away,

Famines of 1770 and 1784:

administrative machinery, but as Mr. Ascoli observes, what really was wrong was in the amount which they sought to collect: it was excessive.

* Inclusive of Subah Behar, it reached Rs. 286 lakhs (Court of Directors' Despatch, dated 12th April, 1786, para. 45). The first year's settlement of Subah Behar in 1766 amounted to Rs. 58·19 lakhs, *vide* Grant's Supplement for Subah Behar, dated 30th June, 1786 (Firminger, Vol. II, p. 450). The actual receipts, as the same Supplement shows, were, however, only about Rs. 42 lakhs.

† The highest bidder, with whom settlement was thus made for 5 years, was called "farmer."

‡ By 1786-87, many of these zemindars were restored and then the allowances ceased: but still the total on this account in Bengal alone was near 4 lakhs of rupees (App. No. 10 to Shore's Minute of 18th June, 1789, statement at pp. 130-32, Firminger, Vol. II).

§ It is known as the catastrophe of 1176 B.S. (*Chhiyattorer Manwantar*). On this famine of 1770, John Shore wrote the following lines in verse, which give a vivid description of what he himself saw:—

"Still fresh in memory's eye the scene I view,
The shrivelled limbs, sunk eyes, and lifeless hue;
Still hear the mother's shrieks and infant's moans,
Cries of despair and agonizing groans.

as stated by Lord Corwallis later, over one-third of the population and reduced an equal proportion of cultivable lands into extensive wastes and into jungles which very soon were infested with wild beasts. Yet, on pressure from abroad, the authorities in Bengal had to pursue the collections with vigour :* and in the course of a couple of years, the zemindars, in order to meet the Company's demands, were found to have got into a debt of over three million sterling at high rate of interest.† This debt went on increasing, and before the country had time to recoup, there was another severe famine in 1784. While such was the position of the zemindars, there can be little doubt that they in their turn must have been striving to exact the utmost they could from the tenantry‡ leaving them little scope or means to struggle. There was widespread discontent, and serious grievances were represented to the Parliament.

—and their disastrous effect.

21. Powerful voices were then raised in England, and the names of Philip Francis and Richard Barwell are associated with those who led the controversy.§ They both asserted

Strong views taken in England.

In wild confusion dead and dying lie;
Hark to the jackall's yell and vulture's cry,
The dog's fell howl, as midst the glare of day
They riot unmolested on their prey :
Dire scenes of horror, which no pen can trace,
No rolling years from memory's page efface."

* See Burke's Impeachment of Warren Hastings: and incidents about Cheyt Singh and others. The famine did not affect the districts of Behar as much as it did those of Bengal.

† C. N. Halhed.—" Memoir on the Land Tenure and Principle's of Taxation, Calcutta, 1812 "—referring to the evidence laid before the Committee of the House of Commons in 1772, quoted in " Zemindary Settlement of Bengal," App. VI, pp. 129-30. Still the average collection inclusive of Subah Behar is stated in paragraph 45 of the Court of Directors' Despatch of 12th April, 1786, as Rs. 252 lakhs. Grant in his Supplement, dated 30th June, 1787 (Firminger, Vol. II, p. 450) gives figures which show the average collection for Subah Behar during this period as about Rs. 35 lakhs. Deducting this latter figure, the remainder, *viz.*, Rs. 217 lakhs, was the collection from Bengal, including Midnapore.

‡ Shore suspected that the zemindars must have been exacting from the raiyats as much as half or rather 3/5th of the gross produce.

§ Barwell in his Minute, dated 28th March, 1775, recommended settlement with the zemindars for one or two generations, and Francis in his Minute of 22nd

that short-term settlements or farming with constant variations in the Government demand, were bound to be ruinous to the country, particularly in the deplorable state to which it had been reduced by the famine of 1770. No Settlement-holder, with such temporary interest, would care to exert himself to the real improvement of cultivation, while, to make the best of the period, he would fleece the subordinate tenantry as much as possible. There were also the questions of constitutional rights and privileges of the zemindars and talookdars: and such rights could not be lightly abrogated.

Auction system stopped.

22. The method of settlements by auction was then stopped by the Court of Directors by their order, dated 24th December, 1776: but no regular plan of a re-settlement was devised. The assessments which had been obtained from the auction settlements of 1769-70, were continued year after year, as the Government demand of revenue: but the net receipt gradually declined, while the number of estates brought under "farming" arrangements, on the inability of the zemindars to pay the revenue, increased.* It was a period of hesitancy and inconclusive deliberation. In 1781, native officers were appointed to attempt to realise the revenue as fixed in the previous year, which really meant in most cases the same amounts as had been obtained by the auction-settlements of 1770; but the result was no better than when the collection was in charge of the District Collectors. There was then an attempt to revise the assessments in some districts through the agency of mofussil and sadar kanungos.†

January, 1776, advocated a settlement in perpetuity with due measures for the protection of the tenantry.

* This meant a heavy charge on the Treasury on account of "malikana," which with other charges amounted in 1784 to as much as Rs. 61·78 lakhs in Bengal (excluding the Salt lands): *vide* Grant's statement at p. 475, Firminger, Vol. II, p. 476. The gross receipt was Rs. 208·81 lakhs and the net only Rs. 147·02.

† Some of these officers in their over-zeal put down exhorbitant amounts for settlement, which had soon to be abandoned. For example in Midnapore, the assessment was put at about Rs. 14 lakhs, while in 1784 it had to be corrected to 8·73 lakhs, and yet the Settlement Regulation VIII of 1793, sections 88 to 98, had to provide for special rules for remissions and reductions in this district. In Dacca,

The result was equally unsatisfactory. The position in 1783-84 (1190 B.S.) as analysed by Grant in the Abstract at the end of his Minute of 27th April, 1786, was that while the gross* assessment of Subah Bengal with Midnapore (excluding customs and salt) was Rs. 228·36 lakhs, the arrears (called by him " defalcations ") amounted to Rs. 101·45 lakhs.

The Regulating Act of 1784.

23. While the matters drifted in this way, there was again a severe famine, and those who were responsible for the administration on the spot—honourable men labouring hard and entertaining high hopes of a British Empire in the Far East—could not but feel that the State could not repudiate its responsibilities, and was liable either to bear the losses or to take effective measures to repair the damages, and let the people recover speedily from the dire effects of the famines and the fickle policies of the past. These were the sentiments which readily appealed to the broad-minded public in England, and in 1784, Pitt's Government passed the Regulating Act (24 Geo. III, Cap. 25), in section 39 of which it was enjoined that permanent rules must be framed to secure the just rights and privileges of all classes of landholders, and that any wrongs done to them must be redressed. This was followed by an order of the Court of Directors for a settlement with the zemindars on the basis of definite rules, for a term of ten years at first, but with a view to making it permanent eventually.

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an increase of Rs. 4·70 lakhs was obtained, but it was excessive and arrears continued to accrue (Ascoli, p. 36). In certain parganas of Jessore a raiyati rent of as much as Rs. 1-6 per bigha plus a cess of 6 annas was assumed while the actual was Re. 1 or less: see James Westland's Report on Jessore.

* In the same abstract, Grant shows as high a figure as Rs. 36 lakhs as outgoings on account of *moshaira* or *malikana* to the zemindars whose estates were taken under Government management and certain mofussil charges, leaving a net revenue of only Rs. 192·34 lakhs.

CHAPTER VIII

The Second British Period

(from the Regulating Act of 1781 to the Permanent Settlement of 1793)

The Permanent Settlement

The Regulating Act of 1784 (21 Geo. III, Chap. XXV) was passed when men like Burke and Fox were members of the Parliament, and the younger Pitt was the Premier. Section 39 of the Act ran as follows :—

The Regulating Act of 1784.

XXXIX. And whereas Complaints have prevailed, that divers Rajahs, Zemindars, Polygars, Talookdars, and other native Landholders within the British Territories in India, have been unjustly deprived of, or compelled to abandon and relinquish, their respective Lands, Jurisdictions, Rights, and Privileges, or that the Tributes, Rents, and Services required to be by them paid or performed for their respective Possessions to the said United Company, are become grievous and oppressive: And whereas the Principles of Justice, and the Honour of this Country, require that such Complaints should be forthwith inquired into and fully investigated, and if founded in Truth effectually redressed: Be it therefore enacted, That the Court of Directors of the said United Company shall, and they are hereby accordingly required forthwith to take the said Matters into their serious Consideration, and to adopt, take, and pursue such Methods for enquiring into the Causes, Foundation, and Truth of the said Complaints, and for obtaining a full and perfect Knowledge of the

same, and of all Circumstances relating thereto, as the said Court of Directors shall think best adapted for that Purpose; and thereupon, according to the Circumstances of the respective Cases of said Rajahs, Zemindars, Polygars, Talookdars, and other native Landholders, to give Orders and Instructions to the several Governments and Presidencies in India, for effectually redressing, in such Manner as shall be consistent with Justice and Laws and Customs of the Country, all Injuries and Wrongs which the said Rajahs, Zemindars, Polygars, Talookdars, and other native Landholders, may have sustained unjustly in the Manner aforesaid, and for settling and establishing, upon Principles of Moderation and Justice, according to the Laws and Constitution of India, the permanent Rules by which their respective Tributes, Rents, and Services, shall be in Future rendered and paid to the said United Company, by the said Rajahs, Zemindars, Polygars, Talookdars and other native landholders.

The directions thereon by the Court of Directors.

The Marquis of Cornwallis was accordingly sent to Bengal early in 1786, furnished with a letter from the Court of Directors, dated the 12th April, 1786, with instructions forbidding introduction of any novel system which would "destroy those rules and maxims of policy which prevailed in the well regulated periods of the native Government," and definitely directing that the system of farming for short terms which only "drained the country of its resources" must be stopped, and that settlements should be made in all practicable instances with the zemindar, on revenues fixed on a permanent basis.

Zemindars could not be ignored.

2. There was no question of ignoring the zemindars. They were an institution in Bengal from the earliest known times and had developed from the peculiar conditions of the country and its people. The Pathans during the 400 years of their domination recognized the system which had grown up, and even allowed many of the zemindars to wield semi-military functions. The Mughals, whatever might have been their policy in other parts of Hindustan, did not attempt to abolish

the zemindars in Bengal, though they took away their military powers. They formed some new zemindaries by distributing amongst their adherents the estates of those who were militant against them, but otherwise the position of the zemindars was the same, and they, as a rule, succeeded by inheritance so long as they were loyal, and even transferred their estates in whole or part. The first attempt to dispossess the zemindars was made 140 years later by Murshid Kuli Khan: but his attempt failed totally, and within three or four years, the dispossessed zemindars had to be restored, and *malikana** was allowed for the period of dispossession.† The method of settlement by auction adopted in the second period of the Company's Dewani implied displacement of those zemindars who could not compete in the auction bids, but the plan had to be abandoned. They were compensated with *malikana* allowance and were eventually restored. Even Barwell‡ did not think it a matter of either practical or abstract politics that the zemindars should be ignored. Any structural disturbance of a system which had evolved in course of centuries and which affected the interests of the entire population—the zemindars, the talookdars and the subordinate tenantry—could not be effected except by drastic expropriation; and the English mind has always discountenanced such arbitrariness. The Parliament's mandate in Section 39 of the Regulating Act of 1784 only gave expression to this public sentiment in England.

* "Malikana" is from Arabic "malik" meaning master or owner, and "malikana" means what relates or belongs to such a person. During the Mughal period, the term was technically used to mean the allowance given to the zemindar when he was, for any reason, kept temporarily out of the management of his estate. The allowance was also called "moshaira" apparently because it was paid every month.

† Shore in his minutes of 2nd April, 1788 and 18th September, 1789, states that he had proof of this at least in a number of cases.

‡ Richard Barwell was the Chief at Dacca at this time. He was one of those who, along with William Makepeace Thackeray and Francis Grand, incurred the wrath of the Court of Directors for exceeding the limits of propriety in their trade commitments and making large fortunes: F D. Ascoli's "Early Revenue History of Bengal," page 48. Mr. Ascoli, however, observes that there is no evidence that any servant of the Company acquired any fortune at the expense of the land-revenue.

3. The policy of respecting the established system of land-tenures was not an exception for Bengal. It has been the policy of the British Rule throughout in every Province as it came under its administration. Bengal or any other part of India was not a *tabula rasa* where the English could construct any system of land-tenures they liked. The same policy was followed in the Northern Circars, in the old N. W. Provinces, in the Punjab, in Bombay, Berar, Sindh and Assam. Even in Oudh where the estates of Talookdars had been confiscated after the Sepoy Mutiny, the Talookdars were almost entirely restored to their estates, and the previous land-system was continued. There were modifications in internal details for fair adjustment of rights and privileges amongst the different classes concerned, but the general system, whether zemindari, talookdari or raiyatwari, as it existed, was maintained. The only exception was in the *poligar-area* of Madras. But this area had a peculiar history and the supression of the *poligars* was a political necessity,* for which Sir Thomas Munro, with the help of a military force led by General Dugald Campbell, had to "clear them (the poligars) out" of the field. A brief sketch of the land-settlements in the different Provinces has been given in the Appendix to this Chapter: and here we will pass on to our narrative about the developments in Bengal.

General policy not to disturb framework of the established land-system.

4. During the first stage of their administration, after the acquisition of Dewani, the East India Company appear to have entertained an idea that they could deal with the land-

Wrong policy of the Company at their first stage—

* This unruly class could hardly be compared with the zemindars of Bengal. See Baden-Powell's account referred to under "Madras" in the Appendix to this Chapter. The troubles they created led to what is known as the notorious "poligar wars." Sir Thomas Munro's advocacy of the "raiyatwari" settlement in these areas of Madras, however, considerably influenced the views of later critics regarding the Bengal-settlement. But it was overlooked that the expulsion of the poligars was necessitated by special circumstances to secure law and order: and assuming that they possessed a semblance of rights in land, the line of action

system of the vast country which came in their charge, in any manner they liked. They neglected the lessons of previous history: they slighted the advice of Muhammad Reza Khan, and ignored the warnings of some of their own officials. When the terrible famine of 1770 caused unheard-of misery and devastation amongst the people, they utterly failed to realise the responsibilities which rested on them as constituting the Government of the country. A catastrophe like this famine would have led a present-day Government to come down with a million sterling to relieve the distressed people: but there is no account that any relief-measures were undertaken. On the other hand the realisation of rents and revenues was enforced with all the rigour possible, and the high assessments obtained by their novel method of auction-settlements were sought to be continued. The Regulating Act of 1784 put a brake on this reckless march of the Directors of the Company. "Principles of justice and the honour" of England required, the Act declared, that the complaints of the landholding classes should be fully enquired into. The establishment of a Government by a foreign people living about a quarter of the globe apart, and with no affinity in language, religion or manners, could be secured only on the foundation of an unflinching confidence of the people in their Rulers. The Act definitely directed that the wrongs already done must be forthwith redressed, and for future guidance "permanent rules" must be laid down, "upon principles of moderation and justice," to regulate the Company's demand of revenue from land.

—checked by the Regulating Act of 1784.

5. We have no account of what action, if any, was taken to redress the wrongs already done, whether for the zemindars or for the tenantry. Within three years of the auction-settlement of 1769-70, the zemindars had run into an

No action to redress wrongs already done.

taken here was an exception to the general policy to respect established systems which has been consistently followed in every other Province, and was clearly enunciated in the Regulating Act of 1784.

enormous debt* of over three million sterling at high rates of interest, to meet the Government demand. Did they do this inspite of having themselves realised sufficient amount from the tenants? The Company's officers were still deluded by hearsays: and it was evidently to test how far this could be correct, that a large number of estates which had failed to pay the full revenue, were taken temporarily under their direct management and collection. The extent of these temporary resumptions may be imagined from the fact that, by 1786-87, the revenue-demand of such estates amounted to over a crore of rupees,† or about half the total assessment. The result of direct management was equally unsatisfactory, and the arrears in 1783-84 amounted to over one crore of rupees.‡ James Westland, in his Report on Jessore, writes that when a portion of Muhammad Shahi zemindari had hopelessly fallen into an arrear of Rs. 1,32,000, and was taken under direct management, it appeared that, on a total revenue of about two and half lakhs of rupees, the zemindar had taken from his collections, in the course of two years preceding 1787, only about Rs. 32,000 inclusive of costs of management. The direct management was a failure,§ and the estate was restored

* See the reference to the Report of the Committee of House of Commons, 1772, by C. N. Halhed, quoted by the author of "Zemindary Settlement of Bengal," Appendix VI, pages 129-30. The private claims against the zemindars exceeded three million sterling: and as to the view whether it was not the Company who were liable for it, see the opinion of the Advocate-General Sir John Day, also referred to in those extracts. Perhaps the position feared was that unless it could be proved that the assets from the raiyats were sufficient, the Company might be liable to make good these debts with which the revenues were paid. Sir John Day gave the opinion that the zeminders were the landholders and therefore not amenable to the jurisdiction of the Supreme Court: and "on this the Government acted and induced the zemindars to plead against the jurisdiction."

† See the statement appended to Shore's minute of 18th June, 1789. The *moshaira* allowances to the zemindars, thus temporarily dispossessed, at 5 to 10 per cent. of the revenue, amounted to about four lakhs a year.

‡ Grant's statement in the Abstract at the end of his Analysis gave this for Bengal as amounting to Rs. 1,01,45,050.

§ Portion was farmed out in small lots. The fact was that the original assessment was exhorbitant. It assumed, as Mr. Westland writes, an average rate of Re. 1-8 per bigha (or Rs. 3 per acre) while the fact was that the actual average was about Re. 1 per bigha (or Rs. 2 per acre), and for newly reclaimed lands only 12 annas per bigha (or Re. 1-8 per acre). It is interesting to note here that the decennial settlement of this estate, which was made permanent later with a

to the zemindar, but burthened still with the liability for the accumulated arrears.

Were the zemindars living in affluence? Shore in his minute of 18th June, 1789, writes—"It is a certain fact, that the zemindars are almost universally poor.* This assertion, if doubted," he continued, "may be enquired into with respect to the zemindars of Rajshahye, Beerbhom, Jessore, Nuddea, Dinajpoor and Satsyka, to whom I do not mean to restrict it." The detailed accounts of both Grant and Shore, to which we will refer more fully later on, show that many of these zemindars had to sell their personal effects to meet the Government demand. The accumulated arrears were, nevertheless, carried over, and were not written off.

Permanent rules for the future: investigations.

6. The next direction in Section 39 of the Regulating Act of 1784 was that permanent rules must be established "on principles of moderation and justice, according to the laws and constitution of India," to regulate the "tributes, rents and services" to be rendered and paid in future by the "rajahs, zemindars, polygars, talookdars and other native landholders." In other words the arbitrary and uncertain methods of fixing the assessment of land-revenue which had hitherto been followed, were to stop. What were then to be the standards of assessment on these various classes? Following the Act of 1784, the Company's officers started investigations to collect materials in a more thorough manner than they had previously done. Major Rennell had already made a survey of the country and his maps were published under the authority of the Parliament in 1781. James

further increase, could be justified only on the assumption of an average rate of Re. 1-6 per bigha (or Rs. 2-12 per acre) *plus* a cess (*sic.*) of annas 6, while the actual rents of the *khudkast* raiyats, which could not be enhanced under the Regulations, gave an average of only Rs. 2 an acre. This illustrates the extent to which the permanent settlement was an advance assessment based on future prospect of extension of cultivation.

* H. Strachey, Judge Magistrate, writing for Midnapur in 1802, stated that "the private houses of zemindars and other men of note consist either of forts in ruins or of wretched huts, generally worse than the stable of an European gentleman."

Grant* made an "Analysis" of available materials, in his well-known minute of 27th April, 1786,† submitted to Hon'ble John Macpherson, then Governor-General at Fort William. On the arrival of Lord Cornwallis in the same year, further investigations were made, and interrogatories were sent out to Collectors. John Shore (later Governor-General as Lord Teignmouth), then a member of the Supreme Council, in his minute of 18th June, 1789‡ reviewed Grant's Analysis and other materials which had been gathered by that time.

Result of investigation: only 11¼ million acres under cultivation out of 53 million acres of assessable land,

7. What appeared from these investigations was that out of a total area of 57·6 million§ acres of land in Subah Bengal and Midnapur, about 53 million acres‖ were assessable to land-revenue, the rest being *lakheraj* (called also then *bazezemin* or alienated lands), *chakeran*

* This was for Subah Bengal including Midnapur. There was a Supplement, dated 30th June, 1787, for Subah Behar. These minutes (reproduced in the Appendix to the Fifth Report of July, 1812, from the Select Committee of the House of Commons on the Affairs of the East India Company) give a mine of information, but the figures are at places confused with Grant's forecasts of what they might be. Grant's idea was that the zemindars and talookdars were mere officers who could be ignored and settlements made directly with the raiyats. Grant was the chief Sheristadar of the Board of Revenue.

† Shore had another Minute regarding Behar, recorded in the Proceedings of 18th September, 1789 (Bengal Revenue Consultations of the same date). He had in the meantime submitted his celebrated minute of 2nd April, 1788, regarding the status of the zemindars (Revenue Department Proceedings of the same date, reproduced by Firminger at the end of his "Fifth Report," Vol. II).

‡ The other important records bearing on the question, are: (1) The Court of Directors' letter, dated the 12th April, 1786; (2) Lord Cornwallis's minute of 18th June, 1789, discussing Shore's minute recorded on the same day; (3) Shore's third minute of the same date recording his dissent from the views taken by Lord Cornwallis; (4) Shore's further minute, dated 8th December, 1789, summarising his own views on the question of permanent settlement; (5) Lord Cornwallis's minute of 3rd February, 1790, in which he explained his own views, after reviewing the views of Shore and other officials; (6) The Court of Directors' despatch, dated the 19th September, 1792, in which they gave their final orders regarding the permanent settlement.

§ Equivalent to 90,000 British square miles ascertained by Major Rennell.

‖ Shore's minute of 18th June, 1789, para. 110. One square mile gave 1,396 bighas according to the Bengal official standard then, as stated by Grant, and thus 2·18 bighas made an acre. The area of *baze-zemin* was estimated at about 3 million acres, and of *chakeran* about 800 thousand acres.

(service land for maintenance of public servants such as the Police) and rivers. But the most important disclosure was that in this area of 53 million acres of assessable land, only about 11½ million acres* were cultivated, and the rest were waste, jungle and forests. Assuming that the average value of the produce from an acre of land, according to the prevailing prices then, was Rs. 6-8,† the value of the total gross produce could not have been more than Rs. 7·48 crores.‡ If the rent of the raiyat was one-third of the value of the gross produce he derived, the total rental value of the assessable area in the Subah could be only about Rs. 2·49 crores.

—and their produce-value 7½ crores of rupees.

8. Both Grant and Shore estimated that in the Bengal districts the average incidence of the raiyat's rent was about Rs. 2 per acre,§ except in the 24-Parganas district as then constituted, where it was about Rs. 3 per acre. This gave a total rental value of the cultivated area, of about Rs. 2·35 crores only :‖ and if 10 per cent. were added for uncultivated lands possibly included in the raiyat's holdings, the total rental could not be more than about Rs. 2·58 crores. Grant had an exaggerated idea about the capacity of the raiyats, and suggested that their rents throughout the Province might be raised to Rs. 3 per acre as in the 24-Parganas area. But Lord Cornwallis could not agree; and Shore also could not

Estimate of raiyati rental,—about Rs. 2½ crores.

* Or, as Grant stated in his "Analysis," no more than 18,000 square miles (11·5 million acres) "was the proportion, alone in cultivation, liable to the rents of the territorial proprietary Government (he was always asserting that the State was the proprietor) at the established rate of the *rebba* or one-fourth."

† The price of rice then was about 8 annas per maund. Taking 13 maunds of rice as the average produce from an acre of land, this gave Rs. 6-8.

Mr. Ascoli in his Early Revenue History of Bengal accepts 8 annas per maund as the price of rice at this time (1787-90). Mr. Thomas Colebrooke in his "Husbandry of Bengal," written between 1794 to 1804 (Reprinted by R. Knight of the "Statesman" in 1884), stated the price of grains, when he wrote, as 8 annas to 12 annas (for more valuable crops) per maund.

‡ Shore's estimate was six crores only: para. 109, minute 18th June, 1789.

§ According to Mr. Thomas Colebrooke (1794-1804), 31 million acres of land in Subah Bengal, Behar, Orissa and Chota Nagpur yielded a rent of four crores of rupees, or an average of Re. 1-5 only per acre. This, it should be noted, included the produce-rent prevalent in Behar.

‖ *Viz.*, 11 million acres at Rs. 2 and half a million acres at Rs. 3.

justify even an assessment of two crores on the zemindars, without assuming that the raiyats paid a proportion of as much as half or three-fifths of the produce they derived from their lands.*

Proper assessment could be about Rs. 167 lakhs.

9. Shore's idea about allowance to the zemindars and talookdars of all grades was that they should get a margin of one-third of the rent they derived from the raiyats to meet their costs of collection and for a reasonable profit. If two and a half crores be taken as the approximate amount of the raiyati rental at the time, an assessment on the zemindars of more than Rs. 167 lakhs could not be justified. Grant's idea of the proportion of allowance for the zemindars and talookdars was 25 per cent. Even on this basis the assessment could not be more than Rs. 188 lakhs.

But actual assessment in 1786-87 was 41 lakhs in excess.

But the net assessment on the zemindars in Subah Bengal and Midnapur in 1786-87 was Rs. 207·59 lakhs (or Rs. 41 lakhs in excess), and for Subah Behar Rs. 49·68 lakhs, giving a total of Rs. 257·27 lakhs.† It was an exhorbitant assessment in the impoverished condition of the country, and the stern reality which faced the authorities was that this assessment could not be realised, and heavy arrears were being simply carried over. And this happened inspite of the fact that extensive zemindaries bearing an assessment of one crore of rupees, or about half the total assessment, had been taken over under direct collection by the Company's officers. Their remittances to England thus fell far short of what the Directors expected from the assessments reported to them, and in their despatches they had frequently to express their annoyance that the actuals were so deficient.

Company's insistence for Rs. 260 lakhs for the two Subahs.

10. Yet the Directors insisted that the assured net land-revenue from the two Subahs (Bengal, with Midnapur, and Behar) must not be less than Rs. 260 lakhs. It was here that

* Shore's minute, dated 18th June, 1789.

† Statement annexed to Appendix No. 10 of Shore's minute, dated 18th June, 1789.

Lord Cornwallis was confronted with an extremely awkward situation. How could he impose such an assessment when even the gross rental assets of the zemindars hardly amounted to as much? He could not reconcile himself to Grant's view that the raiyats were capable of paying 50 per cent. over their existing rents which included the *abwabs* already imposed. An incidence of Rs. 3 per acre gave over half the gross produce the raiyats were receiving from their lands, and a general ratification of such a high proportion for the entire Subah would certainly have meant ruin to the peasantry. He could not accept Shore's proposal for a short term settlement: for, amongst other reasons, such a settlement could be made only on the existing assets, and these assets could not justify an assessment of more than Rs. 167 lakhs, if it was expected to be a real assessment which could be properly realised.

Lord Cornwallis's solution by the permanent settlement.

11. One solution in this dilemma was to base the assessment not on the existing assets, but on what might be expected in course of time if a long period or perpetuity was assured to the zemindars: and it was this solution which appealed to Lord Cornwallis. On the side of the tenantry, he was strong in his views that the rents of the existing raiyats, already increased by the *abwabs* imposed, could not be further enhanced: and for those with whom lands would be settled later on, he wanted to protect them against any rent higher than at the established pargana rates.* For the zemindars, he was equally strong in his view that if they were to be assessed forthwith on consideration of prospective assets, they must be

* These restrictions were embodied in the Regulations of the Permanent Settlement (see Section 7 of Regulation IV of 1794), and have since formed the peculiar feature of the rents of raiyats in Bengal. All relation of rent to produce was effectively obliterated, and the rents of the *khudkast* holdings of that time have, except in certain circumstances which will be discussed in a later chapter, remained the same. They give about one-eighteenth of the gross produce. As for the later tenancies, the initial rents, however arranged, remain the basis, only changed where the landlords have been able to enhance by agreement, or by suit, on the ground of rise in prices or of improvements at the landlord's expense. The average incidence of these rents of the raiyats is now less than one-twelfth of the gross produce. See Introduction, and also Chapter X *post*.

assured that the assessment would remain fixed for ever, and no portion of their increased profits from improvements and extension of cultivation within their respective estates would at any time be claimed by the State.

For the Company, he believed that with this assurance to the zemindar, the assessment would not be a mere paper-assessment, but would be paid punctually in the expectations of the future: and to make the position sure, he proposed simultaneously that more stringent rules for realisation of arrears should be framed. If any zemindar failed to pay his dues for any *kist*, his estate would forthwith be put to auction and sold.* He fully realised that this might cause hardship to the zemindars, and some of them might even be ruined; but, he argued, if as a result of such sales some estates passed into the hands of more industrious and solvent people who were capable of exploiting the possibilities in the vast areas of waste and jungle, and would not mind paying regularly the advance-assessment, that would be a gain both to the country and to the State.†

Previous year's assessment taken as the standard for Bengal—

12. It was thus that, in the assessment of the Decennial Settlement which was eventually declared permanent, the existing assets from the rents of the raiyats were ignored,‡ and the basis adopted was the high assessments which were being

* The earlier practice of arrest and confinement of the defaulting zemindars, and of temporary dispossession, was also continued.

† As matters stood at the time, there was absolutely no security for the Government revenue, because there was no margin of "annual value" for an estate. Lord Cornwallis very pertinently observed in one of his minutes, that he failed to see how, when a zemindar had defaulted in one year, he could pay the arrear in the next. The same observation applied equally to the raiyat when his rent was as much as one-third of the gross produce he derived.

‡ There is a rather common impression that the decennial assessment was made with an allowance to the zemindars of ten per cent. of the net revenue assessed. This erroneous view is due to several reasons. Shore and Grant make occasional references to an allowance at this proportion as *malikana* or *moshaira* to the zemindar during the Mughal period (and also the Company's) when he was temporarily dispossessed of his management. They also mentioned that the *nankar* lands in Behar were supposed to represent about this proportion. But in Bengal there was practically no *nankar* land, and whatever *khamar* lands there were, were not excluded from the calculation. The wrong impression gained ground

carried down, though with some modifications, from the auction-settlements of 1769-70. The first rule for the assessment for the decennial settlement in Bengal was that the "jumma of the preceding year" was to be the standard.* As has already been observed, the Company could not afford† to come forward with any relief during the severe famine of 1770: and before the surviving population had time enough to recover, there was a famine in 1784. There was again a famine in 1786, followed by still another famine in 1787,‡ which caused particular havoc in the Eastern Bengal districts. The assessment carried down from the auction settlement of 1769-70 was sought to be enforced by all means possible. Many zemindars were forced to sell their personal effects, and yet heavy arrears accumulated.

—ignoring the effects of the famines of 1770 and 1784-87, and heavy arrears.

Lord Cornwallis viewed the situation with a broader outlook. The uppermost question in his mind was how to help the landholders and the cultivators to bring about improvements and extend cultivation over the waste lands

Lord Cornwallis's broader outlook—need for speedy extension of cultivation:

from the provision of ten per cent. profit in the Regulations of later temporary settlements (Regulation VII of 1822) and in the rules about enhancement of the rents of tenures in Section 7 of the Bengal Tenancy Act. The only exception to the standard of the previous year's assessment which was made in the Decennial Settlement Regulations for Bengal, was for the small separated talooks for which a detailed investigation of assets was made, and then an allowance of ten per cent. of the net revenue given to the talookdar (Bengal Special Order, in Section 75 of Regulation VIII of 1793).

* This is reproduced in Section 69 of Regulation VIII of 1793 (Bengal Special Orders). Shore had considerable difficulty in justifying this. He introduced a comparison with Cossim Aly's assessment, which, he observed in the same breath, was not such as could be taken "as any fair standard of comparison" (paragraph 148 of his minute of 18th June, 1789). He overlooked here his own previous observation that Cossim Aly's assessment represented really the total rental of the raiyats, ignoring any zeminder or talookdar. He could not, however, overlook the effects of the famines, and his passing reference to "diminution of the specie" (same as rise in prices) is strained, and no comparative figures are given.

† They were after all a trading concern: and needed money for their profits, while money was necessary for their activities in the territory of the Peshawa and other parts where they had got involved.

‡ These are referred to at several places in the minutes of Shore and Lord Cornwallis and also in the Fifth Report (page 182, para. 124). See also Ascoli's Early Revenue History of Bengal, Chap. VI.

and the jungles into which the country had been reduced. "One-third of the Company's territory in Hindustan," Lord Cornwallis observed in his minute of 18th September, 1789, "is now a jungle inhabited by wild beasts. Will a ten years' lease induce any proprietor to clear away the jungle and encourage the raiyats to come and cultivate his lands, when at the end of that lease, he must either submit to be taxed *ad libitum*, for the newly cultivated lands, or lose all hopes of deriving any benefit from his labour, from which perhaps by that time he will hardly be repaid?" The assessment sought to be maintained was about half a crore in excess of what could be justified by the assets at the time, and Lord Cornwallis did not believe that the country could possibly show such material improvement within a period of ten or twenty years, as might, by any reason, justify the continuance of this high assessment with a short-term settlement. No landholder, whether a zemindar or a tenant, could be told that he should submit to advance-assessment of over thirty per cent., being at the same time liable to an enhancement at the end of the period in proportion to the increased profits. Grievous sores had been caused by the fickle policies hitherto followed, and experience of short term settlements had shown that such arrangement only discouraged exertions for improvements (which meant outlay), while it definitely instigated oppressive exactions from the tenantry.*

—his view that a short term settlement could not secure this.

13. This was how Lord Cornwallis viewed the situation, and maintained that, if the revenues were to be kept at the existing assessments, nothing short of a permanent settlement with the zemindars could justify them. He would fix the rents

Rents of Khudkast raiyats also to be fixed:

* Shore suspected that if any zemindar could pay the assessment then made on his estate, he must have been fleecing perhaps as much as half or more near three-fifths of the produce which the raiyat was deriving from the land. Possibly it was so in the Behar districts where the rent was paid by division (usually half) of the crop, but to attempt it in Bengal where the rent was in money, it must mean indirect oppression, worse than direct exaction.

of the *khudkast* raiyats by *pattas*,* quite as the assessments on the zemindars themselves. What he said to the latter was that no portion of the future rental profit from the waste and jungle lands, which were then untenanted,† would at any time be claimed by the State: and, as a part of the bargain, the zemindars of Bengal-districts were to pay on the basis of the previous high assessments. In his letter, dated 6th March, 1793, to the Court of Directors, he wrote—"it is the expectation of bringing them (the extensive waste and jungle lands)‡ into cultivation and reaping the profit of them, that has induced many (of the zemindars) to agree to the decennial jumma which has been assessed upon their lands." The probable profits from these waste and jungle lands were the only resources of the zemindars to balance their position in course of time. This also formed part of the bargain for the other terms of the settlement which required that the zemindars must punctually pay into the Government treasury the assessed revenue, without any excuse on account of drought, inundation or other calamity of the season (Article VI of the Proclamation in Regulation I of 1793). In his same letter to the Court of Directors, Lord Cornwallis explained that "it (was) this additional resource alone which (could) place the landholders in a state of affluence and enable them to guard against inundation and drought, the two calamities to which the country must ever be liable."§

—but future profits from waste and jungle lands not to be shared by the State.

Revenue thus fixed to be enforced irrespective of drought, inundation or other calamity of the season.

* Section 60 (2) of Regulation VIII of 1793. As for the reasons for a somewhat inconsistent provision in Section 5 of Regulation XLIV of 1793, modified later by Regulation XI of 1833, we will discuss in a later chapter.

† Section 52 of Regulation VIII of 1793. As for the restriction by Section 2 of Regulations XLIV of 1793, softened, as regards the raiyats, soon after by Section 7 of Regulation IV of 1794, and the meaning of "established pargana rates," we will also discuss later.

‡ Section 50 of Regulation VIII of 1793. It is to be noted that large tracts of forests such as the Sundarbans did not come in this category.

§ Thomas Colebrooke in Husbandry of Bengal (1794-1804) wrote with reference to Lower Bengal, subject as it was to annual inundation and requiring "patient industry" of the peasants and the landholding classes: "In the same tract, during the rain a scene presents itself, interesting by its novelty: a navigation over

Lord Cornwallis's expectations of how the inducement would work.

14. The necessity of clearing these jungles infested with wild beasts (or as the Collector of Dacca then said, with ferocious animals even in the suburbs of that town), and extending cultivation over the waste lands—not a very easy problem when over one-third of the population of the country had been swept away by famines and pestilence—was paramount: and every possible encouragement from the State was demanded. "To stipulate with them (the zemindars), therefore," Lord Cornwallis continued in the same letter, "for any part of the produce of their waste lands would not only diminish the excitement to these great and essential improvements in the agriculture of the country, but deprive them of the means of effecting it."* Lord Cornwallis had high expectations that this "excitement" would not be failing, and the zemindars would, by proper management, be able to recover, in course of time, from the immediate hardships which his measures might cause. But this recovery rested on the extent to which

fields submerged to a considerable depth, while the ears of rice float on the surface; stupendous dikes, not altogether preventing but checking its sudden excesses." Mr. Colebrooke's service was mainly in Behar (Tirhut and Purnea) and the contrast with the condition of "reservoirs and dams in the champaign country" (meaning Behar) was particularly striking to him.

* Simultaneously with this, vigorous and comprehensive measures on the part of the Government were necessary to establish law and order, and a number of the Regulations of 1793 were intended for this.

Later critics have questioned the propriety of this "sacrifice" of the revenues of these waste and jungle lands. But they overlook several facts: first, an assessment on the basis of the remaining (cultivated) lands, would have been very considerably less than what was adopted for the permanent settlement; secondly, the Government of the time could not take upon itself the reclamation and tenanting of these lands, interspersed as they were in the zemindary areas; thirdly, a tight assessment, on the cultivated area only, would have left no resource to the zemindar, either immediate or remote, to clear the heavy debts which they had incurred to meet the Government demand during the experimental periods of the Dewani; fourthly, heavy extortions from the tenantry would have been inevitable, and it would have been difficult to check these, with the result that agriculture, instead of advancing, would have gone backwards.

It may be noted here that the waste and jungle lands, included in the permanent settlement, did not mean the large tracts of forests as in the Sundarbans and the like: *vide* Lord Cornwallis's minute of 6th March, 1793 and, the provisions in the several Regulations of that year. These latter were kept outside and made liable to new assessments (see Regulation II of 1819).

a particular zemindar would be able to effect improvements in his estates, for which the extensive areas of waste and jungle lands left ample scope. So strong was his view in this respect that he expressed in emphatic terms that if any zemindar showed his incompetency and thus lost his estate in a sale for arrears of revenue, it was "surely not inconsistent with justice, policy or humanity to say that the sooner his bad management obliges him to part with his property to the more industrious, the better for the State."

The Decennial assessment.

15. Thus it was that the net assessment of the Decennial Settlement, so far as completed by the year 1790-91, amounted to Rs. 2,68,00,989, for the provinces of Bengal and Behar, *i.e.*, still more than the net assessment of 1786-87 by about eleven lakhs.* For Subah Bengal (including Midnapur) as then constituted,† it was about Rs. 220 lakhs, or about twelve and a half lakhs over the assessment of 1786-87.‡ It gave an increase in 65 years (since Shuja Khan's settlement of 1728 A.D.) by an amount which was about three times§ as much as was obtained by the Mughal Government in the

* The increase was really greater, for, the decennial assessment was exclusive of *sayer* or internal duties, taxes on gunjes, bazars, shops and houses which were abolished, and also of excise on opium in Behar.

† Some of the districts of the old Subah are now in the Provinces of Behar, Assam and Orissa. The present permanently settled revenue in Bengal of Rs. 215 lakhs is exclusive of the revenues of these districts, but includes the revenues settled permanently later, on the resumed invalid *lakheraj* lands.

‡ To illustrate: Mr. C'Malley, in his Gazetteer of Khulna, states that the previous year's demand of estate Yusafpur was increased by Rs. 5,000, and of estate Saiyadpur, by Rs. 2,000: and so of other estates. "Some of the zemindars," Mr. O'Malley continues, "fought hard for a modification of the terms proposed, but finally had to accept them. In the end, most of the great zemindar families were ruined."

§ Todar Mal's assessment (1582 A.D.) was—Rs. 106·93 lakhs
Shuja Khan's assessment (1728 A.D.) was—Rs. 142·46 lakhs

Increase in 146 years was—Rs. 35·53 lakhs.

Of this increase, as much as Rs. 14·36 lakhs was for new territories annexed: and strictly speaking the real enhancement, area for area, was only Rs. 21·17 lakhs or 20 per cent. in 146 years. The assessment of Rs. 220 lakhs in 1790 gave an increase of Rs. 78 lakhs or an "increase" of over 55 per cent. from Shuja Khan's time.

course of the preceding 146 years, inspite of the severe set-back caused by the famine of 1770 and the almost annual famines during 1784-87. Looked at in this light, it can hardly be said that what appears to-day to have been a sacrifice of the future revenues of the State, was at all a sacrifice. Lord Cornwallis wanted the zemindars to yield to their immediate difficulties, holding out to them a promise of a permanently fixed assessment and leaving it to them to recoup their losses by raising profits from improvements and extensions of cultivation in course of time. But, as for the Government, it was saved from an immediate diminution of its revenue, and any possible loss at a distant future was counterbalanced by the advance assessments, as in fact they were. All the risks of the uncertain future were thus thrown on the zemindars. Lord Cornwallis could not have felt himself very happy at this position : and in the Declaration of the Permanent Settlement, he appealed to the good sense of the zemindars and argued that it was to their own interest that they should treat their tenants with moderation. Simultaneously, Regulations were made explaining the intentions that the existing rents of the raiyats, which would be fixed by *pattas* as far as possible, must not be enhanced beyond the then *nirikbundy* of the pargana. If these Regulations proved insufficient, further strong measures would be taken to enforce the intentions. " Many Regulations," he said in his minute of 3rd February, 1790, " will certainly be hereafter necessary for the further security of the raiyats " and the dependent talookdars. Full power for such measures was thus definitely reserved in the terms of the Proclamation. It was unfortunate that Lord Cornwallis did not stay after 1793, to see the events for a few years and give full effect to his intentions. The Governments* which followed, were more anxious

Risks of the future thrown on the zemindars.

Measures for the protection of the raiyat:

—unfortunately not followed later.

* It is strange that even Shore who (then Sir John Shore) succeeded Lord Cornwallis did very little in this direction. The next *régime* of Lord Wellesley (1798-1805) was too busy with wars and struggles for annexation and

for the Company's revenues than the protection of the tenantry, and in many respects sadly failed to realise these intentions, or to implement them by further appropriate measures.

The political condition of the time.

16. There was another aspect of the situation which later critics, judging in the quiet atmosphere of peaceful times after the consolidation of the British Empire in India, have often overlooked. The political horizon during Lord Cornwallis's time was far from clear either in India or at home. British Rule had just been founded on a very small part of India and the English had yet no position in other parts; while, apart from anything which might blow up amongst the princes in India, France, with which they were not then on friendly terms, was a rival. The English had got themselves involved in the family feuds of the Peshawa, suffered a bad defeat in 1778, and, after the Treaty of Salbaye in 1782,* were just getting a footing in that part of the country. It was not till 1803 that the bulk of the territory in the Doabs (called later the North Western Provinces) was obtained by cession. Similar struggles were going on in Berar which did not end till the Treaty of Deogaon in 1803. Benares had been obtained in 1775, but was not free from troubles. Although open war with France had not yet been declared, heavy clouds were gathering in the political horizon of Europe. A foreign invasion or like disturbance in India was not beyond the region of probability, and no prudent politician could overlook this at the time: and though it

extension of territories. Lord Cornwallis was sent again in 1805, but unfortunately he died within 3 months of his arrival. Then followed a period of what has been characterised as a "period of inaction" which lasted for over 10 years. On the expiry of this period of inaction all attention was engrossed in settlements of new territories, and in resumptions of invalid *lakherajes*. It was thus that matters were allowed to drift.

* England was then at war with the settlers in the United States of America which they eventually lost in 1783; this was followed by quarrels with France for the division of Canada. France had started its "Revolution," and there was intense tremor in the continent of Europe. The Treaty of Amiens (1802) did not bring real truce, and the Napoleonic War which followed did not end till the battle of Waterloo in 1815. The clouds which burst almost at the time when the Permanent Settlement was declared in Bengal, had been getting thick for over a decade.

might have read absurd to later critics, Lord Cornwallis thought it fit to record a warning in his minute of 3rd February, 1790, that it was necessary to secure the confidence and attachment of the zemindars.* The future then was uncertain, and very much in the hand of God. If the Permanent Settlement had relieved the authorities of any anxiety over their possessions in Bengal even to a small degree, it may be questioned whether that in itself, apart from other considerations, was not a sufficient justification for the measure.

Consideration of freeing Collectors for other branches of the administration

17. Another circumstance also influenced the plan of action advocated by Lord Cornwallis. Up till that time the Government and all their officers were mainly busy with the land-revenue side of the administration. But the entire administration, including judicial and police, required thorough overhauling or rather re-organisation. Unless law and order were properly established, no progress in any direction could be expected. But this could not be effected with the cheap, but demoralising methods previously existing : and reforms meant considerable expenditure. On the other hand, it was natural that the East India Company, as a trading concern, were anxious for a good and assured dividend. In their despatch dated the 12th April, 1786, the Court of Directors expressed great concern at the gradual decline in their net earnings which since 1766-67 had fallen by about one million sterling

* He said in his minute: " In case of a foreign invasion it is a matter of last importance, considering the means by which we keep possession of this country, that the proprietors of lands (meaning the zemindars) should be attached to us from motives of self-interest. A landholder who is secured in the quiet enjoyment of a profitable estate can have no motive for wishing for a change. On the contrary, if the rents of his lands are raised in proportion of their improvement, if he is liable to be dispossessed should he refuse to pay the increase required of him, or if threatened with imprisonment or confiscation of his property on account of balances due to Government upon an assessment which his lands were unequal to pay, he will readily listen to any offers which are likely to bring a change that cannot place him in a worse situation, but which hold out to him hopes of a better."

Shore also observed : " The surest way to retain our dominion in Bengal is . . . . . by affording them security in their property,"

in 1783. It was thus expected that with a permanent arrangement of land-revenue with the zemindars, the Collectors would be materially relieved of their work in this branch of the administration, and be in a position to devote more of their attention to other branches, in particular, law and order. A large number of Regulations, promulgated on the same day in 1793, thus outlined re-organizations almost in every department of Government. The financing of these new activities required an assured revenue, the main source of which was still then the land. But this land-revenue could not be regularly and properly realised unless the zemindars were placed in a stable and certain position.

Lord Cornwallis's expectations of recoupment.

18. But this was not the only source on which Lord Cornwallis counted. The future which he envisaged was that his measure would result in gradual accumulation of wealth with the land-holding classes, and trade and commerce would then rapidly grow and flourish, affording wider avenues to the Company's business and yielding eventually much increased revenues from customs and other taxes. In his minute of 3rd February, 1790, Lord Cornwallis said that he expected that these increased revenues would amply recoup any loss in revenue from land which might appear at a future time.

Necessity of growth of wealth with individuals:

19. A perusal of the various minutes and despatches of Lord Cornwallis cannot fail to impress, even a casual reader, how deeply anxious he was for a speedy growth of the prosperity of the people.* The view he took was that this could not be secured by fleecing them of every rupee they earned. In common with the economists of the time, he maintained that the securing of a revenue for the State was only a means to an end, that end being the prosperity of the country, which

* " .....prosperity of our subjects in this country.....deeply concerned.....and as the public good is our only object I am persuaded that it is our wish that the final decision may be such as will most effectively promote it." Lord Cornwallis's minute, dated 3rd February, 1790 (Revenue Consultation, dated 10th February, 1790).

again was only the aggregate of the wealth of its individuals. It was, therefore, more to the accumulation of individual wealth than to any immediate gain to the State, that one should look forward.* The resources of the Government would then automatically increase, while the fountain of these resources would be well and truly sunk. He would like to see the growth of real and substantial property-value for all landed interests, whether held by the landlord or by the raiyat. With the money-rent of the existing raiyats fixed by *pattas*, and of new raiyats also restricted by the established pargana-rates, he expected that as prices would rise there would be a greater margin of profit to the cultivator, which would then give a good value to his interests in the land. The zemindars might experience some difficulties in the beginning: but when in course of time the extensive tracts which were lying waste and as jungle, were reclaimed and brought under cultivation, their profits would increase, and their properties would attain a true value.

and property value of landed interests.

* "In raising a revenue to answer the public exigencies, we ought to be careful to interfere as little as possible in those sources from which the wealth of the subject is derived." Lord Cornwallis, same minute of 3rd February, 1790. "The attention of Government ought therefore to be directed to render the assessment upon the lands, as little burdensome as possible: this is to be accomplished only by fixing it." And as this wealth would accumulate in individuals, "by reserving the collection of the internal duties on commerce, Government may at all time appropriate to itself a share of the accumulating wealth of its subjects, without their being sensible of it." Again, the practice "of making frequent valuations of lands, and where one person's estate has improved, and another's declined, of appropriating the increased produce of the former to supply the deficiencies of the latter, is not taxation but in fact declaration that the property of the land-holder is at the absolute disposal of Government." Same minute of 3rd February, 1790. Henceforward, he informed the Court of Directors, Government was to look to increased trade and commerce and the prosperity of the people for any increase of revenue, and not to the land. The same sentiment was endorsed by the Court of Directors in their Despatch, dated 19th September, 1792 (paragraph 40). Again in their Despatch, dated 1st February, 1811—"the objects of that settlement (the permanent settlement) were to confer upon the different orders of the community a security of property." Mr. Sisson in his Report of 2nd April, 1815, explained it further "prosperity to the great body of the people, increasing the power of the State which must be proportionate to the common wealth that by good government it might enable its subjects to acquire."

20. But all these meant a definite abandonment of the policies of the past. Years of misrule and oppression had demoralised and enfeebled the peasantry. They must be rescued from the constant inquisitorial investigations which the periodical settlements had entailed in the past. A stable form of revenue-administration was sorely needed, and what Lord Cornwallis felt was that this could only be secured by a permanent settlement with the zemindars, providing simultaneously for adequate protection of the tenantry of all classes.

These could not be secured if there were constant inquisitorial investigations.

21. In his minute, dated the 18th September, 1789, addressed to the Court of Directors, Lord Cornwallis said that a permanent settlement alone, in his judgment, could make the country flourish, and secure happiness to its inhabitants; and he continued—

Grounds of humanity

> " and as I have a clear conviction in my own mind of the utility of the system, I shall think it a duty I owe to *them*, to my country and to humanity, to recommend it most earnestly to the Court of Directors, to lose no time in declaring the permanency of the settlement.....and not to postpone for ten years the commencement of the prosperity and solid improvement of the country."

After 25 years of fickle policy, preceeded by 50 years of oppression and mis-rule and constant raids by the Maharatta freebooters, any further vacillating policy was not likely to secure the confidence of the people; but on the contrary very disastrous consequences might ensue. Any short term settlement, Lord Cornwallis felt, was bound to lead to an incitement to further fleecing of the tenantry, and " what hopes can there be," he asked, " I will not say of improvement, but of preventing desolation?"

Final order for the permanent settlement.

22. The proposal for declaring the decennial assessment of 1789-90 as permanent, was approved by the Court of Directors in their despatch, dated the 19th September, 1792. The demand of revenues from land, thus fixed in perpetuity, was the same as assessed for the decennial settlement. The standard taken for Bengal was the assessment carried on in the books of the year immediately preceding the decennial settlement, except for the small separated talooks. The revenue actually fixed exceeded, as already observed, the assessment of 1786-87 by 12½ lakhs of rupees, and that of Shuja Khan's settlement of 1728 A.D. by Rs. 78 lakhs. If the assessment were made on the basis of the then existing assets and the capacity of the raiyats to pay rent in the condition in which they were at the time, the assessment for Bengal could not have been more than about Rs. 167 lakhs; but the actual assessment was about Rs. 220 lakhs. The main justification for this high assessment was the assurance of perpetuity.

Comparison of increase obtained with the increases during the Mughal period.

In fact, when judged from the increases obtained during the best period of Mughal rule and the long intervals at which these were obtained,* the result, apart from other considerations, could hardly be said to be unsatisfactory in the circumstances of the time, and the Court of Directors were quite content.

* Year	Assessment Rs. (in lakhs)	Enhancement Rs. (in lakhs)	Percentage of enhancement	Interval
1582 A.D. (Todar Mal)	106·93	..	...	...
1658 A.D. (Sultan Suja)	116·80 *plus* new territory 14·36	9·87	9·2	76 years
	131·16			
1728 A.D. (Shuja Khan)	142·46	11·30	8·7	70 years
1756 A.D. (Ali Verdi Khan)	153·60	11·14 (by gradual *abwabs*)	7·8	28 years
1790 A.D. (Decennial Settlement)	220·00	68·40	44·53	34 years

23. The immediate benefit of the permanent settlement was derived by the existing *khudkast* or resident raiyats.* Their rents, including *abwabs* already imposed, were fixed, and could not be enhanced except on grounds of fraud or collusion. For new raiyats, their rents could not also exceed the parganarates established at the time of the settlement or re-settlement. The avearge incidence of the raiyat's rent in Bengal to-day is only about one-thirteenth part of the produce he derives or less than one-third of what he pays in the raiyatwari or temporarily settled areas in other Provinces.

Immediate benefit by the raiyat.

The zemindars and talookdars also appropriate to-day about 78 per cent. of the rents they get from their raiyats: but this has happened after 150 years. For good many years they had to live merely on expectations. The gross rents they received from the tenants were no more than the revenue they had to pay punctually, *kist* by *kist*, without excuse for default on any account, and there was little or no margin left to meet the costs of collection, far less to derive a profit. Their hopes were in the reclamation of the waste and jungle lands, and introduction of new tenants to cultivate them. The process was very slow at first, and it was perhaps not till 25 or 30 years after the Permanent Settlement that they got a sort of stability with some reasonable margin between the rents they were receiving and the revenue they had to pay to Government. But before this could be achieved, estate after estate was knocked down in sales for arrears and many old families were ruined. So little was the margin of value left to the zemindars that in the accounts we have of revenue-sales in 1796-98, the sale-prices hardly covered the arrears of revenue for which the estates were sold. In many cases there were no bids, and the estates had to be re-settled at a reduced demand.† Mr. A. D. Campbell estimated

Benefit by the zemindar—gradual.

* In Behar, where the raiyat generally paid rent by division (usually half) of the crop, the benefit was largely lost.

† Reports from Dacca, cited by Mr. Ascoli in his "Early Revenue History of Bengal."

that by the year 1815 " probably one-third or rather one-half of the landed property in the Province of Bengal may have been transferred by public sale on account of arrears of revenue."

Progress of improvement and extension of cultivation.

24. Mr. F. D. Ascoli, studying the history of Dacca where he was Settlement Officer, mentions an investigation made by Government in 1802. It showed that in that district, in the ten years which had followed the Permanent Settlement, the increase by extension of cultivation was only about 6¼ per cent. Mr. H. Colebrooke, writing in 1813, estimated that at that time the zemindars were getting a margin equivalent to about half the amount they were paying as land revenue. Judging from the extensive sales for arrears of revenue, this, at any rate for the Bengal districts, was probably an over-estimation. Mr. R. D. Mangles writing in 1848, estimated that " for every 100 rupees that the zemindars in the permanently settled provinces pay to Government they get 200 from their estates." But these consolidated estimates included the districts of Behar and other Provinces where the raiyats were still paying rent by division of crops. There the zemindars got the advantage of the rise in the prices of produce, to the fullest extent. In the Bengal districts where rents were fixed in money, the proportion of the zemindar's margin must have been much lower than the above averages. In fact the sales for arrears of revenue took place mainly in the Bengal districts : and it may be said that the zemindars of these districts did not get a reasonable margin, say about 30 per cent., till about 30 years after the Permanent Settlement. Thereafter, sales for arrears of revenue became less frequent.

Later criticisms of the permanent settlement —generally adverse:

25. The Permanent Settlement of Lord Cornwallis has been assailed by later critics, mainly on the ground that it prevents the State from raising a higher revenue from land. This change of view commenced early in the beginning of the last century, when the British Rule had been firmly established in a large part of India, and

the country was showing signs of growing prosperity under an well-organised system of law and and order. Officials in India and the Court of Directors in England began to feel that they had surrendered a large portion of the raiyati rental which, but for the Permanent Settlement, might augment the future revenues of the State. As early as 1812 the Select Committee of the House of Commons on the Affairs of the East India Company repeated this sentiment: and eventually the policy was changed, and Regulation VII of 1822 was passed. All later settlements with the zemindars and talookdars were thenceforth to be made for terms of years (15 or 20), always subject to revision on the expiry of each term, according to the developments in the estates during the period. Arguments were also put forward that but for the Permanent Settlement the tenantry of Bengal would have thrived much better.

—till exposition by Mr. R. C. Dutt.

This changed view continued to receive complacent endorsement till doubts were raised in comparatively recent times in what is known as Dutt-Curzon controversy in 1900-02. Romes Chander Dutt, a historian of high repute, a member of the Indian Civil Service and an eminent revenue-authority, exposed the errors of the view that the Permanent Settlement had itself adversely affected the tenantry of Bengal. He gave statistics to show that the incidence of the burden of rent on the raiyat, in relation to the value of the produce, was much lower in Bengal than in other Provinces where either the Raiyatwari system prevailed or settlements were revised from time to time. Bengal, he pointed out, had been comparatively more free from famines, and during the wide-spread distress of 1892 and 1897, the Bengal tenantry showed a greater staying power than those in other Provinces where the consequent mortality was appalling. It was as a result of this controversy that the Government of India announced their general policy that in revisions of settlements in temporarily settled Provinces the allowances to the zemindars should approximate 50 per cent. of the gross rents,

as against the previous rules of 33 per cent.; but the local practices in the different Provinces for the assessment on the raiyats in the raiyatwari and temporarily settled areas, were left untouched.

Was it an undue surrender of future revenues of the Government?

26. The main argument against Lord Cornwallis's measure of fixing the revenue permanently, is that it meant an undue surrender of the future resources of Government. It is true that to-day we find that the zemindars and the intermediate tenure-holders are appropriating about 78 per cent. of the raiyats' rents, leaving only 22 per cent. as Government revenue, while if this revenue could be revised, it could be raised to 50 per cent. But it may be questioned—was it any surrender at the time when Lord Cornwallis made his settlement? The assessment then made was unduly high, and if properly made on the basis of the then existing assets, it could not have exceeded Rs. 200 lakhs for the two Subahs, as against Rs. 268 lakhs actually assessed. It was an advance assessment, and the Government gained at the expense of the zemindars at least for 30 years. We will not repeat the other circumstances, such as the political uncertainty of the time and the impoverished condition of the country after the famines during 1770 and 1784-87, and the urgent necessity of forming a stable system of administration: but if, as Mr. Dutt pointed out, it has, inspite of the improprieties of some zemindars, kept down the burden of rent on the raiyat, which we now know is no more than one-thirteenth part of the gross produce, it has certainly been a great boon to the tenantry. If, as maintained by Mr. Dutt, the staying power of the Bengal peasantry is to any extent attributable to their low incidence of rent, this has been a great gain: and if the extra profit from rents has got distributed amongst more than four millions of the middle class people, that has not been without an economic value.

Was it a surrender of the interests of the raiyats?

27. The other argument against the Permanent Settlement is that it meant a surrender of the interests of the raiyats, leaving their fates entirely in the hands of the zemin-

dars. This argument has always appealed most to the common reader. It is alleged that although *abwabs* were prohibited, *abwabs* continued to be exacted by the landlords; and that although limitations were put on the demands of rent from the raiyats, rents have sometimes been improperly enhanced or assessed. Even if it be assumed that all these are true, it is difficult to see how these abuses can be attributed to the Permanent Settlement. The terms of the Declaration of 1793 were absolutely clear, and Government never did or meant to abrogate its ordinary function of protecting one class of their subjects against aggression by another class. We will deal with the subject of *abwabs* later on,* but will observe one striking fact that there is no mention of any grave abuse in this respect in the records of the first thirty or forty years after the Permanent Settlement. As for the raiyats' rent, there is also the striking fact that the general incidence even to-day is only about one-thirteenth part of the average gross produce from land, or one-third of what the raiyats pay under the " raiyatwari " or " mahalwari " systems in other Provinces. The average incidence of rent of the " raiyats at fixed rate," bulk of whom may be taken as representing the old *khudkast* raiyats, is about Rs. 2-2 per acre, or practically the same as at the time of the Decennial Settlement. The average incidence of the rent of later raiyats, who took settlements at various times during the last one hundred and forty years, or who have developed from the previous class of " labourers " or under-rayats, is only Rs. 3-6 per acre, or about 60 per cent. over the rate of 1793, although prices of food crops have risen seven or eight times since that year. It cannot be gainsaid also that the very substantial rights which the raiyats possess in Bengal, regarding the use and disposal of their lands, have been possible only by reason of the Permanent Settlement.

Was this a free gift of the waste lands to the zemindars?

28. The inclusion of the waste and jungle lands, *i.e.*, the untenanted lands, in the Permanent Settlement, has been characterised as a " free gift " to the zemindars. But, as

* See paragraph 18 of Chapter IX *post*.

it will have appeared from the preceding expositions, these lands were the only resources of the zemindars, which could in course of time stabilise their position. Lord Cornwallis might have underestimated their eventual value of century later, but at that time, these afforded the only justification for the high assessment then imposed, and for the stringent rule that the Government revenue must be punctually paid without any excuse on account of drought, inundation or other calamity of the season. Failure of crops in several successive years led to the famines of 1892 and 1897 in Bengal, and relief works cost considerable amounts to the Government, but the land-revenue was realised from the zemindars as usual.

Concluding observations.

29. If it be right to say that Lord Cornwallis should have foreseen that one hundred years later the State would be losing a good portion of the raiyats' rents, and that for that reason he should not have fixed the State's demand in perpetuity, but should have made a temporary settlement with a revenue less by half a crore of rupees than what he adopted, then only he may be said to have made an error. But the danger in such a course was that it would have seriously impeded the recovery of the people (in particular the peasantry) from the effects of the famines which had preceded, and would have, in all probability, made it impossible for the country to attain the prosperity which it did in the course of the fifty years following the Permanent Settlement.* To say that the Permanent Settlement was a surrender of the revenues of the State, when the assessment was made with half a crore of rupees in advance, would not be correct. Nor would it be correct to say that it was responsible for the high-handedness of which some zemindars may have been guilty; or that, taken as a whole, the raiyats have suffered in the matter of their rents, which, relatively to those in other Provinces, are very low. It is true that certain measures†

* See paragraph 12 *ante*.

† Regulations VII of 1799 and V of 1812, and certain other Regulations, discussed in detail in Chapter IX *post*.

adopted in the earlier part of the last century* operated harshly for some time upon the tenantry, but it may be said that these measures were not quite in keeping with the spirit and intention of the terms of the Permanent Settlement. The mistakes have long been rectified. There was also a mistake in not starting an operation for record-of-rights, when the *patta*-plan was found to be a failure; but this mistake has also been rectified, and we have to-day an authoritative public record of the exact lands held by every raiyat, his rent and the incidents attached to his tenancy.

Summary.

30. The objects of the Permanent Settlement, and the reasons which led to the measure, may thus be summarised as follows:—

(1) to find a solution for the immediate problem of maintaining the previous high assessment, which the country, in its impoverished condition after the several famines between 1770 and 1787, could not bear:

(2) to secure a lasting confidence in the new administration—a matter of great importance in the political conditions of the time:

(3) to afford as much facility to the people as possible, to recover from the disastrous effects of the famines and pestilence and the state of semi-anarchy which had preceded for over half a century. If this recovery could be expedited, and further prosperity assured, trade and commerce would flourish, yielding increased income to the State which would amply compensate for any possible future sacrifice in the item of land-revenue:

(4) to reserve thus to the Government the full right to impose and realise separately duties on customs, etc., abolishing the practice of internal duties by the zemindars:

(5) to enable the officers to have more time to attend to the establishment of law and order, and of a stable system of administration:

(6) to take effective measures for the protection of the tenantry against any high-handedness of the landlords:

measures which were considered then as not possible unless the zemindars were assured of the profits from improvements and extension of cultivation :

(7) to develop a real value in landed properties, both of the zemindar and of the raiyat : the latter from the effective protection he would receive from the Government and the greater value he would receive from the produce, the former from the increased future profits :

(8) to obtain eventually a stable security of the Government-revenue, which at the moment was wanting, and thus justify a strict enforcement of the rules for the realisation of the land-revtnue, without any consideration for drought, inundation or other calamity of seasons.

On points of broad theories, it was maintained at the time that it was only by accumulation of wealth in individuals that the people in the aggregate could attain a state of prosperity which would directly lead to improvements in trade and commerce; and that agriculture being the source of the natural wealth of the country, the State should not stand in the way of individuals, whether the raiyats or the landlords, to their securing the greatest benefit of this wealth. On the question of proprietary right, it was maintained that the State was not the proprietor of the land, being entitled only to revenue from the profits derived from land, and that as between the zemindar and the raiyat, the former possessed the largest *quantum* of rights which constituted ownership including disposition of untenanted lands, and that recognition of proprietary right in the zemindar was not inconsistent with measures for the protection of the tenantry whose rights would also be defined, nor did it exonerate the State from its ordinary function of protecting any class of its subjects against infringements by any other class.

APPENDIX TO CHAPTER VIII

(See Paragraph 3.)

For the convenience of readers, a short sketch of the revenue-settlements in the other Provinces of British India is appended to this Chapter on the Permanent Settlement of Bengal. The established land-systems were generally recognised everywhere, and the British administrators never treated any country as "without a past", and even in Oudh, the estates of Talookdars which had been confiscated (Proclamation, 1858) during the Sepoy Mutiny, were almost entirely restored to them, and the previous land-system was continued.

(i) Oudh Talookdari system.

In the Madras Presidency, the northern part (called Northern Circars), which extended to the south almost as far as the Godavari river, was obtained from the Emperor at Delhi, in 1765, but only nominally, because the Emperor had then little control over this area. It was obtained by the British later in 1768, from the Nizam of Deccan: but when it appeared that excepting certain lands called "haveli" which were reserved for the royal family, the rest were held by Zemindars, much in the same manner as in Bengal, the same plan was adopted for settlements with these zemindars.

(ii) The Northern Circars.

The northern Provinces of India suffered the greatest disturbances from constant political changes and raids such as those by the Scythians in the 2nd century, the Ephthalites in the 5th century, the Muhammadans before they settled down as rulers, and even as late as 1740 by the terrible Nadir Shah. In the midst of apparent diversities in the different parts, when the British obtained (1801-13) the territory then called the North Western Provinces, they found that generally a system with landlords existed, though in various names as rajas, talookdars, malguzars, lambardars or mustajirs. The prevailing land system was recognised, and the main point of

(iii) The N. W. Provinces.

difference from Bengal was that the land revenue was not fixed in perpetuity (Reg. VII of 1822 and Reg. IX of 1833).

(iv) The Punjab.

In the Punjab, during Maharaja Ranjit Singh's time, a good part of the lands was reserved as Crown property: but the rest were distributed amongst Muhammadan and Sikh chiefs who had again their subordinate chiefs, all linked up in a sort of feudal chain. The British obtained the territory during 1846-49, and, to state generally, except for the areas of Crown wastes, the system is being continued with assessment of 50 per cent. of the rental assets of the landlords.

(v) The Central Provinces.

The Central Provinces (keeping Berar separate) came under British Administration by stages during the long period of 1818-60, the bulk, however, being obtained in 1818 by the treaty with the Peshawa and by the cession from the Bhonsla king Appaji. When constituted a separate Administration in 1861-62, it was, as stated by Mr. (Sir Bamfylde) Fuller, " a veritable territorial puzzle " with circumstances differing widely from tract to tract. The Nagpur portion was the centre of the great Maharatta confederacy: the Nimar part was included in one of the Muhammadan Deccan kingdoms: the central part bore affinities with the " landlord " village communities of the Rajputs: Sambalpur had influence of Audra or Oriyas: and the remaining districts had the system of estate-holders and *quasi*-feudal chiefs of the Gond kingdoms. Escheats or conquests brought large tracts as Crown lands; but in the rest the local chiefs or estate-holders were absorbed in the general landlord-system recognised in the temporary settlements which now generally go by the name of " Shaharanpur method."

(vi) Madras.

In the part of the Madras Presidency south of the Northern Circars, there were first the *jaigirs* (*khash* zemindaries) obtained from the Nawab of the Carnatic and Emperor Shah Alam during 1750-63. Then there was the remaining area with village *poligars*—all quarrelling and fighting amongst themselves. These conflicts came to be known as

disgraceful "poligar wars." But though usurping some functions which might be compared with those of Bengal Zemindars, "they were for the most part," writes Baden-Powell, "no Zemindars properly so called." Such of them as were really of local weight and standing and could be called landlords, were recognised with perpetual ownership, and their estates are till to-day called "settled polliems." But for the rest they were a source of constant trouble, and the authorities had to suppress them altogether. Sir Thomas Munro wrote: "The country is over-run with poligars. I am trying, with the help of Dugald Campbell, General of Divisions here, to get rid of as many as possible: but it will take some campaigns to clear them out." This was how the raiyatwari system in Madras originated.

(vii) Bombay.

Surat, Broach and Kaira were acquired from the Nawab of Surat and the Gaekwar of Baroda (as a result of the Maharatta war) during 1800 to 1805. Bulk of the rest was acquired after the war in 1818. Part of Belgaon was obtained by cession in 1818, and the rest was acquired from the Raja of Kolhapur in 1827. Satara was obtained by the deposition of the Raja in 1837. Some tracts in Poona and elsewhere were obtained by treaty with the Scindia in 1860. North Canara was previously part of Madras, and was transferred to Bombay in 1862. The nature and process of the acquisition of territories in Bombay led to peculiar developments in the revenue administration in different parts. But although so diverse, no system allied to that of Zemindars ever existed,* whether during the Hindu times or during the Maharatta domination. The Hindu model, as in Manu, was however adopted to a very great extent, and the system of village-headman and assessment by villages prevailed. Emperor Shah Jehan (1637 A.D.) introduced Akbar's raiyatwari system, which could easily be adapted to this system and Murshid Kuli Khan was employed on this task. When the Maharattas came into power, they continued the system, but with a new "kamal"

* Baden-Powell, Land System of British India, 1892.

assessment field by field, based on a classification of soils, with rates for dry crops at Re. 1 and Re. 1-8 per bigha. It was thus that the British administrators continued here the raiyatwari plan of Madras, when they made the first settlement in 1824-28.

(*viii*) Berar.

The administration of Berar is now governed by the treaty of 1936 with the Nizam. But when, under the treaties of 1853 and 1860, the country was under the exclusive management of the British Government, there was first an attempt to make village settlements on the model of the N. W. Provinces (or the Central Provinces): but the conditions were so much allied to those of Bombay, that eventually the raiyatwari method was adopted.*

(*ix*) Sindh.

A system allied to that of Bengal had developed in Sindh with the conquering chiefs (Jats and Rajputs)—"each ruling a certain area of country, being often in a sort of feudal subordination to some greater raja of the tribe, or in later times, paying tribute for retaining their possession under a conqueror" (Badan-Powel, Vol. III, 326). Gradually, privileged under-tenures also developed. But cultivation in Sindh depends peculiarly on situation near a river or canal. The Chiefs or Zemindars—already with small territories—rapidly got divided up, with no more than a village or part of a village each. But still there were some who were Zemindars in the proper sense: and in the first British settlement of Upper Sindh, "where the Zemindary right was clear, the settlement of the whole was offered: but the Zemindars could not afford to pay assessment on the whole, and the offer was unfortunately declined.....in 1875 the Zemindars were offered leases of tracts including a certain portion of waste on general reduction of assessment (about 30 per cent.),

* It may be noted that this raiyatwari settlement in Berar, or in Bombay, does not mean that the raiyat must be the actual cultivator. All that he is liable for is to pay the assessed rent; and as this rent is high, he has little scope to sub-let on money rent. But the raiyat may and does often make over land to a cultivator on "batai" or metaire or division of the gross produce.

but even this did not prove sufficiently attractive. They preferred to pay on what is called the ' new system.' ''—Baden-Powell, Vol. III, pp. 330-31. This gives the origin of the direct system in Sindh.

(x) Assam.

The district of Goalpara and parts of Sylhet and Cachar were permanently settled along with Bengal. The Assam Valley and the hill districts in the centre of the Province, and also on the frontiers, presented special features. The Ahom rulers claimed not only the soil but also the subjects as the king's property : and there existed a practice not only of paying a land-tax but also of rendering personal service as labour or in some such manner. The nature of the country did not allow continuous cultivation, and the practice of fluctuating cultivation (*jhum*) presented another peculiar aspect. There was, however, a hierarchy of hereditary nobles and officials bearing titles as Phukan, Borwa, Bissoya, etc., who held lands; and where there were " land-holders " of these or other kinds, they were recognised : see Reg. I of 1886. But there were also many others who held lands as *lakhrajdars* or *nisf-lakhrajdars*. Excepting these and leases of large areas under the Waste Land Rules, the system adopted is essentially raiyatwari.

CHAPTER IX

The Zemindars and Proprietary Right in Land

Zemindars recognised as proprietors of the land.

The Proclamation of 1793 declared that the zemindars and independent talookdars with whom the Decennial Settlement was made, were "the proprietors of land." There was a good deal of study and anxious consideration at the time, before this decision was finally arrived at. Bengal was not a *tabula rasa* on which, when the English came, they were free to construct any system of land-tenures that pleased them; and, as explained in the preceding Chapter, the institution of zemindars was there and could not be ignored. At the outset, Lord Cornwallis made a very pertinent observation that when a settlement was to be made with the zemindars and that in perpetuity, and full powers were to be reserved for the protection of the tenantry, the question of proprietary right was a matter of little practical importance. Shore, however, dealt with the question both in the abstract and in the light of what could be gleaned from past history and the maze of inconsistent practices under a long period of autocratic monarchy, where the Sovereign's will was law. He maintained that of the three parties in the field, *viz.*, the King, the zemindar and the raiyat, the zemindar possessed the largest *quantum* of interests which constituted proprietary right. Imbued, however, as he naturally was, with the conception of legal ownership of an English land-owner, Shore hesitated how this could be reconciled with any idea of inviolable rights of the tenantry as well. An answer to this was given

Propriety of this recognition.

to him by Lord Cornwallis, as will appear later on; but as later critics have often questioned the propriety of the declaration that the zemindars at that time were the actual proprietors of land, it will be well to examine first what exactly was meant by the proprietary right of the zemindars, according to the articles of that declaration and the Regulations made in 1793.

Meaning of proprietary right as then intended.

2. In the first place full and free right to transfer by sale, gift or otherwise, the whole or any portion of their estates without applying to Government for sanction, was recognised (article 8 of the Proclamation). When a portion of an estate was so transferred, the zemindars could obtain from Government a proportionate division of the assessment, without any increase in the total. Next, the zemindari right would pass also by succession according to the law of inheritance governing the individual (same article 8). Lastly, for the untenanted lands, which comprised the bulk of the waste and jungle, the zemindars were to be free to let them out in whatever manner they liked (section 52 of Regulation VIII of 1793).

It is difficult to say that, whatever occasional deviations were attempted at times under an autocratic rule, these privileges were not being on the whole enjoyed by the zemindars for centuries prior to the advent of the English.

The restrictions then imposed;

3. But, while these elements of ownership were mentioned, certain heavy obligations and material disabilities were also specified. The zemindars were strictly required to pay the Government revenue punctually, without any claim for suspension or remission on account of drought, inundation or other calamity of the season (article 6 of the Proclamation): in default, their estates, either entire or in part, were liable to sale forthwith (same article), or they might be attached and let in farm (or held *khash*) for such time as the arrear was not recovered; and, in case of contumacy on the

—punctual payment:

part of a zemindar, he was even liable to be kept under confinement* (section 4, Regulation XIV of 1793).

—rents of existing raiyats not to be increased:

Of the disabilities, the most important were those with regard to the portions of the zemindar's estates which were then held by tenants. It was definitely laid down that the rents of the *khudkast*† or resident raiyats of the time could not be enhanced‡ beyond the *nirikhbundi* or rate obtained by consolidating their *asal jummas* with the *abwabs* already imposed; and *pattas* showing the consolidated rent or rate could not be cancelled, while imposition of new *abwabs* was also forbidden: (sections 60(2), 54, 57 and 55 of Regulation VIII of 1793). The tenancies of this class of raiyats were thus, in effect, declared perpetual, quite as much as the settlements with the zemindars.

—and rents of new raiyats not to exceed the established pargana rates:

As regards lands which were not let out to raiyats at the time of the Permanent Settlement, the right of the zemindars or their talookdars or farmers to let them out, was restricted to a period not exceeding 10 years§ at the first instance, but thereafter, the rent was not to exceed the established pargana rate from similar lands: (section 7 of Regulation IV of 1794).

—so also as regards intermediate holders:

Where there were intermediate holders, and they held for a term of years such as a farmer, the zemindar was bound to respect his existing engagements with them; and where they were permanent tenure-holders as *istimrari-dars* or *mukarari-*

* Section 4 of Regulation XIV of 1793 was superseded by Sec. 3 of Reg. III of 1794.

† As opposed to *pykast* raiyat or outside cultivator brought in for temporary cultivation. See Chapters VI and X.

‡ Except on grounds of fraud or collusion, or for adjustment of the rate (*nirkhbundi*) to area found by measurement.

§ Section 2 of Regulation XLIV of 1793. This was in apprehension that the zemindars might settle at rates lower than the established pargana rates, to the prejudice of the security of Government revenue. The restriction was withdrawn by Reg. V of 1812.

dars, their respective rights of inheritance or fixed rent were also to be respected : (sections 48 to 51 of Regulation VIII of 1793).

—sayer, etc., abolished:

While imposition of any future *abwab* was forbidden, the previous practice by which the zemindars used to levy *sayer* (duties) on internal trade, and on merchandise in *hats*, *ganjes* and *bazars*, was stopped : (article 7(2) of the Proclamation, and section 35 of Regulation VIII of 1793). Their functions regarding maintenance of the Police establishment were to cease and they were to disband the *pykes* who were being employed by them wholly or partly for this purpose : (article 7 of the Proclamation and section 41 of Regulation VIII of 1793).

—invalid lakherajes not to be assessed:

The zemindars were also forbidden to assess, for their benefit, invalid *lakheraj* lands within their zemindaries, whether claimed under a Royal grant or otherwise :* (article 8(2) and (3) of the Proclamation) or the Police *chakran* lands.

—restricted powers regarding realisation of rent:

In the matter of realisation of rent,† the zemindars were enjoined, on pain of a penalty, to grant receipts when any rent was paid : (section 63 of Regulation VIII of 1793). They were also required to employ a Patwari in every village for keeping correct accounts of the raiyats, and the Patwari was to be liable to produce his books to the Dewani Adalat or the Collector for inspection, when called for : (section 62 of Regulation VIII of 1793). Although the power of the zemindar to seize and sell the crops and other chattels of the tenant when he had failed to pay rent, was retained, his previous power of confining the tenant was taken away ; and his remedy for realising an arrear, where distraint failed or was not resorted to, lay in a rent-suit in the Dewani Adalat : (Regulation XVII of 1793).

* In case of claims not under a Badshahi grant, areas below 100 bighas were left to the zemindar by Reg. XIX of 1793: in all other cases the assessment on invalid lakherajes was separate and enured directly to Government.

† For a fuller account see Chapter X *post*.

—further full power of legislation for the tenantry, reserved by Government.

Besides these, full power was reserved to Government for the protection and welfare of the tenantry by legislation as occasions might need (article 7 (1) of the Proclamation).

Were these restrictions inconsistent with proprietary right?

4. This was, in brief, the position of the zemindar *vis-a-vis* the State on the one side and the Raiyat on the other, as enunciated in the Regulations of the Permanent Settlement. Whatever may be the strict juridical conception of the expression " proprietary right in land," the meaning which the authors of these Regulations intended, was abundantly clear from this enumeration of specific rights and the specific disabilities which were to be considered as attached to zemindary property. Shore raised the question whether these restrictions were consistent with proprietary right, observing that " it was an encroachment upon such right to prohibit its owner from imposing taxes on his tenants, for it was saying to him that he must not raise the rents of his estate and that if the land was the zemindar's, it would be only *partially* his property, whilst Government prescribed the *quantum* which he was to collect." Lord Cornwallis gave a complete answer to this. In his minute dated February, 1790 (paragraph 33), he said :—

> " If Mr. Shore means that after having declared the zemindar proprietor of the soil, in order to be consistent we have no right to prevent his imposing new abwabs or taxes on the lands in cultivation, I must differ with him in opinion, unless we suppose the ryots to be absolute slaves of the zemindars. Every bigha of land possessed by them must have been cultivated under an expressed or implied agreement that a certain sum should be paid for each bigha of land and no more. Every abwab or tax imposed by the zemindar over and above that sum is not only a breach of that agreement, but a direct violation of the established laws of the country. The cultivator, therefore, has in such case an undoubted right to apply to Government for the protection of his property: and Government is at all times bound to afford him redress."

Harrington in his Analysis of the Regulations (page 222), while comparing this proprietary right with the corresponding right of the English land-lord, observed :—

> " If by the terms *proprietor of land* and *actual proprietor of the soil*, be meant a land-holder possessing the full rights of an English land-lord, or free-holder in fee-simple, with equal liberty to dispose of all the lands forming part of his estate as he may think most for his own advantage to oust his tenants, whether for life or for a term of years, on the termination of their respective leaseholds, and to advance their rents on the expiry of the leases at his discretion—such a designation, it may be admitted, is not strictly and correctly applicable to a Bengal zemindar, who does not possess so unlimited a power over the khudkast ryots, and other descriptions of under-tenants possessing, as well as himself, certain rights and interests in the lands which constitute his zemindary."

Law Courts have felt no difficulty in reconciling these;

But the position need not be read in this manner. The only difference is that while in the English conditions the restrictions and limitations in the exercise of the landlord's rights were specified in an agreement, probably in writing, the Regulations of the Permanent Settlement only laid down what these customary and necessary restrictions were, and should generally apply to all. In the condition of things in this country—its vast area and millions of illiterate people who are concerned—this differentiation is perfectly intelligible. While it is true that the rights which the Government recognised in the zemindars were subject to the rights and the protection which the raiyats enjoyed whether by custom or by specific legislation by the State on public grounds, the existence of such rights and protection does not necessarily affect or derogate from the proprietary right of the zemindar so as to make that right nugatory.* The law-

* " Proprietary right " or " ownership " when applied to land must always have a more limited meanings, as this, than when applied to a movable. Williams, in his "Law of Real Property," warns the students to get rid of the idea of absolute ownership with reference to land. " No man," he observes, " is in law the

courts have also read the position in this way, and held that the zemindars were nonetheless proprietors of the land.* All that these restrictions meant was that they were of the nature of implied *jus in re aliena,* or detached rights recognised by the custom or the system of law of the country, and accepted as sound from the point of view of public policy and welfare of the people at large. The parent right of ownership was with the zemindar, so that when a raiyat abandoned, his occupancy and other rights merged in the proprietor. All residuary rights not specified in the restrictions belonged to the proprietor; and so it has been held that rights in mines and minerals in the Permanently Settled areas belong to the zemindars,† by reason of their being recognised as proprietors, " land " meaning all things down to the centre of the earth. So, also fishery rights.

—and interpreting that barring these restrictions all residuary rights were in the zemindar.

This proprietary right or ownership does not vanish by diluvion or submergence of the land, for law makes no difference between land covered with water and land covered with crops.‡ It extends to alluvial accretions from public domain as by the gradual recess of an adjoining river.§

5. But the more tangible aspect of the proprietary right, presented itself when this right was judged with reference to the untenanted lands in a zemindari. Such lands were extensive, and included the bulk of the waste and jungle lands which at the Decennial Settlement

Meaning of proprietary right more clear in the matter of disposal of the untenanted lands—waste and jungle.

absolute owner of lands. He can only hold an estate in them," *i.e.*, a quantity of interests in them, very much controlled not only by the nature of the property being immovable and indestructible but also by the interests of many others.

* *Freeman* vs. *Fairlie*, (1828) 1 M I.A. 305 (at p. 341); *Raja Ranjit Singh Bahadur* vs. *Srimati Kali Dasi Debi*, (1917) 44 Cal. 841 P.C., 21 C.W.N. 609, 25 C.L.J. 499.

† *Sashi Bhusan Misra* vs. *Jyoti Prasad Singh Deo*, (1916) P.C. 44 I.A. 46 (per Lord Buckmaster), 21 C.W.N. 377, 25 C.L.J. 265.

‡ *Lopez* vs. *Muddun Mohun Thakoor*, 13 M.I.A., 467, 5 B.L.R. 521, 14 Suth. W.R. (P.C.) 11.

§ Section 4 of Regulation XI of 1825.

covered about four-fifths of the total area. Tenants subsequently coming to occupy these lands clearly came in rights as *jus in re aliena*; and for the same reasons as stated before, it did not necessarily mean that the State was debarred from exercising its Sovereign powers for the protection of such tenants who were nonetheless its subjects, or that such protection would be construed as affecting, or as inconsistent with, the proprietary interest of the zemindar.

Practical view taken by Lord Cornwallis.

6. As practical administrators called upon to ascertain and respect the privileges then actually possessed under the indigenous system, by various classes of persons having interests in land, the authors of the Regulations promulgated in 1793 directed their attention mainly to the consideration of facts as they found them, modifying only so far as any detail appeared to them to be unconscionable. They adopted the existing frame-work and codified the relative rights and disabilities of these various classes. Lord Cornwallis did not trouble himself with discourses of abstract theories of growth of property-rights in a country still strange to the English; and when he had defined what were the relative rights and disabilities as between the State, the zemindar, the raiyat, and also the intermediate landholders, the question as to who amongst them was called "proprietor," was of little practical importance. In his judgment he felt that in the conditions in Bengal, the Ruling Power could not be called "proprietor." The Raiyat, as he found him, possessed very poor privileges, and was subject to many limitations regarding disposal or user* of the lands held by him (see Chapter VI *ante*), while the Zemindar was the party who had the privilege and responsibility of disposing of the abandoned holdings, and the vast areas of uncultivated and untenanted lands within his jurisdiction; and he took the view that of the two, if any were to be called "proprietor," he

* Apart from the fact that the raiyat could not sell or even change the species of crop at his free will, neither the Hindu nor the Muhammadan codes conceived the cultivator as concerned with anything beyond tilling the soil.

was the zemindar. It is a truism that, in law, no man can be the absolute owner of land : he can only hold an " estate " in it, *i.e.*, a quantity of interests in the land, very much controlled not only by the nature of the property being immovable and indestructible, but also by the existence of the interests of many others :* or, as Mr. Justice Field has observed, " no one ever did or can *own* land in any country in the sense of absolute ownership—such ownership as a man may have in movable property, for example, a cow or a sheep which may be stolen, killed or eaten, or a table or a chair which may be broken up and burnt." No such absolute ownership was or could possibly be conceived by the authors of the Proclamation of 1793 which recognised the zemindars to be the " proprietors of land." The Courts of law have thus felt no difficulty† in understanding the import of the " proprietary right " as recognised in the Proclamation, though it was of

* Williams, " Law of Real Property." Markby, in his "Elements of Law" has explained how it is impossible to define " ownership " with reference to " land," and has referred to unsatisfactory attempts made by German, French and American jurists. Ownership in real property may be conceived as the " home " of all rights where, if any of these, as a detached right, lapses, that right would come back and merge.

† See the *Great Rent Case* of 1865, in which the observations of several of the Judges were as below :—Mr. Justice Macpherson—" He (the zemindar) never was and never was intended to be the *absolute proprietor* of the soil. He never was proprietor in the English sense of the term, or in the sense that he could do with it as he pleased; for certain classes of raiyats have at all times had rights quite inconsistent with absolute ownership, having rights which entitled them to remain in occupation so long as they paid rent." Again Mr. Justice Campbell in the same case—" However widely they (Governments in the different Provinces) differ in regard to the superior rights of Government and the great landholders, they all concur in the view that neither the Government nor the great landholders had an absolute and complete right, but that some right was concurrently enjoyed by the raiyats in the shape of a right of occupancy at rates regulated by custom." Again Mr. Justice Seton-Karr in the same case—" Neither by Hindus, by Muhammadan nor by Regulation Law, was any absolute right of property in land vested in the zemindar to the exclusion of all other rights; nor was any absolute estate, as we understand the same in England, created in favour of that class of persons. The raiyat has by custom, as well as by law, what we may term a ' beneficial interest in the soil.' " *Thakooranee Dossee* vs. *Bisheshur Mookerjea and others*, (1865) 3 W.R. p. 29 (F.B.). See also *Raja Ranjit Singh Bahadur* vs. *Srimati Kali Dasi Debi*, (1917) 44 Cal. 841 (P.C.), 21 C.W.N. 609; and the early Privy Council case of *Freeman* vs. *Fairlie*, (1828) 1 M.I.A., 305 (p. 341).

Also see Harrington's observation quoted in para. 4 *ante* (p. 166).

the nature of " limited ownership," and could not be exactly reconciled with the " ownership " of English landlords.

Later critics—other grounds: the King not the owner of land:

7. Later critics who have approached the question on other lines, are generally agreed that the Sovereign could not claim the ownership of land whether under the Hindu codes or under the law established during the Muhammadan period. Keeping aside the question whether Manu's code at all applied to Bangadesh (*vide* Chapter II *ante*), we have seen that

—Hindu law:

that code put the King's levy on the profits from land in the same category as his levies on industrial produce such as gems, gold, silver, utensils and profits from trade. It was of the nature of a tax, or, as Yajnavalkya calls it, " raiyapalana betanam," *i.e.*, fee for meeting the expenses of Government.

—the law as established during Muhammadan period.

When the Muhammadans conquered Hindustan, in theory all rights vested in the conqueror; but in practice, and as a measure of expediency, they did not, as will have appeared from the previous discussions, disturb the existing institutions which had developed in different ways in different Provinces. Legal theorists easily found a solution from the precedent in the concession for the Suwaud of Irak, Syria and Egypt. According to Hidayah, " the land of the Suwaud is the property of those who live in it.....because, the Imam when he has conquered a country by force of arms, may confirm the people in possession of it and may impose upon the people a tax or tribute, after which the land remains the property of the people." Galloway,* in his " Law and Constitution of India," states : " India was brought under the principle or law of settlement of land of the Suwaud of Irak, because the people paid the *Jijeeat* or capitation tax

* Observations on the " Law and Constitution of India, on the Nature of Landed Tenure, etc., etc.," by Col. Galloway, 1825. But his conclusion from a mention in *Futwa-ool-Aalamgeeree* that all inheritance among non-Moslems should be in accordance with Moslem laws, as a proof that the strict Muhammadan laws were adopted during the Mughal period, is obviously erroneous as a matter of fact.

and consented to pay the *khirauj*." However explained, the fact remained, as Col. Briggs has observed, that the Muhammadans saw the policy of not disturbing existing institutions: they assessed whole districts at a certain sum, and required the *des adhikars*,* whom they subsequently entitled zemindars, to levy the amount from the respective villages or towns under their charge. So far as Subah Bengal was concerned, we will see later that when any land was taken out from the zemindars for conferment on a *jaigirdar*, an yearly allowance out of the profits of the *jaigir*, called *malikana*, was provided for, and sometimes the lands were actually purchased.

The zemindar and the raiyat.

8. So far, therefore, as the Ruling Power was concerned the position was that the land belonged to the subject, and the King was entitled only to levy a tax for his revenue. But who was this *subject* in Bengal—the zemindar or the raiyat? The discussions on this question have led to disquisitions as to the origin of rights in land, when in some primitive time all lands were *res nullius*, open to any one to go over and till, and then retain so long as he could, by force. Much stress has been laid on conjectures about the methods of Aryan migration on the banks of the Indus and then further on; and on the existence of village-communities in Northern India and akin institutions in the Dravidian countries in Southern India. It has been observed in Chapter II that Bangadesh, physically separated and different from Northern India as it was, had been distinct in its political and social organisations, and conceptions of property-rights, from the earliest known times. But if we ignore stern facts and indulge in theories of what might have been in the earliest age at the dawn of society, it would simply mean scrapping all developments in human institutions, call them civilization or gradual adaptation to altered conditions. As society became more and more complex in the natural process of its growth, the law of prescription operated at all times as a powerful factor

Theory of *res nullius* and first occupation.

Changes in social conditions, growth of prescription.

* "Desh Adhikars" of Manu, stated in Chapter II as "lords."

in determining rights of individuals regarding properties.* There have always been gradual changes by process of evolution, and societies, as they grew, rarely thought of going back. The theory that the person who first brought under plough a piece of ground—then no-body's property—acquired in it absolute right which he then transmitted to his descendants from son to grandson and great-grandson and so on down to the present-day cultivator, hardly applies to Bengal (if ever it applies to any country) where circumstances, as we know, were quite different. Lands had ceased to be *res nullius*, or nobody's property, centuries ago, long before the English or the Pathans came. Societies had organised into kingships, and lands had been allotted (confining to Bengal conditions for the moment) to the jurisdictions of various chiefs. The least rights recognised in them were the rights of reclaiming either by themselves or by induction of tenants on soils which were still virgin or had been abandoned by their previous cultivators. This process of reclamation and colonisation was not an easy matter in Bengal. The greater part of the deltaic area between the rivers Padma and Bhagirathee (or perhaps up to the lower part of the Damodar), was, as has been observed before, dense forest intersected by wide and violent rivers or the estuaries of the Bay, with ferocious animals on land and sharks and crocodiles in the saline water. It needed organisations by persons who could command men and money.† This was not in the pre-historic times of "*res nullius*," but within comparatively recent history, when societies and kingships had already been well-formed in Bangadesh. The zemindari system has thus been,

Special features of deltaic Bengal.

* See Austin's disquisitions concerning titles in general, in his "Jurisprudence." Taking the theory that "land belongs to him who tills it" at the moment, the real owner would be the actual cultivator, *i.e.*, the under-raiyat of the lowest degree or perhaps even the cultivating labourer as the *bargadar*. Where then does the property-right of the "raiyat" lie, if he loses it as soon as he sub-lets?

† Many ancient families of landholders have their traditions as to how some ancestor of theirs had fought with the beasts and built embankments for reclamation of these areas.

as observed by Baden-Powell, a special feature in the very early development of the land-system in Bengal.

The raiyat's position during the Mughal times.

9. The account of the Raiyat, as he was when the Company got the Dewani, as given by both Grant and Shore, is a sorry one (*vide* Chapter VI *ante*). Under-raiyats were unknown. With an assessment on the "raiyat" of as much as one-third of the gross produce there could not possibly be any scope for sub-letting; and where a substantial raiyat employed men for cultivation, the latter were mere labourers.* The *pykast* raiyat was altogether a tenant-at-will; and as for the *khudkast* or resident raiyat, he might be considered as having a sort of a stable right akin to what we now call "occupancy right" which passed by succession according to the law of inheritance; but he had no power to transfer, nor to relinquish, nor even to change the species of crop at his free will. When he was permitted to grow a more valuable species, he was liable to pay a higher rent; and if the landlord was exacting, the raiyat's only safety was to repair to another zemindari. For both *pykast* and *khudkast* raiyats, the fixation of the rent to be paid in a particular year was a matter of arrangement between them and the zemindar,† and the latter presumbly had the upper voice; when they differed the remedy of the former was either in abandonment or refusal to continue to hold the land. In Behar districts where the raiyat's rent was usually a share of the crops actually grown in the season, he was almost helplessly at the mercy of the zemindar. In the matter of enforcement of payment, the zemindar had the authority to seize the crops, cattle or

* Many of the present-day raiyats must have developed from these "labourers," while the original raiyat became a "tenure-holder." The same development can be envisaged with regard to the present-day "under-raiyats" or even "bargadars," as the tendency of legislation is to secure rights for the actual cultivating tenant. A raiyat of to-day is often a tenure-holding of to-morrow. See the account of development of tenures in Chapter XI *post*.

† The supposed "pargana rates" had become a myth by disproportionate additions of abwabs since at least 1727 A.D. Where they existed, they were so elaborate, varying not only with the kind of soil but also with the kind of crop grown, that in practical application they must have been a zig-saw puzzle to the raiyat and a source of corruption.

other chattels of the raiyat without recourse to any court or public officer—and even to confine and use physical coercion. The administration of the Village-Police being to a large extent under the control of the zemindar, the position of the raiyat was almost absolutely subservient.

Shore's view on this position of the raiyat.

10. This is the picture given by Shore in his minute of 18th June, 1789 and repeated in his other minutes also. He could not think that even the *khudkast* raiyat could possess what might be called " right of property " in the land held by him, except that he might at the most be considered to have an occupancy right by sufferance. The disposal of untenanted lands was entirely with the zemindar, and when he let them out to a new tenant, whether a *khudkast* or a *pykast* raiyat, the rents were entirely appropriated by him, at any rate up to the next assessment of his *jumma* or revenue payable to the State. Intermediate tenures between the raiyat and the zemindar were not uncommon, and there were many cases in which the zemindars created *istimraris* (heritable tenures) or even *mukararis* (tenures with fixed rent).*

Views of the authorities of the time—generally.

11. This being how the authorities of the time found the raiyat, they did not, as appears from the contemporary papers, consider that the raiyat was much a party in the consideration of the question—" who was the proprietor of the land." The question which agitated them was thus one between the Ruling Power and the Zemindar. Was the former or the latter really the proprietor of the land?

Grant asserted that the zemindars were no more than " annual contracting farmers or receivers of the public rents, with stated allowances in the nature of comission . . . never exceeding on the whole, by a universal law of the Empire, 10 per cent. on the moffussil collections " (Grant's Analysis of the Finances of Bengal, dated 27th April, 1786).

* The Regulations of 1793 enjoined that these tenures were to be respected.

Warren Hastings in his Review of the state of Bengal, written in the same year, expressed a somewhat doubtful opinion. He said that he did " not mean to contest their (the zemindars') right of inheritance to lands," but characterised " the high ideas of the rights of zemindars in Hindustan " which had become prevalent then in England, as due more to " prejudice " than to correct appreciation of facts. He referred in particular to the magnitude of some of the zemindaries, and to " the power of dispossessing the zemindars on any failure in the payment of their rents, not only *pro tempore*, but in perpetuity," which was at times exercised by the Mughal Government.*

Shore's exposition in his minute of 2nd April, 1788.

12. The position of the zemindar was fully analysed by Shore in his very able minute of 2nd April, 1788, recorded in the Proceedings of the Revenue Department of that date. He commenced his minute by a reference to the division of Bengal, during the Hindu period, into numerous properties of rajas,† as land-holders, and how these were not disturbed during the Pathan regime. The change effected by Todar Mal's settlement did not, in his opinion, " destroy the right of property in the soil, although it greatly reduced the interest of the proprietors in it," because it fixed the Sovereign's share at a definite proportion of the gross produce. In one very material respect was Akbar's plan modified in its application in Bengal. There were no officers of the State in Bengal corresponding to *Aumils* in the code of

* Shore in his minute of 2nd April, 1788, elaborated this point further. A zemindar was dispossessed in perpetuity only for " rebellion or avowed resistance " to Government, and sometimes for proved connivance at murders and robberies. Otherwise, for mere arrears of revenue, if occasioned by a severe calamity, they were excused, and, if from a temporary operation, the arrears were added to the next year; and sometimes a superintendent was appointed or the lands were assigned *for a period* to the management of another, or perhaps the tenure-holder in possession: but in these cases of temporary deprivation of management, they still received the *nankar* and the *malikana*.

† The term " zemindar " is of Persian origin. The Bengali equivalent is " raja ": and even to-day the relationship of landlord and tenant is called " raja-praja sambandha."

Akbar, and Shore observed, "he (Akbar) left with the zemindars the management of their lands," only stipulating with them what revenue they were to pay. Shore could find no mention of *Nankar* lands, supposed to have been meant to cover the zemindar's profit, in the account of Todar Mal's proceedings. The zemindar's resources were thus in the rents he derived from the tenants, improvements of cultivation, and new settlements of lands. Jafir Khan in his drastic attempts did not, Shore commented, "annul their (the zemindars') right of inheritance and that he (Jafir Khan) considered the zemindars to have a property in the soil:" and that during the 25 years of administration by the English they had constantly admitted that the zemindars were the proprietors of the soil.

His interpretation of zemindari sunnads.

The main arguments put forward against the zemindari claim were based on the terms of the zemindari *sunnads*. These arguments were—that a *sunnad* proved that it was essential that there should be an investiture; that the zemindari was expressly called in it a *service*; that an acknowledgment was constantly paid to the Sovereign previous to an investiture; that security for personal appearance of the zemindar was demanded; and that all these were inconsistent with right of property, or the constitution of the Mughal Empire which fixed a share of the gross produce of the soil as its revenue. Shore commented that "although the avowed principle of the Mughal Government limits the value of landed property, and makes it dependent on the equity and humanity of the Sovereign, it is not incompatible with its existence and goes no further than to establish the right of the State to a proportion of the rents of all land." The inheritable quality of zemindari tenure, he said, was ascertained by the laws of usage and prescription, which, he added, were admitted in all countries as legal and indefeasible where they were derived from any principle of natural right or were conformable to right reason. He distinguished this position from that of a *Crorie* or *Aumil* in other Provinces, which were offices and did not succeed by inheritance. That

the term " service " was used in the *sunnads*, he said, proved nothing to the prejudice of the zemindars; for " property may depend upon services, or service in the course of time, by usage, be converted into property and inheritance." The acknowledgment by investiture, he said, was rather a proof of this than an argument against the zemindar; and if presents were received they were either customary tokens of respect for the dignity of the Ruler, or an exaction.* In any case, it was only from the bigger zemindars that this investiture and *nazar* were demanded, and the smaller ones were left undisturbed. " In a country," Shore further observed, " subject to frequent disturbances and revolutions in which the zemindars so often took part against the established Government, the propriety as well as necessity of a personal obligation, by which one subject became bound for attendance and good behaviour . . . is obvious;" and this did not justify an inference to the prejudice of zemindari property : † and he added that " the period assigned in the grant for the duration of the tenure is unlimited."

His argument on the malikana allowance :

13. But the strongest arguments of Shore were perhaps where he referred to the practice of *malikana* allowance, transfers by sale of zemindaries, creation of talooks or dependent tenures (also transferable and heritable) by the zemindars, and actual purchases by the Government when a *jaigir* was granted out of a zemindari. " Malikana " was

* An interesting instance of what happened when the *peskhush* and *nazaranah* for a renewal of *sunnad* on succession by inheritance, was not paid, is given in Patton's "Asiatic Monarchies" (pages 177-78). The succeeding zemindar was not allowed to sign the public accounts, and year after year his revenues remained unpaid. The dues thus swelled and eventually only as much of these as could be exacted was realised. Shore in another place observes that these investitures or *sunnads* were often considered a mark of honour for the recipient.

† Otherwise Shore doubted whether granting of a *sunnad* for renewal was at all the practice. He could trace no account of the zemindari *sunnad* to the reign of Akbar except one, the authority of which, he felt, was doubtful. He named a number of zemindars who had succeeded without any *sunnad*—Mukund Ram and Ramkrishen holding two divisions of the zemindari of Mahamed Aminpur, Narendra Narayan and Mod Narain holding Luskerpur, the zemindars of Kenkjol, Pargana Muldevar, Pargana Chanderdeep, Homnabad, Edelpore, Kismat, Pargana Hougla, Pargana Ateah, Pargana Kharganj, Pargana Mehlind.

an allowance (usually 10 per cent. of the revenue) which was granted to the zemindar as a sort of pension not simply when temporary management was taken over for default of revenue, but also when any land was taken out for a *jaigir* or *altamgha* to an official of the State. Sometimes, Shore says, lands were actually purchased from the zemindars for such transference. The term "malikana," continued Shore, "was a very expressive term, which may be rendered *the right of proprietorship*," and "when it is considered that the *altamgha* grant has no reserve or limitation, and that the persons who acquired by it the possession of land in perpetuity, had generally very considerable interest at court, it may be reasonably supposed that they would not have relinquished any part of their Sovereign's donation except in compliance with an acknowledged right."

—and on sales of zemindaries.

For further proof of clear recognition of a property right of the zemindar, Shore refers in his minute to the practice of the Mughal Government to *sell* zemindaries for the discharge of the arrears of Government revenue, and to records of such sales.

Shore's reference to the Institutes of Timur.

14. Shore referred to the Institutes of Timur, which avowed that the Sovereign was the sole proprietor of the soil, and observed that it was highly probable that the principle was modified in actual application, that is to say, in the exigencies and circumstances as were found in Bengal. The zemindars in Bengal, Shore oberved in the same minute, were not the creation of the Mughals : they existed from before the regime of the previous Muhammedan Rulers (Pathans), and in Akbar's time they were "numerous, rich and powerful."* "From this circumstance, as well as other collateral considerations," continued Shore, "there is reason to suppose that the new invaders, who claimed the revenues of the country, from motives of policy and humanity, employed *the*

* An account has been given in Chap. V how many of them violently resisted the Mughal invasion. Others supported the Mughals and helped them with resources of provisions and men

ancient possessors of land as their agents for the collection of the taxes of the State, superadding the jurisdiction exercised by the Collectors of revenue in their own system of finance."*

Shore's exposition accepted by the authorities and Courts.

15. Shore's discourse on this subject was so thorough that, though at places it read like special pleading, it was entirely convincing to the authorities of the time; and whatever halting views the Court of Directors had (*vide* their despatch, dated 12th April, 1786) were removed. It was thus that, quite apart from any question of policy, the zemindars were recognised as the actual proprietors of the land: the raiyats were their tenants, and the Ruling Power was entitled to assess such revenue as they considered proper consistently with the capacity of the raiyat. This view was embodied in the Proclamation of 1793 and the Regulations passed in that year. The earliest judicial pronouncement on these Regulations was by Lord Chancellor in a case† before him in 1828. He said:—

> "I think it is impossible to read these articles, which were prepared obviously with great caution and consideration by persons well-acquainted with the subject, and possessing every means of obtaining most accurate information on it, and as far back as 1793, without coming to the conclusion that the zemindars and talookdars were owners of the soil."

The Privy Council considered that the investigation made at the time of the Decennial Settlement as regards the

* The list of "officers" in Ayeen-i-Akbari does not include the "zemindar," and this, Shore pointed out in his note to the minute, was significant. In the original Ayeen-i-Akbari Shore found frequent mention of the term "Boomee" with reference to the zemindar, which he interprets as equivalent to the Persian term which meant "possessing the soil." It was probably the same as "Bhuiya" or "Bhumia" of Bengal. Harrington mentions the term "Buzbuzgur" as used with reference to a zemindar who was disobedient, and says that "Buzurgur" in Persian denoted generally a landholder or husbandman. "Aumilguzar" was the "office" of the collector of revenue, and meant an "officer" of the State. There was no "aumilguzar," but his function was merged in the "zemindar."

† *Freeman* vs. *Fairlie*, (1828), I.M.I.A. 305 (page 341).

true position of the zemindars, was thorough and dependable, and they accepted the conclusion then arrived at, *viz.*, that prior to the acquisition of the Dewani, the zemindars of Bengal were the actual proprietors of the soil.

16. Other critics, however, have not been so sanguine. The earliest of them is perhaps Sir Broughton Rouse who wrote his "Dissertation concerning the Landed Property of Bengal" in 1791. He questioned the right of the Parliament to give away to zemindars any property in land which belonged to raiyats or cultivators. But did the Act of 1784 or the Permanent Settlement give away any such right of the raiyat in the land he held? We have seen in our discussions that, far from taking away any rights of the raiyats who held lands at that time, the new Regulations very materially expanded their rights and made them certain. All that the Regulating Act directed was that the grievances of the rajas, zemindars, polygars, talookdars and other native landholders should be investigated and redressed. Here Sir Broughton Rouse's own observations in his Introduction would bear quotation: "The rise and progress of property in land have been . . . always keeping pace with civilization and enlarged policy; and frequently, when established, resting more upon constitution and usage than upon the strict letter of written law, or deeds of tenure." Rights of property in land are thus bound to develop* with changes in social and other conditions, and get established by usage. Colonel Galloway, in his "Observations on the Law and Constitution etc., established by the Muhamedan Law and Mughal Government," 1825, discourses more on abstract notions and occasional writings by Muhammadan jurists, than on facts. From the simple observation in Ayeen-i-Akbari that the husbandmen

Opposite criticisms:— Sir Broughton Rouse.

* If it is assumed that the first reclaimer of a primitive society was the absolute owner of the land he reclaimed, would that right cease when he or his descendants ceased to till it? If it did, then what was the meaning of this ownership, or to whom would the land lapse then? If it did not, then a right in the land must be recognised to continue in him, and the man whom he introduces to till the land would be his tenant.

in Bengal used to bring mohurs and rupees to places appointed for payment, he concluded that "it was a matter of undoubted history that there was no such thing as a great zemindar either in Bengal or Behar." It is difficult to understand this; for, though it is true that much light has been thrown on the history of those earlier times by many erudite scholars after Galloway, the materials collected in official records such as Shore's minutes and Grant's Analysis clearly showed that there were zemindars in Bengal throughout the Mughal period, and many of them held fortresses and were powerful enough to resist the invaders for many years;* and also that under these zemindars there were talookdars and other landholders with permanent hereditary rights.

Patton's "Asiatic Monarchies."

17. Patton, in his "Asiatic Monarchies," lays stress on the terms of a zemindari *sunnad* during the Mughal period, in which the word "service" is used, and maintains that if the *sunnad* was taken as the basis of the zemindar's status, it was only an "office." Shore's minute of 1788, to which we have already referred, gives a complete answer to this question. If it was an "office," it was a hereditary office, and could even be sold or mortgaged, and when its holder was dispossessed temporarily, he was allowed to draw a *malikana*. The settlement with tenants, of waste and untenanted lands, was his concern; and he often introduced farmers and talookdars between himself and the cultivators, and also granted leases for organising reclamations in jungle-areas and marshy tracts. What the zemindars realised from his raiyats and intermediate holders was *khajana* or rent. All these circumstances speak for themselves: and there is further the fact that it was not that every zemindar had a *sunnad*.

Continuing the same idea about zemindari *sunnad*, Patton dwells on the dispossessions of zemindars† by Jafir

* See Chapter IV *ante*.

† Colebrooke, in his Supplement (page 190), cites a Proclamation by the Court of Directors, dated 11th May, 1772, the seventh item of which mentioned "the constitution and dismissing of zemindars with the concurrence of the Nazim," amongst the authorities they proposed to assume with the removal of Nabob

Khan (Murshid Kuli Khan), and concludes that these showed that the zemindars could not have any stable property-right in the land. But it is overlooked that Murshid Kuli Khan's attempts were a failure and had to be given up within three years.*

Other critics.

18. The unnamed author of the book† entitled "Zemindary Settlement of Bengal," himself a scathing critic of the Permanent Settlement of Lord Cornwallis, recognised that, under the Muhammadan Government, "the State was not the proprietor of the soil." He also makes the very pertinent observation that "Bengal was not a *tabula rasa* on which the authors of the permanent zemindary settlement were free to construct any system of land-tenures that pleased them;" and in support he refers to Rouse's exposition that the occupation of India by the British, whether it be considered as a "conquest" or as obtained by "compact," means "no more than a simple transfer of the Sovereignty, not an annihilation of private property." He concedes that the zemindars could not be avoided, and his criticism is mainly with regard to the permanent fixation of the demands of the State, and to the use of the term "proprietor" with refer-

Mahomed Reza Khan. But this did not give any precedent of what was the constitutional practice during the Mughal times; and the fact remains that the Directors had to give up this plan and rescind their orders of 1772.

* See Chapter IV *ante*. Also footnote to para. 11 of this Chapter (p. 175).

† Published in 1879 when the amendment of the Tenancy Laws, which eventually took shape in the Bengal Act VIII of 1885, was agitating the public and the officials. The book is dedicated to Sir Ashley Eden, then Lieutenant-Governor of Bengal, "without permission." The manner of the dedication beseeching Sir Ashley to hear him patiently as did king Agrippa when the account of the Jews was narrated to him, shows that the author must have been a person in familiar terms with him.

The book is in two large volumes, and is a remarkable compilation with extensive extracts, and includes also a discourse about the land systems in the various countries in Europe at that time. It is unfortunate that the author did not make a similar comparative study of the land systems in other parts of India. Such a study was made later by Baden-Powell in his well-known book on "Land Systems of British India" published in 1892. The only reference he makes is to Madras and Bombay, the circumstances about which we have discussed in Chapter VIII and in the Appendix to that chapter.

ence to the zemindar. We will not repeat what we have already stated about the circumstances which led to the permanent fixing of the land revenue, but will observe that the criticisms on this aspect of the Permanent Settlement cropped up when after years of suffering the zemindars had just begun to make a profit out of their estates. The British Rule was then well-established, and, judging in an atmosphere of established law and order, some of these critics felt remorse that the Company were then losing a portion of the traditional proportion of the produce from land, and would be losing more in the future. Others went to the extreme and felt that they might have as well wiped out the zemindars and talookdars, and treated Bengal in the same manner in which Sir Thomas Munro treated the areas in Madras where the " poligars " had raised a " war." Legal quibbles were introduced as to the propriety of the use of the term " proprietor " in the Proclamation of the Permanent Settlement, and it was argued that with the numerous limitations to the exercise of what could be called " ownership," the term really meant nothing. What, however, was overlooked, was that the term still meant a good deal : and had it not meant a good deal, there would not have been any controversy at all. However, it is now the generally accepted view that these restrictions, though implying a limited ownership, are not incompatible with legal proprietary right.

This takes us back to what Lord Cornwallis had felt in his robust judgment. When settlement was to be made with the zemindar, and the rights of the tenantry were also to be defined and protected, it was a matter of little practical importance who was called " proprietor." In fact, the zemindar, the tenure-holder and the raiyat are each the owner of the *quantum* of rights which he possesses by the operation of the Tenancy laws, contract or custom. The only thing left as special for the zemindar or a tenure-holder subordinate to him is that the disposal of untenanted lands within his estate or tenure rests with him, and when any of the immediately subordinate rights lapses, it merges in him. As a practical proposition, it may well be

questioned—with whom else would such disposal of untenanted lands rest, or in whom would such lapsed rights merge, when it is admitted that the State is not the proprietor of the soil?

CHAPTER X

The Permanent Settlement and the Raiyat

Recapitulation of the raiyat's position prior to the Permanent Settlement.

We have discussed in Chapter VI, how poor were the rights, if they could be called rights at all, which the raiyat possessed at the time when the English obtained the Dewani in 1765. The King's share, in theory at any rate, was one-third of the gross produce from the land; but we have no account to show how the rent, which the raiyat was to pay to the zemindar or talookdar, was regulated. The raiyat's rent was supposed to be based on certain "pargana rates" or conventions which had developed during the well-managed period of Mughal Rule. But these rates varied so wildly according to the supposed quality of the land, and the kinds of crops actually grown in the year, that it may be surmised, quite reasonably, that they were more a source of oppression and corruption than of any real help to the peasantry. We have seen also how, since the practice of Subahdari *abwabs* from the time of Murshid Kuli Khan (1722), these supposed pargana rates had become completely obliterated. The total of the Subahdari *abwabs* on the zemindars was perhaps not more than 40 per cent. of the revenue which they paid; but the exactions from the raiyats were in much higher and irregular proportions. It was believed that the zemindars kept the *asal* rent (calculated on the supposed pargana rates) and the *abwabs* separate in their accounts; but the facts as found by Shore were that it was not uncommon that when a new *abwab* was imposed, the old *abwab* was consolidated with the rent, and only the new *abwab* was separately shown. This

process went on till Ali Vardi Khan's time. The repercussion on the tenantry of the arbitrary increases obtained by the auction-settlements in 1769-70, may be left to conjecture.*

The raiyat known as *pykast*, *i.e.*, who came from another village, was only a temporary tenant-at-will. The permanent raiyat resident in the village in which the land was situated (called *khudkast* raiyat) had no right to transfer or mortgage; and in fact the little margin he had after paying a heavy rent, which was at least one-third of the gross produce, gave his interest practically no market-value or security for a loan. His rent was liable to increase as he changed his crop to a more valuable species, or had a second crop on the land, and he could not change the kind of crop without the permission of the landlord. Where there were rates, the rent changed with the elaborate classification of these rates. Nobody thought of any other right except agriculture on the surface-soil. A masonry building or a brick-field by a raiyat was undreamt of. If he had a shop, it was liable to the *sayer*. The enforcement of payment was entirely in the hands of the zemindar or talookdar. He could seize and sell the crop without recourse to any Court or Public officer, and even keep the defaulter under confinement and use physical coercion on him. This put the raiyat almost in a helpless position, for, the maintenance of the village-Police was in the hands of the zemindar.

Changes intended by the Permanent Settlement:

2. Very substantial changes were effected in the position of the raiyat by the Regulations of the Permanent Settlement. There is no mention of *pykast* raiyat in these Regulations; but as regards *khudkast* raiyats, the general intention was that their rents in respect of the lands then held by them should not be increased: in other words, they were to have the same benefit of fixity for their rents as the zemindar

* The only safety of the peasantry was in the fact that population was sparse. Lands were plenty, but there were few men to cultivate them. A zemindar could not afford to disturb a raiyat so long as he paid his rent; nor could he be over-exacting, for, the raiyat would then abandon and repair to another zemindari.

for his revenue. These rents comprised what was then known as the *asal* rent and the *abwabs** already imposed. The total was to be consolidated in one specific sum for which the zemindar or any landholder subordinate to him must grant a *patta* to the raiyat (sections 56 to 61 of Regulation VIII of 1793). This *patta* could not be cancelled† later, except upon proof of "collusion" or that the rent stipulated in it was "below the rate of *nirikhbundi*‡ of the pargana," or "upon a general measurement of the pargana for the purpose of equalising and correcting the assessment."§ Imposition of new *abwab* or levy, under any pretence, in addition to the rent in the *patta*, was forbidden on penalty of three times the amount for the entire period of exaction (section 55). Provision was also made that the landlord should fix *kists* "according to the time of reaping and selling the produce" (section 64), and grant receipts when rent was paid, the penalty for failure being double the amount paid (section 63). The zemindars were also to employ *patwaris* in each village to keep a correct account of the raiyats, and every *patwari* was liable to submit his accounts to the Court or the Collector for inspection, when required (section 62).

—rents of existing khudkast raiyats to be fixed by pattas not to be altered:

—kists for rent, rent-receipts and patwaris for correct account.

* This maintained the *status quo*. Shore in his minute of 18th June, 1789, introduced the theory of "rise in prices" to justify this recognition of the *abwabs* already imposed. Obviously, if these *abwabs* were not recognised, the assessment on the zemindars would have to be correspondingly reduced.

† This meant that these *khudkast* raiyats were fully protected against eviction so long as they paid the *patta*-rents, the *pattas* being without any limitation of time. A complication was, however, created by section 5 of Regulation XLIV of 1793 to which we will refer later.

‡ This term *nirikhbundi* is not used with reference to the new raiyats. The consolidation of *abwabs* (which was by no means in any uniform proportion) really meant forming a "lump rental," and the *nirikhbundi* rate in this section could be nothing but the arithmetical result of the division of the total rent of a holding by its total area.

§ Section 60(2). It might not be possible for the parties to have a measurement within the short time allowed for *pattas*. If really meant that if by a later measurement, the area was found greater than what was borne in the *jumabandi* at the time of the *patta*, the rent would be adjusted accordingly. In other words additional rent was to be paid for any excess area found. Compare section 52 of the Bengal Tenancy Act of 1885, read with section 50(1).

3 In the matter of enforcing payment of rent, the previous power of the zemindar to confine* and use coercion upon the defaulters was taken away; but by Regulation XVII of 1793, the power to seize and sell their crops and chattels without recourse to the Court or the Collector was retained, though with considerable restrictions regarding the process of sale and use of the sale-proceeds. Certain liabilities were also imposed upon the distrainors in case of irregular practice. Where rent was not realised by distraint, the landlord's remedy was to institute rent-suit in the Dewani Adalat.

Realisation of rent by distraint, but not by confinement.

4. As regards raiyats in respect of the lands taken by them *after* the Permanent Settlement (*viz.*, lands out of the untenanted areas, bulk of which were waste and jungle), the same rules regarding *abwabs* and realisation applied: but otherwise there was material difference. By section 52 of Regulation VIII of 1793, the zemindars were permitted to let out these "remaining lands" in whatever manner they thought proper, subject to "prescribed restrictions." Amongst these restrictions, section 2 of Regulation XLIV of 1793 laid down that no landlord was to "grant *pattas* to raiyats or other persons for the cultivation of lands, for a term exceeding ten years," or to renew such a *patta* till after the expiry of the term.† This meant as if the zemindar or talookdar was at liberty to take away the lands of these *later* raiyats, on the expiry of ten years or earlier if the term of the lease was shorter. But it was not the intention that such should be the position of the raiyat; and in the following year

Raiyats after the Permanent Settlement:

—restriction to 10 years:

—but with right of renewal at the established pargana rate.

* The zemindar, however, continued still liable to be kept confined in case of default of Government revenue (Regulation XIV of 1793); and in fact even the Raja of Burdwan was kept confined for such arrears, *vide* Collector of Burdwan's letter dated 27th February, 1794, in Firminger's Fifth Report, Vol. II.

† The authorities seem to have been anxious lest too low rates were fixed to the detriment of the security of the State revenue, or that the estate was burthened with too long a term for such a new tenancy. It was overlooked that if jungles infested with wild beasts were to be cleared, the cultivators must be given some advantageous terms.

Regulation IV of 1794 was passed to explain the correct intention. Section 7 of this Regulation laid down that on the expiry of the term of a new holding, the raiyat shall be entitled to a renewal, that is to say, the expiration of the term of a raiyat's lease did not *ipso facto* give the landlord a right to take away the land. There was nothing in the section to indicate that this renewal could be only for another period of ten years. The only consideration was that the raiyat should agree to pay rent according to the "established rate of the pargana for lands of the same quality and description." We will discuss later the interpretation by the law-courts of this expression "established rate." The provisions of this section clearly implied that a raiyat, once inducted, must be allowed to continue in his land and to acquire in course of time what has later been called "occupancy right;" and that the maximum rent which the landlord might demand from him was what could be levied at the "established pargana rate," whatever that expression meant. Another implication in the provisions of this section was that although it was not open to the landlord to terminate the tenancy on the expiry of the lease, it was open to the raiyat not to continue the tenancy;* in other words, he was to have the right to relinquish.

Meaning of these provisions—security of tenure and acquisition of occupancy right.

5. The position intended by these main Regulations of the Permanent Settlement, for the old *khudkast* raiyats and the later raiyats, was thus quite clear. In the case of the former the rent then fixed was to remain unalterable, and in the case of the latter it might be raised up to the "established pargana rates for similar lands." In the case of both, the raiyat was entitled to continue in his land, and acquire in course of time a right which, since Act X of 1859, is called "right of occupancy."

General position summarised.

* This followed from the words—"upon making application for the purpose," *viz.*, for continuing to hold on. The defect in the section was that it did not specifically mention that the raiyat could "relinquish." This was more a defect in drafting than intentional.

Inconsistent provision in Regulation XLIV of 1793.

6. But these benefits were, unfortunately, marred to a large extent by the somewhat inconsistent provisions which were made at the same time to meet contingencies when an estate of a zemindar was sold for arrears of revenue. Section 5 of Regulation XLIV of 1793 laid down that whenever the whole or a portion of the lands of any zemindar would be disposed of at public sale for the discharge of the arrears of the public assessment, all subordinate tenancies of whatever description, "shall stand cancelled from the day of sale." It was left to the option of the purchaser or purchasers to let an existing tenant continue to hold on, and no exception was made for raiyats.* The only explanation for this drastic provision would seem to lie in the nervousness of the authorities for the security of the assessment made on the zemindars. This is apparent from the preamble to the Regulation itself. Conscious as they were of the high assessment made on the zemindars, and doubtful about the adequacy of the rental assets for this assessment, they were naturally very cautious. The only relief given to the raiyats was that, when the purchaser chose to let them continue, their rents were not to exceed the rates "according to the established usages and rates of the pargana or district" in which their lands were situated. It is very doubtful whether the old *khudkast* raiyats actually suffered by the operation of this rule of automatic cancellation, or, whether the rule was at all meant to apply to such raiyats.† It is true that during the next 20 or

* A slight improvement in the position of the raiyat was made by section 9 of Regulation V of 1812. The power of the purchaser to annul previous engagements was retained, but if he desired to enhance the rent without disturbing the possession of the raiyat, he was required either to obtain the latter's agreement or to give him a previous notice specifying the enhancement demanded. There was no provision for cases where the raiyat was unable to agree to the demand: his relief was only by relinquishing.

† See the observation of Trevor J. in the *Great Rent Case*, explaining the custom: "*Khudkast* raiyats in possession 12 years before the (Decennial) Settlement were, under no circumstances, not even on a sale for arrears of revenue, liable either to enhancement of rent, or eviction from their holdings so long as they paid the rents which they had all along paid." According to him all that sec. 5 of Reg. XLIV of 1793 meant, so far as this class of raiyats were concerned, was that

25 years, about half of the zemindaris in Bengal were knocked down at sales for arrears of revenue; on the other hand population had dwindled fearfully, and while lands were plenty, men available to cultivate them were few. The official records of the time make frequent references to cases of what are called " kidnapping of the raiyats " of one zemindari by the proprietor of a neighbouring estate. It is thus not very probable that any purchaser of a zemindari could afford to disturb the existing cultivators. What the latter suffered from, was that in some cases their rents might have been pitched up to the level of the pargana rates established* at the time of the sale.

Not altered till 1822.

7. The authorities were apparently watching. The progress of extension of cultivation and improvement of the assets of the estates was at first slow. But by the year 1822, it was felt that conditions had materially changed. Section 32 of Regulation XI of that year thus distinguished the old raiyats of the time of the Permanent Settlement, and called them " *khudkast kudeemee*† raiyat." Any power of the purchaser at a revenue-sale to avoid them was taken away, and it was made clear that such purchaser could not demand rent from such raiyat at a higher rate than what he was previously paying.‡ As for the rest, *viz.*, the later

they might be required to enter into a written agreement for paying at their existing rates.

* For a history of the law prior to Act X of 1859, see the *Great Rent Case. Thakooranee Dossee* vs. *Bishessor Mukherji*, F.B. (1865) 3 W. R., Act Rulings, 29, per Trevor J, at p. 35, etc.

† From Arabic " kadam," meaning " head or main." The word resembles Bengali " adi " or " adim," meaning " original."

‡ Section 32 laid down—"nor shall the said rule be construed to authorise any purchaser as aforesaid to eject a ***khudkast kudeemee*** raiyat, or resident hereditary cultivator, having a presumptive right of occupancy;" and the purchaser was not to demand rent from such a raiyat, " a higher rate.....than was receivable by the former malguzar," except where " in consequence of abatements having been granted by the former malguzars from the old established rates by favour, or for a consideration or the like." This had obvious reference to section 60(2) of Regulation VIII of 1793. The next section 33 of Regulation XI of 1822 was apparently meant for other raiyats whose rent was enhancible. The words used here are— " rates according to the law and usage of the country;" and this had reference to

raiyats, if the purchaser desired to enhance the rent it could be up to the rates "according to the law and usage of the country;" but the continuance of the tenancy could not otherwise be disturbed, section 7 of Regulation IV of 1794 being still operative.*

Retrograde Acts of 1841 and 1845:

8. But there was a set-back by the provisions of Act XII of 1841, passed 19 years later. These provisions were repeated also in Act I of 1845. The reasons which led to these provisions are not very clear. The position of the *khudkast kudeemee* raiyats was maintained; but as regards the later raiyats, who by reason of their permanent residence in the village or by possession for over 12 years had acquired a *khudkast* right, was rendered precarious. The purchaser was given the power to eject such raiyat or to assess him with rent "at the discretion of the landlord." This retrograde measure was not rectified till Act XI of 1859 was passed, after the assumption of direct government by the Crown. This Act (section 37, proviso), which is still the operative Act, lays down that a purchaser at a revenue-sale is not entitled to eject any raiyat having a right of occupancy, whether his holding has been existing from the time of the Permanent Settlement or was created later.

—not rectified till 1859.

The Rent Act X of 1859.

9. Simultaneously with Act XI of 1859, which relates to matters arising from sales of estates for arrears of revenue, the Rent Act X of 1859 was passed. It was the first legislation, long overdue as it was which attempted to consolidate and amplify the law regarding the tenants and their landlords. It also laid down rules regarding enhancement of rents, where

section 7 of Regulation IV of 1794. See the interpretation in the *Great Rent Case*, *ibid.*

* Section 33 of Regulation XI of 1822 laid down that nothing in section 9 of Regulation V of 1812 was to be construed "to annul or diminish the title of the raiyats to hold their lands subject to the payment of fixed rents (apparently referring to the *khudkast kudeemee* raiyats), or rents determinable by fixed rates, according to the law and usage of the country" (apparently referring to the later raiyats and to section 7 of Regulation IV of 1794).

they were enhancible. But before we proceed to deal with this and subsequent enactments, we will briefly review the effects, on the raiyats, of the measures taken or neglected during the period prior to 1859.

The Raiyat till Act X of 1859

Measures intended by Lord Cornwallis.

10. We have seen before that, in the arrangements of the Permanent Settlement, the Government very properly assumed the responsibility of protecting the interests of the voiceless millions, the peasantry. Regulations VIII of 1793 and IV of 1794 embodied the measures which were then taken in this direction; but these initial Regulations were necessarily incomplete, and much depended on how the executive authorities were watchful* that the provisions in these Regulations were applied in practice. Lord Cornwallis repeatedly stressed that other measures, both legislative and executive, would be necessary to implement these Regulations so as to fulfil the spirit and intention underlying the provisions made in them. But it was unfortunate that, in certain matters, the later Governments, during the Company's regime, failed to carry out these intentions properly, or to implement the original measures when difficulties were found in the working of details.

Lord Cornwallis's *patta*-plan.

11. Both Shore and Lord Cornwallis fully realised that it was no use simply declaring a paper-regulation that the existing rents of the *khudkast* raiyats were not to be altered in future. The plan which they devised for trial, to give effect to their intentions, was that the raiyats should take *pattas* specifying in "neat sums" the rents (inclusive of the *abwabs* already imposed) which they were to pay. The difficulties in

* The Court of Directors, when approving the proposals for the Permanent Settlement and the draft Regulations, emphasised the necessity on the part of the Company's "servants to watch incessantly over the progress of the changes made." Despatch, dated the 19th September, 1792.

the enforcement of this plan of *pattas* arose from two main causes, *viz.*, (1) refusal of many of the old *khudkast* raiyats to take *pattas*, and (2) disputes about the rent or the rate. Inspite of the good intentions of the authors of the plan, the hesitancy of the old *khudkast* raiyats was natural. Acceptance of a *patta* implied agreement or *kabulyat* regarding its terms; and with the experience of the irregular methods and devices to which they had to submit in their own generation and the preceding generation,* they were suspicious. Section 58 of Regulation VIII of 1793 required that the form of the *patta* in any district should be approved by the Collector, and it is difficult to understand that its authors, anxious as they were for the success of their plan, could have intended that the Collector would not also indicate the rates or *nirikh-bundi* in his district or any part of the district. Nothing worse could be done than the provision made in a Regulation passed a year later when Lord Cornwallis had left India.

How the *patta*-plan was suffered to fail.

This was section 6 of Regulation IV of 1794, which shirked the responsibility of the executive authorities by attempting to put a different meaning on section 58 of the Regulation of 1793. The parties were directed to obtain an adjudication of the Dewani Adalat when there were disputes regarding the rates. So far as regards the old *khudkast* raiyats, this meant nothing else than settling what were their *existing* rents, and the procedure of a civil suit for the purpose could only repel them and aggravate suspicion and estrangement.† Later, it was declared that a mere notification by the zemindars of what they considered to be the rates of their parganas or estates, was sufficient for the requirements of the Regulation of 1793. It was thus that the *patta*-plan of Lord Cornwallis was allowed to lapse; and what is more surprising is

* *Pattas*, as we have seen before, were usual during the Pathan period and the best times of the Mughal Rule, both for initial settlements and revisions. They had apparently fallen into disuse with the irregular methods of frequent additions in the name of *abwabs*, etc., since Murshid Kuli Khan's time.

† See the reports of the Collectors quoted in Shore's minute of 18th June, 1789, relating to Bengal districts, and of 28th June, 1789, relating to Behar districts, regarding the difficulties felt early at that time.

that though Shore was Governor-General till 1798, nothing really effective was done. By this time the *patta*-plan was almost dead.*

Court of Directors' strictures in 1815.

12. We do not know how far this *laissez faire* attitude of the officials in India had the knowledge or approval of the Court of Directors. But the following unusually strong observation by them in a letter dated 6th January, 1815, throws some light :—

" We cannot with too much earnestness direct your attention to the enforcement of the *patta* regulation, a measure which was contemporaneous with the Permanent Settlement, was then considered as an essentially necessary branch of the system, and upon the observance of which the security of the raiyats, and consequently the general prosperity of the country, were stated mainly to depend. Had the regulation been duly enforced, and had the penalties attached to the breach of it been regularly imposed, a degree of confidence might have been established between the zemindars and raiyats, which would gradually have spread its influence into our other provinces.....But it has unfortunately happened, and we must say much to the discredit of the executive authorities abroad, that the *patta* regulation has been suffered to become a dead letter."

But still nothing was done.† The obvious solution was preparation of an authoritative record of the lands held by the

* There was much talk afterwards, but nothing was done. In 1811, the Collector of Rajshahi pointed out that a preliminary requirement was that the rights of the raiyats should first be clearly defined (Revenue Selections, Vol. I, p. 241). Lord Moira wrote on 21st September, 1815, that the old *khudkast* raiyats were really " under-proprietors," and *pattas* meant as if they could have no rights except by *pattas*. Mr. Sisson, in his report of 2nd April, 1815, observed that " the illiterate raiyat could never, under the old rules, have felt his right to perpetual possession confirmed by a deed which expressly limited his lease to ten years." This apparently referred to the later raiyats, but a suspicion by the older raiyats was natural. The idea of *pattas* for the older raiyats did not, however, altogether vanish from the minds of the authorities; for we find mention of them in Act X of 1859 (section 3), and also in Act VIII of 1869.

† But discourses continued. Sir Edward Colebrooke, writing on 5th January, 1819 (Revenue Selections, Vol. III, pages 171-72), observed that a *patta* from the

tenantry and their rents;* and, although provision was made for a *jamabundi* before a *temporary* settlement could be made under the later Regulation VII of 1822, it was not till 1885† that provision was made in the law for a record-of-rights in the permanently settled areas, and it was again not till about 20 years later that any action was taken in the Bengal districts.‡

Lord Cornwallis's plan of village-patwaris.

13. Lord Cornwallis's plan of a *patwari* in every village, liable to keep correct accounts and submit them to the Collector or the Court for inspection, was materially elaborated by Regulation XII of 1817. This Regulation was extended to all the districts of Bengal by Regulation I of 1819, and is still in the statute-book; but it is never resorted to and has long become a dead letter. There has since been another Act, *viz.*, Act XX of 1848, which empowers the Collectors to compel landholders to produce their collection papers.

Realisation of arrear-rent:

14. It has been stated previously that, during the Mughal period, the zemindars had almost unrestricted powers in realisation of rents from the raiyats. They could straight seize and sell the crops or other chattels of the raiyat; and they could even keep him under confinement and use physical coercion. Section 28 of Regulation XVII of 1793 prohibited the practice§ of "confining" or inflicting corporal punishment on any under-farmer or raiyat or dependent talookdar or his sureties, to enforce payment of arrears of

—confinement and corporal punishment abolished: but distraint retained—Regulation XVII of 1793.

zemindar could attract only the labouring classes, but not the raiyat who held his land and regulated his payments by a much more solid tenure.

* That this was the right thing to do was indicated in a Government Resolution of 1st August, 1822, *viz.*, to prepare at least a distinct register, "specifying lands held by each (raiyat) and the conditions (including rent) attaching to the tenure."

† Chapter X of the Bengal Tenancy Act, VIII of 1885.

‡ The first operation was in Chittagong. But really cadastral survey operations began regularly in Bengal from about 1905 when the district of Bakarganj was taken up.

§ These severe methods apparently continued for some time during the early periods of the Dewani, as would seem from the reference in the Preamble to this Regulation.

rent. The power of distraining and selling the crops and other movables of the tenant, without having recourse to the Collector or the Dewani Adalat, was, however, retained. The reason stated in section 1 of that Regulation would read strange to-day : it was—" it being essential to the prosperity of the country and the punctual collection of the public revenue, that landholders and farmers of land should have the means of compelling payment from defaulters without being obliged to have recourse to the Courts of Justice and incurring the delay and expenses necessarily attending a law process for the recovery of every arrear." The authorities were uneasy about punctual realisation of the Government demand which was excessive : and at that time the taking away of the power of arresting the defaulter and using physical coercion on him was a good advance towards the protection of the tenantry. The power of distraint was also considerably restrained by detailed rules regarding disposal of the sale-proceeds and providing penalties for irregular seizure of crops or other movables by the landlord or his agents. There could also be no distraint, if the tenant had furnished a security beforehand. But the most important provision was in section 9 of the Regulation. The tenant could enter into a bond before the Judge of the zilla, the Cauzy of the pargana or the distrainor, with good security, binding himself to institute a suit in the Dewani Adalat disputing the claim and demanding a trial : and the distraint would thereupon cease. Though a sort of a safeguard, this would read today as a curious procedure. From its nature, it could hardly be availed of by the poorer and the more helpless classes of the raiyats : but possibly it was abused by the bigger tenants, *viz.*, the tenure-holders. At any rate, this was alleged by the zemindars as a serious obstacle in their process for realising rents, and a reason for failure on their part in punctual payment of Government revenue. The authorities also seem to have taken this view, for they rescinded this provision in section 9, by Regulation XXXV of 1795. The reason stated

Power to tenant to stay distraint by petition to Court and by instituting suit within 15 days:

—this power taken away by Regulation XXXV of 1795.

in the Preamble to this Regulation was that these provisions (of section 9 of Regulation XVII of 1793) had been found "to counteract the object of the Regulation" by affording the defaulter an "opportunity of protracting the discharge of just demands," and thus putting obstacles in the way of the zemindar's paying the Government demand punctually. Simultaneously, a provision was made (section 11) by which the landlord could apply to the Court for the arrest and confinement of the defaulting tenant. Cases like that of Banaressy Ghose, reported by the Collector of Burdwan in 1794,* probably frightened the authorities into measures of this kind. He was a subordinate talookdar under the Raja of Burdwan; and having fallen into a heavy arrear of as much as Rs. 47,643. removed himself, with all his personal effects, to the jurisdiction of the city of Calcutta. The talook was apparently overassessed (as the zemindari of the Raja) and did not itself furnish sufficient assets for the arrear, although attached under the provisions of Regulation XVII of 1793.

The haftam or Regulation VII of 1799.

15. Then followed Regulation VII of 1799, known as the notorious *haftam* (meaning the "seventh"). It supplemented the Regulation of 1795; but its worst feature was that it abolished the provisions which required that the landlord must first satisfy the Judge that the arrear claimed was really due and that the defaulter was likely to abscond, before the tenant or his surety could be arrested and put in confinement. All that was necessary for the landlord was to represent to the "Native Commissioner"† or the zilla Dewani Adalat that he had reasons to believe that the defaulter or his surety would abscond or be "eloped." The prisoner would not be released unless the landlord stated in writing that he

* Letter dated 21st January, 1794, to the Board of Revenue, given in Appendix 8 to Firminger's Fifth Report, Vol. II, and also Proceedings of the Board, dated 14th March, 1794.

† "Native Commissioners," Muhammadans and Hindus, were appointed first in the cities of Patna, Dacca and Murshidabad for "determining suits for sums of money or personal property not exceeding in amount or value fifty sicca rupees," and then extended to other districts: Regulation XL of 1793.

might be released; and the tenant could not claim release on the ground that he disputed the arrear, so long as it did not appear that "a considerable proportion of the demand is not justly due:" sections 14 and 15. Attachment of the tenant's crops and personal effects and their seizure and sale could simultaneously continue, without any previous notice* of demand on the tenant, specifying his account. In the process of distraint, power was given to the landlords (including their naibs, gomasthas and other agents) to break open the doors of houses to seize the personal properties of the tenant, and for this purpose, the Police were required to assist the landlord.†

The pancham or Regulation V of 1812.

16. The next legislation was Regulation V of 1812, known as the *pancham* (meaning the "fifth"). It did not repeal Regulation VII of 1799, but only restored the power of the tenant to stay distraint or seizure of crops or chattels, by furnishing security to the Court or the Collector, and then instituting a suit within 15 days to dispute the demand.‡

How these Regulations violated the pledge for the protection of the tenantry.

17. Nothing could be more remote from the minds of the authors of the Permanent Settlement than that their successors would thus forget the spirit and intention of their scheme, and give so much power to the landlords. But considerations of punctual realisation of the revenues assessed on the zemindars forced the hands of the authorities when they found that estate after estate was being knocked down for arrears§ and the sale-proceeds did not

* This notice had been abolished by Regulation XXXV of 1795.

† Although from a general perusal of the Regulation it would seem that the main object was the "tenure-holder," by the abolition of the previous restriction of arrest to cases where the arear exceeded Rs. 500, and by mention of "crops" at places, the "raiyats" were also encompassed.

‡ It was a curious procedure, and reversed the normal procedure which requires the claimant first to prove his claim.

§ Reference is made to "frequent successive sales" in the Preamble to Regulation VII of 1799. In the Fifth Report of the Select Committee of 1812, some figures are given to show how the sale-proceeds did not fetch even the arrears of the *kist* for which the estate was sold. Two Regulations passed in the meantime, *viz.*, Regulations L of 1795 and XLVII of 1803, entitled the purchaser at a revenue-sale to collect arrear-rents from the tenantry for any period *prior* to the sale.

often cover even the dues of the *kists* for which it was sold. Yet, howsoever necessitated by the circumstances of the time, it was a mistake not to have differentiated the cultivating raiyats; for, the power to distrain their crops was quite sufficient.

Rent-receipts and abwabs.

18. We do not know what action was called for or taken to enforce the intentions of the Permanent Settlement Regulations regarding rent-receipts and illegal exactions. It is rather surprising that contemporary records do not make any mention of these.* We find, however, frequent mention of the inadequacy of the law-courts and the Police under the system then introduced, and of plans for stopping robberies and dacoities which became a growing menace. The combined effect of this and the powers given to the zemindars was that the raiyats often resorted to the latter for redress of their petty grievances, such as a dispute about the boundaries of their land and the like, and even social matters; and it is no wonder that the zemindars did not miss such opportunities to exact a fee.† Perhaps this was the practice before the Company's time; but it is impossible to say that the zemindars' agents did not also exact bribes when they demanded a raiyat to attend or seized his crops or other movables. All these

* The Government of the time seem to have taken the view that "the great body of the people employed in the cultivation of land experienced ample protection from the laws, and were no longer subject to arbitrary exactions:" Fifth Report, referring to a letter from Government to the Board in 1795. "The evils complained of," the Report continues, "did not affect the cultivators, but the zemindars; who now in their turn suffered oppression from the malpractices of the former." It is strange how the conditions had changed. The tenantry who had been so long so submissive, were sometimes found open to the charge of intriguing and taking too much license of the laws: Rev. Letter of 31st October, 1799, referred to in the Fifth Report.

† This practice continued in some districts down to comparatively recent times. Mr. (afterwards Major) J. C. Jack, I.C.S., in his Settlement Report on Bakarganj District (1904-08), relates an interesting episode. A private estate was brought under direct management of the Collector. The raiyats all expressed their satisfaction for the improved methods of management, but they put the question—"who was to settle their petty disputes and squabbles?" Mr. Jack also referred to the difficulties of access to the law-courts, in the district where innumerable rivers existed every second mile. His description of a supposed "diary" of a zemindar is amusing and instructive at the same time.

exactions took the name of *abwab*; but they did not come into any prominence till much later years when prominent men, in particular the Christian Missionaries, brought the abuse to public notice.

Main controversies in law-courts.

19. The questions which raised controversies in the law-courts during the period prior to 1859 were, mainly—

(1) whether the rents of holdings existing since the Permanent Settlement were unalterably fixed;

(2) whether the raiyats of holdings created after the Permanent Settlement acquired occupancy rights by long possession; and

(3) what was the meaning of " established pargana rates " up to which the rents of the latter class of raiyats could be enhanced.

The trend of judicial decisions was that, as regards the holdings which had existed from the time of the Permanent Settlement without any alteration in the rate of rent, the rate could not be enhanced. The question about the permanency of these holdings (in other words " occupancy rights " of their holders) even when the zemindari estate was sold for arrears of Government revenue, was taken as finally settled by Regulation XI of 1822.

As regards the holdings created after the Permanent Settlement it was generally recognised that the raiyats acquired occupancy right by possession for 12 years.* The rents of these raiyats, although they might acquire occupancy right, were treated as enhancible. There was, however, a good deal of uncertainty as to the grounds on which such enhancement could be made and the limits up to which it could be permitted. The expression " established rates " in

* This was based on the general theory of acquisition of prescriptive right by possession. Their position, when the zemindar's estate was sold for arrears of revenue, was, however, still uncertain. Some authorities, in particular Mr. O'Kinealy, maintained that a custom had grown by which every raiyat who was a " permanent resident " in the village acquired a right of occupancy, although he had not held the land for twelve years.

section 7 of Regulation IV of 1794, read with the provisions of Regulation XI of 1822, was taken to mean that the rents of these raiyats could be enhanced up to the rates as established at the time when enhancement was sought.* This meant that where the landlord had been able to secure a higher rate from the bulk of the raiyats, whether by new settlements or amicable enhacement, the rest were to follow that rate. This position satisfied none, and the question whether rise in the prices of crops was not a good test, was sometimes agitated.

The Raiyat since 1859

20. It was in this unsatisfactory state of the law that Act X of 1859 was passed. It purported to be an Act " to amend the law relating to the recovery of rent :" but in its provisions it went through the entire question of rights and rents of raiyats and tenure-holders. The idea that interchange of *patta-kabulyats* was the only method† of securing a written record of the tenant's rights, however, still persisted (*vide* sections 2, 5 and 8); and the consideration of the proposals about preparation of a public record-of-rights was postponed.

Act X of 1859—the first Tenancy Act.

* We have seen that, by the progressive consolidation of *abwabs* during the latter part of the Mughal rule, and the final consolidation at the Decennial Settlement, " pargana rates," whatever they meant, were effectively obliterated. The confusions which followed were the result of attempting to persist in the idea of a " pargana rate " as a " live " rate. It is not that this was not realised; for, we find it stated in section 5 of Regulation V of 1812 that " pargana rates are in many instances become very uncertain," and then in section 7 that where pargana rates were not known the basis for fixing rent was to be the " rate payable for land of a similar description in the places adjacent."

† This created a lot of controversy in the *Great Rent Case*, *viz.*, whether the " fair and equitable rent " for a *Patta-Kabulyat* case under section 5 was independent of the rules of enhancement in section 17, that is to say, whether principles other than those in the latter section could be admitted in determining fair and equitable rent under section 5. It was held that the same principles were to apply. This, however, is of little practical importance now, as, by the Bengal Tenancy Act of 1885, the *patta*-plan was altogether given up and a plan of record-of-rights was, after all, adopted.

Classification of raiyats under Act X of 1859.

21. Act X of 1859 did not define " raiyat," but conceived a classification of " raiyats " (whatever that term meant) into the same three classes as have since been more categorically stated in Act VIII of 1885 :—

(1) *Raiyats at fixed rates*—meaning those who had held at the same rate of rent from the time of the Permanent Settlement (section 3); and if a raiyat proved that his rent had not been changed for 20 years, he was to be presumed to be such a raiyat, unless the contrary was shown (section 4);

(2) *Occupancy raiyats*—meaning those who had cultivated or held the land for a period of twelve years whether under a *patta* or not (section 6); and

(3) *Non-occupancy raiyats*—meaning raiyats who had not cultivated or held the land for 12 years.

It will be seen that, as regards (1), *viz.*, raiyats at fixed rate, the provisions were the same as those embodied later in section 50(1) of the Bengal Tenancy Act of 1885. That Act, however, includes in this category also the raiyats who, though not holding from the time of the Permanent Settlement, have obtained a *mukarari* lease from the landlord.

As regards (2), *viz.*, occupancy raiyats, the doctrine of " settled raiyat " as corresponding to the older idea of resident raiyat (*khudkast*), which has been recognised in the later Act of 1885, was not embodied in the Act of 1859. The possession required by the Act of 1859 was, therefore, possession of the *same land* for 12 years.* Still, in view of the

* This raised much criticism. Mr. O'Kinealy maintained that this provision had the effect of serious injury to the " resident raiyats," as it placed them in the position of tenants-at-will in respect of all lands of which they could not prove twelve-years' continuous possession. On the other hand, as observed by Mr. Field, those raiyats who were not resident in the village but held their lands for twelve years, were definitely declared as having occupancy rights. Both classes were brought under the class of "occupancy raiyats" by the Bengal Tenancy Act of 1885, a " resident raiyat " (called in the Act " settled raiyat " as more appropriate for *khudkast*) being a person who has held some lands, not

uncertainty of the law prior to that year, it was a definite advance towards clarity of the raiyat's position. Simultaneously with this Act, the Revenue Sales Act XI of the same year (which is still the operative Act), protected all occupancy raiyats against eviction on a sale of the estate for arrears of Government revenue (proviso to section 37). From the meaning of "occupancy raiyat," *viz.*, one who held possession for 12 years, raiyats holding at the same rate from the time of the Permanent Settlement had of course an occupancy right, and were also similarly protected.

Raiyats at fixed rates.

22. The rent of a raiyat for land which had been held at a fixed rate from the time of the Permanent Settlement, could not be enhanced: and he was entitled to *patta** at that rate (section 3). This was a definite recognition of the intentions of the authors of the Permanent Settlement, *viz.*, that the benefit of a fixed demand was to be enjoyed by the then existing raiyats in the same way as the zemindar. It, however, gave no relief to those raiyats who had, in the meantime, been already made to submit to an enhancement; and this has rightly been the subject of much adverse criticism. These raiyats fell into the category of the inferior class of ordinary occupancy raiyats, with further liability to future enhancements.†

necessarily a particular land, for 12 years [section 20(1) and (2)]; and every such person has a right of occupancy (section 21).

* The *patta*-idea persisted for some years still; and in Act VIII of 1869 provision was made according to which a raiyat could enforce a *patta* by suit in the Civil Court. It was useless and was eventually abandoned by the Act of 1885. There were curious provisions in the Act of 1869 restricting the term of a *patta* to be ordered by the Court to not more than ten years. We do not go into the details of these, as the Act was entirely repealed by the Act of 1885.

† It is difficult to estimate the number of old *khudkast* holdings which have suffered. Some have suffered by the operation of section 5 of Regulation XLIV of 1793, till 1822, and some by reason of the tenant not being able to show 20 years' rent. The total area of land held by "raiyats at fixed rate" (*mukarari*) in the record-of-rights is about 3 million acres. But some of these old holdings have merged in the landlords' interest by rent-sales after 1885, and a good many have been treated as "tenures" by the operation of the definition of "tenure-holder" in the Bengal Tenancy Act: see Chapter XI *post*.

Occupancy raiyats—grounds of enhancement of rent.

Section 17 of Act X of 1859 laid down the only grounds on any one of which the rent of an occupancy raiyat could be enhanced, *viz.*—

(1) that the rate of rent was below the prevailing rate paid by the same class of raiyats for land of a similar description and with similar advantages in the adjacent places; and

(2) that the value of the produce or the productive powers of the land have been increased otherwise than by the agency, or at the expense, of the raiyat.

To a certain extent the two grounds overlapped each other; for, the prevailing rate would not be levelled up unless the bulk of the other raiyats had agreed to an increase of their rates, and, normally, they would not agree unless they could afford to do so by reason of increased money-value of the produce, or increased productivity of their land. Enhancement could, therefore, be claimed only on any *one* of these grounds. However, " prevailing rate " was as vague and deceptive as the supposed " pargana rate;"* but just as the authorities persisted in their idea of *pattas*, they also persisted in their notions of " prevailing rates," a term which, as was to be expected, developed considerable controversy in Courts.

Doctrine of " prevailing rate."

23. Act X of 1859 is no longer applicable in the districts of Bengal, except Darjeeling; but the provisions in it regarding " prevailing rate " are, in substance, embodied in the Act of 1885 which is now the operative law. The idea behind this doctrine of " prevailing rate " would seem to be that, where the bulk of the raiyats in an area have agreed to pay rent at certain rates, there is no reason why such rates should not be considered as fair and equitable for the rest. In theory, this reads quite sensible. But a raiyat might have taken his first settlement at a low rate, for example, in consideration of a *salami* (premium) paid at that time, or in consideration of the conditions of the lands, their situation and

* See footnote to para. 19 (page 202).

other circumstances of which the raiyat took the risks. All these may be forgotten in course of time. Above all, judging from the conditions of the peasantry in general (though there has been an awakening in recent years), the mere fact that a landlord has been able to secure an increase from some or even the bulk of his tenants, does not necessarily mean that an increase is justified for the rest.

It is, in Bengal, neither "economic rent" nor "competitive rent."

24. The question was discussed in all its bearings in the *Great Rent Case* of 1865.* In an earlier case† of 1864, Sir Barnes Peacock C.J., had laid down the doctrine that rent for a raiyat in Bengal was "economic rent" as defined by Malthus.‡ This view was not accepted in the *Great Rent Case*, in which the majority of the Court held that the words "fair and equitable" in section 5 of Act X of 1859 meant, not the rate obtainable by competition, but the prevailing rate payable by the same class of raiyats for lands of a similar description and with similar advantages in the places adjacent. The relevant portion of this section 5 was as follows:—

"In case of dispute, the rate previously paid by the raiyat shall be deemed to be fair and equitable, unless the

* *Thakooranee Dossi* vs. *Bishessor Mukherji*, (1865) F.B. 3 W.R., 29 B.L.R. 202. It was an extraordinary Full Bench case in which no less than 15 Judges of the High Court sat together.

† *Hills* vs. *Iswar Ghosh*, W.R. Sp. No. F.B. 148.

‡ This definition is that "rent" is "that portion of the value of the whole produce which remains to the owner of the land after the outgoings belonging to its cultivation, of whatever kind, have been paid, including the profits of the capital employed, estimated according to the usual and ordinary rate of agricultural capital at the time being."

Malthus's exposition of the meaning of "rent" is, as explained by Norman J., in the *Great Rent Case*, only theoretical and not capable of practical application. One test may be the amount which could be obtained from the best bidder; but even the theory of rent being a share of the produce (known in the early accounts of many countries of Europe and Western Asia as well) had no such conception of competitive rent behind it. It is more a question of what is sound for the interests of the community in the conditions of the particular time, than of abstract right of the landlord. For instance, the Indian Taxation Committee would have the fair rent of a raiyat at one-fourth of the net produce, by which latter term is meant the value of "gross produce less the cost of production including the value of the labour actually employed by the farmer and his family and the value of the enterprise." This, to put broadly, would be about one-eighth of the gross produce. In

contrary be shown in a suit by either party under the provisions of this Act." The corresponding provision in the Act of 1885 is in section 27, and is substantially the same.

"Prevailing rate"—unworkable in Bengal.

Taking the expression " prevailing rate " in its dictionary sense, it would mean such rate as might be taken as " prevailing " in a specified locality; that is to say, the rate at which the bulk of the raiyats of the same class were actually paying rent for similar land in such locality. It followed that any enquiry to determine this must be exhaustive of the entire area of the specified locality. The provision in the Act of 1859 was, however, very vague in this respect. Section 17 simply stated—"land of a similar description and with similar advantages *in the places adjacent.*" Section 30(*a*) of the Act of 1885, as originally passed, laid down that " the same village" was to be the field of enquiry. Apart from the impracticability of any exhaustive enquiry for an entire village in the absence of a cadastral survey and record-of-rights, there were obvious difficulties in determining the process by which lower or higher rates would be eliminated.* A process was indicated later by the amending Act III of 1898, which introduced sections 31A and 31B; but the same Act added the words " or in neighbouring villages." The provisions relating to " prevailing rate " have been rarely applied with success in the Bengal districts, and they are almost a dead latter in this Province.

Rise in prices.

25. Act X of 1859 recognised for the first time the principle that, where the money-rent of a cultivator was enhancible, a proper ground for enhancement would be rise in the value of the produce derived by the raiyat. In other words, it was

Soviet Russia and in the system of collective-farming, the tendency is to reduce the actual cultivators to mere wage-earners.

* Rents in Bengal have, as will have already appeared, developed really as " lump rentals," and any background of recognised rate or rates is totally lost. The peculiarity here, thus, is that the incidence varies widely even in the same locality and for the same class of land : *vide* para. 23 *ante*. The process for finding out a rate can thus be only an arithmetical division of the total rent of a holding by its total area. Where the lands in a holding are of different kinds, the process thus becomes complicated and practically unworkable.

recognised that the landlord was entitled to a share of the "unearned income" from the land, as represented in money, though not to a share of any increase in the quantity of the produce, effected by the raiyat. The principle has been assailed on several grounds. First, that the Government revenue payable by the zemindar having been permanently fixed, it is not reasonable that the zemindar should have an increasingly rising profit over the rental at which he initially settled with the raiyat. One answer to this is that the benefit of fixity of rent was allowed under the terms of the Permanent Settlement only to the *khudkast* raiyats for lands held by them at the time of that settlement, and not for the later tenancies to which only the rule is intended to apply.* The next ground is that the Mughal method of adjusting the rent was by imposition of *abwabs*, and as all future *abwabs* were prohibited by the terms of the Permanent Settlement, this indirect sanction was a breach of those terms. Against this, it may be said that it is not correct that the Mughal system of adjusting rise in prices was by *abwabs*. *Abwabs* came into vogue only during the latter part of the Mughal Rule, from Murshid Kuli Khan's time. They were imposed for specific purposes, and carried no idea of adjustment† of rent to current prices. Another argument is that as agriculture is the chief source of the wealth of the

* These comprised mainly "the remaining lands" referred to in section 52 of Regulation VIII of 1793, which by the terms of the Permanent Settlement were placed at the disposal of the zemindars in whatever manner they thought fit, subject to the prescribed restrictions. As for the rent of the raiyat, the only restriction was that in section 7 of Regulation IV of 1794, and we have already discussed the interpretation of this section. The interpretation is exhaustively expounded in the *Great Rent Case*. In this case, Mr. Justice Campbell observed: "Looking to the expressions regarding the expiry and renewal of *pattas* and the advantage to be derived from more valuable articles of produce, I imagine that the framers of the Regulations very probably contemplated periodical readjustments of rates between the zemindars and raiyats with reference to the produce." This was with reference to raiyats whose holdings were created after the Permanent Settlement. Mr. Justice Seton-Karr did not quite agree, but agreed that "a reasonable share of the increase is to fall to the zemindar."

† Shore in his minute of 18th June, 1789, makes a passing reference to "rise in prices," only to find an explanation to justify the consolidation of the *abwabs* in the rents which the old *khudkast* raiyats were to pay.

country, the growing prosperity which is reflected in the currency, is attributable to this source; and therefore the cultivators were the persons to whose exertions this prosperity ought to be entirely credited. It is a large question; for, there are many other factors which contribute to the value of the species, rise in prices and changes in the currency. On the whole it is now generally accepted that variations in the prices of commodities occur for so many causes, both internal and external, that the entire community, both landlord and tenant, should reap their effect, whether favourable or adverse.

Principle accepted in Act X of 1859.

26. Section 17 of Act X of 1859 definitely accepted the principle of division of "unearned income" between the landlord and raiyat, and laid down that the raiyat would be entitled to the whole of the increase when it was "by the agency or at the expense of the raiyat." Immediately on the Permanent Settlement and for some years afterwards, the landlords had to offer low and attractive rents to cultivators. We have noticed, in paragraph 23 *ante*, that in later settlements also the starting rents have been influenced by many factors, and it does not seem reasonable that, in the absence of any contract to the contrary, the benefits of these circumstances should be lost to the raiyats at any time. But where the rent is not *mukarari* and is paid in money, rise in the money-value of the produce in the ordinary course, would seem to be quite an equitable ground for enhancement.

Increase in rent to be proportionate to increase in price.

27. In the *Great Rent Case*, there was a good deal of discussion as to how the increase due to rise in prices should be divided between the landlord and the raiyat. The question raised was—how should allowances be made for the cost of cultivation? This must be presumed to increase also, by the operation of the same causes as raise the prices. It was held that such increased cost would be fairly accounted for if the rent was increased in the same proportion as the prices of the produce had increased. For example, when the money-

value of the produce had risen from Rs. 30 to Rs. 60, a rent of Rs. 5 might be raised to Rs. 10.

Modification by the Act of 1885.

28. Section 30(*b*) of the Act of 1885 carried forward the same general principle of enhancement on the ground of rise in prices. But an important change was introduced by restricting the scope of enquiry to the price of "the staple food crop." This was taken as giving a reasonable index-figure and also simplifying the procedure.* Section 32 next provides that the prices during two decennial periods should be compared, whenever practicable. It also lays down that in calculating the proportion of increase for the rent, one-third of the rise in the prices should first be deducted from the higher figure. For example, in the illustration given in the last paragraph the higher figure of Rs. 60 should first be reduced by Rs. 10 (*viz.*, one-third of the difference between Rs. 60 and Rs. 30), *i.e.*, to Rs. 50, and the rent enhanced in proportion of 3 : 5. The new rent in the above case would thus be Rs. 8-5.†

Fluvial action.

29. In a country like Bengal, intersected by rivers which are constantly changing their courses, and bringing down or washing away silt, the productivity of the soil in the riparian areas is often affected by fluvial action. Increase in the productive powers of the land by fluvial action is thus also an "unearned income," and is treated as a ground for enhancement, section 30(*d*). Section 34(*b*) lays down that the rent shall not be increased by more than half the net increase in the value of the produce.‡

* What the staple food crop should be in a particular area, is notified by the Board of Revenue. There is also statutory provision for recording and publishing the current prices periodically (*vide* section 39).

† Considering that the raiyat takes all the risks of vicissitudes of season, it is doubtful whether this deduction of one-third is sufficient. It is, however, to be noted that the price to be compared is the price per maund of the staple food crop (rice) and not the price of the total quantity produced. If the raiyat has improved the outturn or species by his efforts, he gets its benefit in full at the higher price.

‡ It is difficult to understand how as much as half could be adopted. Raiyats sometimes start with a rent for land which is not even capable of producing any

Reduction of rent.

30. There are corresponding provisions in section 38 for reduction of rent on the ground of fall in prices, not due to a temporary cause, or permanent deterioration of the soil by a deposit of sand or other specific cause. The provision regarding reduction for fall in prices has rarely been used; but with regard to deterioration of the soil for deposit of sand and like causes, it is difficult to see how the condition " permanently " can be justified.

Non-occupancy raiyat.

31. It has already been noticed (*vide* paragraph 20 *ante*) that since the Act of 1885, a raiyat who has held some land in the village—not necessarily the same land—for twelve years, is a " settled raiyat " of the village and possesses occupancy right. This restricts " non-occupancy raiyats " only to entirely newcomers who become raiyats as by a first settlement. They are, however, occupancy raiyats in embryo; for, as soon as they complete the period of twelve years, they acquire " occupancy right." So long as occupancy right was not recognised as transferable, an outsider-purchaser when admitted by the landlord as a tenant, came within this category; but since the transferability of occupancy right has been recognised by the amending Act of 1928 (and more fully by the Act of 1938), such a purchaser also automatically becomes an " occupancy raiyat." The proportion of non-occupancy raiyats is thus very small, only about one in five hundred.

However, the position of a non-occupancy raiyat under Act X of 1859 was that he was required to agree to whatever rent the landlord might demand; and in the alternative he was to vacate. This was unsatisfactory, and the defect was removed by the Act of 1885,* which laid down in the first ins-

crop. A proportion of half may mean thus as much as half the net value of the produce, which, when the cost of cultivation is deducted, would be at least as much as one-fourth of the gross produce.

* Till then judicial decisions had tended to the view that the rent might be the highest which a person intending to take the land might offer; or in other words, the rent might be levelled up to " competitive rent." See *Kabir Sirdar* vs. *Goluk Chander Chakrabarty*, (1865) 3 W.R., Act X, 126 : *Maniruddin* vs. *Kennie*,

tance that no tenant could be ejected except in execution of a decree (section 89), and for non-occupancy raiyat the Court may determine a fair and equitable rent which the raiyat would be bound to pay or else he should vacate. There is no direction given as to how the fair rent should be determined, except that the Court shall have regard to rents generally paid by *other raiyats* of the same village, not necessarily only other non-occupancy raiyats, if any.* This, in effect, keeps down the rent to the general level of the rents of occupancy raiyats.

Summary of the law of enhancement of the raiyat's rent.

32. To summarise now the history of the law regarding enhancement of rent, it may be said that prior to 1859, where a raiyat did not agree to the landlord's demand, the only ground which the latter could urge in the Court was "established pargana rate." It is doubtful that there could be many cases in which the landlord could adduce the required proof. The rule of "rise in prices" was introduced in 1859, but in the absence of provisions for its detailed working, it helped the Courts very little. There was an elaboration of this rule by the Act of 1885, but till proceedings were taken up for record-of-rights under Chapter X of the Act, enhancements on a large scale were rare. The facilities afforded for settlement of fair rents under section 105 of the Act in the course of the proceedings have been largely availed of by the landlords, and it is really in this way that extensive enhancements have been obtained through official authorities. Prior to this, enhancements were mostly by agreements, and such agreements naturally depended on the personal equations of individual landlords and individual raiyats. But taking the landlords of Bengal as a whole, it cannot be said that they have been exacting in the initial rents at which they settled

(1865) 4 W.R., Act X, 45 : *Gopal Lal Thakur* vs. *Budruddin*, (1867) 7 W.R. 28. But in the Full Bench case of *Bakranath* vs. *Binodram Sen*, (1868) F.B. 10 W.R. 33, it was laid down that a non-occupancy raiyat was bound to pay only a fair and equitable rent, and it was a matter for the Court to decide in a particular case what was to be the fair and equitable rent.

* For a discussion as to the nature of evidence to be considered, and the Court's discretion where sufficient evidence was not available, see *Nawab Sir Syed Hossain Ali Khan* vs. *Hati Charan Shaw*, (1900) 27 Cal. 476, 4 C.W.N. 301.

with raiyats after the Permanent Settlement, or in enhancements thereafter. For, the average incidence of the rents of ordinary occupancy raiyats to-day is only about Rs. 3-6 per acre, and does not represent more than one-twelfth part of the produce they derive from their land, while the fact remains that the price of rice has risen seven or eight times since the Permanent Settlement, when the rate of rent was about Rs. 2 or 2-2 per acre.

Meaning of "raiyat."

33. The term " raiyat " was not defined till Act VIII of 1885. Section 5(2) of this Act lays down that " raiyat means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family or by servants or labourers, or with the aid of partners, and includes successors in interest of persons who have acquired such a right." In the earlier legislations since 1793, the " raiyat " is taken as the " base-tenant," all persons between him and the zemindar being " talookdars," " malguzars," " farmers "—sometimes called also " under-tenants." The " raiyat " was directly responsible for the cultivation of the land, and in this sense he was sometimes called " cultivator." But, if it be correct (and there are reasons to think that it is correct, see Chapter III *ante*) that a raiyat during the Mughal period held generally about 20 acres of land, and in some cases as much as 100 acres, it is improbable that he could himself be always the actual tiller of the soil. There were agricultural labourers and they were called *krishan*, *kamin* or *pahee*, and probably many of those who were called *pykast* were of this class. The raiyat as the " base-tenant " was the *asami* or a subject or item of assessment* in the rent-roll of the zemindar, talookdar, malguzar or farmer. He was the lowest man recognised as having a permanent interest in land. Even so late as 1883, when, after so much research and study,† the first Bill which

* Compare " estate " which means an item of revenue-assessment in the Collector's Registers.

† The Rent Commission commenced in 1879.

eventually led to the Bengal Tenancy Act of 1885, was framed, "holdings" which had been existing from the time of the Permanent Settlement were conceived in the same category as permanent "tenures:" clause 2(3) of the Bill. When the incidence of the raiyat's rent was high, these "labourers" could have no place in the chain of tenancy-interest, nor was it to their advantage to claim any.* The rent-system which developed from the Permanent Settlement in Bengal, maintained the original incidence of the money-rents of old *khudkast* raiyats, and also kept down the rents of the later tenants. But as in course of time prices rose, the entire aspect began to change. It was natural that many of the earlier "labourers" who continued to work under the same raiyat from year to year, began to be treated as "tenants." This must have been more marked in respect of the larger holdings of the old *khudkast* raiyats whose rents were low. Up till 1859 this class of persons did not attain sufficient importance, for we find no mention of them ("under-raiyats" as we call them to-day) in the Acts which were passed in that year. They came to notice when the Act of 1885 was passed, but it was not till the Amendment Act IV of 1928 that substantial rights were provided for this class of tenants: see paragraph 7 of Introduction, Chapter I *ante*.

Growth of under-raiyats.

The number of tenants recorded as under-raiyats is over one-fifth of the number of "raiyats," but they cultivate a slightly lesser proportion of their lands. Their number would have been much larger; but many of the earlier "raiyats," particularly the larger ones, were treated as "tenure-holders" in the Settlement records (see Chapter XI *post*), and as a result good many of these sub-tenants have got recognised as occupancy raiyats.

* Such is also the general position of this class in *raiyatwari* Provinces, where the rents of the raiyats or small cultivating *maliks* holding directly under Government, are being continuously levelled up to a proportion of one-fourth or so of the produce.

The rent of under-raiyats.

34. The Act of 1885 laid down that the rent of an under-raiyat was to be limited to 50 per cent. above the rent of the raiyat. This was, as was to be expected, an impracticable rule; for, as a rule only portions of holdings of raiyats were sub-let. The Amendment of 1928 fixed the maximum of the money-rent* of an under-raiyat at " one-third of the value of the average estimated produce of the land for the decennial period preceding " [section 48D(2)]. This was the first time when a definite share of the produce was expressly recognised for rent in a legislation during the British period. It was not, however, with any reference to Akbar's rule of one-third that this proportion was fixed. What was assumed at the time was that the average of the raiyat's rent in Bengal was about one-fifth of the gross produce; and if 50 per cent. of this was added for the under-raiyat's rent, the proportion would be about one-third. The statistics gathered since that time show, however, that the average incidence of the occupancy raiyat's rent is only about one-twelfth of the gross-produce, and that of a raiyat at fixed rate, about one-eighteenth. Working with the 50 per cent. rule, the proportion ought not to exceed one-eighth. There is, however, a danger in restricting sub-letting, by such artificial rules. The result may be an increase in the number of mere " labourers " without any legal interest in the land. The development of under-raiyats has been rapid, with the growth of rural population; and while this has added another link† to the chain of sub-infeudation, one marked result is that in Bengal the proportion of landless labourers in agriculture is very small.‡

* In the case of the under-raiyats who pay a share of the actual produce, the rent may be up to half : section 178(1) (*e*).

† Sometimes series of links, for in some places where the raiyat's rent is low, there are under-raiyats of the 2nd or even 3rd degree. As once observed by Mr. W. H. Nelson (lately Member of the Board of Revenue), sub-letting cannot be stopped when the rent of the tenant is low.

‡ Some economists have adversely criticised this position. Jathar and Beri attribute the apathy of the Bengal-villager to industrial labour, to this cause, and observe that the very rights which a Bengal-cultivator has in his land, make him

Transferability not recognised by the Act of 1859:

35. It has been observed before that, during the Mughal period, a raiyat, though he could inherit, could not transfer his lands by sale or gift to another. In fact the question of transfer could hardly arise. With a rent as much as one-third of the gross produce—we need not go so far as Shore's estimate of one-half—the land had very little left in it for a market-value so far as the raiyat was concerned. Though Lord Cornwallis's ideal was to develop a real value in the property of each class of persons, whether zemindar or raiyat, which might stand in good stead in times of need,* the question of the raiyat's right to transfer did not appear to him or others, at the time, as of any importance. The question arose when, with the gradual rise in the prices of the produce from land and the money-rent not keeping pace with it, the raiyat's interest became really valuable. In the various laws† regarding realisation of arrears of rent from 1793 to 1859, the only plans of execution were confinement, distraint, sale of movables and ejectment, the underlying idea being that, as the raiyat had no right to sell his holding, it could not be sold. When the next legislation (which eventually became Act VIII of 1885) was taken up, the question of the raiyat's right to transfer came very much to the forefront. The statistics of 1881-82 showed that in the 25 districts of Bengal proper there were in that year about 15,500 sales (registered) by raiyats at fixed rent fetching a value of about Rs. 16 lakhs, and about 26,600 sales (registered) by ordinary occupancy raiyats, fetching a value of about Rs. 18 lakhs. These sales gave a source of windfall-income to the landlords who levied varied fees or *salami* for recognition of the transferees as tenants. The sales of the holdings at fixed rate yielded in most districts‡ from 6 to 13

stick to it like a limpet, however poor his earning from it: "Indian Economies" by Jathar and Beri, Oxford University Press, 1932.

* For otherwise, he said, how could he be expected to pay an arrear which he could not pay in the year in which it was due?

† Regulations XVII of 1793, VIII of 1794, XXXV of 1795, VII of 1799 (*haftam*) and V of 1812 (*pancham*) and Act X of 1859.

‡ The exceptions were Howrah, Dacca and Mymensingh, where it was 28 times, 35 times and 24 times respectively.

times the annual rent, and for ordinary occupancy holdings, from 4 to 8 times.* This gives an index to the extent by which the margin of the raiyat's profit, or annual value of his property, had increased by that time. The Bill which was introduced in 1883 thus proposed to recognise full rights of transfer for the raiyats at fixed rate; and as regards ordinary occupancy raiyats, they were also to have the same rights, but subject to a right of pre-emption by the landlord. The idea was that undesirable tenants would otherwise freely get in.† The right of transfer was recognised for the raiyat at fixed rate (*mukarari*), but as regards ordinary occupancy raiyats the question of their right to transfer was left to local custom. The proposal for pre-emption, of course, was thus also automatically dropped. But the rule which left the question of right to transfer to proof of custom, led to considerable complication in the administration of the law; and in 1913 the Calcutta High Court drew the attention of Government for urgent legislation. This legislation did not, however, come up till 1928. By the Amending Act IV of that year, all occupancy raiyats were given full right of transfer, but subject to their paying a landlord's transfer-fee of 20 per cent. of the consideration money, or 5 times the rent, whichever was greater. The landlord was also given the right of avoiding the purchaser, by paying him 10 per cent. over his purchase-money. This did not, however, satisfy the raiyats; and it remained a burning question till, by the amending Act VI of 1938, the landlord's transfer-fee as well as his right of pre-emption was abolish-

—recognised in 1885 for raiyats at fixed rate, but not for ordinary occupancy raiyats except under local custom:

—recognised in 1928, for occupancy raiyats also, but subject to a transfer fee and post-emption:

—the latter conditions abolished in 1938.

* The exceptions were 24-Parganas, Dacca and Mymensingh, where it was 15 times, 16 times and 14 times respectively.

† Another theory which was much stressed at the time was that, as the zemindar was the "proprietor," he should have the right to choose his tenant, at least for the lands to which section 52 of Regulation VIII of 1793 applied, that is to say, for the later raiyats. Government seem to have been also influenced by the Report

ed. Since this Act, an occupancy raiyat in Bengal has obtained the full right to transfer his holding in whole or part; and all that he is required to do is to give a notice to the landlord,* through the Registering Officer, at the time the sale-deed is registered.

Controversy about transferability of occupancy rights.

36. Whether this position of the occupancy raiyat will really tend to the good of the peasantry, has been the subject of much controversy. We have already noticed that the Famine Commission thought that free right of transfer to the peasant class, thriftless as they were supposed to be, was fraught with the danger of turning many of them into landless labourers. But from a broad common-sense point of view, a right in property, whatever the nature or extent of that right, cannot be said to have much value, unless its possessor has the power of disposal of that right.† Any artificial restraint on such power, unless justifiable on grounds of strong public necessity,‡ is unsound in the economics of the society as well as of the individual. But limiting to the terms of the Permanent Settlement, the strongest argument in support of this right

Restraint artificial, and not sound economics.

of the Famine Commission which had preceded, in which much emphasis was laid on the ignorance and thriftlessness of the peasantry and the danger of their becoming landless if free right of transfer was conceded.

* He is in one respect better than a raiyat at fixed rate: for, the latter has, besides giving the notice, to pay a transfer-fee of 2 per cent. of the rent, not exceeding Rs. 100 in the total: *vide* section 18(1) read with section 12. The anomaly is now being sought to be removed by fresh legislation abolishing this 2 per cent. transfer-fee.

† Even the British Indian Association of Calcutta, writing to Government on 20th November, 1878, said that the recognition of the right of transfer would create a direct interest in the improvement of the soil, would stimulate cultivation, would tend to establish a substantially peasant proprietary (?), would give a valid security for the realisation of the landlord's rent, and by increasing the marketable value of the land, would lower the rate of interest when the raiyat has to borrow: Referred to in the Report of the Bengal Government (on the Tenancy Bill of 1883), dated 27th September, 1883. The Association would, however, restrict such right to cases in which the transfer is made to a man of the "cultivating class" only.

‡ In the case of a raiyat, such necessity would arise for regulating the rent, etc., of an under-raiyat, if there is sub-letting. It may arise in case of usufructuary mortgage.

for the raiyat is that it was undoubtedly the intention of the authors of that Settlement that, as a result of the permanent limitation to the demands of the State, real and substantial values should develop for all classes of interests in land. The interests of the raiyats were not to be an exception. It is true that the Regulations do not specifically mention the right of the raiyat to transfer his interests in the lands held by him; but they neither say anywhere that the raiyat should not have that right, even when his interests acquired a marketable value. From this point of view, Act X of 1859, which assumed that the raiyat did not possess such right,* was a retrograde measure. The raiyat's property in land had begun to attain substantial value by that time, and when the landlord stepped in to claim a share of that value, the right course would have been to stop this claim by legislation. The authors of the Act of 1885 realised the position, but happened somehow to adopt a halting policy.† They proposed at first that raiyats should have the full right of transfer *inter vivos*, just as they had the right of inheritance by succession or Will, but they spoiled their plan by attempting to introduce a right of pre-emption for the landlord. It is thus not surprising that the plan ended in a fiasco, and created complications which puzzled the best legal brains. The system of *nazarana* on transfers was thus perpetuated, cramping the operation of natural economic laws. The Act of 1928, though it declared the right of the raiyat to transfer, quite inconsistently recognised the *salami*, and revived the theory of pre-emption by the landlord. Judged thus, the Act of 1938, which gives full and free right of transfer to the raiyat, has only removed this inconsistency and the puzzling complications which arose from the earlier laws. It cannot, however, be gainsaid that

* In 1883, the Lieutenant-Governor of Bengal (Rivers Thompson) expressed the view that "freedom of transfer was not an incident of the *khudkast raiyati* holding:" Report dated 27th September, 1883, *ibid.* This must have been so, for the growing custom of *salami* for recognition, was left unchecked by the Act of 1859.

† Probably influenced to a large extent by the views of the Famine Commission, to which we have already referred.

this development in Bengal, has been only possible by the Permanent Settlement. The declaration of this Settlement definitely disowned any claim by the State to ownership in land, and by the permanent limitation of the State's demand and other laws restricting enhancements, kept down the incidence of the raiyat's rent at a low figure, thus directly contributing to the growth of a substantial property-value which the raiyat has in his lands to-day. The Regulations recognised that the ownership of the land, with all that the term implied, was with the subject; and taking the various provisions in them all together, and ignoring slight inconsistencies at places, the ownership conceived was a joint ownership in which the zemindar, the *talookdar* and the raiyat were all co-partners, each being the owner of the *quantum* of interests he possessed. The obligations *inter se* were fairly well-defined. At that moment they were concerned with the amount of rent which the tenant was to pay and the security of his tenure; and we have seen how this was sought to be provided for.

This right of raiyats only possible from the Permanent Settlement.

37. The question of " user " of the land by the raiyat did not appear to be important at the time. He was the cultivator, and all that was necessary was to lay down some provision to protect him against enhancement for growing any kind of crop he thought proper, when his rent was once fixed in a specific sum of money. In the Act of 1859 there was no provision for ejectment or damage on the ground that the raiyat has used the land in a particular manner. Judicial decisions which developed, led to the view that unless there was a specific provision in the lease (meaning *patta-kabulyat*, where any) that on the breach of a particular condition the tenant was liable, he could not be ejected or subjected to damage.* There was no change in the law in this respect by Bengal

Restrictions as to right of " user " of land.

* *Augar Singh* vs. *Mohini Dutt*, (1864) 2 W.R., Act X, 101. See also *Ramkumar Bhattacharyya* vs. *Ram Kumar Sein*, (1867) 7 W.R. 132.

Act VIII of 1869, and the cases decided were on the same line.*

The view taken by the law Courts that a raiyat could not be ejected for his user of land, unless such user was a breach of his covenant with the landlord, was embodied in the Bengal Tenancy Act of 1885, only as regards raiyats at fixed rates: section 18(*b*); but as regards other raiyats with occupancy right, the theory that such raiyats were not entitled to use the land in a manner which rendered it unfit for the purpose of the tenancy, was introduced for the first time: section 25. It was taken as only an enunciation of a general principle that a tenant can use the land only for the purpose for which he took it. But the purpose of an agricultural tenancy being "agriculture," it followed that this provision barred the use of the land for any other purpose, such as building a house, or excavating a tank, etc., unless these were necessary for the purpose of agriculture.† Violation of this provision renders the raiyat liable to ejectment. This necessitated an enumeration of what works the raiyat could do on his land as "improvements" for agriculture (*vide* section 76), which, though modified since in some details, retains the underlying principle adopted in 1885.

Rent-receipts and abwabs.

38. There was no change in the law regarding penalties for withholding of rent-receipts and exaction of *abwabs*, by Act X of 1859, except that for the latter the fine was reduced

* See *Mahomed Faiz Chaudhuri* vs. *Shib Dulai Tewari*, (1871) 16 W. R. 103 and *Maharaja Beerchand Manick* vs. *Shaikh Husain*, (1871) 17 W.R. 29. The latter was a case in which there was specific covenant that the tenant could not excavate a tank.

† Section 23 of the Act, as passed in 1885, had a restriction on the rights of a raiyat regarding trees. It laid down that a raiyat "shall not be entitled to cut down trees in contravention of any local custom." The fear of legislating in any way which might affect a "local custom," known or unknown, was still pursuing. Controversies in law-courts often centred round the question whether a tree was grown by the raiyat (*hatrop*) or had been existing from before he took settlement. The law often operated as a cause of undue interference and exaction, and sometimes of agrarian dispute. The amending Act IV of 1928, has removed this unnecessary restriction by deleting the reference to custom, and laying down that an occupancy raiyat has full right to enjoy the fruits and flower or to fell and utilise or dispose of the timber in any manner he likes: section 23A.

to an amount " not exceeding double the amount exacted " (section 10).* The same penalty was repeated in Act VIII of 1869 (*vide* section 11). A further provision was made for fine, apart from any criminal prosecution which might lie, where rent, whether due or not, was extorted by illegal confinement or duress (section 13).

These provisions about fine were of little use to the raiyats, particularly the poorer ones; for, it was left to the individual tenant to bring a suit in the ordinary Civil Court, for the redress of his grievance. The Bengal Tenancy Act of 1885 provides for executive action by the Collector, when he receives information about withholding of rent-receipts (*vide* section 58); but there is no similar provision regarding *abwabs*.

There has been a general awakening amongst the tenantry about their rights since the commencement of the operations of cadastral survey and record-of-rights about 30 years ago.† Rent-receipts are, as a rule, given by the landlords, and *abwabs* have become rare, except perhaps where they are paid as tips to the landlord's petty agents or as bribes to his officers, to secure an undue advantage. But the law about tender of rent is still unsatisfactory, and is often a cause for accumulation of arrears which hang as a perpetual halter round the raiyat's neck. Section 54 of the Bengal Tenancy Act of 1885 provides for " tender " only on account of the rent payable for the year *before* it falls due. There is no provision for tender of an arrear or a part of the rent. This obstacle in the way of a raiyat's tendering his arrear or part of an arrear, when he has just been able to scrape out a few rupees, is still a source of harassment and exaction. The

* The reason for this is not very clear. It may be that the raiyats were beginning to assert themselves. But this is doubtful, for serious complaints were made at about this time by public men, and in particular by the missionary gentlemen who knew very well the conditions in the interior. It was, however, a matter of little consequence whether the penalty was double or three times. So long as the matter was left to individual suits in the Civil Court to be brought by the raiyat, the relief supposed to be given was useless.

† Mr. (Major) J. C. Jack writes, in his Bakarganj Settlement Report, that the raiyats consider the Settlement *parcha* as their Magna Charta.

difficulty of payment is greater when there are co-sharers amongst the landlords. A provision was made in section 93 by the amending Act of 1928, that when half the tenants applied, the District Judge might appoint a common manager. But this is almost an impossible demand for the tenantry to comply with, and it is not surprising that there has not as yet been any case under this provision in the Act. The rule of limitation for rent-suits, which allures the raiyat to accumulate arrears for as long as four years, is also often a cruel mercy to him. These defects in the law call for early rectification.

Modifications by Act X of 1859.

39. In the matter of realisation of arrear-rent by the landlord, Act X of 1859* purported to re-enact the provisions in the existing laws, only with some modifications, and did not make any substantial change. The main modifications were (1) exclusive jurisdiction to try all rent-suits was given to the Collector: (2) the power of the landlords to distrain crops without having recourse to the Court or the Collector was retained, but if these were to be sold, such sale could be effected only by, and on application to, the Civil Court Amin: (3) the power to obtain arrest of the defaulting tenant was retained, but this could be done only by instituting a rent-suit; otherwise, a decree—*ex parte*, contested or on

* Up till 1859, the Civil Courts were supposed to exercise the jurisdiction in rent-suits. But this was, to a great extent, nominal. As early as Reg. VIII of 1794, the Civil Courts were empowered to refer such matters to the Collector for enquiry and report: the final adjudication and execution were with the Court (sec. 13). The same plan was continued in Reg. VII of 1799 (sec. 15) and Reg. V of 1812 (sec. 21); but Reg. XIV of 1824 gave practically a finality to the Collector's report (called in it "award"). This Regulation required the Court to take up execution proceedings immediately on receipt of the Collector's award, leaving it to the aggrieved party to institute a regular suit (secs. 3 to 5). A further step towards transfer of rent-suits to the Collector was taken in Reg. VIII of 1831. It directed that all "summary claims connected with arrears or exactions of rent shall be preferred in the first instance to the several Collectors of land revenue, whose decisions in such cases shall be final, subject to a regular suit, unless the ground of appeal be relevancy of the Regulation to the case appealed, on which ground only the Commissioner of Revenue for the Division is authorised to receive an appeal:" (sec. 4). To encourage parties to this course, the court-fee for such claim-cases was reduced to one-fourth: (sec. 8).

admission—would follow. The execution of such a decree would, except in the case of a " saleable under-tenure," be effected only against the person or movable properties of the defaulter. The house (huts) of the raiyat might be sold, but not his lands, the idea being that the raiyat had no saleable right in them. But a raiyat could be ejected, if the landlord so wished, on the ground of his having failed to pay an arrear of rent.

The reason for retaining with the landlord the power of distraining (*i.e.*, preventing the raiyat from disposing of) the crops, is stated thus in section 112 : " The produce of the land is hypothecated for the rent payable in respect thereof," and so when there was an arrear of rent, the landlord might recover the same by stopping their disposal by the defaulter, without bringing a rent-suit against him. Such a view might have been justified from the low prices at the time of the Permanent Settlement, or perhaps down to 1812; for, if the net value of the produce of an acre of land (*i.e.*, after deducting cost of production) was, as stated previously, only Rs. 3-6, and the raiyat's rent was Rs. 2, it left him only a margin of Re. 1-6 : and unless the rent of any year was realised from the produce obtained in that year, it was impossible to expect that the raiyat would be able to pay the arrear in the next year or any subsequent year. Ejectment of a raiyat and replacing him by another, helped the situation very little. But by 1859, the prices had risen considerably and the rigorous laws of distraint or of sale of the raiyat's huts or his movables, *without a process from Court*, was hardly justified.

Radical change by the Act of 1885 and then by the Act of 1928.

40. This drastic power was taken away by Act VIII of 1885. This Act (sections 121 to 142) enjoined that such distraint could only be made under a process of the Court, and simultaneously the venue of all rent-suits was also transferred back to the Civil Court.* The rules regarding arrest and confinement of defaulter had already been abolished by Act VIII of 1869. The Acts of 1859 and 1869 rendered a raiyat

* The venue had really been transferred to the Civil Court by Act VIII of 1869

liable to eviction when he fell into arrears of rent, and ejectment (and not sale of the holding) could be enforced in execution of a decree for arrear-rent. The theory underlying was, as has already been stated, that where the tenancy was not transferable, it could not be sold. The Act of 1885 did not recognise transferability of occupancy rights, but special provision was made that occupancy raiyats could not be ejected for arrears of rent, and that their holdings could be sold in execution of a decree for such arrears. These holdings had attained a good market-value by this time, as already noticed, and no question of landlord's consent arose when the decree-holder himself was the landlord.* It is a striking fact that this change brought down cases of distraint to insignificance, at any rate in the Bengal districts, and by the amendment of 1928, all rules of distraint were abolished.

Mistakes in the earlier legislations: their effects.

41. It will have appeared from the above account that the history of the procedure for realisation of rent during the periods prior to 1885, was a sad one for the raiyat. The authorities appear to have been continuously stressing on the point that, as the punctual payment of the Government demand was being rigorously enforced against the zemindar, the landlords should be given, in all " fairness " and " justice," powers to enforce payment by their tenants without resorting to a Court of law. It was overlooked that what might be justified for the State, was not necessarily justifiable for the acts of private individuals. The result was oppression and exactions by the more unscrupulous amongst the landlords or by their subordinate staff, gradual estrangement between the zemindars and the tenantry, and general demora-

* The rule was thus confined only to cases where the decree-holder was the sole landlord or represented the entire body of landlords (section 158B). In any case arrear of rent was no longer a ground for ejecting an occupancy raiyat (section 25): and the administration of the new rules was at first not altogether free from difficulties. Eventually, the law which evolved from judicial decisions was that when an occupancy holding was sold in execution of a decree for rent at the instance of a co-sharer landlord, it was only a sale as in a money-decree and only the right, title and interest of the defaulting tenant passed: while if the decree-holder was the sole landlord or represented the entire body of landlords, the holding itself would pass free from all encumbrances.

lisation. When, however, a radical change was effected in 1885, it was feared whether the law was not going to the other extreme: and the authorities* did not feel happy that a more simplified method could not be adopted for the benefit of the landlords as well as the raiyats. A procedure which involved protracted litigation and expense was not conducive to the good of either. The debates in the Council during the passing of the Act of 1885, made one thing clear, *viz.*, that without an authoritative record-of-rights showing the lands and the rents of every tenant, it was impossible to prevent a rent-suit running into protracted litigation. When, however, the record-of-rights operations were commenced later, instead of devising a simplified procedure for the Civil Courts, a provision was made (Act III of 1913) by which a landlord might, if permitted by Government, have recourse to the "certificate procedure"† through the Collector. This, however, did not become popular, and somehow the tenants also did not like it.‡ The provisions were repealed by the amending Act VI of 1938. It is often overlooked that since the preparation of record-of-rights, by far the greater proportion of rent-suits (about 80 per cent.) are not contested: and yet the raiyat has eventually to pay at least 30 per cent. over their arrear-rent, by way of costs and other expenses. It is a heavy drain on them, while the landlords too do not recover all the expenses that they have to bear for these cases.

Mistakes in the legislations since 1885.

Early remedy called for, for the interest of both the raiyat and the landlord.

Some General Observations

42. The history of the Tenancy Laws in Bengal, given in the preceding paragraphs, shows that there have been both

* Secretary of State's Despatch, dated 23rd June, 1885.

† Under the Bengal Public Demands Recovery Act III of 1913.

‡ When sympathetically applied, the Public Demands Recovery Act provides for better accommodation to the certificate-debtor than is possible in an execution of a decree in a rent-suit.

omissions and commissions since the declaration of the Permanent Settlement; but the fact remains that with the Regulations of 1793 and 1794, the position of both the old *khudkast* raiyats and the new raiyats was made much more secure than what it was before. The omissions on the part of the authorities, during the Company's time, to implement the intentions of the Regulations, and the mistakes in several legislations, have since been mostly rectified; and it cannot be gainsaid that the position of the raiyat to-day is immensely improved, and even under-raiyats have got a security of their tenure. The raiyat has practically full rights to use or dispose of his land in whatever manner he thinks proper: and he has been provided with an authoritative record-of-rights which gives the rent which he has to pay and other particulars of his land. There are, however, still many defects in the existing laws, particularly in regard to tender and payment of rent, and procedure of rent-suits, which demand attention and rectification.

43. The most striking fact regarding the *raiyati* holdings in the Permanently Settled areas of Bengal, is the low incidence of rent. Even for the raiyats whose rent is enhancible, the average incidence of rent is only about Rs. 3-6 per acre, and represents one-twelfth part of the estimated value of the average gross produce. In the temporarily settled estates, the average incidence of the raiyat's rent is Rs. 4-6 per acre, and in the estates under direct *raiyatwari* management of Government it is Rs. 4-11, representing one-ninth and one-eighth, respectively, of the average gross produce. An abstract of the systems of assessment on the raiyats or corresponding class of tenants or peasant-proprietors in other Provinces where *raiyatwari* or *mahalwari* system prevails, is given in the Appendix to this Chapter. The incidence of rent varies from one-sixth to one-fourth of the estimated value of the gross produce, but the tendency is to reach a standard of about one-fourth. The reason is not far to seek. In *raiyatwari* and "temporarily settled" areas, whether in Bengal or other Provinces, the rents are revised at regular intervals, and it is far more easy for a

Revenue Officer of Government to obtain an increase than for a private landlord, whatever the legal powers of the latter be. Even when there are intermediate landlords in a temporarily settled estate, there would naturally be less official restraint on the activities of these landlords to obtain the submission of a raiyat to an increased rent, and this rent would later on find confirmation from the Settlement Officer as an agreed contractual rent.

44. In the permanently settled areas of Bengal, the rents of the old raiyats are fixed at the old rates which give an average incidence of about Rs. 2-2 per acre, representing one-eighteenth part of the gross produce. The difference in the average rate of rent of the ordinary occupancy raiyats whose rents are enhancible, is thus only 60 per cent. while the price of the staple food crop (rice) has risen at least seven times. It is thus impossible to say that the landlords of Bengal have as a whole much abused their powers which were very wide and practically unrestrained during the Company's regime prior to assumption of government by the Crown. It is a mistake to suppose that the Permanent Settlement restricts the powers of the State to guard the raiyat against exactions by a landlord. On the other hand, the authorities are untrammelled by any consideration of Government revenue which is fixed. Whatever be the other criticisms about the Permanent Settlement, it cannot be gainsaid that it has been due to this measure that the burden of rent on the raiyats of Bengal is so low as we find it to-day. It has also been due to the Permanent Settlement, that it has been possible for the raiyats of Bengal to secure to-day the very substantial rights in their lands, which their brother raiyats in other Provinces do not enjoy.*

* Mr. R. C. Dutt first brought out these facts with statistics as known in his time. His open letters of 1900-01, to Lord Curzon, to which we have already referred, attracted the serious attention of Government. Mr. Dutt was advocating Permanent Settlement for other Provinces and quoted facts and figures to show that Bengal has been much less subject to famine than the other Provinces, and when there was drought or inundation, the tenantry showed much greater staying power than in " raiyatwari " or " mahalwari " areas. Mr. Dutt failed to

45. It is not to be understood from this that the raiyats of Bengal are in affluence. On the other hand they are a half-starved class, lacking even the bare necessaries of life. The reason for this is to be sought elsewhere. The total area of land available for cultivation is about 26 million acres, and 33 millions of people cannot live on this area, if agriculture be their only or even main source of living. The average area of land available to an agriculturist's family is only a little over 2 acres, yielding a gross produce of about Rs. 80 or 90 per annum. Population has rapidly grown under the well-ordered administration of the British Rule, but in Bengal there have been other powerful factors which have contributed to this heavy pressure on land. One of these factors is lack of occupation in industries, and the aversion of the Bengali villager to mill or factory labour. But we have seen that even when population was sparse the villager had other occupations for his earnings.* Spinning was a cottage-industry in every household, and the yarns pro-

carry conviction with Lord Curzon's Government that the raiyats of Bengal bore a much lighter burden of rent than the raiyats in Madras, Bombay or the Central Provinces. But the reason was that neither Mr. Dutt nor the Government was in possession of correct statistics for Bengal, as there was no cadastral survey yet. Mr. Dutt estimated that the value of the average produce in 1900 was Rs. 27 per acre, and the average rent of the raiyat was Rs. 5-3. This gave a proportion of one-fifth, while we know to-day that the proportion is one-twelfth. The result was that the Government of India laid down a policy of an allowance of 50 per cent. to the Settlement-holder, but the methods of assessment on the raiyats in the other Provinces were not touched: "Land Revenue-Policy of the Indian Government," 1902.

* Mr. Thomas Colebrooke, in his "Husbandry of Bengal, 1794-1804" (reprinted by Robert Knight of the "Statesmen" in 1884), gives figures which show that one-fifth of the village-population were artificers. "A fine sort of cotton," he states for the time when he wrote, "is still grown in the eastern districts of Bengal, from plants thinly interspersed in fields of pulse or grain," and mentions "cotton piecegoods" as the staple manufacture. "Plain muslins," the same writer continues, "distinguished by various names according to fineness and to the closeness of their texture, as well as flowered, striped or checquered muslins, denominated for their patterns, are fabricated chiefly in the Province of Dacca." "Khasahs" were fabricated by the villagers in the country between the Mahananda and the Ichhamati river. "Bastas" were manufactured "in S. W. corner of Bengal," and "patch thread" in Northern Bengal. For the resources of the villager he mentions in particular "valuable articles of sugar, tobacco, silk, cotton, indigo and opium." "Indigo," he says, "appears to have been known and practised in India at the earliest period," and hence "Indicum" (India) for "indigo."

duced supplied work for the weavers. The population of these weavers was considerable, and when their business began to starve owing to competition by mills and the trade-policy in the days of the Company, they had to turn to land. The same has been the position with many of those who were employed in other cottage-industries as oil-crushing, sugar-manufacture, rope and mat-making, pottery, etc. The loss of " spinning " not only ruined the cultivation of cotton as a special crop which used to be grown usually on a patch of ground adjoining every household, but deprived the women-folk of a good money-earning occupation. Another development, though in comparatively recent times, has operated in the same direction. It is the development of rice-mills. Rice-husking was a regular occupation in every cultivator's family, and while finished rice yielded a larger income, many helpless people (specially women) found in this work a means for their living. All these persons are now swelling the number of non-earning dependants on persons who have no other resource than the raw produce from land. Besides these common village-industries, salt manufacture along the 300 miles of Bengal's sea-coast provided a very profitable occupation to lakhs of people. Grant, in his Analysis of the Finances of Bengal, 1786, says that there were in this tract 12,000 salt *khallaries*, yielding about 3 millions of maunds of salt; and the Select Committee of 1812, in their Fifth Report, mentions that the revenue from the duty on salt amounted to Rs. 115 lakhs. It may be presumed that the wealth which the workers earned must have amounted to several crores. We will not pursue this subject further, but it is obvious that any attempt for a solution of the problem of the raiyat's poverty must be directed primarily to finding ways and means for providing the agriculturist-population with other occupations to which a portion of them may divert, and also suitable subsidiary industries to which those who keep to land as their main source of living, may employ themselves either during their spare months or *pari passu* with agriculture.*

* See the recommendations of the Agriculture Commission, 1928. It is more a question of unemployment than any effect of the land-system. A very pertinent

APPENDIX TO CHAPTER X

(*Vide* paragraph 43, p. 227)

A Summary of the Systems of Assessment on Raiyats and Peasant-Proprietors in certain other Provinces

First, with regard to *raiyatwari* areas :—

(*i*) *Madras.*—In the *raiyatwari* area, the rent is assessed at one-half the cultivator's price (*i.e.*, about 25 per cent. less than the trader's price) after *deducting* from it certain percentages for vicissitudes of the season and expenses of cultivating. The cultivator's price is supposed to be taken on an average of 20 non-famine years. The proportion of deduction varies according to circumstances, and apparently much depends on the personal equation of the revenue-officer. However, the assessment at the first Settlement of 1805 gave averages of as much as Rs. 11-1, Rs. 3-10 and Rs. 21-9 per acre for wet, dry and garden lands in the Southern Division, and Rs. 15-3, Rs. 3-12 and Rs. 18-9 in the Northern Division. The rates were, however, moderated later, and still the result in 1900 was Rs. 4-15-2 per acre from wet land *plus* one-half extra for a second crop, *i.e.*, a rate of Rs. 7-2-9 per acre for *dofasli* lands (Madras Board of Revenues' letter of 6th December, 1900, appended in the Land Revenue Policy). Yet, the money value of the gross produce of the first sort of land then was no more than Rs. 33-12 per acre.

Raiyatwari area of Madras.

observation has been made by Mr. I. S. Nurunnabi, I.C.S., Director of Rural Reconstruction, Bengal, in his address at a recent meeting at Asansol (23rd July, 1939). He said: "Few people realise that India possesses vast resources in man-power. But owing to unemployment or inadequate employment during a large part of the year the labour power of the village (agriculturist) is wasted." Organised industrial schemes with a definite programme, have to be planned. See "Recovery Plan for Bengal," by Mr. S. C. Mitra (1938).

Raiyatwari area of Bombay.

(*ii*) *Bombay.*—The background in the *raiyatwari* areas here was the high assessment of the Maratha time—at half the gross produce. Section 107 of the Bombay Revenue Code of 1886 laid down: "In revising assessments of land revenue regard shall be had to the value of land and, in the case of land used for the purpose of agriculture, the profits of agriculture."

The increased profits from the improvements at the expense of the tenant were to be excluded. There was no rule of proportion to the gross or nett produce as in Madras. The materials relevant for consideration were prices which the *miras* tenants got by sub-letting and so forth. The Bombay Government reported in 1901 that, to state generally, this incidence of rent did not exceed one-sixth of the average gross produce of a series of years. In the highly assessed parts of Broach, Kaira and Surat, it was as high as 20 per cent., and in the poorer parts of the Deccan, 5 to 7 per cent. of the value in a normal year, which was equivalent to one-eighth to one-sixth of the average produce of a number of years.

Raiyatwari area of the Punjab.

(*iii*) *Punjab.*—Half the area of the Punjab is held by owners directly under Government. No particular fraction of the gross produce is prescribed as the limit of the owner's rent: but it is said that the incidence "nowhere exceeds one-fifth" (Punjab Settlement Commission's Report dated the 30th November, 1900 in the Land Revenue Policy).

Raiyat's rent in the Temporarily Settled areas in other provinces.

Next, with regard to the *mahalwari* or *malgujari* areas (equivalent to temporarily settled estates), the general principle is to take the actual rents paid by the raiyats and a valuation of the *khash* lands, and then to calculate the proportion (50 per cent.) for the Government revenue. But it would naturally be apprehended that there would be less restriction to the landlord's scopes for enhancement of the raiyat's rents during the interval between two revisional settlements: and the Settlement Officer may even treat the actual rents as too low. For instance, in the old N. W. Provinces, the

rental adopted " was not necessarily the actual rental, but an estimate of what the rental should be under proper management. If the Settlement Officer thought the rents too low, he assumed that the landlord could or should raise them, and assessed them on the supposition that they were raised to his standard." This rule has now been set aside and the Settlement Officer " does not, except in the case of gross fraud or negligence, go beyond the ascertainment of the rent actually paid." In the Punjab, however, the rule (as stated in the Land Revenue Policy) is that the basic rent is to be the rent paid by a tenant-at-will. The result of this would be that the rents of the other tenants would be levelled up by the landlord to those of the tenants-at-will. In the Central Provinces, the Settlement Officer takes account of such immediate enhancement of the raiyat's rents as he deems reasonably possible, and estimates the real letting value by such tests and comparison as is possible for him. He then fixes his revenue on the assets so estimated. It will be illustrative to state that the revision of the 30 years' Settlement, made about 1898, gave an increase in the raiyat's rental from Rs. 52·23 lakhs to Rs. 75·17 lakhs or about 50 per cent. The incidence of the rents of the raiyats in these *mahalwari* areas varies, it would seem, from one-half to one-fourth or one-fifth of the gross produce, and in the Central Provinces, in by far the greater portion, 14, 15 and 16 per cent., and in Nagpur, 9 per cent. (Land Revenue Policy—pages 65, 66, 75, 88 and 121).

CHAPTER XI

The Permanent Settlement and Tenure-holders

Tenures or talooks during the Muhammadan period.

We have seen before that "tenures" in the sense of intermediate interests between the zemindar and the raiyat, were well-known during the Mughal period.* Both Grant and Shore mention them as "talooks," and the Regulations of 1793 as well as those of later years, make frequent mention of these "talooks." Most of them were hereditary (called *istimrari*), and some were even recognised as held at unalterable rent (called *mukarari*), although the zemindar's own *jumma* was not permanently fixed. It is not, however, that all these talooks were creations of the zemindar. For instance, the history of the Burdwan Raj from the time of Abu Roy who came as a military official to help in the subjugation of the native landholders who had become turbulent,

* Histories of the tenures dealt with in the earlier cases as reported in Moore's Indian Appeals trace most of them to periods even earlier than Murshid Kuli Khan's time. For instance, the talook, in the case of *Baboo Gopal Lal Thakur* vs. *Tilak Chandra Ray*, 12 M.I.A. 263, was traced to 1704 A.D.

Mr. M. A. Momin, C.I.E., in his Fiscal History of the Jessore District (Settlement Final Report), observes that, even before the Dewani, "Bhusna was held largely by talookdars."

Shore's surprise at not finding any mention of these tenures in Todar Mal's plan, is pertinent here. If by fixing one-third of the gross produce as the Sovereign's share, Akbar at all meant that this was also to be the rent which the raiyat would pay, where was any profit or interest of these middlemen to come from? But this question applies equally with reference to the zemindar himself. Such profit arose either from exaction (to which there was not much restraint), or from the increasing rentals during the intervals between two settlements, which, during the first 140 years of Mughal Rule, were long intervals. After this, with the breakdown of the Empire and introduction of arbitrary methods, everything was in confusion.

shows how these persons* were eventually treated as talookdars, when this vast territory was formed into the zemindari of *Chukla* Burdwan comprising numerous *parganas* and *tarafs*. During the Pathan period when the *Bhuiyas* established their authority over large tracts, and similar potentates were recognised as zemindars, the previous landholders became only subordinate talookdars. In the unreclaimed deltaic area, full of jungles or forests and intersected by numerous rivers, enterprises such as described in the anecdote of Kalaketu† must have been the natural process for colonisation; and the leaders of these enterprises became talookdars, unless any of them was powerful enough to get recognised as a zemindar. A great part of the rest of the country also consisted of vast tracts of marsh, which could be brought under cultivation only by more or less similar enterprises. In all these cases, sub-settlements of large areas with capitalists on favourable terms, were the only way for reclamation.

Jungleboory and patitabadi talooks.

2. The *jungleboory*‡ talooks to which reference is made in section 8 of Regulation VIII of 1793, and, allied to them, the *patitabadi* talooks, were also of the same nature. The description of *jungleboory* talooks in the Regulation, illustrates the process of reclamation which was still pursued in the tracts bordering the forest areas. The section (since omitted by Act XVI of 1874) ran thus :—

"The *pattas* granted to these (*jungleboory*) talookdars in consideration of the grantee clearing away the jungle and bringing the land into a productive state, give it to him and his heirs in perpetuity, with the right of disposing of it either by sale or gift, exempting him from payment of reve-

* They were loosely called "farmers" in the settlement during the transitional period of the Company's management: but they form the nucleus of what were later recognised as Patni tenures.

† See Chapters II and III *ante*. The process of settlement of the unreclaimed areas in the Sundarbans during the last one hundred years gives also a similar history: see Chapter XII *post*.

‡ Literally means "clearing the jungle."

nue for a certain term, and at the expiration of it subjecting him to a specific *asal jumma*, with all increases, *abwabs* and *mathoots** imposed on the pargana generally; but this for such part of the land only as the grantee brings into a state of cultivation: and the grantee is further subject to the payment of a certain specified portion of all complimentary presents and fees, which he may receive from his under-tenants, exclusive of the fixed revenue. The *patta* specifies the boundaries of the land granted, but not the quantity of it, until it is brought into cultivation."†

Ganti, howla, etc.

Of a more or less similar nature were the *Ganti* tenures‡ in the districts of Jessore and Khulna and the *Howla* tenures of Bakarganj. Mr. Allen's description of Chittagong talooks carries these illustrations further. He says:—

"The first settlers naturally occupied the most convenient spots in the vicinity of the port, each family or group of families making its own clearance in the neighbourhood of the huts in which it obtained shelter. As the family increased in number in course of time, more jungle would be cleared, but each oasis so reclaimed would remain more or less isolated and surrounded on all sides by impenetrable jungle. Each such clearance is known in local parlance as a *talook*."§

* Also spelt as "mathut" or "mathote;" is from Arabic "mathot" meaning a contribution. It was an item of abwab recognised in Shuja Khan's time, and comprised the following articles, *viz.*, (1) *nazar pooneah* or presents of the new year, (2) *bhay khelat* or price of robes, (3) *pushtabandi* or charge for protecting river banks, and (4) *russoom nezarat* or charge for escorting treasure (rents collected) from the interior.

† The later settlement of Sundarban "lots" with large and small capitalists were more or less on this traditional line. See Chapter XII *post*.

‡ These comprised usually compact tracts, though not always very large, protected by embankments.

§ The talooks formed the "units" of tenancies, or *asamis* in a zemindari called *mahal* or *taraf*.

Of these talooks, those which the talookdars had brought under cultivation after 1764, were called *noabad* or newly cultivated. The *noabad* talooks, though held directly under Government, are not "estates," but are "permanent tenures," Government being the landlord or proprietor. The rent is liable to enhancement according to the provisions of section 7 of the Bengal Tenancy Act, 1885. See *Prosonna Coomar Roy* vs. *Secretary of State for India*, (1899) I. L. R. 26 Cal. 796.

Jote.

The *jotedars* of Rangpur and adjoining districts have their origin from similar first reclamations. They were the persons who held directly from the zemindar, and, where the size of a *jote* was large, the *jotedars* inducted sub-tenants called *chukanidars*.*

Miras, chakla.

A permanent tenure held from generations was called *miras*, or *maurash*, and as we have seen before, there were tenures held by persons called *chakladars* in some districts of Eastern Bengal, during the Muhammadan period.

3. Regulation VIII of 1793, classified the talooks† into three groups, *viz.* :—

Three classes of talooks under Regulation VIII of 1793.

(1) *Mukarari*,‡ by which was meant talooks for which the rent was fixed for the period for which they were held (sections 16 to 18);

(2) *Istimrari*,§ by which was meant talooks which were heritable and transferable, *i.e.*, which were held for unlimited period, but with rent liable to enhancement according to custom (sections 19 and 49); and

(3) *Istimrari-mukarari*,‖ by which was meant *istimrari* talooks of which the rent was fixed in perpetuity (section 49).

Another class of tenures is mentioned in section 60, under the English term "under-farmers," but no definition is given.

* See Report of the Rent Commission referring to the Collector's letter, 1876.

† Excluding those which, being of the nature of practical transfers of zemindari interest, were separated out and settlements were made direct with the zemindars and called "independent talooks."

‡ From Arabic *makarari*, meaning "fixed." Also spelt in official records as "mocurrary." The term is still almost always used to signify fixity of rent.

§ From Persian *istimrari*, meaning "perpetual or continuous." The term is now rarely used. The term now used is generally *maurashi*, literally meaning "obtained from the ancestors," and therefore permanent. *Miras* has the same etymology.

‖ The word *mukarari* does not by itself import *istimrari*, but it may do so if there are other terms in the instrument to imply perpetuity of tenure. Where there are no such terms, the question would be whether other terms in the instrument, its objects, circumstances under which it was made, or the conduct of the parties, indicate that the intention was that the grant should be perpetual: *Bilasmoni Dasi* vs. *Raja Sheopershad Singh*, (1881) P.C., 9 I.A. 33, 8 Cal. 664.

Simple mukarari.

A simple *mukarari* (*i.e.*, one which was not heritable or transferable) was of a non-permanent nature, although the rent was fixed during the period for which it was held. Such *mukararis* were grouped into two classes, *viz.*, (*i*) those created prior to the Dewani of 1765, and (*ii*) those created after that time. The former were allowed to be continued till the life-time of the grantees (section 16), but the latter were to cease immediately on the Decennial Settlement (section 18).

Simple istimrari.

Simple *istimrari* talooks, *i.e.*, those with rents which were liable to enhancement according to the "general rate of the district," were also recognised as permanent tenancies subject to the above condition. But as regards *istimraris*, which were also *mukarari* as regards rent by reason of the terms of the leases between the parties, a distinction was made between those which had been held at the same rent for more than twelve years prior to the Decennial Settlement, and those which had not been held at fixed rent for so long a period. The former were declared as not liable to be assessed with any increase whether by the zemindar or by Government. As regards the latter it was declared that the zemindar himself could not increase the rent, but in case the estate became *khash* of Government or was let in farm, on account of arrears of public revenue, the rent could be increased to the "general rate of the district" (section 49 and 50).

Istimrari-mukarari.

As regards tenancies called "leases to under-farmers," section 60 of the Regulation laid down generally that they were "to remain in force until the period of their expiration."*

* The Regulations frequently mention "farmers" of estates. These were persons to whom the collection of rents from the tenantry was entrusted when, on the default of the zemindar, his estate was temporarily taken over under direct management. They were strictly not talookdars, but as they had also to perform certain functions of a landholder, as, for example, settlement of lands abandoned

Summary of the general plan of 1793.

4. The above analysis shows that the general plan in the several provisions was that the talookdar would have the benefit of whatever his agreement with the zemindar was, except when the estate would pass out of the zemindar's hand in the event of his falling into an arrear of public revenue. It was only in the case of *istimrari-mukararis* which were held at the same rent for twelve years previous to the Decennial Settlement of 1789-90, that Government was also bound by the fixed rent.*

Intermediate effect of the Decennial Settlement *re* creation of new talooks.

5. This was how the intermediate interests between the zemindars and the raiyats, were treated at the time of the Decennial Settlement. The high assessment which was declared permanent gave an impetus (or "excitement" as Lord Cornwallis called it) to the zemindars for effecting improvements in their own assets by speedy reclamation and settlement of the areas which were waste and jungle. For this purpose they needed fairly substantial people who could undertake the necessary enterprises for reclamations and for organising extension of cultivation by induction of raiyats. Population was still very sparse, and the zemindars had to offer attractive terms, often at low rates of rent and for long periods or even in perpetuity. These activities must have commenced sometime before the Decennial Settlement; and it seems that the authorities became apprehensive that, unless there was a check, the estates

by a tenant, or settlements of new lands, the same obligations as intended primarily for zemindars and talookdars were also enjoined on them.

These "farmers" correspond strikingly to the "Farmers-General" (*fermiers generaux*) of France before the Revolution of 1789, meaning persons to whom the right of collecting certain taxes or items of public revenue was granted. The practice was to farm the taxes to the highest bidder.

* The drastic and rather inconsistent provision in section 5 of Regulation XLIV of 1793, to which reference has been made in paragraph 6 of the last Chapter, affected all classes of "talookdars" when there was a sale of the zemindari for arrears of revenue—till the anomaly was removed by Regulation XI of 1822. But a "talookdar" was generally too powerful a person to be easily avoided: and where he was weak, he generally appeared the purchaser by paying a *nazarana* or submitted to an increase of rent. But the talook, as a rule, continued.

might be permanently disabled from attaining a value which could stand as good security for the revenues of Government. Section 2 of Regulation XLIV of 1793 thus restricted all new leases to terms which were not to exceed ten years.* It was not till 1812 when they found that sales for arrears of revenue were becoming less frequent, and felt that the country had improved, that this restriction was taken away by Regulation V of that year. To make the intention more clear, another Regulation (XVIII) was passed in the same year explaining that the zemindars were "competent to grant leases for any period, even in perpetuity, and at any rent which they might deem conducive to their interest." The same sentiment was repeated also in the Preamble and section 2, of Regulation VIII of 1819.

6. But Regulation XLIV of 1793 was still in force, and the Regulation of 1819 (section 2) definitely laid down that "nothing herein contained shall be held to exempt any tenures.....from the liability to be cancelled on sale of the said estates for arrears of the said revenue under the rule of section 5 of Regulation XLIV of 1793." This liability to cancellation, so far as it affected the older tenures, was removed by Regulation XI of 1822. This Regulation laid down that when a tenancy had been held from the time of the Permanent Settlement, the terms and conditions which were binding on the defaulting zemindar would be binding also on the purchaser at revenue-sale. This principle was carried into section 37 of Act XI of 1859 which is still the operative law on the subject, and talooks existing from the time of the Permanent Settlement cannot be annulled.† Provision is also

Regulation XI of 1822:

—Act XI of 1859.

* The provisions in the Regulations of 1789-90 for the Decennial Settlement, regarding *mukararidars*, were also not modified, when the assessments on the zemindars were declared as permanently fixed.

† The rule of evidence that, where it is shown that the rent has not been enhanced for twenty years, the presumption shall be that the tenancy has been held from the time of the Permanent Settlement, applies to tenures also: sections 16 of the Act X of 1859 and 50(1) of the Bengal Tenancy Act VIII of 1885.

made for the protection of talooks created after that time, if they are duly registered under the provisions of the Act.

Tenures from original raiyati-holdings.

7. It is generally believed that tenancies which are now called " tenures," are the same as the earlier " talooks." But the distinctive meaning which is now attached to the term " tenure," really originates from the Tenancy Act of 1885. The Regulations passed at the time of the Permanent Settlement, conceived two classes of tenants, *viz.*, the talookdars and the raiyats. But though a large number of raiyats might have themselves been cultivators, a good amount of actual work of cultivation must have been carried on by persons who were treated as mere labourers. The raiyat was the *asami* or unit of assessment borne in the rent-roll of the zemindar or *talookdar*. Many such *asamis* held as much as 20 to 100 acres of land,* and of course they could not till, manure and harvest all by themselves. They employed labourers whether called *pykast*, or *pahee* or simply *kamin*, *muzur* or *munish*. In course of years, many of these persons who had been continuously employed on the same land, came to be regarded as " tenants," the original *asami* preferring the more dignified appellation of *jotedar*.† Act X

Meaning of " tenure " in the Act of 1859 and the Bill of 1883:

of 1859 did not attempt to define either " raiyat " or " tenure-holder," and the term " tenure " used in section 16 along with talook, would seem to include holdings of raiyats also. The first attempt to define or rather to explain the term as used in later legislations was in the Bengal Tenancy Bill of 1883 which eventually led to the Act passed in 1885. Section 1(3) of this Bill simply stated that a " tenure " included an " under-tenure " and the interest of *every tenant* of the

* See Chapter III *ante*, where it has been noticed that a substantial " raiyat " held as much as 100 puras of land, a *pura* being a little over an acre : and ordinary raiyats from 10 to 20 puras.

† It is interesting to note here that in Record-of-Rights proceedings in Behar, and in the earlier districts taken up in Bengal, many persons described as " raiyat " in the draft records, filed objections asking for being treated as tenure-holders (*darmiani hakdars* in Behar).

class referred to in section 14. The " tenant " referred to in section 14 was any person who or whose predecessor in interest " has held.....at a rent which has not been changed from the time of the Permanent Settlement," and whose rent thus would be treated as unalterable. It carried the same ideas as in the Act of 1859, and shows that up to 1883, it was the view of at least some persons that all old *khudkast* raiyats of the time of the Permanent Settlement whose rents had not been altered should be placed in the category of " tenure-holders." In the course of the examination of the Bill of 1883, ideas crystallysed into what we have now in the definition of " tenure-holder " in section 5(1) of the Act of 1885. A " tenure-holder " according to this definition " means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents* or bringing it under cultivation by establishing tenants on it, and includes also the successors in interest of persons who have acquired such a right." Clause (5) of the same section next lays down that " where the area held by a tenant exceeds one hundred standard bighas, the tenant shall be presumed to be a tenure-holder until the contrary is shown." We will not discuss here the numerous decisions of the law Courts on this definition of the term " tenure-holder;" we will only mention that the effect of these provisions has been that many of the bigger tenants holding more than one hundred bighas, who were or had acquired the lands from persons who were originally " raiyats," and even smaller tenants of this description who had sublet the greater part of their lands, came to be treated as " tenure-holders."† It is necessary to remember these facts to avoid

—in the Act of 1885.

Effect of above on the present-day statistics of tenures.

* Judging from this test alone, *i.e.*, whether the tenant is primarily a rent-receiver or a cultivator, the number of *de facto* tenures would be over six millions, as in Cess-Revaluation, and not 3½ millions.

† It is true that in the definition of " raiyat " in section 5(2), the term includes " successors in interest," but very few cared to, or could, if they cared, trace the origin of their tenancies, in order to maintain the status of a " raiyat,"

any mistaken notion from the present-day statistics of "tenures," that they represent the extent of intermediate interests *created* by the zemindar between himself and the raiyats. A good portion of the holders of these tenures are the heirs or successors in interest of persons who were previously considered to be "raiyats," while many of the present-day raiyats have developed from the earlier *pykast*, *pahee* or *kamin* cultivators.

8. The number of tenancies recorded in the cadastral survey and record-of-rights, as "tenures" is about 3½ million, as against about 11½ million "raiyati holdings" below them and about one million zemindari "estates" above; and it is neither the fact, nor is it reasonable to suppose, that all these 3½ million tenancies were thrust in by the zemindars between themselves and the older raiyats. Probably not more than half a million, comprising mostly the *Patnis* and similar tenures created after the Permanent Settlement, can be regarded as having their origin in a lease granted by superior landlords over their raiyats.

Classification of tenures under the Act of 1885.

9. The Act of 1885 divides tenures into two classes,* *viz.*, (1) those which are heritable and are not held for a limited time, and (2) those which are not so.† The former are called "permanent tenures" [section 3(9)], which may, or may not, be held at fixed rent. When they are not held at fixed rent, the rent is liable to enhancement from time to time according to the provisions in section 7. But, to state generally, a tenure is fully subject to the disabilities which

which, as already mentioned, was not always coveted. An occupancy raiyat had in certain respects greater protection, but in other respects, such as user of the land for any purpose, and right to transfer (till the Acts of 1928 and 1939), a "permanent tenure-holder" had much superior rights.

* Patni tenures governed by Regulation VIII of 1819, are excepted [*vide* section 195(*e*)]. They, however, come under the class of permanent tenures at fixed rent, only the conditions of security and liability to sales according to that Regulation are special.

† Tenures of this second kind are very few; and where they exist, they are in alluvial areas which are in the process of development.

the tenure-holder has agreed to in his *kabulyat*, where any. This constitutes a fundamental point of difference in the position of a tenure-holder and that of an occupancy raiyat. An occupancy raiyat is not bound by any term in his contract with the landlord, if it is inconsistent with the provisions of the Act or is derogatory to the rights and privileges expressly given to him by the Act [*vide* sections 25(*b*) and 178]. But this protection is not given to a tenure-holder. Perhaps the idea is that a person who would be a tenure-holder should be capable of always acting *sui juris* in his own rights, and his liberty of contract need not be restricted.*

Greater freedom of contract.

10. But by far the larger number of tenure-holders (as now called) have, as has been observed before, developed from earlier raiyats and have no written agreements. The effect of the change of nomenclature in their cases, needs some elucidation. They are mostly "permanent tenure-holders" with rents liable to enhancement under section 7. Such tenure-holders have always been recognised as possessing the right to transfer their tenures in whole or part (*vide* section 11); but till 1938, the position of the occupancy raiyat in this respect was different. Since the Amendment Act of that year, the latter has also now the full right to transfer his holding, together with the occupancy right in it. A raiyat has also as much right to sub-let as a tenure-holder, but the point of difference is that while the sub-tenant of a raiyat becomes an "under-raiyat" with inferior rights, the subtenant of a tenure-holder becomes a full raiyat, who, generally, would have occupancy right forthwith. While in this respect the raiyat is in a better position, a permanent tenure-holder is in a stronger position in respect of user of the land. The raiyat may use his land only in a manner which does not

Permanent tenures compared with occupancy holdings:

—transferability:

—sub-letting:

—user of the land:

* This is only with regard to user of land and enhancement of rent, and does not apply as regards other provisions in the Act, such as procedure for realisation

render it " unfit for the purposes of the tenancy," *i.e.*, agricultural purposes [sections 23 and 25(*a*)], but in the case of the permanent tenure-holder there is no such restriction, unless he has specially agreed to any in his contract with the landlord.

Enhancement of rent.

11. With regard to enhancement, there is no restriction when there is a contract.* But otherwise, leaving apart the question of custom (which is illusory), the rent may be enhanced to an amount which would leave the tenure-holder a *net* profit of not less than ten *percentum* of the balance of the "gross rents " of his tenure, after deducting the expenses of collection. If we take the expenses of collection at 15 per cent., this means that his landlord may get as much as 76·5 per cent. of the gross receipts as his rent. This is very high compared with the limits prescribed for raiyats or even under-raiyats. In practice, however, no more than about 40 per cent. is allowed to the landlord† The " gross rents " or receipts on which this percentage is calculated, mean the rents of the tenants (who may be under-tenure-holders) immediately under the tenure-holder and a fair rent for his *khash lands*.‡

Grades of tenures.

12. Tenure-holders are sometimes of several grades, and the term " tenure " includes " under-tenures." In Bakarganj, under-tenures often run down to many grades and form a complicated maze of interlaced interests; but, in other districts, they do not generally go beyond the second or third grade. It is, however, not to be supposed that every estate

of rent, granting of rent-receipts, etc., all of which fully apply. See also proviso to section 10 for contracts after 1885.

* Compare section 29 for occupancy raiyats.

† Where there are several grades of tenures, the rents payable by the " raiyats " thus get distributed amongst them, each superior landlord taking about 40 per cent. of the rents received by the tenure-holder under him.

‡ The position is different in temporarily settled estates when a settlement of land-revenue is made under Regulation VII of 1822. The rents payable by the " raiyats " (*i.e.*, ignoring tenures) and a fair rent for the *khash* lands, are first taken as forming the total assets of an estate; Government revenue is then deter-

or every piece of land in an estate has tenure-holders between the zemindar and the raiyats. Many estates, particularly the smaller ones, have no tenures. The proportion of the *raiyati* rental which is intercepted by the tenure-holders, has not been worked out officially; but it may be estimated at between one-third and one-half.*

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mined at 50 to 70 per cent. of this total, and the balance is distributed amongst the settlement-holder and the tenure-holders. The tenure-holders in temporarily settled areas thus get much less than 50 per cent. See Chapter XII *post*.

* As for the economic value and other effects of this distribution amongst the section of the community called the " middle class " of Bengal, see Chapter I *ante* (Introduction).

CHAPTER XII

SETTLEMENTS AFTER 1793

Lands liable to assessment after the Permanent Settlement.

The Permanent Settlement of 1793 included practically all lands which were comprised in the estates then held by zemindars and "independent" *talookdars*. Lands for which settlements were made subsequently, may be classified as below :—

I. Lands which were outside the limits of the permanently settled estates, such as the Sundarbans and other similar extensive forests and wastes (*vide* section 3(1) of Regulation II of 1819).

II. Alluvial accretions and islands which were formed by the gradual or sudden changes in the courses of rivers (*vide* section 3(2) of Regulation II of 1819).

III. Lands situated within the limits of permanently settled estates (*parganas* or *mauzas*), but expressly declared in the Regulations as liable to resumption and assessment of separate revenue.

These comprised invalid *lakheraj* lands, and lands appropriated for keeping up thanas or police establishments (*vide* section 8(3) and (4) of Regulation I of 1793, section 36 of Regulation VIII of 1793, and Regulations XIX and XXXVII of 1793).

IV. Estates or *mahals* owned by Government, called Government Estates or Khas Mahals.

These included the bulk of the lands comprised in class I, islands in the midst of large navigable rivers, the beds of which were not the property of any individual (*vide* section 4(3) of Regulation XI of 1825), areas as Calcutta, Chinsura,

etc., the ownership of which had a historical background, and estates acquired by Government by purchase or otherwise.

Reg. VII of 1822: its extension to Bengal in 1825.

2. In 1822 a Regulation (Regulation VII of 1822) was passed for the settlement of the newly acquired territories called the "Ceded and Conquered Provinces,"* and Cuttack and Puttaspore and its dependencies. The provisions of this Regulation, with some modifications, were extended to Bengal by Regulation IX of 1825 (section 2) for application generally to areas not included within the limits of permanently settled estates; and in particular to Government Estates including the Sundarbans and the extensive forests and wastes outside the revenue limits of the permanently settled estates.

Provisions of Reg. VII of 1822, analysed.

3. The provisions of Regulation VII of 1822 were different from those of Regulation VIII of 1793, in several material respects.

Permanent fixation of revenue abandoned.

In the first place, the plan of permanently fixing the assessment was definitely given up. The revised settlements to be made with the zemindars and others in the newly acquired territories, were to be for such "period as the Governor-General in Council may direct." The reasons which justified, or rather necessitated, the permanent settlement in 1793, did not apply to these territories; and in Bengal, the circumstances had also changed. British power had been firmly established in the country under a well-organised system of law and order: the expectations that with the gradual extension of cultivation over waste and jungle lands, the estates of zemindars would, by themselves, afford sufficient security for the Government revenue, were fully realised: the

* The "Ceded and Conquered Provinces" meant the territories situated within the Doab (*i.e.*, between the two rivers the Ganges and the Jamuna) and on the right bank of the Jamuna, which were obtained by the Treaty of 1803 with the Peshwa and ceded at about the same time by Daulat Ram Sindia. These territories were formed into the Lieutenant Governorship of the North-Western Provinces in 1858 (16 and 17 Vict., Cap. 95, sec. 15), corresponding to present United Provinces.

finances of the Company showed also immense improvement,* and they were able not only to meet the deficiencies in other parts of India, but could also afford to render substantial assistance in the war which had broken out in Europe.†

Assessment to be on assets, with 20 per cent. on the jumma as net profit to zemindar.

In the next place, it was laid down that the actual rental assets of every estate must first be accurately ascertained, and the amount of assessment to be made then determined in such manner as would leave to the zemindars "a net profit of twenty per cent. of the *jumma* payable by or through them:" section 7(2).

Rights and privileges of all grades of landlords and tenants to be recorded and respected.

4. There was, however, no departure from the general policy enunciated in the Regulating Act of 1784, and followed in the Decennial Settlement, that Zemindars, Talookdars and other subordinate landholders, where they existed, should be recognised, and their respective rights and privileges respected so far as practicable. The Preamble as well as several sections of the Regulation thus emphasised the necessity of "ascertaining, settling and recording the rights, interests, privileges and properties of all persons and classes, owning, occupying, managing or cultivating the land, or gathering or disposing of its produce or collecting or appropriating the rent or revenue."‡

Fair rents of raiyats to be settled and recorded:

5. Section 7(2) of Regulation VII of 1822 enjoined that the assessment to be made on any estate "shall be fixed with reference to the produce and capabilities of the land," and section 9(1) further laid down that "a record shall be formed of the rates per *bigha* of each description of land or

* Apart from the improved receipts from customs and the more punctual and regular realisation of the land revenue, the duties on salt-manufacture along the sea-coast of Bengal had risen to over one crore of rupees, and, by the change in the management of the opium monopoly, the revenue from this source had increased from £. sterling 95,050 to £. sterling 693,700: *vide* Fifth Report, 1812.

† Dr. P. N. Banerjea's "Finances in the Days of the Company," Macmillan, London, 1928.

‡ Preamble and sections 6, 9, 14, etc.

kind of produce, demandable from the resident cultivators." It meant that in determining the rents which the raiyats were to pay and on the basis of which the Government revenue would be assessed, the Collector was to consider the "produce and capabilities of the land." This necessarily involved consideration of other allied questions, such as cost of production, value of produce, and the profit to be allowed to the raiyat.

and for this, the produce and capabilities of the land to be the basis.

6. Regulation VII of 1822 was extended to Bengal by Regulation IX of 1825; but so much of its provisions as prescribed that the *jumma* to be demanded from any *mahal*, was to be calculated "on an ascertainment of the quality and value of actual produce, or on a comparison between the costs of production and value of produce," were repealed later by section 2 of Regulation IX of 1833.* The reasons for this are not very clear; but, since the Bengal Tenancy Act of 1885, the question is of no practical importance. In all operations for settlement or re-settlement in temporarily settled estates or Khas Mahals, the Revenue Officer has to settle fair and equitable rents for all raiyats according to the principles laid down in that Act (*vide* sections 104 and 191).

Amendment by Reg. IX of 1833.

7. It is not, however, that the rule of "temporary settlement" in Regulation VII of 1822, has been applied to all settlements made after the Permanent Settlement of 1793. Invalid *lakheraj* lands, when resumed, were settled permanently with their holders at a concessional revenue of 50 per cent. of the raiyati rental, under special Regulations. The resumption and transfer of *Chaukidari Chakran* lands were effected with a perma-

Invalid lakheraj assessed permanently:

—but not all Police Chakran lands.

* The reasons of this are not stated. Of course they had no application in tracts like the Sundarbans and similar forests and unreclaimed tracts, where the settlements had necessarily to be based on prospective basis, with a graduated scale of rates as reclamation progressed, and perhaps also with a rent-free period to begin with. Section 8 of Regulation VII of 1822 made special provisions for cases of a somewhat similar nature.

nent assessment.* Resumed police lands, such as *Phanridari* or *Simandari*, were, however, formed into temporarily settled estates; but their total area is inconsiderable. The rule of "temporary settlement" with proprietors, has been applied really only in the assessment of alluvial accretions to the estates of zemindars. These are commonly called "Diara Mahals." The total area of temporarily settled estates is now about 4,970 square miles, and the bulk of this area is "Diara." The total Government revenue from the temporily settled estates is Rs. 26 lakhs, or an average of 13 annas per acre, as against 9 annas in the permanently settled estates.

Rule of temporary settlement applied mainly to Diara.

8. The whole of the Sundarbans and the other extensive forests and wastes, as well as the lands comprising the *Noabad Talooks* of Chittagong, which were outside the limits of permanently settled estates of zemindars, were claimed by Government in proprietary right, and have been treated as such. The settlement-holders are thus not "zemindars" in the technical sense, but are only tenure-holders except that in the Sundarbans the leases are governed by the Crown Grants Act and the relationship between Government and a lessee is not exactly that of a landlord and tenant.†

Sundarbans and certain other lands, the property of Government.

The total area of estates owned by Government, including the above and other Khas Mahals, is about 5,193 square miles, yielding a revenue of over Rs. 68 lakhs, or about Rs. 2 per acre. Besides these, the Reserved and Protected

Area and revenue of Government-owned estates.

* The Village Chaukidari Act, Act VI of 1870, Part II. The land is resumed and transferred to the zemindar within whose estate it lay, on a fixed assessment at half the rental assets. The assessment, however, is payable to the village-chaukidari fund and not to Government.

The *ghatwali* lands of Birbhum have a different history, and their settlements were governed by the Bengal Ghatwali Lands Regulation XXIX of 1814 and Act V of 1859.

† See *Ambuja Bashini* vs. *Secy. of State* (Nov. 1937), 42 C.W.N. 289; also *Jnanendra* vs. *Jadunath* (Aug. 1937), 42 C.W.N. 81.

Forests owned by Government have an area of about eight thousand square miles, yielding a gross revenue of about 22 lakhs of rupees a year.

Settlements of Invalid Lakheraj Lands

Two classes of lakheraj—Badshahi and Non-Badshahi.

9. Lands commonly called *lakheraj* fell into two groups, *viz.*—(1) those claimed under grants made or confirmed by the Sovereign or *Badshah*, and thus called *Badshahi*, and (2) those claimed under grants made by inferior State Officials or by the zemindars, and thus called *Non-Badshahi*. There was no regular investigation regarding these lands till 1782. Regulation VI of that year provided for the appointment of a Registrar or Superintendent for the purpose of investigating the titles of persons claiming to hold lands exempt from payment of public revenue. The Registrar appointed under this Regulation worked for four years, and during this period statistics* were collected of lands which were claimed as *lakheraj*. Grant referred to these statistics in his Analysis of 1786, and Shore in his Minute of 1789 estimated that the total area of lands comprised in these claims was 67 lakhs of bighas or about three million acres. All these lands, whether held under a valid or invalid title, were excluded from the Decennial Settlement (*vide* section 36 of Regulation VIII of 1793), and the right to assess any such land as was held under invalid title, was reserved to Govern-

* The investigation was not, however, completed for all districts. Paragraph 111 of Shore's minute of 18th June, 1789, analysed the result thus:—

Investigated districts—

Chakeran	... 12 lakhs of bighas (half a million acres).
Lakheraj	... 44 lakhs of bighas (two million acres).

Uninvestigated districts—

Chakeran	... 5 lakhs of bighas (230,000 acres).
Lakheraj	... 23 lakhs of bighas (one million acres).

ment. Regulation XXXVII of 1793 next laid down the rules for investigating title as regards *lakheraj* claimed under a *Badshahi* grant, and Regulation XIX of the same year laid down similar rules as regards *Non-Badshshi lakheraj*.

Badshahi grants :

10. We have seen in Chapter V that it was customary for Muhammadan Rulers to make revenue-free grants of land to learned or religious men, and these were called *Ayma* or *Madadmash*, and sometimes *Altamgha*. These grants were usually of a perpetual nature, being heritable and transferable; but sometimes they were simply for the life-time of the grantee, in which case they were termed *jaigirs*.* The 12th of August, 1765, which was the date of the accession to the Dewani by the English Company, was taken as the material date for the authority of the Mughal Emperor to make any *lakheraj* grant. Section 2 of Regulation XXXVII of 1793 thus laid down that grants made under the authority of the Supreme Power,† prior to 12th August, 1765, would be recognised, provided that the grantees "actually and *bona-fide* obtained possession of the land so granted;" and section 3 next declared that all *Badshahi* grants made after that date, other than by the authority of the Government (of the Company) "and which may not have been confirmed by Government or by an officer empowered to confirm," were invalid.

—when valid or invalid.

Non-Badshahi grants : Reg. XIX of 1793.

11. Regulation XIX of 1793 deals with *Non-Badshahi* grants, and the criterion of validity in these cases is also the same, *viz.*, that the grant was made prior to the 12th August, 1765, and that the grantee had "actually and *bona-fide* obtained possession of the land so granted" previously to that date: *vide* Clause (1) of section 2. The Preamble to the Regulation states that these grants were often made by the zemindars "under the pretext that the produce of the land

* Section 15 of Regulation XXXVII of 1793.

† Meaning the *Badshah*.

was to be applied to religious or charitable purposes." Clause (4) of section 3, thus laid down that, where the quantity of land granted did not exceed ten bighas, " and the produce of it is *bona-fide* appropriated as an endowment on temples, or to the maintenance of Brahmins, or other religious or charitable purposes," it would not be subjected to assessment of revenue.

Essential conditions of validity of lakheraj.

12. The essential conditions for the validity of both the classes of *lakheraj* (*Badshahi* and *Non-Badshahi*) were thus—(1) that there was a grant prior to 12th August, 1765, and (2) that the grantee was in *bona-fide* possession since. The only exception to the first condition was in respect of small grants of ten bighas or less, mentioned in the last paragraph. Section 2 of Regulation II of 1805, however, laid down a rule of limitation that " no claims on the part of Government . . . for the assessment of land held exempt from the public revenue " would be maintainable unless made " within the period of sixty years from and after the origin of the cause of action."

Civil suit.

The remedy of a party who desired to question the finding of the Revenue Authorities was by Civil suit in the Dewani Adalat.

Methods of settlement of invalid lakheraj.

13. Regulations XIX and XXXVII of 1793 also laid down that when any claim to hold revenue-free was found to be invalid, the claimant, if he was in possession, was not to be disturbed; but he was to be admitted to settlement on a proper revenue. The rules regarding assessment were, however, different for the two classes of *lakheraj* claims. When the claim was made on an alleged *Badshahi* grant, the settlement was to be made in perpetuity at an amount to be determined according to the rules of the Decennial Settlement in Regulation VIII of 1793 (*vide* section 6 of Reg. XXXVII of 1793). Where, however, the claim was made on grounds other than a *Badshahi* grant, the assessment was to be made on a " fixed revenue of only half of the amount assessed on

other *malguzari* lands in the country" (*vide* section 5 of Regulation XIX of 1793).* The effect in either case was that the settlement-holder became a zemindar like other zemindars, with the Government demand of land-revenue fixed in perpetuity.

Effect of such settlement.

14. Lands claimed under grants made by the zemindar were usually in small areas, sometimes scattered over several villages. The trouble and expense involved in investigations about such small scattered areas, could not be commensurate with the result. Section 6 of Regulation XIX of 1793 laid down that *Non-Badshahi lakheraj* of areas less than one hundred bighas, though found to be invalid, would not be assessed to revenue by Government; and that such areas would be left as part of the estate or *talook* within which the lands were situated, without the zemindar or *talookdar* being rendered liable to any additional revenue therefor.†

Non-Badshahi lakheraj of less than 100 bighas.

15. The intentions of the Regulations of 1793, as summarised in the preceding paragraphs, were further explained in clause *first* of section 3 of Regulation II of 1819. The other provisions of this Regulation and other Regulations‡ on the

Summary of the legal position.

* There was an exception in the case of grants made between the years 1770 and 1790. In such a case the assessment was to be made according to the rules of the Decennial Settlement in Regulation VIII of 1793.

† This meant that the zemindar or *talookdar* might assess such land with "rent" for his benefit. But where the grantor was the zemindar himself he could not resile. The provision benefited only a revenue-sale purchaser, and thus, in one way, afforded a protection of public revenue when the assets of an estate were impaired by such grants.

Since Bengal Act VII of 1862 suits by proprietors, farmers or *talookdars*, for resumption of lands claimed as *lakheraj* within their estates or tenancy, are to be instituted in the Civil Court.

‡ These Regulations are (1) IX and XIV of 1825, and (2) III of 1828. The last Regulation provided for appointment of Special Commissioners to hear appeals from decisions of Collectors. See also section 28 of Act X of 1859. W. W. Hunter, in his "Indian Mussalmans" (1872), writes: "At an outlay of £800,000 under resumption proceedings, and additional revenue of £300,000 was permanently gained by the State." It was, however, only a very small portion of this additional revenue which was derived in the districts which constitute the present Province of Bengal. The bulk was for Behar.

subject of *lakheraj*-resumption relate more or less to details of procedure. The legal position as summarised by the Privy Council in the case of *Nabo Kristo Mukhopadhyay* vs. *Kailaschandra Bhattacharyya*, 8 B.L.R., 566, is that *lakheraj* tenures fell into three classes, *viz.*—(1) those created before the 12th August, 1765, (2) those created between 12th August, 1765 and 1st December, 1790, and (3) those created subsequent to 1st December, 1790. Regarding those of class (1), they were generally valid, subject to certain conditions (section 2 of Regulation XIX). As regards those of class (2), they were all *invalid* except in certain cases (section 3); and as regards *lakheraj* tenures created after 1st December, 1790, they were *absolutely null and void* (section 10). This last provision regarding grants by a zemindar after 1790, does not, however, affect the binding nature of a grant as between the grantor and the grantee;* but such a grant is null and void so far as Government is concerned, and it does not bind a purchaser at a sale for arrears of public revenue.

Area of revenue-free lands.

16. The total area of revenue-free lands in the present Province of Bengal is about two million acres,† and may be said to constitute lands which were declared valid *lakheraj* in the course of the resumption proceedings during the years 1819 to 1840. These revenue-free lands are treated as "estates" (Part 'B' of the Collector's Register‡ of Estates), and their holders are treated as "proprietors" in the same manner as those of revenue-paying estates. Except that no land-revenue is payable, the conditions of subordinate tenancies in these estates are regulated by the same laws as in revenue-paying estates.

* See *Mahomed Ali* vs. *Asadannissa Bibi*, (F.B. 1867) 9 W. R. Civ. Rul. 1. Previous to this decision there was considerable divergence of opinion: see *Piziruddin* vs. *Madhusudan Pal Chaudhury*, 2 W. R. Civ. Rul. 15.

† The largest of these revenue-free estates is probably that in Burdwan which was decreed in favour of the claimant on the ground of limitation (60 years) in the Privy Council case of *Maharaja Dheeraja Mahatap Chand Bahadur* (1848-50), 4 M.I.A., p. 466.

‡ Section 9 of Bengal Act VII of 1876.

17. Lands which are held rent-free under a zemindar or *talookdar*, are commonly called *nishkar*, as opposed to *lakheraj* which means revenue-free. But it will have appeared from the above discussion, that Government did not resume or assess to public revenue two classes of lands under *Non-Badshahi* claim, *viz.*—(1) those which were held for religious or charitable purposes and were less than ten bighas in area, and (2) those which were of less than one hundred bighas. Such of these as were obtained prior to 1st December, 1790 and have continued to be held without any rent to the zemindar, are, strictly speaking, *lakheraj* or revenue-free. Only those which have been created by grants after 1790 are properly *nishkar* or rent-free. The two classes are, however, mixed up; and lapse of time makes it impossible, in many cases, to differentiate them.

Nishkar lands.

Settlements of Alluvial Formations

18. The rivers of Bengal have always presented peculiar characteristics. They change their courses constantly, sometimes carrying away vast areas of cultivated lands and even village-sites, and sometimes throwing up extensive sandbanks or *chars* along the banks, or forming islands surrounded on all sides by deep water. Two questions usually arise with regard to such alluvial formations, *viz.*—(1) of ownership, and (2) of liability to assessment of revenue in addition to that fixed at the time of the Permanent Settlement. It is well to keep the two questions distinct in all discussions.

Characteristics of Bengal rivers.

19. "Land," in its juridical sense, includes sub-soils down to any depth,* and ownership in land does not vanish by reason of submergence or by reason of the upper soils being washed away

Ownership in alluvial lands.

* "Land," in its legal sense, comprehends not only the soil but "it extends downwards to the globe's centre." Wharton's Law Lexicon.

and the land thrown under water. It follows that if a particular site was included within the limits of an estate at the time of the Permanent Settlement, the proprietary right of the zemindar does not vanish when the land is submerged by a river, although the exercise of such right may be restricted by public right of navigation. When the land emerges on the same site* by subsequent changes in the river, the zemindar would have the same rights in it as at the time of the Permanent Settlement.

Liability to assessment of revenue: Reg. II of 1819.

20. The question of liability to assessment of revenue is, however, somewhat different. The substantive law is contained in clause *second* of section 3 of Regulation II of 1819. This section lays down that "all *chars* and islands formed since the period of the Decennial Settlement, and generally all lands gained by alluvion or dereliction since that period," are liable to assessment "in the same manner as other unsettled *mahals*." The case is simple where the fact appears to be that the river flowed along the boundary of an estate and was outside the limits of such estate at the time of the Permanent Settlement. If, in such a case, the river receded afterwards, throwing up *chars* along the bank, such *chars* would be land "gained" to the estate, and thus clearly liable to further assessment of revenue. But where the river was included within the limits of an estate, and *chars* were

* Such emergence is technically called "re-formation *in situ*" or "re-formation on original site." The doctrine is explained in the leading case of *Lopez* vs. *Muddun Mohan Thakur*, 13 M.I.A. 467, and has been followed in all later cases. This right prevails against a claim based on the other doctrine of "lateral accretion." See the latest case of *Secy. of State* vs. *Maharaja of Pittapur*, A.I.R. 1938, Mad. 470, in which it has been explained that where there are two competing claims, one based on "re-formation on the site" and the other upon "lateral accretion," the former must prevail. It has further been held in this case that no presumption of abandonment of title, even though 70 years have elapsed, arises: for, from the nature of things, the owner of submerged lands exercises no acts of ownership over it during the period of its submergence. See also the case of *Tarakdas Acharyya* vs. *Secy. of State*, P.C., A.I.R. 1935, 39 C.W.N. 994. Also the case of *Kesava Prasad Singh* vs. *Secy. of State* (1926), P.C. 31 C.W.N. 717, in which it has been laid down that abatement of revenue for the period of submersion does not extinguish this right.

thrown up in its bed after the Decennial Settlement, the question was not free from controversy till the decision of the Privy Council in the case of *Secretary of State* vs. *Sir Bijoy Chand Mahatap Bahadur** in 1921. The view taken in this case is that the material question in every case is whether the *char* has formed on a site which was a river at the time of the Decennial Settlement. If so, it is, under Regulation II of 1819, liable to further assessment; and it is immaterial that the river lay within the limits of the zemindary of the proprietor.†

With whom settlement to be made: Reg. XI of 1825.

21. The next legislation on the subject is the Bengal Alluvion and Diluvion Regulation XI of 1825. Section 4(1) of this Regulation lays down that where the *char* is an accretion to riparian estate, the proprietor of the estate is entitled‡ to settlement of the accretion as if it were an increment to his tenure; but where the *char* is an island in the midst of a river and the channel between it and the river is not fordable, it would be at the disposal of the Crown (section 4(3)); that is to say, that Government may settle it with any person they consider proper, or keep it under direct management. But

* 48 I.A. 565, I.L.R. 49 Cal. 103, 26 C.W.N. 619; followed also in *Secy. of State* vs. *Jatindranath Chowdhury*, (1924) 29 C.W.N. 1 (P.C.) See also *Secy. of State* vs. *Saratsundari Debi*, (1923) 29 C.W.N. 195.

† In other words, it is not necessary that the *char* must have formed on a site which is strictly a "public domain." It was held also that section 31 of Regulation II of 1819, which exempted waste lands *within* an estate, did not apply to *chars* in a river.

‡ He is in law the proprietor of the accretion, which corresponds to *incrementum latens* of the English law (provided it is not in the site of another private individual's estate), and if he does not agree to the revenue assessed, he is entitled to a *malikana* allowance (see paragraph 26 *post*).

As to the meaning of "gradual" in the section, it is not without a significance that the word "imperceptible" in English law is not used. The reason may be the difference in the condition of Indian rivers. Yet the meaning of the word has not been free from controversy. In a Madras case of 1936 it has been held that an accretion formed in a single flood-season, and remaining unchanged thereafter for 30 years, is not "gradual" accretion: *Narayani* vs. *Krishnan Nanbiar*, A.I.R. 1936 Mad. 138, 161 I.C. 111. See also the case of *Secretary of State* vs. *Raja of Vizianagram*, 49 A.I.R. 67 (P.C. 1922), 26 C.W.N. 348; also *Secretary of State* vs. *Foucer and Co.*, A.I.R. (P.C.) 1934, p. 83. See also para, 23 *post* and footnote thereunder.

before Government can take such a course, another essential requirement, as laid down in the section, is that the bed of the river " is not the property of an individual;" that is to say, that the river was not included within the limits of an estate at the time of the Decennial Settlement. If it was so included, the proprietor of the estate would be entitled to possession, though he may be subject to an assessment of revenue if the site was a river at that time.

Comparison of surveys: Rennell's survey.

22. But there was no survey at the time when the Decennial Settlement was made. Major Rennell had made a survey in 1764 to 1777, and his maps were published in 1781. These maps were prepared on such a small scale and showed so few permanent landmarks, that it was not possible to re-lay them with the degree of accuracy required for the purpose of assessment of revenue, when there was a controversy. It was not till 1847 that " revenue surveys " were legalised (section 3 of Act IX of 1847) and provision was made for comparative surveys of lands on the banks and beds of rivers at intervals of not less than ten years, so as to ascertain the extents to which lands might have been washed away or added. Sections 5 and 6 of the Act next laid down that when such surveys disclosed that lands had been washed away, the Revenue Authorities " shall without loss of time make a deduction from the *sadar jama* " of the estate concerned, and when land was added, they " shall without delay assess the same with a revenue." Zemindars have generally been reluctant to take abatement, probably through an apprehension that it might lead to loss of right* when the land would re-form. Abatements on account of diluvion of a permanently settled estate or portion of such estate have been

Comparative Revenue Surveys: Act IX of 1847.

* But the right is not necessarily lost : see the Privy Council case of *Keshava Prasad Singh* vs. *Secretary of State*, (1926) 31 C.W.N. 717.

Such right does not vanish even in the case of the holder of a permanent tenure, although he may have claimed or accepted remission of rent in respect of land washed away : *Arunchandra Singh* vs. *Kamini Kumar*, (1913) P.C. 41 I.A. 32, 41 Cal. 683, 18 C.W.N. 369. See also *Ram Nandan Shahay* vs. *Jaigobind Pandey*, (1924) Pat. 213, 75 I.C. 955.

very rare, though there have been frequent comparative "revenue-surveys" under Act IX of 1847, and additional revenues have been assessed by settlements (called *Diara** operations) of alluvial accretions and islands.

Rules of settlement.

23. These settlements are made according to the rules in Regulation VII of 1822, read with Regulations X and XI of of 1825, Acts IX of 1847, XXXI of 1858 and IV (Bengal) of 1868. If the riparian estate is a permanently settled one, the settlement may be also permanent; but as a rule all *Diara* settlements are temporary, usually for a term of 15 years, and the estates formed are kept separate as "temporarily settled estates." The total area of *Diara* estates, excluding those in the Sundarbans, may be estimated at about two million acres,† yielding a land revenue of about twenty lakhs of rupees. It is true that many rivers in Bengal have deteriorated, but yet it is difficult to say that they have shrunk by as much as two million acres. The explanation lies in the fact that the zemindars have very rarely taken abatements for diluviated lands, and the areas of these lands are thus left unaccounted.

Fair rents of all grades of tenants to be determined at every revision.

24. At every revision of settlement as well as at the first resumption proceedings, it is usual now to settle fair rents for the raiyats and tenure-holders, where any, under the Bengal Tenancy Act, on the basis of a record-of-rights prepared under Chapter X of that Act. In any case, the principles laid down in the various sections of that Act for the determination of fair and equitable rent have to be followed: *vide* section 191. We have seen in Chapter X that these principles do not rest on any theory of what should be the fair proportion of the produce‡ from the land which the raiyat should pay as rent. They presuppose an existing rent, howsoever

* Probably from "daria" meaning a flowing river.

† A considerable portion of this area is, however, either mere sand or is not fully fit for proper cultivation.

‡ Regulation VII of 1822 required, generally, that the Collector should ascertain "the extent and produce of the land" in determining the *jumma*, but these provisions are not applicable to Bengal, *vide* section 2 of Regulation IX of 1833.

fixed, and indicate how it can be enhanced on the ground of rise in prices and fluvial action. The initial rent of a raiyat in *char* lands is left to such amount " as may be agreed on between him and his landlord " [section 180(1) (b)]. Thereafter, the ground of " increase in productive powers due to fluvial action " operates in particular to alluvial lands; and section 34(b) limits enhancement on this ground to not more than one-half of the value of the net increase in the produce of the land. In every settlement the lands are classified according to the degree of productivity attained by deposit of silt or otherwise, and at the next revision a comparison is made as to whether the particular land has reached a higher class. It is, however, generally found that the landlord has already raised the rent by agreement with the raiyat, and in practice this contractual rent is recognised and taken as the basis of re-settlement with the zemindar. The rents of the raiyats may, however, be reduced if the soil has been deteriorated by deposit of sand or other specific cause: section 38(1) (a).

Diara assessment usually at 70 per cent. of the gross assets.

25. The settlement or re-settlement of revenue is made under Regulation VII of 1822, taken with the subsequent enactments mentioned in paragraph 23 *ante*. Where the *char* is an accretion arising from gradual recess of a river, it is considered as an increment to the estate of the riparian zemindar (section 4(1) of Regulation XI of 1825). He is thus entitled to possession and settlement of the accreted lands. Where the accretion is not on the site of a previously diluviated part of the estate for which revenue is being already paid, it is subject to assessment of new revenue. The usual practice is to give the zemindar and all grades of tenure-holders (if any) a consolidated allowance* of 30 per cent. of the " gross assets," reserving 70 per cent. as Government revenue.†

* " Consolidated," *i.e.*, including the expenses of collection and profit.

† Compare the standard of 50 per cent. in the " Land Revenue Policy of the Indian Government, 1902," for ordinary temporary settlements. In *Diara* settlements, the usual allowance to the zemindar and tenure-holders is 30 per cent.: but where there are several grades of tenure-holders (as would happen when there

The amount of the " gross assets " is calculated by taking the " raiyati " rents of such lands as are held by " raiyats," and a fair rent for the lands held *khash* by the zemindar and the tenure-holders, and deducting any authorised allowance for embankments and like items.

Malikana allowance to recusant proprietors.

26. If the zemindar declines to accept the assessment offered by the Collector, the lands may be either let out in farm to another person or held under direct management of Government, for a term not exceeding 12 years at a time (sections 3 and 5(3) of Regulation VII); but in such case the zemindar is entitled to an annual *malikana* (proprietary) allowance of not less than five per cent. of the amount which he may have tendered, and failing such tender, not less than five per cent. of " the net revenue derived " by Government " on account of the year preceding that in which the Collector may make the said requisition."*

Subordinate tenures, when zemindar does not take settlement.

27. The taking over of a *Diara mahal* under direct management of Government or letting it out in farm, on the refusal of the zemindar to take settlement, does not, however, affect the possession of subordinate tenure-holders or raiyats. The tenure-holder immediately under the zemindar is liable to pay to the Government or its farmer such rent as may be determined by the Settlement Officer as fair and equitable. There is a difficulty where the tenure-holder had stipulated with the zemindar for a lower rent. Section 191 of the Bengal Tenancy Act lays down that such stipulation is not binding on Government if it is contained in a lease or contract made *after* the passing of the Act, *viz.*, 14th March, 1885.

are several grades of them on the adjoining mainland), this percentage has to be raised, as each grade of tenure-holder must be allowed a profit of at least 10 per cent. under section 7 of the Bengal Tenancy Act.

* *i.e.*, requisition calling upon the zemindar to state the highest amount of *jumma* for the payment of which he may be willing to engage.

Riparian tenants.

28. Apart from any lease given by the zemindar specifically for the accreted lands, the doctrine of *jure alluvionis*,* which entitles him to the accretions, applies also to the riparian tenants of all grades who hold the adjoining lands. They are entitled to possession, according to their respective status, of the accretions directly in front† of and adjacent to their tenancies. This is recognised in section 4(1) of Regulation XI of 1825. But the tenant is subject to additional rent for the same reason as the zemindar is subject to additional revenue to Government. Under section 86A of the Bengal Tenancy Act, as amended by Act VI of 1938, a tenant is entitled to abatement when the land of his tenure or holding diluviates; but he retains his right therein for twenty years, that is to to say, he is entitled to possession if the land re-appears at the site within twenty years.‡ As for a permanent tenure-holder, see footnote under paragraph 22 *ante* (p. 260).

Where char extends beyond mid-river.

29. So far the position is simple enough. But difficulties arise where the accretion extends beyond the middle of the river (*i.e.*, of the river as supposed to have been at the time of the Decennial Settlement). Two circumstances may arise in such a case, *viz.*—(1) the channel between the outer limit of the *char* and the opposite bank may be shallow and fordable, or (2) such channel may be deep and not fordable. In

* For the conception of the same idea by ancient Hindu jurists, Doss, in his "Law or Riparian Rights" (Tagore Law Lectures, 1889), pp. 172, etc., refers to the following text in Vrihaspati: "Land yielded by a river (or given by the king) is acquired by him on whom it is bestowed. If this be not admitted these men cannot make any acquisition through acts of God (or royal favour)." According to the opinion of "Hindu Law" experts, laid before the Dewany Adalat so far back as 1814, "the proprietary right in alluvial lands of the Ganges and such like rivers, the same being connected with one of the banks, vests in the proprietor of such bank." Markby, Lectures on Indian Law, Vol. II, pp. 251-53.

† The theory is the same as in the case of proprietors, and is explained in *Shahabuddin* vs. *Kaiiluddin Tarafdar*, A.I.R. 1937 Cal. 18, 167 I.C. 130, *viz.*, in perpendicular lines dropped from the common boundary point of *asli* lands on the old river bank to the new river bank.

‡ He has, however, to pay arrear rent in respect of the land which has reappeared for the period during which it was lost or for four years, whichever is less. It has yet to be seen how this provision will work in practice.

the former case the doctrine of *aqua filum medium** is applied, and the portion of the *char* which lies beyond the middle line of the supposed old bed of the river, is treated as accretion to the estate on the other side of the river. In the latter case the position is somewhat complex. It is explained by Mr. Doss, in his " Law of Riparian Rights," thus : Where the bed of the river or stream belongs to the owners of the adjacent soil and not to the Crown,† the portion of the *char* outside the " middle line " would belong to the proprietor of the opposite bank, because the ownership of the bed at the site was in that proprietor. But where a private river or stream is the boundary of two estates, and it *imperceptibly* changes its course, the " medium filum " of the *new* channel becomes the boundary line. Where, however, the change is *sudden*, the original " medium filum " continues to mark the boundary between them.‡ Section 2 of Regulation XI of 1825 reserves such questions to local " usage."

Island-chars :

30. Islands formed in the midst of a large navigable river present a different aspect. Section 4(3) of Regulation XI of 1825 lays down that where the bed on which the island is formed, is not the property of an individual, and the channel of the river between such island and the shore is not fordable, it shall, according to established usage, be at the disposal of the Crown. This means that in such circumstances no zemindar is entitled to claim a settlement of the island, but the Government

* See *Olappamanna Nanakal* vs. *Secretary of State*, 51 I.C. 770 (Madras), in which it is observed that it is a part of the Common Law of India that the ownership of river beds *usque filum aqua* is presumed to vest in the riparian owners on either bank.

† Where the bed belongs to the Crown, the fact that the *char* has extended beyond the " middle line " will not affect the claim to settlement by the riparian owner from whose side of the estate the accretion has been continuous without any intersecting non-fordable stream.

‡ For fuller discussion see Doss's "Law of Riparian Rights" (Tagore Law Lectures, 1889), p. 172, etc. For the Ancient Hindu Law on the subject, Mr. Doss refers to the following text in *Vrihaspati* : " Where a river forms the boundary between two villages, it gives or takes away land according to the good or bad luck of persons. When there is diluvion of the bank on one side of a river, and deposit of soil on the other, then his possession of it shall not be disturbed."

may deal with it in whatever manner it may think proper. Apart from non-fordability from either bank, an essential condition, before Government can treat the land as entirely at its disposal, is that the site on which the island is formed, is not the property of an individual. The bed of a large navigable river is *prima facie* the property of the Crown, but it will be the property of the zemindar if it was included within the limits of his estate at the Decennial Settlement: see paragraph 19 *ante*.

Comparative surveys.

31. It will have appeared from the above general discussion regarding alluvial lands, that difficulties must often arise in identifying the site of any *char*, so as to ascertain whether it is within the limits of permanently settled areas or a particular permanently settled estate. The procedure adopted by Revenue Authorities in resumption proceedings or in revisional operations, is to compare their own survey with a previous revenue-survey under Act IX of 1847. But still it is open to a party to contend that the position of the river was different at the time of the Decennial Settlement. Major Rennell's survey made about 15 to 25 years before that Settlement, taken with other documents such as *chauhaddibandi* papers, have sometimes been used.* Any dispute which arises usually gets settled during the general *Diara* operations: but when such dispute arises in the intervening period, between two or more proprietors, each attempting to take possession of a new formation, there may be a likelihood of riots and other disturbance. To obviate this, Bengal Act V of 1920 provides that when there is such apprehension, the Collector may attach the alluvial land and take it in his charge. He is required then to make a survey of the

Act V of 1920 to prevent breach of peace.

* See *Haradas Acharjya Chowdhury* vs. *Secretary of State*, 26 C.L.J., p. 590. *Chauhaddibandi* papers (or, as also called in some districts, *hudabandi* papers) giving boundaries of villages, and Quinquennial Papers under Regulations XLVIII of 1793 and VIII of 1800, as also partition papers and *Chittas*, etc., of a time prior to the first Revenue Survey under Act IX of 1847, if reliable, may all be usable as evidence.

land, and submit a reference to the Civil Court for an adjudication of the dispute.

Sundarbans and other Tracts Outside the Permanently Settled Estates

Rights of Government to assess: and proprietary right.

32. The Preamble to Regulation II of 1819 explained that Government had "the right to assess all lands which, at the period of the Decennial Settlement, were not included within the limits of an estate for which a settlement was concluded with the owners." The disposal of such land, whether by grant, lease or assignment, rested with Government, and Government thus asserted the right of proprietorship in such lands. The position (though with reference to the Sundarbans only) was explained thus in section 13 of Regulation III of 1828: "The uninhabited tract known by the name of the Sundarbans has ever been and is hereby declared still to be the property of the State, the same not having been alienated or assigned to zemindars or included in any way in the arrangements of the perpetual settlement."*

The Sundarbans: customary process of reclamation.

33. At the time of the Decennial Settlement and till the early periods of the last century, salt manufacture on an extensive scale used to be carried on in certain parts of the Sundarbans. But in the other parts the process of reclamation by enterprisers who cleared the forests, constructed embankments and inducted tenants to cultivate the lands, proceeded in the same manner as in the rest of the Great Gangetic Delta in the earlier periods. The attention of the authorities to these reclamations and to the possibilities of increased revenue with organised methods of settlement by the State, was drawn by Mr. Tilman Henckell† (the first

* But once these lands have been leased out to "lotdars," and they have let out to "raiyats" and the "raiyats" to "under-raiyats," Government becomes only a "limited owner" quite as much as the zemindar in a permanently settled estate.

† Henckell's efforts failed, and one reason was that some of the neighbouring zemindars claimed all lands as far as the sea. By the year 1792, all the leases

Judge-Magistrate of Jessore) as early as 1784, but no systematic action was taken till about 1810. The first step taken was a survey of the Sundarbans by Mr. W. E. Morieson during the years 1811 to 1814. A Regulation (IX) was next passed in 1816 appointing a Commissioner of Revenue "for the performance of certain duties connected with the public resources in the tract of the country ordinarily called the Sundarbans." Regulation XXIII of 1817, passed in October of the following year, laid down the procedure to be followed for the assessment of areas in the Sundarbans which had been reclaimed by private individuals, and which were outside the limits of the settlements made with the adjoining zemindars. The Preamble to this Regulation stated: "There is reason to believe that extensive tracts of lands, lying within that part of the country which is ordinarily denominated the Sundarbans, and which at the period of the Permanent Settlement were entirely waste, and not included within the limits of parganas, mauzas or other known divisions of estates for which a settlement was concluded, have been brought into cultivation and are now occupied by individuals without payment of revenue." Section 10 of the Regulation next laid down that the resumption and assessment of these lands "shall be regulated by the general rules contained in the Regulations for the settlement of lands paying revenue to Government; and the Revenue Authorities shall follow generally with regard to them the same course as is ordinarily adopted in respect to unsettled mahals excepting, of course, in cases in which the undisputed proprietary right to the lands may be vested in Government." The reclamations which were proceeding in the Sundarbans area from before the time of the Permanent Settlement, were usually effected under leases taken from the adjoining zemindars, and called by various names as *patitabadi*, *jungleboori*,

Early Regulations of 1816 and 1817.

granted by Henckell were obliterated, except sixteen in three blocks which are still known as Henckell's Talooks: see F. E. Pargiter's "Revenue History of the Sundarbans, 1765 to 1870."

bhati, abadi, etc. Such of these as had been created before the Permanent Settlement, but were not brought under assessment at that time, came within the first part of section 10, and were settled in perpetuity according to the older Regulations. The others were thus treated as entirely at the disposal of Government in its proprietary right. The disputes thus centred round two questions, *viz.*—(1) what were the limits of the estates settled in 1793, and (2) whether any reclaimed area was taken into account in the assessment of revenue made at that time.

Substituted by Regulation II of 1819.

34. Regulation XXIII of 1817 was repealed by Regulation II of 1819, but section 3(2) of the latter Regulation specifically mentioned the Sundarbans as liable to assessment in the same manner as any other unsettled *mahal.* Regulation IX of 1825 next extended the provisions of Regulation VII of 1822 to the Sundarbans also, *vide* section 2(3). But with regard to the unreclaimed lands, where there were no individuals in occupation, the problems were different. The question here was—*either* (1) that Government should take upon itself the task of clearing the forests, constructing the *bundhs,* and then inviting cultivators to take up cultivation directly under Government; *or* (2) that specified tracts should be leased out to persons who had the necessary capital and were willing to take up these preliminary works and then induct cultivators on the land. There was no question of *existing* assets on the basis of which a *jumma* could be fixed. It was the latter plan which was adopted and from which have developed what are now known as the Sundarban "lots." Regulation III, passed in 1828, declared that "the uninhabited tract known by the name of the Sundarbans has ever been and is hereby declared still to be the property of the State" (section 13). It then provided for an authoritative demarcation of the boundaries* of the Sundarbans, and final adjudication

Regulation III of 1828.

* The survey thus made was conducted by Lieutenant Hodges, and is known as Hodges' survey. Previously to this, Mr. Prinsep had surveyed (1822-23) the

of disputes which might arise in the demarcation. The general plan was that specified tracts would be granted, leased or assigned to individuals who " shall be entitled to hold or take possession of any tract . . . . . so granted or assigned without question or opposition."*

Perpetual leases of 1830.

35. The settlements of Sundarbans " lots " have thus been regulated by special Rules, called later the Waste Land Rules, issued from time to time. The first Rules were those of 1830. They provided for leases in perpetuity, the first twenty years being rent-free, and thereafter the rent, to state generally, was to be Rs. 1-8 per acre. But there was a condition that one-fourth of the total area of a " lot " must be brought under cultivation within five years. About 860 square miles, or over half a million acres, were settled in 98 lots, under these Rules; but a good many lapsed for inability on the part of the grantees to reclaim one-fourth of the area within five years, and other causes.

Ninety-nine years' leases under the Rules of 1853.

A new set of Rules was issued in 1853, on more liberal terms. It was realised that an average rate of Rs. 1-8 per acre, even though not enforceable till 20 years afterwards, was too high. The rate was reduced to 6 annas per acre, to be reached gradually in 50 years. The proportions of reclamations required were reduced to one-eighth in 5 years, one-fourth in ten years, one-half in 20 years and so on. The period of the lease was, however, restricted to 99 years, renewable at its expiry on such terms as Government might prescribe. The earlier grants were also permitted to be commuted to leases under the new Rules, the period of 99 years being counted from the date of the first grant under the Rules of 1830. About 250 square miles were settled under these Rules.

line of forest from the river Jamuna to the river Hooghly, and divided the tract into blocks, which were numbered by Lt. Hodges from 1 to 236.

* Public Officers were enjoined to assist them : and any party feeling aggrieved might sue in the Court of Adalat or before a Special Commissioner under this Regulation.

Forty and thirty years' capitalist leases of 1879.

The Rules were revised several times after 1862, and ultimately a new set of Rules was issued in 1879. Leases under these Rules are classified into two classes, *viz.*—(1) those for " Large Capitalists " and (2) those for " Small Capitalists." The former were for lots of 200 acres or more in area; and the latter were for smaller " lots " with less than 200 acres. The period prescribed for the first was 40 years, and for the latter 30 years, with a rent-free period of ten years and two years respectively. The maximum rents were 12 annas to Rs. 1-8 per acre, a deduction being made for one-fourth of the area and also, according to the terms, for the expenses of maintaining the embankments.

Bengal Tenancy Act regulates the rights, etc., of sub-tenants.

36. The above account explains the reasons for the varieties of the conditions which have developed with the settlements in the Sundarbans by " lots," with persons of the landlord class. They are not " zemindars " in the technical sense of that term, and their rights are not those of a " proprietor " of land. The Bengal Tenancy Act of 1885 applies to the whole of the area, and although the arrangements between the Government and the " lotdars " are governed by the Crown Grants Act, 1895, the tenants under the " lotdars " are either " tenure-holders " or " raiyats," with all the rights and privileges allowed to such tenants by the former Act.

Effect of 1853 and 1879 Rules.

37. The plan of settlement by " lots " under the Rules of 1853 and 1879 has clearly been a success. Extensive areas have been reclaimed, protected and brought under cultivation; and the record-of-rights, recently prepared, shows that the " gross rents " derived by the *lotdars* fully satisfy the expectations with which these settlements were made. The average incidence of rent of the raiyats in this area is slightly higher than that in the permanently settled estates: it is about Rs. 5 to 6 per acre or one-eighth of the average gross produce.*

* The main crop is paddy and probably the outturn is greater: but the risks and privations of the cultivators are also heavy.

38. So it was that when proceedings were taken up in recent years for the re-settlement of those lots for which the term had expired, the rental assets of the " lotdars " were found to be such as might justify a heavy increase in the assessment if the rules in the Regulations or in section 7 of the Act of 1885 were strictly applied. But in consideration of the special circumstances of the area and the need of constant watchfulness to prevent deterioration, more liberal principles were adopted. The previous arrangement of exempting one-fourth of the total area of a " lot " from assessment was continued. In the case of those " lots " which had been held under the Rules of 1853, the assessment has been fixed for a term of 30 years at one-third of the assets of the remaining area. For re-assessment at the end of the period, it has been stipulated that the demand would not exceed 45 per cent. In the case of those " lots " which had been held under the Rules of 1853, the assessment has, however, been higher, *viz.*, 65 per cent. on the same three-fourths. A deduction of 5 to 15 per cent. was also made as embankment allowance. The term of this assessment is also 30 years.

Recent re-settlements.

39. Direct *raiyatwari* settlements have been attempted since 1904, in some parts of the Sundarbans; but, to state generally, these cannot be said to have been successful. The efforts of the Colonisation Officers in the 24-Parganas and Bakarganj are, however, commendable, and have a salutory effect on the management of the private " lots " in the neighbourhood.

Raiyatwari settlements in the Sundarbans.

40. The portion of the Jalpaiguri district on the west of the Tista river was formerly a part of Rangpur; it is permanently settled and is typical of Lower Bengal generally. The portion on the east is known as Western Duars and was obtained from Bhutan in 1866. Act X of 1859 and Act VI (B.C.) of 1862 were duly extended to this latter area: and since then the Bengal Tenancy Act of 1885 has also been extended, but with certain important modifications which re-

Jalpaiguri-Western Duars.

serve the right of Government to impose conditions under the Waste Land Rules. This part of Jalpaiguri comprised mainly of " extensive forests and wastes " such as were contemplated in the earlier Regulations. In such areas the settlements are temporary, very much in the manner of settlements by " lots " in the Sundarbans, and are regulated by the special Waste Land Rules. The leases are mainly for growing tea, and in 1937-38 the total area under tea-plantation was 132,200 acres.

Outside these tea-leases, there are also " Jotes " or tenures held under the proprietorship of Government, which are comparable with the " lots " in the Sundarbans, though some might be traced to an earlier origin.* The " Jotes " are heritable and transferable, and a " Jotedar " may sub-let. The sub-tenants, called " Chukanidars " and " Dar Chukanidars," are " tenure-holders " governed by the provisions of the Bengal Tenancy Act. The rents of " Jotedars " are liable to revision from time to time according to the general principles in this Act, subject to the terms and conditions of the leases, where any.

Noabad taluks in Chittagong.

41. The extensive forests and waste lands in Chittagong outside the permanently settled estates, were also treated in the same manner as similar other tracts mentioned before, in which the proprietary right was vested in the Crown. A peculiar feature here, however, is that patches of ground which had been reclaimed by *talookdars* after 1764, though before the Decennial Settlement of 1789-90, were also treated as comprised within the proprietary area of the Government. These were called " noabad taluks," meaning newly cultivated or cultivated after 1764.† They are all

* An extension of the same ancient practice of reclamation, which gives the origin of many " Jotes " in the part of the district which lies on the western side of the Tista.

† Certain taluks created during the settlement of 1848, from excess lands of the permanently settled estates, were separately settled with the proprietors of those estates. They are also sometimes called " noabad taluks," but the talukdars in these cases are " proprietors " and not " tenure-holders."

" tenures " directly under Government, and the difference between them and the leases in the Sundarbans or the Western Duars, is that they are " permanent tenures," *i.e.*, not held for any limited period, with rents which are enhancible according to the provisions of section 7 of the Bengal Tenancy Act.

Darjeeling.

42. Darjeeling was ceded by the Raja of Sikkim in 1826. A small area of about 15 square miles is permanently settled, and by far the bulk of the district belongs to Govenmrnt in proprietary right. The tenancy conditions are regulated by Act X of 1859 which is in force in this district.*

Chittagong Hill Tracts.

43. The District of Chittagong Hill Tracts has an area of a little over three million acres, of which over one and a half million acres are forests and uncultivable hills. Actually cropped area is a little over two hundred thousand acres,† of which one-half grows rice. About 58,000 acres grow cotton, which is the special crop of the district.

The Chittagong Hill Tracts were constituted a district in 1860 by Act XXII of that year. The special feature of the administration of the district is that it is held by three Chiefs‡ with certain customary rights and privileges over the native population. There is no special Tenancy Act, and the tenancy conditions are governed by the Rules made under section 18 of Regulation I of 1900. This section empowers the Local Government to make Rules to regulate or restrict

* Excluding the Forests, the settled area is distributed as below :—

	Area (in sq. miles).	Revenue (Rupees).
Permanently settled ...	15	316
Temporarily settled ...	81	1,01,327
Directly under Government ...	486	2,82,943

The net cropped area according to the Agricultural Department's Season and Crop Report of 1937-38 is 187 thousand acres, of which 63,400 acres grow tea.

† Season and Crop Report of the Agriculture Department, 1937-38.

‡ Called Bohmong, Chakma and Mong.

the transfer of land, to provide for the collection of rents, to prohibit or restrict the emigration of cultivating raiyats from one Circle (of a Chief) to another, and to regulate the procedure of office. There are two kinds of cultivation, *viz.*—(1) *jumming*, or shifting cultivation, a practice which is native to the nomadic habits of the people; and (2) regular or " plough " cultivation. For the former, the Rules regulate the power of the Chiefs to tax the house or family; and for the latter Government fixes the rents by " leases " to individuals.

Assessment of Non-agricultural Lands in Government and Temporarily Settled Estates

Assessment of non-agricultural lands.

44. The recent Bengal Act XIX of 1936 lays down certain principles for the assessment of land-revenue on lands not used for agricultural purposes, in temporarily settled estates and Government Khash Mahals. Prior to this, the assessment in Town Khash Mahals used to be made according to the executive instructions of Government, issued from time to time.* The materials on which such assessment can be based are ordinarily :—

(1) rents at which similar bare lands may have been settled at about the same time, and on similar terms, in the vicinity :

(2) rack-rents of the lowest grade tenants-at-will :

(3) market-price of similar land in the vicinity.

The practical difficulty in applying these *data* arises from the fact that the lands may be already developed by buildings, and it is not always easy to find out the letting

* But there were doubts as to whether, when the tenant did not agree, the rent fixed by the Revenue Officer could be enforced. The only other method was to institute a suit for ejectment and then obtain a compromise with the tenant. There is no provision in the Transfer of Property Act authorising the Court to settle fair rent as in the case of agricultural tenancies under the Bengal Tenancy Act

value or market-value of hypothetical bare land from value or rents which may be found to be obtaining from land with buildings on it.

45. However, the executive instructions in the Govern-Estates Manual of 1933 were :—

Executive instructions.

" In giving a long-term lease, *salami* should be charged at the initial settlement. The rate should be according to local conditions. A good working rule would be to fix the *salami* at 20 per cent. to 40 per cent. of the capital value, and the rent at not less than two per cent. of that value. When the *salami* is low, the rent should be correspondingly high. When no part of the value is taken as a premium or *salami*, the full rent obtainable may be taken as 6 per cent* of the capital value.

" The capital value will be estimated, from the recent records of sale-prices of similar land, at the sale price *plus* twenty-two times the current rent at the time of sale."

Act XIX of 1936.

46. The general principle laid down in section 6 of Act XIX of 1936 is that the rent must not exceed four per cent. of the market-value of the land, subject to consideration of the rates of rent generally paid for non-agricultural lands with similar advantage in the vicinity and any special conditions and circumstances attaching to the holding.

The Act does not apply to cases of " homestead " lands to which section 182 of the Bengal Tenancy Act applies. According to this section when a person who holds some land as a " raiyat " or an " under-raiyat " (as defined in the Bengal Tenancy Act), in the same village or a contiguous village, the incidents of the tenancy in respect of his " homestead " land would be the same as those of his raiyati or under-raiyati holding, as the case may be.

* 3½ per cent. Govt. paper sold at Rs. 88-4 in 1933, yielding thus 4 per cent. return to the purchaser. In 1936, when Act XIX was passed, the price of 3½ per cent. paper was Rs. 99-15.

Redemption of rent or revenue.

47. In some of the Town Khash Mahals, such as Calcutta, parts of Panchannagram, Baranagore and Chinsura,* the rent or revenue is fixed in perpetuity. The persons who hold directly under Government are practically "proprietors" with full right of transfer or disposal in whatever manner they may like. They are also permitted to obtain permanent redemption by paying 25 to 35 times† of the assessed rent or revenue.

Act XIX of 1936 not applicable to tenants in permanently settled estates.

48. Act XIX of 1936 does not apply to tenants in permanently settled estates; and in such areas, except where section 182 of the Bengal Tenancy Act applies, non-agricultural tenancies are governed by the Transfer of Property Act.‡ The tendency is to secure permanent rights from the landlord, by paying him a *salami* or consideration money.

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* The ownership of Government in these places has a historical background Chinsura was obtained from the Dutch by the Treaty of London in 1824. Dr. Duff in a sermon said: "Chinsura, through the blundering ignorance of a British Minister, was ceded to the British Crown in exchange for the magnificent island of Java." We need not discuss whether it was really a mistake. Baranagore (from Barahanagar) was occupied by the Dutch as a port for selling pork. A huge number of pigs, it is reported, used to be slaughtered here for this purpose. It was ceded to the British Crown in 1795.

† Thirty-five times in Calcutta and Panchannagram, and twenty-five times in the other two places.

‡ One indirect effect of Act XIX of 1936 would probably be that its principles would be imitated by private landlords, and become established in course of time in permanently settled areas also.

APPENDIX

List of Repealed Regulations

(1793 to February, 1834)

The list given below comprises only those Regulations which related to Revenue and Tenancy Laws and were applicable to the districts constituting the present Province of Bengal, and which have been *entirely* repealed. For the Regulations which have not been entirely repealed, see Bengal Code, 1939, Vol. I.

For the authority of these Regulations, see the Regulating Act of 1773 (13 Geo. III, Cap. 63) and the Act of 1781 (21 Geo. III, Cap. 70). For the plan of consolidation of all Regulations in a Code, see Regulation XLI of 1793.

An Act of Parliament passed in 1797 (37 Geo III, Cap. 642) indicated the manner of publication of the Regulations. Another Act of 1813 (53 Geo. III, Cap. 155) required transmission of copies of the Regulations to England to be laid before the Parliament.

1793

Number.	*Subject.*
III.	Zilla and City Courts empowered to take cognizance of all suits and complaints respecting .....land-rents, revenues, etc. (Modified by Reg. II of 1805 : partially repealed by Regs. I of 1806, V of 1833, XIII of 1833, Acts XXII of 1843, X of 1861, VIII of 1868. Final repeal by Act VI of 1871.)
IV.	Rules of procedure for above. (Modified by Regs. II of 1806, XIII of 1808. XXVI of 1814, VI of 1830 : explained or extend-

1793 (*contd.*)

Number.	*Subject.*
	ed by Regs. IX of 1799, L of 1803, XLIX of 1803 : partial repeals by Acts XIV of 1847, XII 1856, X of 1861, XI of 1864, VIII of 1868. Final repeal by Act XVI of 1874.)
X.	Regulation relating to the Court of Wards for disqualified landholders and their estates. (Partial repeals by Regs. VII of 1796, VII of 1799 and Acts XXXV of 1858, IV (B.C.) of 1870. Final repeal by Act XVI of 1874.)
XIV.	Regulation for the recovery of arrears of public revenue assessed upon lands. (Partial repeals by Regs. III of 1794, VII of 1799, XVIII of 1814, XI of 1822, VII of 1830 : Acts VII (B.C.) of 1868, XXVI of 1871. Final repeal by Act XIV of 1874.)
XVII.	Rules of distraint by landholders for realising arrears of rent due to them. (Partial repeals by Regs. XXXV of 1795 and VII of 1799. Final repeal by Act X of 1859.)
XXI.	Revenue records in Zillas to be kept in the native language. (Repealed by Act XII of 1873.)
XXIII.	Regulation for imposing a tax on shops, *ganjes*, trades, etc., in towns and villages for the expenses of Police establishment. (Repealed by Reg. VI of 1797.)
XXIV.	Regarding continuance or discontinuance of pensions heretofore paid by proprietors and farmers from their lands, but included in the *jumma* assessed.

1793 (*contd.*)

Number.	*Subject.*
	(Partial repeals by Regs. XXII of 1806, XI of 1813. Entire repeal by Act XXIII of 1871.)
XXV.	Divisions of estates for shares, to be compact: Rules therefor. (Partial repeals by Regs. I of 1801, V of 1810, XI of 1811. Final repeal by Reg. XIX of 1814.)
XXVI.	Extending the age of minority of Muhammadan and Hindu proprietors of land paying revenue to Government, to the expiration of the eighteenth year. (Repealed by Act XXIX of 1871.)
XXVII.	Re-enacting, with modifications, the rules for adjusting the assessment of land-revenue, on account of abolition of *sayer* or internal duties and taxes. (Claims preferred after 1871, not admissible: Reg. VI of 1811. Repealed by Act XXIX of 1871.)
XXXIII.	Maintenance of embankments by Government, as public works. (Partial repeal by Reg. VI of 1806. Entire repeal by Act XXVI of 1871.)
XLI.	A Regulation for forming into a regular Code all Regulations that may be enacted. (Repealed by Act VIII of 1868.)
XLIII.	Regarding grants of land to invalided native soldiers.

1793 (*contd.*)

Number.	*Subject.*
	(Modified by Reg. LVI of 1795 : and repealed by Reg. I of 1804 and Act XXIX of 1871.)
XLIV.	Prohibiting leases for more than ten years : and laying down that in the event of revenue-sale, all leases to stand cancelled. (The latter clause modified by Reg. I of 1801 : partial repeals by Regs. V of 1812 and XVIII of 1812. Entire repeal by Act XXIX of 1871.)
XLV.	Procedure on the occasion of the Civil Court having recourse to the sale of an estate : the Collector to effect the sale : power of the Board to attach in such cases : adjustment of proportionate revenue. (Modified by Reg. I of 1801, repealed by Reg. VII of 1825 and Act IV of 1846.)
XLVIII.	Quinquennial Registers of revenue-paying estates. (Repealed by Reg. VIII of 1800, Acts VIII of 1868, XVI of 1874 and VII (B.C.) of 1876.)
L.	Exempting female proprietors, when competent, from the Court of Wards. (Repealed by Act IV (B.C.) of 1870 and Act XVI of 1874.)
	1794
IV.	Postponing the dates for *Pattas* in certain districts. (Repealed by Regs. V of 1812, XII of 1817 and Act X of 1859.)

1794 (*contd.*)

Number.	*Subject.*
VIII.	Empowering Zilla and City Courts in certain cases to refer rent and revenue accounts to the Collector for report: section 13. (Modified by Regulations VII of 1799, V of 1812, and XIV of 1824: repealed by Regulation VIII of 1831 and Acts X of 1859 and VIII of 1868.)

1795

XX.	Same subject as Reg. XLV of 1793. (Repealed by Reg. VII of 1825 and Act IV of 1846. See also Regs. V and XXVII of 1795.)
XXV.	Further elaborating the Rules regarding realisation of arrears of rent by distraint of crops, etc. (Repealed finally by Act X of 1859.)
LV.	Prohibiting Civil Courts from requiring security from guardians of disqualified landholders. (*Vide* section 32 of Reg. X of 1793. Repealed by Acts IV (B.C.) of 1870 and XVI of 1874.)
LVI.	Rent-free grants of lands to invalided soldiers to be held for 10 years, though the grantee may die within ten years. (See Reg. XLIII of 1793. Repealed by Reg. I of 1804.)
LVIII.	Granting to the Collectors a commission on the *jumma* assessed on resumed invalid *lakheraj*. (Repealed by Act XII of 1873.)

1796

Number.	*Subject.*
III.	Excluding certain description of landholders from the Court of Wards : also exempting leases partly within a portion of an estate sold for arrears, from cancellation. (See section 5 of Reg. XLIV of 1793. Modified by Reg. I of 1801 and repealed by Act IV (B.C.) of 1870 and Act XXIX of 1871.)
V.	Surplus sale-proceeds in revenue or court-sales, to be paid to the proprietor. (Modified by Reg. I of 1801 : repealed by Reg. XI of 1822.)
VII.	Retrospective effect for Court of Wards, when a proprietor is provisionally disqualified. (Repealed by Act VIII of 1868.)
XII.	Raising the deposit required from an auction-bidder at revenue sale from 5 per cent. to 15 per cent. (See Regs. XIV and XLV of 1793. Repealed by Reg. XI of 1822 and Act IV of 1846.)

1797

XV.	Prescribing fees to defray the expense of the offices for keeping revenue-records in the native language. (Repealed by Bengal Act VII of 1876.)
XVIII.	Suits relating to boundaries, etc., of tenures in Chittagong and suits relating to land with value less than rupees fifty to be triable by Native Commissioners. (For Native Commissioners, see Reg. XL of 1793. Repealed by Reg. XXIII of 1814.)

1799

Number.	*Subject.*
VII.	Realisation of rents by zemindars, farmers and others, from their tenants. (Modified by Regs. IX of 1801, VIII of 1819, XIV of 1824, VIII of 1831, and Act VIII of 1835. Repealed in parts gradually by Regs. I of 1801, XII of 1817, XX of 1817, XI of 1822, VII of 1830 and Acts X of 1846, X of 1859, VII (B.C.) of 1868, IV (B.C.) of 1870. Final repeal by Act XVI of 1874.)

1800

I.	Appointment of guardians for minor proprietors of estates. (Repealed finally by Act XL of 1858.)

1803

XLIX.	Head "Native Commissioners" for trial of suits relating to *malguzari* and other lands of value not exceeding rupees one-hundred: *Munsiffs*. (Modified by Regs. XIII of 1810, XXVI of 1814: repealed in parts by Regs. XXIII and XXIV of 1814: final repeal by Act XVI of 1874.)

1805

II.	Limitation of suits—(*a*) by Government, for the assessment of land held without public revenue, for recovery of arrears of public assessment, or for any other public right—sixty years from and after the origin of the cause of action (the date

1805 (*contd.*)

Number.	*Subject.*
	not being prior to 12th August, 1765): (*b*) by private parties—twelve years. (Modified and repealed in part by Reg. XXVI of 1814: final repeal by Act VIII of 1868.)
XVII.	Guardians, natural or by Will, of minor of disqualified co-sharer proprietors. (Repealed by Act XXIX of 1871.)

1806

VI.	For more effective repair of embankments: Embankment Committees. (Repealed by Reg. XI of 1829 and Act XXXII of 1855.)

1807

XII.	Exonerating the landholders and farmers of land from the general and exclusive charge of the Police: Register of Guards and Watchmen employed by them: *Ameens* of Police. (Repealed by Reg. VI of 1810 and Act VIII of 1868.)

1808

XI.	For the adjustment of rent payable by the heirs of invalid *Jaigirdars*. (Repealed by Act XXIX of 1871.)

1809

Number.	*Subject.*
VI.	Prohibition of illicit cultivation of poppy: rescinding section 15 of Reg. VI of 1799 and extending certain sections of Regs. XXXI of 1793, IX of 1801 and XLI of 1803. (Repealed by Reg. XIII of 1816.)

1810

V.	For facilitating partition of estates, and for removing restrictions of such partition hitherto imposed on small estates. (Repealed by Reg. XIX of 1814.)
VI.	Penalties on zemindars for not giving information of robberies in their estates. (Repealed by Acts XVII of 1862 and X of 1872.)
XV.	Taxes on houses in Towns and Suburbs: function of Collectors: Assessors. (Modified by Reg. IV of 1811 and repealed by Reg. VII of 1812.)

1811

IV.	Modifying Reg. XV of 1810. (Repealed by Reg. VII of 1812.)
VI.	Rescinding such parts of Reg. XXVII of 1793 as declared holders of *lakheraj* and *malguzari* lands entitled to a compensation on account of abolition of *sayer*. (Repealed by Act VIII of 1868.)

1811 (*contd.*)

Number.	*Subject.*
VII.	Rescinding previous Regulations which empowered landholders to exercise certain Police powers. (Repealed by Reg. XX of 1817 and Act XVII of 1862.)
IX.	For facilitating the division of landed property and for securing the rights of joint shares of joint undivided estates. (Repealed by Act XVI of 1874.)
XI.	Revision of allotment of *jumma* on partition of an estate, when fraud or material error is proved : time extended. (Repealed partly by Act XVI of 1874 and entirely by Bengal Act VIII of 1876.)
XIII.	Regarding Board of Revenue. (Repealed by Act XXIX of 1871.)

1812

VII.	Rescinding Regulations XV of 1810 and IV of 1811, *ante*.
XIV.	Rescinding provisions of Reg. V of 1812 which limited the rights of proprietors and farmers in granting leases. (See Acts XVI of 1842, VIII of 1868 and XXIX of 1871.)

1813

I.	Modifying the rules regarding settlement of (Cuttack), Pargana Puttaspore and its dependencies.. (Repealed by Act VIII of 1868.)

1813 (*contd.*)

Number.	*Subject.*
VI.	Providing for settlement of suits regarding land or limited tenures therein or rights dependent thereon, by arbitration. (Modified by Regs. XV of 1824, V of 1827 : repealed by Acts IV of 1840, VIII of 1859 and X of 1861.)
XV.	Abolition of the office of *Diwan* to the Collectors of Land Revenue. (Repealed by Act VIII of 1868.)

1814

XVIII.	Regarding previous sanction for advertising for sale of portions or shares of an estate or estate under partition. (Repealed by Reg. XI of 1822.)
XIX.	Regarding partition of revenue-paying estates. (Partially repealed by Act XI of 1838, and entirely repealed by Bengal Act VIII of 1876.)

1815

I.	Regarding assessment by the British Government of *mukarari* and *istimarari* grants by any preceding Government on the demise of the holders thereof. (Repealed by Act XXIX of 1871.)
III.	Continuing the existing settlement of (Cuttack), Pargana of Puttaspore and its dependencies. (Repealed by Act VIII of 1868.)

1815 (*contd.*)

Number.	*Subject.*
V.	Suspending the operation of the existing Regulations in Pargana Bogri, for disturbances in that area. (Repealed by Reg. IX of 1817.)

1816

VI.	Settlement of (Cuttack), Pargana Puttaspore, and its dependencies for a further period of three years. (Repealed by Act VIII of 1868.)
IX.	Appointment of a Commissioner of Revenue for the Sundarbans. (Partially repealed by Act XVI of 1824, and entirely repealed by Bengal Act I of 1905.)

1817

IX.	Rescinding Reg. V of 1815 regarding Bogri. (Repealed by Act VIII of 1868.)
XIII.	Establishing Kanungoes in Midnapore and Hidgeli : and extending Reg. XII of 1817. (Repealed by Act XXIX of 1871.)
XXIII.	Declaring that lands not included within the limits of any pargana, mauza or other divisions of estates for which settlements were concluded with the owners, were liable to assessment : particularly referred to the Sundarbans : and to alluvial accretions : modified Regs. XIX and XXXVII of 1793 in their application to the Sundarbans and the districts of 24-Parganas,

1817 (*contd.*)

Number.	*Subject.*
	Nadia, Jessore, Dacca, Jalpaiguri and Bakarganj. Declaring further that this was not to be considered as affecting the right of the proprietors of estates for which a permanent settlement had been concluded to the full benefit of all waste lands included within the boundaries of their estates. (Repealed by Reg. II of 1819.)

1818

I.	Establishment of Kanungoes in the 24-Parganas, Nadia, Jessore, Dacca, Jalpaiguri and Bakarganj and extending Reg. XII of 1817 thereto. (Repealed by Act XXXIX of 1871.)
X.	Provision for more punctual realisation of public revenue in (Cuttack), Pargana Puttaspore and its dependencies: confinement of defaulters: attachment: charge of interest. (Repealed by Act XI of 1859.)
XIII.	Extending settlements in (Cuttack), Pargana Puttaspore and its dependencies, by three years. (Repealed by Act VIII of 1868.)

1824

XII.	Revival of the penalty of interest and damage on defaulting zemindars in Reg. V of 1812 (section 28). (Repealed by Reg. VII of 1830.)

1824 (*contd.*)

Number.	*Subject.*
XIV.	Collector's report on reference by the Civil Court of rent-suits to be " awards " which the Court was to execute forthwith, leaving any aggrieved party to file regular suit. (Repealed by Reg. VIII of 1831 and Act X of 1859.)

1825

VII.	Rescinding provisions in Regs. XLV of 1793 and XXVI of 1803, which required the Civil Court to transmit decrees for sale of estates to the Collector: Court itself to execute by sale, but might seek the aid of the Collector. (Repealed by Acts IV of 1846, VIII of 1859, X of 1861 and XVI of 1874.)
XIX.	Special procedure for His Highness the Nazim of Bengal, in cases of claims against him. (Repealed by Act XXVII of 1854.)

1829

XI.	Modifying the rules in force relative to the construction and repair of embankments. (Repealed by Act XXXII of 1855.)
XVIII.	Rescinding section 3 of Reg. IV of 1829 regarding Special Commissioners under Reg. III of 1828. (Repealed by Act VIII of 1868.)

1830

Number.	*Subject.*
VII.	Modifying the Revenue-Sale provisions in Regs. XIV of 1793, VI of 1795, VII of 1799, V of 1812 and XII of 1824 (see also Reg. XI of 1822) in certain details of procedure: and consolidating interest and damage at 25 per cent. per annum on the arrear of revenue due. (Repealed by Act XII of 1841.)

1831

VIII.	Collectors to hear and decide claims connected with arrears or exactions of rent (*i.e.*, not on reference by the Civil Court, provisions regarding which were rescinded), subject to separate regular suit by the aggrieved party. (Modified by Reg. VII of 1832 and repealed by Acts XXV of 1837 and X of 1859.)

ERRATA

Page		For	Read
9,	foot-note,	" Thomson "	" Robertson ".
15,	line 5,	" has been "	" is ".
32,	foot-note, line 14,	" old "	" present ".
33, 34,	foot-note,	" Radhakamal "	" Radhakumud ".
35,	foot-note,	" to land "	" to lend ".
44,	foot-note,	" literally "	" littorally ".
57,	line 7,	" adventures "	" adventurers ".
131,	line 7,	" as "	" and ".
153,	line 4,	" of "	" a ".
173,	foot-note,	" tenure-holding "	" tenure-holder ".
231,	foot-note,	" I.S. Nurunnabi "	"T.I.M. Nurunnabi"

GENERAL INDEX

A

Abbas Khan Sarwani 62.
Abdus Salam 61.
Abu Roy 234.
Abul Fazl 47, 56, 65, 70-4, 84.
Abwab 77, 78, 104, 105, 164, 173, 185, 187, 188, 193, 194, 200-01, 208, 221-22, 236.
Adhiars 6.
Agriculture, statistics 8-9, 18, 19.
,, with the Aryans 35.
,, Commission 17, 230.
Ahom 42.
Ajodhya 33.
Akbar 60, 67, 76, 79, 103, 234.
Akbarnagar 70.
Akta (*Jaigir*) 95.
Alamgir II, 113.
Alauddin Khiljy 61, 64.
Alienated lands 99.
Ali Verdi Khan 88, 112, 186.
Allen, C. 236.
Alluvial lands 247, 257-67.
Altamga 98, 99, 115, 178, 253.
Amirpur 91.
Anga 34.
Aracan 32, 68, 70, 75, 109.
Arcot, Nabob of 97.
Arthasastra 31, 49-51.
Aryan migration 33, 35-7.
Aryyavarta 32, 33.
Asami (*Raiyat*) 213, 241.
Ascoli, F. D. 118, 119, 120, 123, 126, 132, 148.
Asoka, his dominion 51.
Assam 42, 127, 160.
Auction, Settlements 83, 86, 119-22.
Audra 32, 52.
Aul land 104.
Aumil 64, 74, 175, 176.
Aurangzeb 75, 84, 99, 109, 110, 111.
Austin, Jurisprudence 172.
Ayeen-i-Akbari 47, 56, 70-4, 84, 103, 179.
Ayma 69, 98, 253.

B

Baden-Powell, 'Land Systems' of British India 33, 35, 37, 41, 42, 47, 127, 173.
Badshahi Lakheraj (See Lakheraj).
Bagri 53, 54.
Bahadur Shah 111.
Bahikas 33.
Bakargan; 11, 65, 200, 236, 245.
Balia Pargana 85, 87.
Balin 56.
Ballal Sena 53, 54.
Banaressy Ghosh 198.
Bandah-i-ali-Barga 92.
Banerjea, Dr. P. N., Finances in the days of the Company 115, 249.
Banga (Bangadesh) 32, 34, 35, 43-4, 54, 55, 171.
Banibaha, Roys of 94.
Bara-bhuiyas 58, 60, 64.
Baranagore 277.
Barendra 53, 54.
Bargadar 6, 172.
Barisha 67.
Baruas 43.
Barwell, Richard 121, 126.
Basudeva, King of Paundra 34.
Bayley, Sir Stuart 6.
Baze Zemin 87, 99, 131.
Beal, Samuel, Translation of Chinese Travels 51.
Behar 63, 65, 69, 70, 107, 120.
Benares 30, 67.
Berar 127, 159.
Bhabananda Mazumdar 67.
Bhabeswar Mazumdar 91.
Bhadrak 70.
Bhagchasi 6.
Bhaumiks 56, 57, 60, 61, 179.
Bhay Khelat 236.
Bheturia Pargana 60.
Bhowal 60.
Bhuiyas (See also Bara-bhuiyas) 66, 179, 235.
Bhukti 53, 54.
Bhulua 60.
Bhumhar 60.
Bhurshut 68.
Bhusna 60, 68, 234.
Bigha, equivalent of 73.
Bikrampur 60.
Birbhum 79, 130.
Bishaya 43, 54, 56, 61.
Bishnupur 55, 61, 69, 75, 76.
Blochman, Geography 34.
Bohmong 274.
Bombay 2, 127, 158, 232.
Boughton, Gabriel 109.

Bow Begum 89.
Brahmarshi 32.
Brahmavarta 32.
Brahmottar 25, 99.
Briggs, Lt.-Col., Land Tax in India 40.
Brit 99.
British Indian Association 218.
Buchanan Hamilton 34.
Bukhtyar Khilji 57.
Bukshian 93.
Bunjer land 103.
Burdwan 3, 52, 82, 85-7, 89, 108, 113, 188, 198, 234.
Burma 43.
Burke, Edmund 121.
Buxar, battle of 114.
Buzbuzgur 179.

C

Calcutta 4, 82, 110, 247, 277.
Campbell, A. D. 148.
Campbell, General Dugald 127, 158.
Campbell, Justice 208.
Carnac, Major 113.
Ceded and conquered Provinces 248.
Ceded lands 82-7, 118.
Central Provinces 30, 157, 232.
Cess, R. and P. W. 27-8.
Primary Education 29.
Chaharam land 104.
Chakladars 58, 61, 64, 66.
Chakma 274.
Chakran lands 26, 99, 131, 164, 251, 252.
Chamba State 33.
Chanchra 67.
Chandradwip 58, 60.
Chandragupta 41, 49.
Chandrakona 75.
Chandras 53.
Chand Rai 60.
Chaudhuries 61.
Chauhaddibandi papers 266.
Chaukidari chakran 250, 251.
Chauth-Maharatta 78, 79.
Chechar land 103.
Cheyt Singh 121.
Chiyattorer Manwantar 120.
Chikan work 56.
Chinsura 247, 277.
Chitrasen 34.
Chittagong 3, 5, 65, 79, 82, 84-5, 113, 118, 196, 236, 273.
Chittagong Hill Tracts 42, 274.
Chota Nagpur 34, 42, 43.
Chukanidar 237, 273.
Chukla 85.
Chunnacally 70.
Clive 82, 97.
Colebrooke, Sir Edward 195.
Colebrooke, Supplement 181.
Colebrooke, Thomas 132, 138, 229.
Colebrooke, H. 149.
Collective farming 207.
Cooch Behar 75.
Cornwallis, Lord 2, 14, 106, 125, 131, 134-46, 161, 165, 168, 182-4, 193, 239.
Cossim Aly 79-82, 88, 96, 136.
Crorie 176.
Cotton, H. J. S. 84.
Curzon, Lord 228.
Cuttack 70, 248.

D

Dacca 3, 4, 79, 119, 122, 198.
Dam, equivalent of 72.
Danrs (irrigation) 50.
Danujmardan Deb 58.
Darjeeling 274.
Darmiani hakdar 241.
Daroga-Adalat-al-Alia 101.
Davak 51.
Day, Sir John 129.
Dayabhaga 1, 45.
Decennial Settlement 2, 145.
Deo kharcha 89.
Desadhikars 171
Devala Smriti and Bangadesh 44.
Dewani Lands, 87-9.
Dhammathat 43.
Dhapa 82.
Dhumghat, Battle of 67.
Diara 251, 257.
Dinajpur 79, 89, 130.
Dineshchandra Sen, Dr. 53, 59, 61, 65, 68.
Distraint 196-9.
Diwan 101.
Doab 248.
Doem land 104.
Doss, Tagore Law Lectures 264, 265.
Dravidians 1, 32, 34, 42.
Drisadvati 32.
Duff, Rev. Dr. 277.
Dutt, R. C. 150, 228.

E

Elliot, History of India 61, 62, 63.
Enhancement Law 21, 201-2, 205.
Estates, Statistics of 2-4.
(See Permanently settled Estates, Temporarily settled Estates, Government Estates or Khash Mahals).

F

Fah-hien 51.
Famine of 1770, 120-21, 128, 136.
,, of 1784-87, 136.
,, Commission 217-8, 219.
Faria de Souza 56.
Faridpur 5, 7, 94.
Farman, East India Company's 109, 115-6.
Farmers-General 239.
Futwa-ool-Alamgeeree 170.

Faujdar 58, 97.
Fazl Gazi 60.
Feroz Khan 68.
Feroz Tughlaq 62.
Field, C. D. 14, 101, 169, 203.
Fifth Report 102, 199, 200 230.
Firminger, Ven. W. K. 73, 81, 84, 87, 97, 120, 121, 122, 131, 188, 198.
First clearer, Theory of 36-9.
Fitch, Ralph 60.
Fishery 108.
Fluvial action 210.
Fort St. George 96.
Francis, Philip 81, 121.
Furruksher 110.

G

Galloway, Col., Law and Constitution 170, 180-1.
Ganesh, Raja 60.
Ganti 236.
Gauhati 52.
Gaur 56, 60, 63, 79.
Ghatwal 251.
Ghaziuddin Tughlaq 62.
Ghulam Husain Salim 47, 56, 61.
Ghyasuddin I, 55.
Goalpara 68, 75.
Gobindapur 82, 110.
Goraghat 55.
Gots 42.
Gramam 3, 36, 40.
Grand, Francis 126.
Grant, James—his Analysis and Minutes 73, 87, 88, 104, 108, 110, 120, 121, 123, 129, 131, 132, 133.
Great Rent Case 21, 169, 190, 191, 192, 202.
Guha, Dr. S. C. 44.
Gupta, Rajendralal 52.
Guz—Illahee : *Sekandari* 73.

H

Haftam 198.
Hajang 53.
Halhed, C. N. 121, 129.
Halhed, N. J. 35, 39.
Hamilton, Surgeon 110.
Hambir Malla 61.
Harappa 33.
Harrington, Analysis 166; 169.
Hastabood method 75, 79.
Henckell, T. 267.
Hidaya 170.
Hijli 82.
Hodges, Lt. 269.
Holwell, J. 83, 84.
Homestead Land 276.
Howla 236.
Hudabandi papers 266.
Huen Tsang 52.
Humayun 56, 63.
Hunter, Sir W. W. 2, 58, 59, 255.
Hussain Shah 55, 56.

I

Ijara 11.
Illahee Guz 73.
Interest—Manu 38.
Isha Khan 60, 68.
Islam Khan 66, 68.
Istimrari 11, 108, 163, 174, 234, 237-9.

J

Jafir Khan (See Murshid Kuli Khan).
Jaigir(-dars) 57-9, 61, 65, 69, 74, 75, 77, 79, 82, 85, 91-8, 171, 253.
Jajnavalkya 35.
Jalpaiguri 272.
Jangalbari 68.
Jarib-ana 63.
Jarric 60.
Jather & Beri, Indian Economics 216.
Jehandar Shah 111.
Jehangir—his Ordinance 59.
Jehangir Cooly Beg 63.
Jelaluddin Khan 55.
Jellasore 70.
Jeradkhana 75.
Jessore 6, 5, 55, 58, 60, 76, 129, 130, 234.
Jhenida 58.
Jijeeat 170.
Jimutavahana 1, 45.
Jinnatabad 56.
Johnstone, Resident, Midnapore 87.
Jones, Sir William 32.
Jote, Jotedar 237, 241, 273.
Julfikar Khan 111.
Jum (jhum) 42, 275.
Jungleboory 235, 268.

K

Kabikankan 46.
Kalaketu, Anecdote of 46-7, 57, 58.
Kaliganga, Battle on 68.
Kalikata 82, 110.
Kalinga 32, 34.
Kamin 213, 241, 243.
Kanungo, Prof. K. K. 61, 62, 63, 65.
Kamrup 55, 68, 70, 75.
Kandarpa Narain Rai 60.
Kanyakubja 32.
Karatoya 32, 48.
Karkun 64.
Karna Suvarna 52.
Kartaleb Khan (See Murshid Kuli Khan).
Kashijore 87.
Kashmir 33.
Katani 54.
Katlu Khan 67.
Kaushiki 34, 43.
Kautilya 31, 49.
Kazi 66, 101.
Kedar Rai 60, 68.
Khallaries (salt) 230.

Khalsa 58, 61, 74.
Khamar 76.
Khasahs 229.
Khash Mahals 4, 8, 247, 250-1.
Khasnabis 87.
Khels 42.
Khizrpur 60.
Khudkast 106, 130, 137, 145, 148, 152, 163, 173, 186, 189, 190, 193-5, 203, 204, 208, 213, 217.
Khudkast Kudeemee 191, 192.
Khulna (See also Jessore) 6, 5, 236.
Khunts 42.
Koch 32, 48, 53.
Kolharians 1, 42, 43.
Korwas 43.
Kotwal 101.
Knight, Robert 229.
Krishan 213.
Krishnagar 67, 110.
Kulingdupat 70.
Kurukshetra 32, 48.
Kusadaha 67.
Kushidas 56.

L

Lacknauty 55.
Lakhan Manik 60.
Lakhan Sena 53.
Lakheraj 2, 5, 25, 96, 98-100, 131, 163, 247, 250, 252-7.
Lakhikanta Mazumdar 67.
Long, Rev. J., Selections 83.

M

Mabarak-ud-Daula 116.
Madadmash 69, 98, 99, 253.
Madarun 69, 75.
Madhyadesa 32.
Madras 2, 96, 127, 157, 231.
Magura 58.
Mahabharata 33, 34, 45, 48.
Mahananda 32, 55.
Mahatran 25, 99.
Maharattas 79, 87, 107, 111, 112, 117.
Maharatta Ditch 82, 111, 113.
Mahatab Rai 67.
Majha 42.
Malda 4.
Malikana 91, 120, 121, 126, 135, 171, 175, 177-8, 263.
Malthus, rent 206.
Mandalikas 54, 56.
Mangles, R. D. 149
Manki 42.
Manrique, Sebastian 60, 61.
Mansubdars 91.
Mansab-i-Ala 58.
Man Singh 66-7.
Manu 32, 35-40, 44-5, 48, 170-1.
Markby, Lectures on Indian Law 264.
Mathote 236.
Mathura 32.
Matsya 32.
Mauza 3.
Mayuradhwaj 34.
Mazumdar, Kedarnath 53.
Midnapore 4, 5, 52, 61, 70, 82, 87, 113, 118, 122.
Mills, A. J. Moffat 43.
Miras (*Maurush*) 237.
Mirat-i-Amadi 59.
Mir Jafar 113, 114.
Mir Kasim (See Cossim Aly).
Mithila 54.
Mitra, S. C., History of Jessore-Khulna 33, 53, 54, 58.
Mitra, S. C., Recovery Plan 231.
Modagiri 32, 34, 43.
Mohenjo-Daro 33.
Moira, Lord 195.
Momin, M. A. 91, 234.
Monahan, F. J., Early History of Bengal 49.
Mong 274.
Moradkhane 75.
Morieson, W. E. 268.
Moshaira (See Malikana).
Mufti 101.
Muhammad Reza Khan 88, 118, 119
Muhammad Tughlaq 62.
Muhtasib 101.
Mukarari 11, 108, 163, 174, 234, 237-40.
Mukharji, Prof. Radhakumud 33, 44.
Mukundaram 46.
Mukundaram Rai 60, 68.
Mullickpur 91.
Munda 42.
Munro, Sir Thomas 127, 158, 183.
Munsiff 64.
Muquddims 63.
Murphy, P. W., Bhagalpur Settlement Report 50.
Murshidabad 56, 79, 198.
Murshid Kuli Khan 75-8, 80, 85, 87, 91, 94, 99, 108, 111, 117, 182, 185, 194.
Muslin 229.
Mymensingh 3, 5, 53.
Mymensingh Ballads 31, 53, 59, 61, 64, 65, 85.

N

Nadia 5, 51, 55, 67, 110, 130.
Nadir Shah 112.
Nadjam-ud-doula 114, 116.
Naldanga 67, 91.
Nand Coomar 88.
Nankar 76, 89-90, 135, 175.
Native Commissioner 198.
Nawab Vizier 114.
Nazar 77, 78, 236.
Nelson, W. H. 215.
Nezam's Ballads 65.
Niladhwaj 34.
Nirikhbandy 163, 187.
Nirikhs 73, 103, 104, 194, 204-7, 212.
Nishkar 25, 257.

Noabad Talook 236, 251, 273.
Noakhali 5.
Non-agricultural lands 275-7.
Non-Badshahi (See Lakheraj).
Norman, J. 206.
Northern Circars 30, 127, 156.
North-Western Provinces 30, 127, 156.
Nowara 93, 94.
Nurunnabi, I.C.S. 231.

O

O'Kinnely, Justice 201, 203.
O'Malley, L. S. S. 140.
Opium 249.
Orissa 30, 43, 55, 61, 74, 75, 76, 87.
Oudembar 70.
Oudh 30, 41, 156.

P

Pachet 69, 75, 76.
Pahee 213, 241, 243.
Paiks 102, 164.
Pala Kings 53.
Patton, Asiatic Monarchies 717, 181.
Panchala 32.
Pancham 199.
Panchannagram 277.
Pandavas (Digvijoy) 34.
Pargiter, F. E. 268.
Patitabadi 235, 268.
Patni 12, 235.
Patta-plan 187, 188, 193-5, 202, 204, 205.
Patwari 164, 187, 196.
Paundra 32, 34, 43.
Peacock, Sir Barnes 206.
Permanent Settlement 2, 13, 26, 31, 124-55, 161-93, 234-40.
Perwoty land 103.
Peshkhush 68, 69, 75, 177.
Phanridari 251.
Pipli 109.
Pir Batasi 65.
Plassey, Battle of 112.
Polliems (Madras) 30, 158.
Poligars 42, 127, 157-8.
Poolbundy 88.
Poolej land 103.
Porto Grande 84.
Porto Piqueno 84.
Pragjyotishpur 32, 34, 43.
Pratapaditya 60, 67, 91.
Prevailing rate 205-7.
Prinsep—his survey 269.
Proprietary right 26, 161-84.
Punjab 30, 127, 157, 232.
Pura (land measure) 31, 66, 241.
Purneah 70, 79.
Pushtabandi 236.
Puttaspore 248.
Pykast (*Paikast*) 107, 163, 173, 186, 213, 241, 243.

R

Raghab Sidhantabagish 67.
Raghunandan 1.
Rai Baghini 68.
Raibir Khan 67.
Raiyat 5, 7-10, 16-7, 20-25, 30, 163, 173, 185-230.
Raja-praja 54, 175.
Raje Mahindra 70.
Rajbansi 53.
Rajmahal 70, 79.
Rajshahi 5, 89, 104, 130, 195.
Rakhaldas Banerji, Banglar Itihash 53.
Ramayana 34.
Ranas 41.
Rangpur 52, 53, 68, 75, 79.
Rapson, Prof., History of India 51.
Rarh 54.
Reduction of rent 21, 211.
Regulations (Repealed) 278-92.
Regulating Act of 1784, 123, 124, 128, 130.
Rennell, Survey by 130, 260, 266.
Rent Commission 213, 237.
Rent-realisation 105-6, 223-6.
Rent-receipts 221-2.
Revenue-surveys 3, 260, 266.
Rice husking 66.
Rig-veda 33, 34.
Rise in prices 207-10.
Riyazus-Salatin 47, 61.
Rouse, Sir Broughton, Dissertations 60, 180.
Rudyard Kipling 114.
Russia 207.
Russoom Nezarat 236.

S

Sadbhag (one-sixth) 54.
Sakina 68.
Salikha, Battle of 68.
Salt-lands 17, 120, 230.
Samatata 52.
Samudragupta 51.
Samudrasen 34.
Saranjami 88.
Sarfaraj Khan 112.
Sarkar, Prof. Sir Jadunath 59, 61.
Sasaram 63, 64.
Satgaon 52, 56, 84.
Satra'it 68.
Satsyka 130.
Sayer 88, 102, 108, 186.
Sebandi 102.
Seir Mutaquerin 60, 69.
Sekunder Shah 57, 62.
Sena Kings 53.
Seraj-ud-Daulah 112.
Service lands 26.
Seton-Karr, Mr. Justice 208.

Shah Jehan 109, 110.
Shaista Khan 110.
Shamasastry, Prof., Arthasastra 49.
Sher Khan 56.
Shere Shah 57, 61-5.
Shibottar 25.
Shore, John (Sir John, later Lord Teigumouth) 71, 74, 80, 88-91, 95, 99, 104, 106, 120, 129-33, 136, 143, 161, 165, 174-9, 193, 195, 208, 234.
Shujauddin, Nabob 78.
Sicla Gurhy 70.
Sikdar 58, 61, 64.
Simandari lands 251.
Sindh 127, 159.
Sircars (Circars) 64, 70.
Sisson, Report of 145, 195.
Sitaram Rai 76.
Soèm land 104.
Sonargaon 52.
Sookhasan 71.
Spinning & Weaving 66.
Sripur, Siege of 68.
Stewart, History of Bengal 55, 56, 61.
Strachy, H. 130.
Suhma 32, 34, 43.
Suja, Sultan 74, 77, 109.
Sundarbans 47, 58, 75, 82, 235, 247, 251, 267-72.
Supervisors 74, 118.
Sura dynasty 53.
Surasena 32.
Suryya Majhi 54.
Sutanati 82, 110.
Suwaud of Iraq 170.
Syeds of Burhur 111.
Syedpur 91.
Syef-ud-Daulah 116.
Sylhet 43, 70.

T

Talook 108, 234-42, 249.
Tamluk 70, 82.
Tandah 70.
Tawfir 77, 79.
Taranath (Tibetan monk) 51.
Tarikh-i-Shere Shah 62.
Tatar Khan 56.
Taxation Committee 206.
Tenure-holder 11-5, 234-46.
Teria Gurhy 70.
Thackeray, William Makepeace 126.
Thakurs 41.
Thompson, Sir Rivers 219.
Thompson, W. H. 16, 17, 31.
Tibet 55.
Tippera 5, 69, 75.
Tilakchand, Raja 82.
Timur, Institutes 178.
Todar Mal 65, 68, 69-74, 175, 234.
Town Khash Mahals 275.
Transferability 216-20.
Tuksheem 72.
Tumar 72.
Twenty-four Parganas 3, 82, 83-4, 113, 118.

U

Udayaditya 67-8.
Under-raiyats 5, 6-7, 214-5.
Union Boards 29.
Upa-Banga 32, 43.
Uraons 43.
User of land 220-1.

V

Verelst, Henry 81, 85, 86.
Village 3.
Vinashana 32.
Vincent Smith, Early History of India 51, 52
Vrihaspati 265.

W

Warren Hastings 175.
Watters, Thomas, Yuen-Chwang 52.
Wells, H. G. 112.
Western Duars 272.
Westland, James 58, 84, 123, 129.
Williams, Law of Property 166, 169.
Wise, Dr. James 60, 65.

Y

Yin-tu (India) 52.

Z

Zeminder 2, 5, 26, 56, 64, 67, 71-82, 125-6, 161-84.
Zemindary Settlement of Bengal (Book) 182.
Zia Barani 62.
Zimm (Jaigir) 95.