# THE BOOK WAS DRENCHED

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and great expense both of blood and treasure (supposing the case to have occurred in barbarous times, when such disputes were not unfrequently adjusted by the sword). At length, after having secured themselves against all antagonists from without, reclaimed the rebellious inhabitants, protected them in their industrious pursuits, secured them in their persons and property, encouraged them in their commercial dealings, in extending their cultivation, increasing their manufactures,—the population multiplied, the country flourished, happiness prevailed, and wealth abounded.

It would, indeed, be a hard measure of justice, to mete to those who had been the entire instruments, under Providence, of producing a change so beneficial, if they were to be denied any participation in the fruits of their own labour.

Yet those who, like this writer, denounce the English nation for abstracting from India, through the medium of the Company, this "public and private tribute," are guilty of precisely the same species of injustice, but in a degree aggravated, in proportion as the reformation which the India government has wrought was not only more difficult, but the number of those who have benefited by it is past all comparison greater than any parallel case could suffer us to imagine.

The amount of this "public and private tribute" is stated by this writer, in his usual loose and unsatisfactory way, to average for fifty-five years, from 1765 to 1820, £2,000,000 per annum; or, in all, £110,000,000. But he deigns not to notice the value of exports to India by the Company in goods, stores, and in bullion, during the same period, though we know, on better autho-

rity than this writer, that at the period he commences his debtor and creditor reckoning, *viz.* 1765, these exports in goods and stores, *exclusive of bullion*, till 1792, varied from £357,764 to £415,264 per annum; and that the cost of the investments from India during that period, *viz.* from 1766 to 1792, did not exceed, but varied from £803,336 to £1,222,832, valuing the current rupee at two shillings and threepence, which is thirty-four per cent. above its real value; reducing the amount of investment from the average of £1,000,000 to £600,000; from which, if we deduct the English exports, this "enormous tribute abstracted by the Company" will not exceed £200,000, instead of £2,000,000 annually, or one-fifth part of what he states it to be. And here we have not reckoned the bullion which the Company remitted to India, nor the bills drawn by the India Governments on them, in payment of the investment. This is probably sufficient to cast a doubt over this author's account of the "public tribute." But there is a document existing which refutes our author's calculations specifically and entirely. I allude to the statement drawn up by Mr. N. Smith, Chairman of the Court of Directors, which, on the 1st of March 1790, shews a balance of "debt due by India to England of nearly five millions sterling."

But, for the sake of argument, admitting that England did really benefit by India to the extent of £2,000,000 per annum, does it prove that India has suffered to this extent, or suffered at all, or that she has not gained for herself £20,000,000 yearly by her connexion with England, by the abstraction of these £2,000,000 of tribute from her; for there is nothing inconceivable in an agent benefiting both himself and his constituent. It is, therefore, possible to imagine, that those who managed the affairs of India benefited both India and England, and that the extent

extent of that benefit may have been ten times, aye, ten hundred times, greater to India than to England.

Nor would the imagination, however much expanded, exceed the reality of the case. It is impossible to conceive, far less to appreciate, in pounds, shillings, and pence, the incalculable benefits which England has conferred on India. It is equally impossible to foresee to what extent it may please the Almighty Ruler of Nations farther to employ the same instrumentality. The history of the world, however, the history of our own nation, the history of our own times, forbid us to employ the means prescribed by this writer for ameliorating the condition of India, if we desire to continue to England that instrumentality, either efficient in degree or permanent in duration; for when we colonize we must quit India.

Another topic discussed by this author is what he is pleased to call the "Territorial System of India." But as he adds nothing to the commonest stock of information on that head, but, on the contrary, does very much pervert the real nature of the India territorial system, it is not my intention to follow him at any length through the two chapters of his book appropriated to this subject. The writer who, at this time of the day, gravely tells us that "the land-tax is nine-tenths of the rents, and that "as the country is cultivated by a sort of *metayers*, this constitutes "a much greater proportion of the gross produce than would be "implied by an equally heavy tax on rent in Great Britain," (p. 164), must either himself be grossly deceived, or design to mislead others.

The wide range which this author takes when he s

"Territorial System of India," where variety instead of system prevails, renders it impossible to correct him through the whole; but as he talks of the "permanent settlement" of the Bengal provinces, and quotes Lord Cornwallis, Mr. Shore, Mr. Colebrooke, &c., I presume he alludes principally to that system; it being, moreover, the only "territorial system" as yet permanently adapted.

Now, according to the territorial system of India, properly considered, there is no such thing as a "land-tax" *and* a "rent." The "land-tax" and "rent," properly speaking, are one and the same thing. In those districts not subject to the permanent settlement, this is seen clear enough. There the person who undertakes to cultivate engages to pay the dues of the land to the government collectors; and by the permanent settlement the only departure from this rule is, that in most cases a third person was introduced, who engaged to pay the dues of the land. These dues were fixed by the permanent settlement, and beyond that no augmentation of the dues on the land was ever sanctioned by government. To represent the government, therefore, as extorting "nine-tenths of the rents," and the land to be cultivated by "a sort of *metayers*," is precisely in our author's best style of composition.

The *amount* of the land-tax, or dues levied from the land, is a fair object of inquiry. But in doing this we must not forget that, with the exception of the dues on the land, there is absolutely no other tax in India that affects the agriculturist. The land-

England and of India, therefore, do not represent the same

But waiving this essential difference, let us look into the

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The late agricultural distress in Britain has given birth to many suggestions for its prevention in future. Among others, Sir George Mackenzie proposes to adopt a valuation of the average produce, as a datum for adjusting rents between landlord and tenant, convertible into money: the shares of the produce to be in *thirds*; one-third to go for the expense of cultivation, which he states as a thing admitted to be an ample allowance, and the other two-thirds he proposes to divide between the landlord and the tenant: an ample share, it must be admitted, to the latter, considering that the public burdens are payable by the former, and that the capital invested in the stock and implements of husbandry cannot, in any case, be equal to the value of or capital vested in the land.

But supposing, in England, where the price of labour, especially agricultural labour, is at least four times, and including manure, perhaps ten times higher than in India, one-third of the crop is deemed sufficient to defray the expense of cultivation, including of course seed, what rate shall we fix for the expense of cultivation in India? But allow *one-third*, as in England. Mr. Colebrooke, whose authority will not be disputed, and quoted too by this author, states "the average produce of a beegah (of 1,600 square "yards) to be, at a medium, seven and a half maunds of rice in the "husk, and three and a half maunds of pulse or other grain." Here we have eleven maunds of grain; which, though Mr. Colebrooke rates them at less, may yet average one rupee per maund: but say nine rupees for the eleven maunds. Deduct one-third for expense of cultivation, there remains a profit of six rupees from this beegah; which may become a rent, because, if the owner chose to cultivate, it would be a nett profit, less however the land-tax. And what is the amount of that land-tax

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from this beegah, yielding a profit of six rupees? If it lay in Bengal or Behar, it would be, according to Mr. Colebrooke, a fraction above ONE-FOURTH OF A RUPEE! for he rates the average number of beegahs in those provinces cultivated at 95,000,000, and the land-tax was 25,000,000 of rupees*.

So that, as usual, we find on analyzing this author's statement, instead of "*the land-tax being nine-tenths of the rent*," it is, as above, just one twenty-fourth, that is one twenty-fourth part of the produce, after paying the expense of rearing it; leaving the remaining twenty-three twenty-fourths as a clear profit to the landholders who shall choose to take the trouble of cultivating.

It is surely needless to go beyond this on the subject of our author's "Territorial System." His next labour is bestowed in shewing us, very complacently, how we are to abolish the East-India Company, and to manage India after the abolition: to abolish that Company, whose interests, he tells us, are so diametrically opposed to those of India, who, in spite of the revelations of Mr. Ricardo and the modern economists, have been guilty of the unpardonable obstinacy of adhering to the ancient transgression of consolidating every species of taxation into the dues levied from the land, and of the unparalleled oppression of wringing these from the "life-blood of the people," to the unheard-of amount of no less than ONE THIRTY-SIXTH PART OF THE PRODUCE!!!

But as there is really nothing in this division of our author's labour to defray the expense of extracting, I shall let it remain where it is; and take leave of a work which certainly has afford-

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* See Husbandry of Bengal, and the printed Revenue Accounts.

ed me no pleasure in perusing, and as little information on the subjects of which it treats.

Though quite unnecessary for a writer on India affairs to apologize for sending an anonymous production to the press, the practice having been so general among them, my reason is, that as I cannot flatter myself that my name will add to, it is but fair that I should not suffer it to detract from the weight due to my opinions.

*February* 6, 1824.

# OBSERVATIONS,

*&c. &c.*

## CHAP. I.

*On the Law and Constitution of India.*

THE British Legislature has declared that "the Indian "subjects of Britain shall be protected in their rights "according to the *laws and constitution* of *India.*" But what "laws and constitution" are here meant, it has been doubted whether the lawgivers themselves knew. It is assumed, indeed, that laws and a constitution do exist; but that a matter so important should remain ambiguous—that the "laws and the constitution," by which the rights of so large a portion of the human race are here commanded to be protected, should not be known, is truly marvellous.

After so many years of British government of India, one might expect, at least, that there had been no want of endeavour, on the part of its rulers, to discover what "laws and constitution" did exist in India, and to expound the law, for the guidance of their subjects in obeying, and of their judges in administering it; and we accordingly find that some of its greatest governors have been most anxious in the attempt. But, whether the means adopted were insufficient I know not: certain it is, they have failed; for when we turn for information to

what has been written on the subject, we are forced to lay down the unsatisfactory volumes in profound mortification.

Almost any kind of regular government, following the distracted and tyrannical misrule which pervaded India during the decline and fall of the Moghul empire, could not fail to be hailed as a blessing by the inhabitants of that kingdom; and to this it is, probably, we owe the acquiescence of our Indian subjects in our judicial system, more than to any real excellence of its own. Assuredly, however, it is unworthy of the high character justly maintained by the Indian government in other departments, to rest satisfied, in this, with the mere acquiescence of their people: a people, too, but little skilled in the affairs of government (or, if informed, only taught in the school of anarchy and corruption), and to suffer them to be governed by laws, and by "regulations and laws," such as those now prevalent in India; enacted, doubtless, with the very best intention, but being founded on no system, have been made to partake of all, and are now become a compound of legislation to which no parallel is to be found.

So long ago as the year 1807, a "Digest of the Re-"gulations and Laws enacted by the Governor-General "in Council for the Civil Government of the Territories "under the Bengal Presidency," was published by Sir J. E. Colebrooke. This "Digest" consists of no less than three ponderous folio volumes. We may conjecture the enormous mass whence so copious a digest was produced.

But the reader will be still more surprised, when he is told that this immense body of "rule and regulation," instead

instead of *defining rights*, is principally taken up with settling forms of procedure and judicial formula; and that it contains not one word, or scarcely one, of the law of India; and which, indeed, the British Government, in these Regulations, professes to administer to its native Indian subjects: so that, after wading through this waste of legislative wisdom, the student of law, supposing him previously qualified in Arabic and in Sanskrit, has to commence his legal studies of Moohummudan and Hindoo jurisprudence; a field not less extensive, nor perhaps less studded with thorns, than that which he has passed through.

In short, the rules which are to govern so many millions of the natives of India, with our well-known maxim of *ignorantia juris* staring them in the face, are, if not incomprehensible, certainly unknown. They may be said to be, as laws, totally unintelligible. Existing partly in English, partly in Arabic, partly in Sanskrit, they seem as if enacted to be concealed rather than promulgated; the former language being unintelligible to the governed, and the two latter to the governors. And to increase this chaotic confusion, the codes of Menu and of Moohummud are to be expounded by *native expounders*, who profess, indeed, but do not understand them; and to be administered by *European judges*, who do not even profess to understand either.

This, as a judicial system, can be approved by no intelligent being. So far, indeed, as separating the *expounding* and *administering* functions, I think I can see in it a humble copy of the Moohummudan establishment of a Kazee or judge, with a Mooftee to assist him: the projector forgetting, however, that under the prototypi-

cal system the Kazee was himself a Mooftee, and equally eminent, or more so, than his coadjutor, for his knowledge of the law.

Were the fact unknown, it would appear incredible, that the laws which are administered under the British Government in India should, at this day, remain a mystery, even to the judges who preside over their administration; that there is no establishment under Government, either in India or in England, in which the laws and constitution of India are taught to their servants, destined to sit as judges of the law: nay, that there is no book, treatise, or other work, from which a competent knowledge of the law may be acquired, as yet rendered into our vernacular language.

It is, consequently, not much to be wondered at, if the information of the general reader, relative to the "law "and constitution of India," be extremely limited. Particular pursuits have led me to consider the subject; and although I do not hope to be able to satisfy all my readers, yet I am confident that, whatever my success may be, an endeavour to shew what "law and constitution" formed the law and constitution of conquered India, at the period of the statute in question, and was consequently alluded to in it, will be favourably received.

Let it not be imagined from what I have said, that my design, in the following pages, is only to criticise or condemn. No one can be more fully sensible than I am, how much necessity has been the parent of many existing defects, nor of the difficulty, perhaps impracticability, of remedying them. But as I most confidently believe that there is no individual connected with the Indian Government,

ment, either at home or abroad, who does not make the welfare of that country, and the prosperity of the British Government over it, the most anxious wish of his heart, I am confident those worthy and patriotic individuals will not deny me the same benevolent motives, but will ascribe my strong, plain, perhaps occasionally unmeasured style and manner of expression, to the anxiety I feel to co-operate with them, as far as my humble talents will go, in the same most worthy cause, by endeavouring to point out to those in power where and how to improve the system of administration as adopted for India. To discover defects is the first step towards improvement: and an important one it is, when, as in this case, those who have the power have also the will to improve.

My first object of inquiry, then, is—What is the "law "and constitution of India?" There are, I apprehend, only two sources whence a satisfactory answer to this fundamental question is to be obtained; namely, the *law of the conquerors*, and the *history of the country*. From these I purpose to draw such information as the compass of an essay, like this, may enable me to submit.

I am then to inquire into the nature of *tenures*, with reference to the question so often agitated, "In whom vests "the property of the soil under the British government "in India; whether in the *Sovereign*, in the *Zumeendar*, "or in the *Cultivator?*" In doing which I shall, first, shew the law applicable to the question; and secondly, note such historical records as may serve to shew what, *de facto*, was the nature of such tenures under our predecessary Moslem government of India.

I shall notice, also, the different kinds of tenure recognized by the law: whence it will be seen what are *heritable*, what are *resumable*, how far the antient tenures in existence at the Moohummudan conquest are good, and what parts and portions of the soil could, at that period, have been matter of *transfer* or *settlement;* or to which a proprietary right could otherwise be *legally* acquired.

I shall then advert to the tenures recognized by the British Government, their *origin* and *nature;* whether *permanent* or *limited, free,* or evince *liability to be assessed* for the revenues of the state.

I shall afterwards shew the *nature* of *taxation* and *extent* thereof, as recognized by law under a Moohummudan government; what was levied by the Moslems in other conquered countries, as in Syria, Iraak, &c. and held by law as precedents in case of future conquest; what by law was leviable in India; and what *de facto* they did levy.

To these will be added observations on the *permanent settlement*, and on the present *revenue* and *judicial administration*, and *system of police*, as established under the British Government in Bengal.

What is the "law and constitution of India" to which the Legislature refers, as above; by which it declares that "the rights of the natives shall be protected?" There are two codes of law or constitutions known to *us* in India, the Hindoo and the Moohummudan; totally distinct, however, in themselves: so that, as they never could have been, and certainly never were, *combined*, either the one or the other must be distinctly pointed at.

Is

Is it the Hindoo "law and constitution," then, or the Moohummudan "law and constitution," that is meant by the Legislature as the law, &c. of India?

I must, however, pause here, and observe, that when we speak of a "Hindoo law of India," we assume the previous existence of a paramount Hindoo government; a fact which ought first to be established. I ask for records, to shew that there ever was a regular Hindoo government established over India. We know that a number of petty states, or Rajahships, existed at a late period, and even now exist. These have been magnified into kingdoms and independent principalities. Independent, indeed, they may have been who held them, as in a rude state of society every head of a family is independent and absolute; but we have no authentic account of a Hindoo paramount monarchy: whilst, on the contrary, Mr. Ward notices the names of "fifty-three separate kingdoms" in India. (vol. iii.) *Arrian* tells us, "according to Megasthenes, India was divided into one hundred and twenty-two several nations:" and we are told that, so long ago as 1450 years before Christ, India was conquered by the Persians; and, as Dow states, "paid tribute, and was ever after in some measure dependent on Persia."

Ferishta declares, that the Hindoos have no written history better than the heroic romance of the Mahabarut. It is, indeed, contrary to the analogy of history to believe, if there had been a regular government over India, that in the course of two thousand years, no one prince should have appeared to rescue his country from the Persian yoke; for that is the period between the eras of the Persian and Moohummudan conquest of India by Mahmood.

But supposing that their Persian conquerers suffered the Indians to rule themselves by their own laws, to which of the fifty-three separate kingdoms, according to Mr. Ward, or one hundred and twenty-two several nations as Megasthenes has it, are we to go for the "constitution of India?"

Whether we look to the laws of the Hindoos (I mean those which have been given to us as such) for more than we reasonably ought to do, I shall not say; but their real value, many are of opinion, is not great. Even their *antiquity* has been questioned; perhaps justly. It must be admitted, however, by their most strenuous advocates, that judging of what may be yet to unfold of the Hindoo law by that which has been translated, no high opinion can be entertained. I will not speak irreverently of their code, as a late historian does, who says, the laws of the Hindoos are "puerile, and worse than puerile, stained with brutality." *(Mill.)* But I am constrained to think that the law of the Hindoos, as given to us, is neither so antient nor so valuable, "and certainly not so familiar to the people, as to merit attention."

There is a propensity in man to magnify the value of whatever is rare or unknown that happens to be discovered by himself. Sir William Jones was unquestionably an eminent man, but he was greatly addicted to the above-mentioned propensity. Many of his followers, too, have been somewhat enthusiastic; and there is little doubt that the fame of the Hindoo law and literature has been augmented thereby. The propensity I advert to runs strongly towards antiquity; and, accordingly, we find that Sir William takes some trouble to raise the value of his Hindoo code in this respect.

"Of

"Of the Law of Menu," (or, as it is also written, Munnoo), Sir William Jones tells us, "we have some evidence, "partly extrinsic and partly internal, that it is really one "of the oldest compositions existing." Then he states his *evidence* (which, however, amounts to little more than mere conjecture), that the "original of this book must "have received its present form about 880 years before "Christ:" and then, in a very significant manner, he adds, "whether Menu, or *Menus* in the nominative, *Menos* in "the oblique case, be the same person with *Minos*, let "others determine." But why did Sir William rest satisfied with this? for it would have been just as easy to prove, by etymology, a much higher antiquity to the Laws of *Munnoo*, thus aptly enough: *mun* or *min*, "from," and *Noo*, "Noah;" that is, *Minnoo*, or *Min-noo*, from Noah; meaning that the work was, really, the production of the second father of the human race, whom the Asiatics call *Noo*, but subsequently converted into a proper name, as is not very unusual. Thus, "the law *Men-noo*" may be translated, "the Law of *Menu*," or the Law *from*, or *of*, Noah. A lawyer ought not to have been satisfied with such *evidence*.

All that Sir William asks, however, though granted, would be very little satisfactory; when, at best, he would only establish the origin of the Hindoo law to be *posterior* to the period when India ceased to be an independent state, and became "tributary to Persia," on the authority of the Mahabarut and of the historian above mentioned; that event taking place 1450, instead of 880 years before Christ, the date assigned by Sir William to the code of Menu.

But according to Ælian (Var. Hist. lib. 4 chap. 1.) and Alex.

Alex. ab. Alex. (lib. 4. chap. 17. quoted by Purchas) "the laws of the Indians are *not written.*" Another difficulty in the way.

But for the sake of avoiding the discussion of a question of difficult solution and of little consequence to my investigation, and supposing the Hindoos to be in possession of an authentic body of law, the point to be ascertained would still remain: Is it the *Hindoo* "law and constitution," or the *Moohummudan* "law and constitution," which is the "law and constitution of India?"

That it is not the former I have undertaken to prove. All must deem this, at least, *probable*, who advert to the mere fact, that six to eight centuries have elapsed since the country has been ruled by the triumphant and intolerant Moslems. We cannot believe, indeed, that a Moslem, who had the *power*, even the legal power, to exterminate the Hindoos as idolaters, would have the *will to adopt* and to *administer* their law and constitution, *and to subject his Moslem conquerors to it.* It is impossible to suppose that a Moslem, by exercising, would contribute to the permanence of the laws and constitution of an idolatrous and conquered people. The Mohummudan prince who should have attempted this, would, by the sacred law of *his* saviour, have subjected himself to the pains of apostacy; and by the ordinary laws of the human mind, to the contempt and execration of those in whom alone he was powerful.

During the whole period of the Moohummudan history in India, though we have seen that Hindoos were employed even at the head of other departments, we have never heard of a *Hindoo judge;* and assuredly no Moohummudan

hummudan Kazee could ever have been found to administer the laws of Menu.

The public law (I mean that publicly administered, as well as that to which the sovereign could be a party, that between the sovereign and the people) I conclude, therefore, was indisputably Moohummudan; and that is the only law with which, in a question of this nature, we have any thing to do. The more tolerant princes may have sanctioned indulgences in cases of private succession, where the interests of the Hindoos alone were the subject of discussion; but, *in foro judice*, a question of private right, even of inheritance among Hindoos, could not have been decided except by the Moohummudan law, which accordingly provides for such questions, and declares that "they are to be determined as between Moslems," with certain limitations, however, which are applicable alike to *all* non-Moslem subjects. Even on the delicate point of inheritance, the Moohummudan law says, "a non-Moslem subject shall not *take* (inherit) in virtue of a marriage which by *our law* is illegal." *Zeylaaee, Súraúj, Moheet*, &c.* It would, indeed, be absurd to suppose, that questions of property in lands, of revenue, finance, police, where the rights, interests, or regulations of the sovereign were involved, could ever have been remitted to the decision of any tribunal but that of Islaum.

This much for the *probability* of the case. Let us see what the *law* of the conquerors is.

By the Moohummudan law, the Daur-ool-Hurb, as a foreign

* These are celebrated commentaries on the Moohummudan law, as well as the Jaumeaa-oor-rumooz and Zauhedec, mentioned in the following paragraph.

foreign province, becomes the Daur-ool-Islaum; that is, becomes annexed to the Moohummudan dominions "by "the *mere act of conquest*, and the exercise of *even a part* "of the law of Islaum in it." "That country is the Daur-"ool-Islaum," says the *Jaumeea-oor Rumooz*, "in which "the laws of the Moslemeen prevail;" and, adds the same writer, "it is stated by *Zauhedee*, that according to the "unanimous opinion of the learned, the Daur-ool-Hurb "becomes the Daur-ool-Islaum, by the exercise of even "*some* of the laws of Islaum in it."* Profession of the Moohummudan faith on the part of the inhabitants is not a condition. Therefore, by the Moohummudan law, India undoubtedly was the Daur-ool-Islaum: nay, is held by law to be so now; for it is not a necessary condition that the sovereign be a Moslem.

If, then, by law, the empire of India, by virtue of the Moohummudan conquest, become the Daur-ool-Islaum, that is a part of the Moohummudan dominions, it would have been absolutely contrary to law, even an heresy, in its most formidable shape, to have suffered any law or constitution to exist in India but that of Islaum. Every law, even private right and interest, which existed in the country prior to the conquest, by that act alone perished; and so strong is the Moohummudan law on this point, that supposing even a Moohummudan subject to have previously taken up his abode, and to have acquired lands or houses in India, by the mere act of subsequent conquest by the Moslems, the lands of their domiciled brother would fall to the conquerors, along with those of the conquered infidel, although his personal property would be secure to him.

"Nay

* Jaumeaa-oor Rumooz, voce "*Seeur*," or the military and political law.

" Nay even (says the learned Zeylaaee and others) if a " Moslem subject went into a foreign country (the Daur- " ool-Hurb), and therein purchased lands, and that " country were subsequently conquered by a Moslem " army, such lands would be held as conquest, like those " of the other subjects who are infidels."

" Nay, if a *Hurbee* (an alien unbeliever) enter the " Moohummudan dominions under a passport, leaving a " wife and children, old or young, and property in trust " in his own country, whether in the hands of a Hurbee " or of a Moslem therein, and were he to embrace the faith " in the Moohummudan dominions, should a Moslem " army conquer his country, all these (his wife, children, " and property) are prize to the conquerors."*

Here, then, we have not only the destruction of all public law, but of all private rights, by the mere act of conquest of an infidel country by a Moslem army. How then can it be imagined, that the Hindoo law can have survived the Moohummudan conquest of India?

The Moohummudan law of conquest is explicit; and the first act of the conqueror is required to be to carry the law into effect, either by partitioning the spoil and lands among the conquerors, or by fixing the *khurauj*, or public revenue on the lands, and the capitation tax on the heads of the conquered. The inhabitants are first called to embrace the faith. If they become converts, they enjoy all the privileges of Moslems; if they refuse, they are then called upon to pay the capitation tax; for if they consent to this and to pay the *khurauj*, it is not lawful to put them to death.

كل

* Surauj

كل ارضٍ فُتِحَت عنوةً وتُرِكَت علي ايدِي اهلِها فالامامُ انّهُ يضع علي اعناقِهم الجِزيةَ اذا لم يسْلموُا وعلي اراضِيهم الخَراجَ اسْلَمُوا اَو لم يسْلموا

"All land conquered by force of arms and suffered to "remain in the hands of the people, the Imaum shall fix the "capitation tax upon the inhabitants (*lit.* on their necks), "if they do not embrace the faith; and on their lands the "khuraúj, whether they embrace the faith or do not."

This is the Moohummudan law of conquest; and it is mandatory, and not optional, to establish the law of Islaum within the Moohummudan dominions. Even questions of inheritance among non-Moslem subjects, as I have before stated, are not left to the decision of any other than a Moslem tribunal, but must be decided according to the Moohummudan law, and by Moslem judges; for every judge must be a Moslem, as is stated by all writers on the law.

And it is of importance to note that in the "*Futava-ool Aalumgeeree*," a celebrated work on the Moohummudan law, compiled in India under the patronage of Aurungzebe, expressly for the government of his Indian subjects, the chapter of the Law of Inheritance, entitled "of inheritance among non-Moslem subjects," is preserved entire, as compiled from the original law of Arabia. "They "shall *take*," says this work, "among themselves, by *blood* "and by *compact*, as Moslems *take* among themselves. "The *progeny* of a marriage which is legal by *their sacred* "*books*, though illegal by *our* law, shall not be debarred "from inheriting; but the parties to a marriage which is "illegal

" illegal by *our* law, shall not take in virtue of such " marriage." And the test of an illegal marriage, as we find in the *Surauj*, is, " were the parties to become Mos- " lems would the marriage be legal ?" Here, then, the Moohummudan law on the most delicate point is maintained, and an exemplary liberality at the same time shewn to the innocent progeny. The same is found in the other works on the Moohummudan law; but I mention this work in particular, on account of the peculiarity of its origin.

This is the written " law and constitution of India," as published under the sanction of the Emperor himself, little more than fifty years before the English power became paramount in Bengal.

We now come to the historical part of this branch of the subject; and I trust that I shall be able to corroborate, from history, my position, that the " law and constitution of India " is Moohummudan.

From the time of the conquest of that country by Mahmood the First, or about the year of our Lord 1000, the Moslem power prevailed in India; and we are told by Ferishta, that this said Mahmood " was a virtuous prince, " and reflected glory upon the faith of Islaum." And in the year 1008, after he had destroyed the idols of Nagracote, his answer to Annundpal of Lahore, when he begged him to spare Tannesir, is well known. " I have " resolved," said he, " by divine aid, to root out idolatry " from India, and why should I spare Tannesir ?" So also may I refer to the congratulatory letter from the Khalif of Baghdad, who was then the Moohummudan Pontiff, to this same prince, on his success against the infidels,

infidels, in which he confers on Mahmood the title of "Guardian of the faith of Islaum." It is not likely that such a conqueror would hesitate to establish his laws.

*Balin*, in 1265, as Dow tells us, "observed the "Moohummudan law, and ordered the Soobahdar of "Badown, Malik, to be put to death, in retaliation for "the murder of a poor woman's son." Here is the Moohummudan law observed to the strict letter in the most severe and exemplary manner; the governor of a province suffering the punishment of the law for the murder of the poorest individual. Is it possible that the sovereign, who had firmness to do this, would want either inclination or nerve to enforce obedience to laws?

It was about this time (*i. e.* about A.D. 1260) that the Moghul Emperor of the neighbouring kingdom of Persia, Ghazan Khan, having a diet or assembly of the most eminent sages and principal military commanders, assisted by the learned professors, theologians, Kazies, and superiors of the several religious orders in his empire, ordered them to prepare a code of regulations for his dominions, prefacing his orders with a magnanimous address, which proved alike the liberality of the individual prince and the regard of Moslem potentates to their established faith in those times. See Kirkpatrick's Institutes of Ghazan Khan, published in the New Asiatic Miscellany, page 171.

*Feroze II.*, again, in the case of the celebrated Seyud Mullah, prohibited among his subjects the ordeal by fire, "because it was contrary to the Mohummudan law." (Dow.) This was about 1290.

*Allah I.*

*Allah I.* was a tyrant; and Ferishta tells us "he broke "through all the laws and customs which were by the "Moohummudan law left to the decision of the courts of "justice: he, however, studied the law himself, under "the tutelage of a Cazee." This was in the year 1300. So we are told that *Moohummud III.* was strict with respect to public and private worship, and ordered the five daily prayers to be read in the mosques. "He sent an embassy "to Mecca to procure the confirmation of his title to the "empire from the Khalif." Reigned from 1324 to 1351.

*Timour I.* invaded India in 1327. The Soobadars of the provinces had rendered themselves independant during the previous troubles. Timour confirmed all those who submitted to him and determined to hold possession of the empire.

It is to be observed, that at this time the Soobadars were all Moslems.

Of Guzaret the Soobadar was Azim.

| | |
|---|---|
| Malwa | Dilawer. |
| Kenouj, Oude, Khurrah, Juanpore | Khaja Jehaun, who called himself King of the East. |
| Lahore, Debalpore, Moultan | Khezzar. |
| Samana | Ghaleel. |
| Biana | Shums. |
| Mohabah | Moohummud. |
| Mewat | Mobarik and Buhadoor. |

And it is stated by Timour himself in his Institutes,

" that he established his kingdom on the religion and " law of Islaum; that the first of his regulations was to " promulgate the religion and law of Moohummud in every " town, city, and province; and that he regulated his " empire by the Moohummudan religion and law."*

" I appointed," says he, "one of the descendants of " Aalee, a man of talent, to the office of Suddarut (equi- " valent to our Lord Chancellor), to take charge of ap- " propriations by wukf, and to appoint incumbents to " those benefices, and to nominate to every city and pro- " vince Kauzees and Mooftees, and police officers, and to " assign *sey-oor-ghaul* (public funds), and maintenance " to the descendants of the Prophet, to the learned, the " holy men, and those to whom the law gives a claim for " public maintenance."

In 1291 the Deccan was conquered by Allah, and Moohummud III. made Dowlutabad the capital of his empire.

" In the reign of Secundus I. a Moohummudan had a " dispute with a Brahmin on the subject of his idolatry, " in which the Brahmin said he believed the same God to " be the object of worship of both, and that the Moohum- " mudan and Hindoo religions were equally good. The " Moohummudan summoned the Brahmin before the " Kazee. The case made a great noise in the country, " and the Emperor called together all the Moohummudan " doctors of fame in the empire to decide the question. " The decision was that the Brahmin should be allowed " the option of the faith or the sword. He chose the " latter and was put to death, A.D. 1499."†

*Baber,*

* Page 176. † Dow.

*Baber*, who settled in India A.D. 1525, assumed the title of *Ghazee*, which signifies fighter for the faith.

*Akbar*, in 1556, succeeded his father Hoomayoon, the son of Baber. This prince, celebrated for his wise government, framed his "Institutes" almost literally after those of his renowned ancestor, Timour; and both institutes, as well as the code of Ghaznan Khan the Moghul Emperor of Persia in A.D. 1260, are in all essential points strictly conformable to the Moohummudan law. The whole establishment of a Moohummudan government is clearly seen in those Institutes, combined, however, with other regulations suitable to the times and to the mixed population of the empire: a power which the Moohummudan law expressly recognizes and vests in the sovereign.

The capitation tax on the Hindoos, the most ignominious lawful impost of Islaum, existed as late as the fortieth of the reign of Akbar, who was the most liberal, if not enlightened prince of his time. It was remitted by that most tolerant monarch, though contrary to his religion and law, probably at the intercession of his celebrated financial minister Rajah Tudur Mull. It was revived, however, again by Aurungzebe. Akbar died in 1605; and his son, Selim, afterwards Juhaungeer, succeeded him by consent of the nobles, "after having taken the oath to maintain the law of Mahomet."*

Bewteen *Akbar* and *Aurungzebe*, two princes in lineal descent intervene, *Jehangeer* and *Shah Jehan*. *Aurungzebe* deposed his father, Shah Jehan, in 1658, and ascended the throne. He reigned about fifty years: and Orme states "that he may be esteemed one of the ablest "princes who have reigned in any age or country." His

 devoted

* Methwold

devoted attachment to the religion and law of his fathers has procured him from some the appellation of a bigot; which opprobrious epithet, however, in its common acceptation, implies a degree of weakness altogether at variance with the character of so great a prince.

The affecting story of his brother, Prince Darashekah, is well known, and furnishes us with a strong proof of the scrupulous attention paid in those days to the forms of law. In his flight to escape from Aurungzebe this prince took refuge, by particular invitation, with Malek Juwan (or as the translator of the Seir-ool Mootuakhereen has it, *Malec Djeven,*) a Zemeendar on the western confines of India, who had been condemned to die, but was pardoned by Shah Jehan, at the intercession of the young prince, now his guest in distress. The wretched Afghan delivered Darashekah, with his infant child, into the hands of his brother and persecutor, Aurungzebe; for which most perfidious act he rewarded him with the title of Bukhtear Khan, and the rank of commander of a thousand horse. This man made his appearance at court amid the execrations of all. He had the temerity to pass through the streets of Dehli in the day; but having been discovered by the populace, he was pelted with dirt and stones, and an affray took place in which some lives were lost. It might be expected that the Emperor would himself have punished the ringleaders of this riot. No, "so scrupu- "lously was he attached to the forms of law," says this writer, "that he did not, but delivered them over to the "law. They were condemned by the Mooftees and "other law officers, and executed with all the forms of "law." "Nor did he put to death the prince without a "legal sentence passed upon him, and attested by the "signatures and seals of all the doctors." "Darashekah

"was

" was condemned and executed for apostasy." This happened about the year 1658.

This prince (Aurungzebe), as well as his great progenitors, Akbar and Timoor, gave his subjects a code of laws. Those of the former were imperfect. Aurungzebe collected the most learned lawyers from all parts of India, and employed them for years in preparing a code of law for the use of his judicial and revenue officers, and of his subjects; on which he is said to have expended £500,000. This celebrated work, after his own name, was called the " *Futavah-ool Aalumgeeree;*" the greatest, and certainly the most lasting monument of his reign. This is perhaps the most valuable work on the Moohummudan law extant. It is a collection of decisions on supposed cases of the highest authority in India, and not less so throughout the Turkish dominions, where it is better known by the name of " Futavah-ool Hind," or " Indian (collection of) decisions."

The " *Futavah-ool Aalumgeeree*" is the last work on the law of India promulgated by royal authority; and ought, therefore, to be considered as part of the written law and constitution of that empire.

Aurungzebe died in 1707: only fifty-eight years before the provinces of Bengal, Behar, Orissa, and Benares, were ceded to the Company.

So great was the influence of the law officers under the government of Aurungzebe, that even the governors of the provinces in which they were placed were obliged to court and even to succumb to them; a remarkable instance of this is mentioned in the Seir-ool

Mootuakhereen, in the case of the governor of Boorhanpoor, an illustrious nobleman, and allied both to the Emperors of Iraun and Hindoostan. "The governor "charged two witnesses, on the evidence of whom the "Kazee had previously decided a suit, with perjury, "which they confessed; on which the governor said, "'these are the men on whose evidence you have deprived "a poor man of his house.' The Kazee, in a rage, "charged the governor with personal enmity and a desire "to make him appear ridiculous; but, added he, 'I in-"form you that you have rendered the law itself ridicu-"lous, and have consequently fallen under its lash, and "merit its punishment. The credit of these witnesses is "not yet affected; so far from it, that if those very men "were now to stand up in court and give evidence that "you drank wine yesterday, I should sentence you "immediately to the punishment which the law awards "for that offence.' The Kazee, however, resigned in "disgust; but so strong was this kind of influence at "court, that the governor of the province thought it "expedient to visit the Kazee, and to beg of him to "resume his office, which he did with as much overbear-"ance as before."

*Ferukhsere* continued the capitation tax; and we are told that, "at the supplication of Adjeet Sing and Rut-"tunchund, his successor, Ruffee-ood-durjaat, relieved "the Hindoos all over the empire from the opprobrium "of the capitation tax." This was about the year 1720.

And this said Ruttunchund is stated by Ferishtah, "in "the reign of Moohummud Shah, to have so usurped the "powers of every office, that he nominated the Moohum-"mudan Cazees of the provinces," 1720.

The

The capitation tax seems afterwards to have been levied, as it is stated to have been again repealed at the intercession of Maharaja Jay Sing, "much to the satis-"faction of the Hindoos," by Moohummud Shah, after Ruttunchund was put to death; and Moohummud Shah was the last emperor of Hindoostan who possessed any real authority. He was succeeded, in 1748, by Ahmud Shah, who in 1753 was succeeded by Aalumgeer II., who was in 1760 succeeded by the late emperor Shah Alum.

Thus, I have endeavoured to corroborate the written law, by a chain of historical facts and events, through a period of nearly eight hundred years, from which it is obvious that no other law but the Moohummudan had any existence within the Moghul dominions in India. No Moohummudan lawyer can read the history of India without conviction on this point; which, had our English historians of India possessed any knowledge of the law, could not now have required any proof. But the fact is, that they were all totally ignorant of the Moohummudan law and constitution, and could therefore not discriminate what usages arose out of it from what did not. They could give no distinct account of them, nor explain in intelligible language the nature of the office under government, of the taxes levied, or tenures by which the lands were held: yet they have not hesitated to give their opinions; and Mr. Mill, even at this day, on the authority of Orme, gravely tells us that "after the Moohum-"mudan conquest, the Hindoos continued to be governed "by their own laws and institutions."* Dow again says, "the Hindoos are governed by the laws of the Koran or "by the arbitrary will of the prince."†



* Vol. i. p. 437. † Preface, p. 36.

But if the Moohummudan law and constitution did not exist in India when the government of that country fell into the hands of the English, let me ask what law and constitution did exist? Was it the law of the Maharattas; for they were, during the decline and fall of the Moghul empire under the successors of Aurungzebe, the most powerful state in India. But their origin is scarcely so early as our own in India.

The first time they were recognized as a power was in the reign of Buhadoor Shah, A. D. 1701, A. H. 1121; who made an agreement with Simbajee and his sons, Ram Rajah and Rao Rajah, that they should have a tenth or tithe of the husbandman's share of the crop over the provinces south of the Soobah of the Dukun (*viz.* Poonah, the Conkan, &c.). This they called the *Dus Mukhee*, or tenth handful.*

Or if the Hindoo law is to be maintained, is it to the provincial school of Bengal, as Mr. Colebrooke calls it, or to that of Benares, we are to go for Hindu law?

The Edinburgh Reviewers say, and on that point we are agreed, "the Act of Parliament which enjoined that "the natives should be protected in their rights according "to the laws and constitution of India, meant unquestion- "ably such rights as existed when the India Company "obtained possession. It certainly never entered into "the imagination of any one, at home or abroad, (but it "certainly did,) that it was necessary to revert to laws, "institutions, and rights, (meaning Hindoo laws,) which "a lapse of six centuries had obliterated from the minds "of the natives,"† meaning six centuries since the Moo-hummudan

* Secur-ool Mootuakhereen. † Vol. xviii., p. 359.

hummudan conquest. And again, " that the civil and " military institutions, the judicial and financial arrange- " ments of these courts (of the princes of the Deccan), were " formed on the model of those adopted by the Maho- " medan emperors of Dehli. Nearly six centuries have " elapsed since the Hindoos have been accustomed to " those institutions and arrangements of the Moohummu- " dans, which have not only superseded but condemned " to oblivion the system of justice and taxation congenial " with the ancient habits and prevalent superstition of " the natives."* And again: " It is sufficient to observe, " that for many centuries all knowledge of those laws " (Hindoo laws) has been effaced from the memories of " the natives."

Finally, in the firmaun, or deed, executed by the late king, Shah Alum, dated the 29th October 1764, conveying to the English Company the province of Ghazeepore and the rest of the zumeendarry of Rajah Bulwaut Sing (Benares), it is expressly stipulated by his majesty, " that " the Company must use their best endeavours to pro- " hibit the use of things of an intoxicating nature, *such* " *as are forbidden by the law of God,* in driving out " enemies, *in deciding causes* and settling matters *agreea-* " *bly to the rules of Moohummud and the law of the* " *empire*;" meaning clearly, agreeably to the law of Moohummud, which is the law of the empire. I have only to add, that universal tradition confirms what I maintain. There is not one native of India, that knows the difference between one law and another, who is not as perfectly aware that the Moohummudan law was the law of India, as that the king of India was a Moohummudan sovereign.

* Vol. xviii., Review of Wilks's Mysore.

## CHAP. II.

### *On the Nature of Tenures, according to the Law of India, under the Moohummudan Government.*

THUS I conclude that I have established beyond controversy, that the Moohummudan law and constitution was the established "law and constitution of India," at the time the authority of the British became paramount in that Empire; and that it is that system of laws to which the British Legislature must be held to have alluded, as above, seems to be a necessary consequence.

To the Moohummudan law, therefore, the question of *law*, with respect to the second branch of our inquiry, must be referred, *viz.* What is the nature of landed tenures under a Moohummudan government; more particularly, what is the nature of such tenures under a Moohummudan Huneefeeah government? For it was and is the law of the Huneefeeah sect of Soonnee Moslems which, it is universally admitted, prevailed in India.

In whom does the real and indefeasible right of property in the lands of Bengal rest? In the *sovereign*, or in the *zumeendar*, or in the *cultivator*? This is a question which has puzzled, in no small degree, the gentlemen "versed in India affairs."

The learned body (Edinburgh Reviewers) to which have referred, rest the whole question upon this:—Are these zumeendars, *by the laws of the country*, the proprietors

proprietors of the soil?* And all must admit that they are right so far; that the law of the country must decide the point: for to what other tribunal can such a question be referred?

It is my intention, believing that I have shewn what law is the law of the country, to point out what that law says on the case.

But before proceeding to discuss a question of this nature, it is necessary we should define what we understand to be the meaning of the terms which are important in it: the *sovereign*, the *zumeendar*, the *cultivâtor*.

What is meant by a *sovereign* every one knows; but the learned in the East define him to be that power, than which there is none higher, nor any equal to in a state. The word *Zumeendar*, generally rendered *land-holder*, is a relative and indefinite term; and does no more, necessarily signify an owner of land, than the word *Paddar* signifies an owner of money under his charge; or an *Aubdar*, the proprietor of the water he serves up to his master; or a *Soobahdar*, the owner of the province he governs, or in military language, the owner of the company of sepoys he belongs to; or *Kellaadar*, the proprietor of the fort he defends; or *Thanadar*, the owner of the police post he has charge of. On the contrary, I might venture to assert that the affix *dar*, according to the idiom of the Persian language, has more of a *temporary* meaning: it imports more an official or professional connexion between the person and thing connected, than a real right in the former to the latter; as *Fojdar*, though the

* Edinburgh Review, vol. xv. Review of Voyage aux Indes Orientales.

the *Foj*, or troops, are the kings; *Tehseeldar*, though the rents collected belong to the government; *Amildar*, though he acts for government; *Beldar*, *Tubldar*, though the *spade* or *axe* are the property of the master. I say the word *Zumeendar* imports nothing more, *necessarily*, than that a relation exists between the *person* and the *zumeen*, or land. What that relation is, forms part of the subject to be discussed.

The word *cultivator* I understand to mean the person who, by his own labour, or that of his family or of his hired servants, causes the ground to produce, and reaps the crop; who receives no wages, who has not hired the land, neither borrowed it from any one; or at least, that there is no record or tradition, or any existing evidence of his having done so. These are the significations I would be understood to give the terms defined.

A *cultivator* of the above description stands, as man originally did, "the lord of the earth." All rights claimed over such a man are *incidental;* or, as the eastern logicians term it, حادثا "*Hadesun:*" and he who sets up an incidental claim the burden of proof lies upon him, because his plea sets forth that which is contrary to the radical order, or state, of the subject matter of claim.

But it will be said this cultivator *gives* something to another, in name of the lands which he holds, and therefore *he* cannot be the real owner; for *paying* is an acknowledgment of a superior, and the act of a vassal. I apprehend that this is a feodal idea, and that necessarily it has no real foundation. Let it be remembered, that *paying* for an equivalent, as in a purchase and sale or in discharg-

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ing a debt, is exchanging one commodity for another; that *paying* or *giving without* an *equivalent*, is an act which rather denotes *superiority* in the *giver;* and that only when it is to appease and to avert an evil, which we dread, is giving indication of inferiority.

But admitting that the giving of something by the cultivator is an acknowledgment of a right existing in another, we shall find that all the claimants, from the cultivator to the sovereign, are equal in this respect. To whom does the cultivator pay? To the Zumeendar. But does this constitute him the proprietor? Certainly not. If the Zumeendar were actual owner of the lands from which the something is paid, it is clear that he might either retain what he receives or give it to whom he pleases; because the right to the proceeds of actual property must be indefeasible, like actual property itself. But we find, on the contrary, that the Zumeendar, in name of those very lands, must pay either all or part of what he receives, also, to another; in this point of view, then, his right is not stronger than that of the cultivator: he receives from one and pays to another; and, therefore, can only be deemed a channel through which the produce of the soil flows from the cultivator to the public treasury of the sovereign. But even here it does not rest. Though we cannot so easily trace it, yet its transmission through the sovereign for the exigencies of the state, is no less certain than through the channel by which it flowed to him. If this be true, then it follows that *payment* is as little a test of vassalage as receipt is a proof of property.

For whose benefit, then, does this channel flow which contains the produce of the soil? Unquestionably for the benefit of the *people.* All contribute towards relieving the public

public wants, all enjoy their share of public prosperity. Some give their aid in one way, some in another. One man serves the state in person, one gives so much from his land, another gives so much from his flock; and it would appear as reasonable to say that the sheep producing wool or lambs are not the property of him who contributes a lamb or a pound of wool (or their equivalent in money), as that the land producing wheat or barley is not the property of him who contributes a bushel of wheat, or a measure of barley, or an equivalent in money.

But as by the Moohummudan law the sovereign is considered only the trustee of the people, we must identify them. The *people*, by law, claim only a *portion* of the *produce of the soil* as their right; and as no trustee can have a stronger claim than his constituent, the right of the *sovereign* must also be limited to a *portion* of the *produce*, and a right *in* the *produce* is not a right in the soil.

And with regard to the Zumeendar, who resembles the sovereign merely in *receiving* and *paying*, if the right of the sovereign on these grounds (of receiving and paying) may not be admitted to the soil, that of the Zumeendar must fall of course; for since we have seen that both are merely instruments, or channels, through which its produce is collected, both claiming on the same grounds, if the *greater* fall the lesser cannot stand.

This seems the *natural* state of the case, and of the rights of the parties claimants. Let us see how far it is conformable to the law of the land; and if historical facts should correspond, the corroboration will be so far at least satisfactory.

We

We must not forget, that the conquerors of India had a written law, by which, in other matters at least, we know and admit they were guided. That law is extremely minute on this particular subject, and particularly specifies the mode of settlement of other conquered countries: might we not therefore assume, even without farther proof, that the settlement of this conquered country was influenced by the law?

Hindoostaun was subject to a Moohummudan government for more than seven hundred years before that of the English was established over Bengal. The laws which existed during that period were Moohummudan, and according to the tenets of the Huneefeeah Soonnees: by the doctrine of this sect, therefore, I conclude the question of law must be determined. To appeal to the laws of the Hindoos on this point, would be just as satisfactory as reference to the laws of the Britons administered by the Druids, should they be dug up on the Island of Mona, for the nature of tenures of land now in England.

India was conquered by the Moslems by force of arms. If so, by law, the land must either have been partitioned among the conquerors: in which case every individual who bore arms would be entitled to an equal share without respect to rank, but a horseman to double the share of a foot soldier, and the land would be subject to a tenth of its produce, and thence termed *ooshree*, or tithe land, from *ooshr* عشر tenth: or it must have been settled on the conquered inhabitants, and the *Khurauj*, or land-tax, imposed on their lands, and the *Jizeeah*, or capitation tax, on their heads, as the Moohummudan lawyers express themselves.

If,

If, then, the land had been divided among the troops, no one who is not a Moslem, or who has not purchased from a Moslem, or received by some other legal mode of conveyance, can be a lawful proprietor of land. I say conveyance; for it could not descend by inheritance from a Moslem to a Hindoo or other non-Moslem. There is no inheritance between a Moslem and an unbeliever. The Hindoos admit of no proselytes; and if they did, by the Moohummudan law the crime of apostasy would occasion forfeiture of property. If the land were settled on the inhabitants, as was done when the Moslems conquered the *Sūwaūd* of Erauk, Syria, and Egypt, the land would be termed *Khuraujee*, or subject of the *Khurauj;* and the law regarding it would be as follows.

" The land of the *Suwaud* of Erauk is the property of " its inhabitants. They may alienate it by sale and " dispose of it as they please; for when the Imaum con- " quers a country by force of arms, if he permit the " inhabitants to remain on it, imposing the *Kurauj* on " their lands and the *Jizeeah* on their heads, the land is " the property of the inhabitants; and since it is their " property, it is lawful for them to sell it, or to dispose of " it as they choose."—*Sūraūj-ool Vūhaūj.*

The word *Khurauj*, and almost all the other revenue, judicial, and financial terms, remaining in use at this day in India, throw some light on the subject. *La Khurauj* (or as it is more generally written, *Lackerage*) is one of those, and denotes a right in the sale, " without any impost." The word is لا خَرَاج not subject to *khurauj*. *Khurauj* خَرَاج, from خُرُوج khurooj "to come out of," or "be out," Heb. הרג *khuruj*,

*khuruj*, "coming out of a narrow place." Psalms xviii, verse 45.

The meaning of the word Suwaud سواد of Erauk, is "the lands of the province," as the same author informs us; adding, that this province is called *Suwaud* "on account of the verdure of its trees and of its cultivation." The Hebrews have שד *sud*, also שדה *sudah*, "land, the ground." The word in the above quotation translated "property" is in the original ملک *milk*, which in law signifies indefeasible right of property; and the word rendered "inhabitants" is in the original اهل *ahl*, the import of which is simply that of dwelling, residing on the lands; as they say, اهل البصرة *ahl-ool-busrah*, the inhabitants of Busrah.

From this we see, that if the inhabitants of India were suffered to remain on their lands on paying the above impost, the right of property in the sovereign is gone at once; and if it was partitioned among the conquerors, the alienation is equally complete. The question at issue, therefore, is shortened by one claim at least. But, in order to determine the other two claims, we must see what persons are meant by the *ahl*, who are thus vested with indefeasible right of property: for it may be said that these were the *former proprietors* of the soil, and that, by this settlement, is meant merely a confirmation of *former rights*. But that this is not the case, it is only necessary to know that, by the Moohummudan law, when a Moohummudan army conquers a province by force of arms, every *right* and interest which the conquered inhabitants before possessed ceases and determines, by the very act of

conquest: that the sovereign has, by law, the power even of carrying the conquered inhabitants into captivity, and reducing them to slavery, or of suffering them to remain free as *Zimmees*, as was done with the inhabitants of Erauk, abovementioned; or of removing the former inhabitants, and placing another people in it, as zimmees. By suffering the *ahl*, the inhabitants, however, to remain *under the conditions required by law*, *viz.* as *zimmees*, and to pay the *khurauj* and capitation tax, the property of the soil is *established* in them, not *continued.*

But who are the *ahl* here spoken of? This is the only question now remaining: and I answer, it will appear that they are those who cultivate the land. They, the *cultivators*, pay the *khurauj*, and are termed رب الارض *rubb-ool arz*, or masters of the soil. This would be sufficiently apparent merely by attending to the circumstance above related, *viz.* that the Imaun, when he conquers an infidel province, has the power of removing the *ahl* or former inhabitants, and of placing another people in it as *zimmees.*

But the great Huneefeeah lawyer, Shums-ool-Aymah-oos-Surukhsee, in speaking of *khurauj*, on the question,—what is the utmost extent of khurauj which land can bear? says, "Imaum Moohummud hath said, regard shall be "had to the cultivator, من زرعه *to him who cultivates.* "There shall be left *for every one who cultivates his land* "as much as he requires for *his own support* till the next "crop be reaped, and *that of his family, and for seed.* "This much shall be left him: what remains is *khurauj*, "and shall go to the public treasury." Here there is no provision made for, no regard paid to a *zumeendar*, who contributes

contributes nothing to the produce of the soil. We have no ten per cent. *malikana* to recusant zumeendars.

Farther, the rate of *khurauj* leviable from land was fixed; not, however, with reference entirely to the soil, but to the kind of crop which it produced: for instance, by one mode of settlement, a field which produced wheat paid a *kufeez* of wheat and a *dirhum* in money, for every "*jureeb*" of sixty measures square, whatever the quantity of the produce might be; a vineyard or field which produced grapes, ten *dirhums;* and so on. But the same author says, "if the cultivator choose to cultivate a more "valuable crop in a field which before produced one less "valuable, he shall pay the khurauj of the *superior crop:*" and again, "when the possessor of khuraujee land is "unable to cultivate it," Aboo Yoosuf hath said, "the "sovereign shall lend him, from the public treasury, as "much as will enable him to cultivate, taking from him "a surety, and he shall enter into a bond to cultivate; "and when the grain is ripe, government shall take the "khurauj; but that which was lent him from the public "treasury shall be a debt *against the person* (of the pos-"sessor): or government may sell the land to another "who can and will cultivate it. This, however, only "when such possessor رب الارض is unable to cultivate by "being in poverty; for when he is wealthy, the sovereign "shall call him into his presence and say to him, Why "have you not cultivated your land? He shall not, "however, compel him to labour; but he shall take from "him the khurauj, because he left his land uncultivated "when he had the power of cultivating."

Here there is no reference to any one but the cultivator, who is emphatically stiled *rubb-ool arz*, the master of the

land, and the imaum: and what is here meant by the *imaim* is the *sovereign*, or his officers appointed to collect the tax.

The same author adds, "It is proper that the sove-
" reign appoint an officer for the purpose of collecting the
" khurauj from the people in the most equitable manner.
" He shall collect the khurauj to the best of his judg-
" ment, in proportion as the produce is reaped. When
" lands produce both a rubeeaa crop and a khureef crop,
" when the rubeeaa crop is gathered, he shall consider,
" according to the best of his judgment, how much the
" khureef crop is likely to produce; and if he think it will
" yield as much as the rubeeaa he shall take half the
" khurauj from the produce (lit. 'the grain') of the
" rubeeaa, and postpone the other half to be taken from
" the produce of the khureef." Here we see the minutest detail: and who are the parties? the sovereign, or his servant and the cultivator.

The truth is, that between the sovereign and the *rubb-ool arz* ربّ الارض (who is properly the cultivator), no one intervenes who is not a servant of the sovereign: and this servant receives his hire, not out of the produce of the lands over which he is placed, but from the public treasury, as is specially mentioned by every lawyer.

But should a possessor of land ربّ الارض *rubb-ool arz*, choose to cease from cultivating the land himself, he may *let* it for hire to another, or *lend* it to him: because, if he had not this power, his right as a proprietor would be defective; but having this power of giving the lands he cultivated himself to another, without reference to any third party, as a zumeendar for instance, his right in them

them is complete. "But though he *let* his lands, or give "the use of them *voluntarily* to another by any contract, "the khurauj is still due by the *lessor*, for *he* is *held* the "*cultivator*, because he has the power of cultivating; "which is proved by the lessee (lit. 'hirer') being able "to cultivate. Should the lands, however, be *seized* by "*force* by another and cultivated by him, then the khu- "rauj is due by the usurper; for, in this case, the right- "ful owner did not give the use of them away *voluntarily*, "and he has not the power of cultivating."

What is above stated, however, it is necessary to repeat, is the law of the Huneefeeahs: that which was, and now is the law prevalent in Hindoostan. It is almost superfluous to offer proof of the tenets of the Moghuls; but the following introduction to a *fermaun* of Aurungzeb's dated in 1668 may be quoted. "We have deemed it "expedient to issue our royal edict to all officers intrusted "with the management of affairs throughout Hindoostan, "directing them to levy the khurauj, in the mode and "proportion enjoined by the *holy law* and the tenets of "Aboo Huneefah."*

The "Huneefeeahs" are one of the four great Moslem sects, known by the general name of *Soonnees*. The other three sects of Soonnees are the *Shaufaaeeahs*, the *Maulikeeahs*, and the *Humbuleeahs*, the founders of which were Imaum Shaufaaee, Imaum Maulik, and Imaum Ahmud Humbul. These sectaries, though none of them have ever thought of *three* claimants to the property of the soil, yet, with regard to the question whether the right of property in the soil vests in the *sovereign* or in the inhabi-

 tants,

* *Mecrat Ahemudee.*

tants, they have differed in opinion, not less than the learned gentlemen of our own faith. And as it may be some consolation to all parties (except, indeed, to those who maintain the right of the zumeendars), to know that there is law, and a Moohummudan law too, which supports their doctrine, I shall state shortly the law of the different sects abovementioned on the subject.

Aboo Huneefah, and the Huneefeeahs, hold, that when the Imaum conquers a province by force of arms, first, he may, if he judge it expedient, partition the land among the conquerors, and it becomes their property by partition; or, secondly, he may settle the inhabitants upon it, and it becomes their property by his doing so; or, thirdly, he may remove them, and give it to others, and it becomes the property of those others. But the Imaum has no power to make it (as the Moohummudan lawyers express themselves) "*wukf*" for the use of the Moslemeen. What is meant by *wukf* is, that like lands appropriated by wukf, or endowment, to a particular pious purpose, it remains, according to Aboo Huneefah, the property of the endower, but the *use* thereof is transferred to another as a loan: for example, it may be retracted by the appropriator, according to Aboo Huneefah, at any time *before a judicial decree* has confirmed it, or seisin has been had of it by the incumbent; and if retracted, then it reverts to its former state, and may be disposed of by him like his other property. Or, fourthly, the Imaum may enter into compromise *before conquest*, and settle the land upon the inhabitants, on paying a certain specified sum in money, according to the quality of the land and the state of population.

Shaufaaee, and the Shaufaaeeahs, hold it incumbent on

on the Imaum to *partition* the lands of a conquered province among the conquerors, as it is incumbent upon him thus to partition *all other kinds* of property captured from the enemy, unless the captors forego their right; in which case the lands shall be deemed *wukf* for the Moslemeen. That the *conquered* inhabitants have no *right of property in the soil;* but if they hold it, they hold it merely as tenants (lit. "hirers"), and may not dispose of it, more than an incumbent may of a benefice appropriated by *wukf.*

Maulik, and the Maulikeeahs, hold, according to one report, that the Imaum may not lawfully partition conquered lands among the conquerors; but that, by the mere act of conquest, the lands become *wukf* for the Moslemeen, the inhabitants retaining them, but the right of property vesting in the state.

By another report, however, Maulik holds that the Imaum may either partition the lands among the conquerors, or make them *wukf* for the benefit of the state.

Humbul and his followers are reported to have held three different opinions. By the most authentic report, however, he is said to hold that the Imaum may either partition the lands of a conquered province among the conquerors, or he may make them *wukf* for the Moslemeen, if he deems the latter more advantageous for the state.

Adverting to this difference of tenets among the Soonnee Imaums, the learned Huneefeeah Surrukhsee observes that "the learned have differed in opinion with regard to "land conquered by force of arms, on which the Imaum "has suffered the inhabitants to remain on paying the "khurauj

" khurauj and jizeeah. Some say that the lands are the " property of the Moslemeen (*i. e.* of the state), and that " the inhabitants are slaves, عبيد *aabeed*, of the Mosle- " meen, upon whom may be imposed whatever burden " the liege shall determine, as a master may on his " slave. But, according to our law (the Huneefeeah), " the inhabitants are freemen, as zimmees; their lands " are their indefeasible property, and that which is ex- " acted from them is khurauj."

This, besides being an explicit declaration of the law, will, I hope, throw some more light, if more can be required, on the question of who are the *ahl*, or inhabitants, to which the law alludes, when it says that " the " land is the property of the inhabitants." Can it be meant by those who hold the inhabitants of a conquered province " slaves of the Moslemeen," that those only shall be slaves who are in that class of society in which we choose to place the persons whom we call zumeendars? And can it be imagined that those who maintain that " the inhabitants shall be freemen and their lands their " own property," mean that only those shall be freemen, and own their lands, who are of the rank we choose to confer on our zumeendars? The answer is obvious.

On the whole, then, according to the Huneefeeah law, if a Moslem army conquered a non-Moslem province or kingdom by force of arms, and the conqueror chose to suffer the inhabitants to remain in it, his duty would be, either himself, or by commissioners (as Omr did in settling the khurauj of the province of Erauk), to partition the lands among them, and to fix the land-tax. Those who share in this partition are the proprietors of the soil for ever;

ever; and may not be disseised of it, without their consent, so long as they pay the land-tax.

The above is the Moohummudan law on the question. I shall now notice a few historical facts connected with it. The reader must, however, avoid an error into which many have fallen, *viz.* that of confounding the law of the different sects of Moohummudans. The error is equally great, as quoting the law of France would be to prove the nature of tenures in England, because both the French and English are Christians, and the laws of both nations have the same origin.

The Moohummudan law has been brought forward by the disputants who favour the claim of the sovereign and of the cultivator, in support of their doctrine. The Edinburgh Reviewers* think they have destroyed the opinion of Sir William Jones, and made that celebrated oriental scholar and lawyer hide his diminished head, by quoting the law of the *Sheeah Persian* (on the authority of Ibn Haukal and Sir William Ouseley), to prove that of the *Soonnee Moghul.* They are polite enough, indeed, to suggest an apology for Sir William Jones; but I will tell them that, on the subject of either Moohummudan or Hindoo law, that amiable, philanthropic, and learned judge, was less likely to be misinformed than on any other point of oriental research; for it was, above all others, the chiefest object of his pursuit to make himself master of these codes; his highest ambition, as he every were tells his friends, to superintend the compilation of, and translate digests of Moohummudan and Hindoo law for the use of the judges, "to enable them to control and to check the opinions of "the

* See Reviews above noticed.

" the native law officers," which digests he declares to be " indispensable to the due administration of justice to " our Asiatic subjects;" and in his endeavour to attain this object he ultimately sacrificed his valuable life.

Sir William Jones, unfortunately, did not live to complete his great undertaking; and the Moohummudan law, which is doubtless the law of India, yet remains unknown. But Sir William Jones's authority on the point in question is not to be shaken by the opinion of the Edinburgh Reviewers, founded on such documents. Nor will Mr. Jonathan Scott's doctrine avail them much, when he says, in his *note*, vol. ii. page 148 of his "Dekkan," quoted by the Reviewers, " the property of the soil is all in the em- " peror, and the landholders are removable at pleasure," till we have some proof of Mr. Jonathan Scott's knowledge of the law and constitution of India.

Mr. Hastings says, " the public in England have of " late years adopted very high ideas of the rights of the " zumeendars in Hindoostan. Our government, on " grounds which more minute scrutiny may perhaps find " at variance with facts, has admitted the opinion of their " rightful *proprietorship* of the lands. I do not mean to " contest their right of inheritance to the lands, while I " assert the right of government to the produce thereof. " The Moohummudan rulers continually exercised the " power of dispossessing the zumeendars. The zumeen- " darry of Rajshay, the second in rank in Bengal, and " yielding twenty-five lakhs of rupees of revenue an- " nually, has risen to its present magnitude within the " last eighty years, by accumulating the property of a " vast number of dispossessed zumeendars; though the " ancestors of the present possessor had not, by in- " heritance,

" heritance, a right to a single village in the zumeen-
" darry."*

The zumeendars may purchase property, like other individuals; but that the name of zumeendar is an official designation there can be no doubt. The commission, or sunnud, of a zumeendar is quite explicit on this point. A translation of the sunnud of zumeendaree granted to Chytun Sing of the zumeendaree of Bishenpore, which office was held by his grandfather, to whom he was appointed in succession, is well known. As a common work, I refer the reader for it to Patton's Asiatic Monarchies, Appendix No. 1. The sunnud is addressed to the mutusuddees, choudries, canoongoes, talookdars, ryots, and husbandmen of Bishenpore, setting forth " that the " *office of zumeendar* has been bestowed on Chytun Sing," and certain conditions are specified. He is to pay a peshcush of one hundred and eighty-six mohurs and two anas; to be conciliatory to the ryots, so as to increase cultivation and improve the country; *to pay the revenue of government into the treasury at stated periods;* to keep the high roads in repair and safe for travellers; to be answerable for the property of travellers if robbed; to *render and transmit the accounts required of him to the presence every year, under his own and the canoongoe's signature.* Then the jumma of rent to government is stated:

| | Rupees. | | | |
|---|---|---|---|---|
| Purgunna of Bishenpore, one mehal, | 37,529 | 4 | 0 | 0 |
| Do..... of Shapore, one mehal ... | 96,374 | 9 | 1 | 2 |
| Total jumma or gross revenue... | 1,29,903 | 13 | 1 | 2 |

We are then given the muchulcah, or written obligation given

* Hastings' Memoirs of the State of India, 1786.

given in by the nominee. He promises to be diligent in the discharge of his *office*, to be mild and conciliatory to the ryots, to increase the cultivation, to pay the revenue to government regularly into the treasury at the stated periods, to transmit the accounts, signed by himself and the canoongoe, regularly. We have finally the security for his person, of the canoongoe of Bengal, "that the "office of zumeendar having been bestowed upon Chytun "Sing, I will be security for his person," &c.

So far, therefore, as the holders of large zumeendarees, such as many of the zumeendars of the province of Bengal are, it will probably not admit of dispute, that their tenure was *official*, and that the *bonâ fide milkeeut* (ownership) of the soil did not rest in them.

The Hindoo law is also quoted, to establish or destroy the right of the zumeendar, the cultivator, or the crown. I have no great faith in the purity of what we have given us as Hindoo law. I doubt very much whether the origin of any Hindoo law extant can be shewn to be antecedent to the Moohummudan conquest of India. At all events, after the lapse of eight hundred years since the government of India was wrested from the Hindoos, to quote *Menu* in proof of what the law of India respecting landed tenures was at the English conquest, or even before the dismemberment of the Moghul government, is at least not very satisfactory. Those who have attempted to clear up this noted question, have searched too much into, have relied too much upon the Hindoo law and authorities.

How many generations of men have been swept away, since the laws of Menu were held up to execration by the triumphant

triumphant and intolerant Moslems? The very names, the technical terms and phrases of their law, are forgotten by the Hindoos themselves. The Reviewers, indeed, admit this, as I have before shewn.

But before I have done with the Reviewers, I must take notice of another of their "proofs." Shere Khan, before he usurped the throne of India, on the occasion of a dispute between him and his brothers about their father's *jageer*, when it was proposed to partition it, replied "that there "were no hereditary estates in India among Moohum-"mudans, for that all lands belonged to the king, which "he disposed of at pleasure." This the Reviewers quote, leaving us to believe it the authority of the India historian; while, in fact, it is nothing more than an anecdote, or at most the opinion of Shere himself, who, though a very good soldier, was probably not a very profound constitutional lawyer. But this is not all. The land in dispute was a "*jageer*;" which, in fact, by the Moohummudan law is *not* hereditary: and, besides, it so happened, that Shere's opinion here is liable to great suspicion; for he had himself privately got a grant of the jageer from the king. He says, indeed, "that as he himself had got a "personal grant of his estate, his brothers were out of "the question; but he would give his brother Soleyman a "part of the money and moveables, according to law."*

That the law suffered to exist in this country, on all matters between the sovereign and the people, was Moohummudan, there is, I presume, no doubt. The revisal of the assessment on the lands in Akbar's reign, by Rajah Tudar Mull and Muzuffur Khan, was evidently made

* Dow, vol. ii. page 164.

made on the principle of the Moohummudan law. It was founded on the principle of the settlement known in the Moohummudan law by the name of *mookawsumah*, or a division of the crop between the husbandman and sovereign, from *kismut*, which signifies partition, division, &c. The fractional value of the share was fixed as one half, two-thirds; but the amount arising therefrom to the revenue varied, of course, with the quantity of produce. "Thus," say the Reviewers, "it (the revenue) was fixed "in principle but varied in amount." The principle adverted to the circumstances and nature of the crop as well as of the cultivator. "We fully admit," say they, "that the settlement of Tudar Mull was not concluded "with the zumeendars, but with the tenants."*

Akbar, for liberality of sentiment, has few equals even in this age. He remitted the capitation tax, which was an infringement of the Moohummudan law. He was particular, however, in other respects. By the Moohummudan law, the revenue is fixed with reference to the coin of Arabia. In order to ascertain the exact weight of the legal coin, by which the revenue was to be fixed, we are told in the *Futawah Mukhtussur Shaufee*, that from the Shureef of Mukkah a *dirhum* and a *miskaul* of the legal standard were brought to Akbar by Khaujah Bhaoo-oodeen-Abdoollah of Moultan. The dirhum, on trial at the mint of Dehly, was found to weigh three mausha, four and a quarter barley-corns; and the lowest taxable amount of the property tax (which, for silver, is two hundred dirhums) was fixed at fifty-four tolah, five mausha, two jow (though some say fifty-two and a half tolah). Here we see the most minute attention paid to the law. How came it, then, that so much obscurity arose with respect to

* Dow, vol. ii.

to the most valuable rights, at least in our estimation, the *right in the soil?*

It so happened in India, that there was infinitely more arable land than there were husbandmen to cultivate. The wants of the husbandman were few, those of the state many. The interest of the sovereign was, therefore, greater to encourage cultivation, than of the cultivator to take the grant and to cultivate. Thus the value of landed tenures in India being extremely small to the ryot, they probably seldom became matter of dispute, or afforded much room for legislation. We ought, consequently, to expect to find in the law, and in the political, fiscal, and financial regulations, handed down to us, more of the nature of encouragement from a landholder to cultivate the soil, than of definition of landed tenures so little valued. We accordingly see their wisest princes exert their utmost endeavours to protect the cultivator and to encourage cultivation. "Let the Amelguzzar," says Akbar, "learn the character of every husbandman, and "be the immediate protector of that class of our subjects. "Let him endeavour to bring the waste lands into cul- "tivation, and be careful that the arable lands are not "neglected. Let him promote the cultivation of such "articles as will produce general profit and utility; with "a view to which he may allow some remission from the "general rate of collection. If a husbandman cultivate "a less quantity of land than he engaged for, but pro- "duces a good excuse, let it be accepted. Let him (the "Amelguzzar) give no cause for disgust; but, on the "contrary, let him (the Amelguzzar) transact his business "with each husbandman separately, and see that the "revenues are demanded and received with affability "and complacency." And again, "let him agree with "the

" the husbandman to bring his rents himself, that " there may be no plea for employing intermediate mer- " cenaries. When a husbandman brings his rent let him " have a receipt for it signed by the treasurer."*

Where so much encouragement was required to take lands and cultivate them, we can hardly expect to see much on the law of ejectments. But here we see nothing at all: and although the Moohummudan law, which declares the property of lands to vest in the cultivator, allows the sovereign to eject a cultivator who does not cultivate, and give his lands to another, yet there is not a single word on that head in the whole of the instructions of Akbar to his revenue, or judicial, or fiscal officers. No, the soil was the property of the cultivator as much as it could be. Law gave no power, policy gave no motive to remove him or to disturb him, so long as he paid his taxes. When he did not, his lands could be attached; and so can those of the first *peer*, holding by the firmest tenure of the English law.

The right of the Indian husbandman is the right of possession and of transfer; and the rate of his land-tax was fixed; often, indeed, the amount. In what respect, then, is his right of property inferior to that of the English landholder? I answer, instead of the *rate*, the *amount* of *part* of the land-tax of the English landholder is *always* fixed, and so far he has the advantage. I say " part," for his land is subject to tithes and to poor's rates, which are only rateable, as the *whole* of the land-tax was in India. And we have lately seen, that in some parts of England so burthensome were the imposts of tithes

* Ayeen Akburee.

tithes and poor's rates, that the value of landed tenure was in reality as little there as it could ever have been in India. At the period I allude to, in some parts of England no *cultivator* (that is, farmer) could be found to take the land and to cultivate, paying the poor's rates and tithes, the English *khurauj*.

Had this state of things continued and become general in England, government must either have relinquished the revenue leviable from lands, or have confiscated such lands; and all this by the laws of England, to pay the revenues of the state: and having done so, they must have employed their officers to give the lands to cultivators and to collect the land revenue, the *khurauj*. Whoever should have witnessed this state of things, and knew no better, might well have said, "all the lands of England "belong to the king," &c., as those our India historians, ignorant of the Moohummudan law, have said of India.

Every government, whether despotic, monarchial, mixed, or democratical, must possess a right, whatever may be its name, over all the property of its subjects, whether real or personal: I might indeed add, over their lives as well as property. And this is proved by its having the right of depriving them of the one, either partially or wholly, or taking away the other. The subject holds his property, and even his life, by the tenure of his conforming to the will of the laws framed by government, as they may be from time to time communicated to him. This right government has: and I say it is a *right*, although the "owner" of the land, &c. as he is termed, has it in his power to prevent its exercise, by his compliance with the will of the law.

How very difficult then it is to discriminate precisely,

whether the right of property in the soil is the right of government or of the holder? If the paramount authority in a state have the right of imposing a burden upon property, and to levy the sum imposed even by the ejectment of the holder, it seems by no means an easy matter to prove that the right of government is not paramount over that property.

I must now endeavour to remove a prejudice which I think exists against the doctrine I maintain; namely, that the admission by us of an indefeasible right of property in the soil to exist in any one except the sovereign, would tend to excite dangerous feelings of independence. If their right of property were held indefeasible and absolute, the people might, in time, come to think that there was no absolute necessity for giving away any of it. But no such danger would exist, if we followed the law and constitution and the example of the Moohummudan rulers of India, who took care that dreams of indefeasible right should be occasionally interrupted. If a bushel was produced, a portion of it was received; if fifty, still a portion of fifty went to the exchequer. If a jureeb of land was cultivated, and an ascertained rate was fixed and paid; if fifty were cultivated, fifty times the revenue arose to the crown. The admission of a right of property, with the assertion of the power of increasing taxation of the soil, carries with it nothing likely to engender a feeling of dangerous independence.

But to proceed. Though the law be explicit as to the right of the cultivator, and although it be equally doubtless that the zumeendarry right is official; that any given individual may be zumeendar, in the sense in which that word is loosely understood, and also a *malik*, or real owner of

of the soil, such as I have defined the "cultivator" to be, it is scarcely necessary for me to say, because the original tenure of *milkeeut* being transferable, might be purchased by such individual, and thus a large estate might be acquired: and doubtless many considerable properties thus grew up, and many more were unjustly got possession of. But then the difference between two individuals, claiming, the one as a cultivator in possession of the soil, and the other as a zumeendar, just described, claiming the right of a malik over him, is, that the latter must prove his purchase or lawful acquisition, and that the cultivator-possessor holds as a lessee under him; for the law has vested the original or radical right to the soil in the cultivator. Of this right no individual can divest himself legally, but by sale or gift; and no individual can acquire it from him, but by gift, purchase, or inheritance. The sovereign may grant to his favourite a sunnud of zumeendary, or jageerdary, or altumghadaree over the lands, and the grantee will draw the government revenue, the *khurauj;* but the property of the soil remains with the owner, the *malik*, who may nevertheless sell, or let, or give it to whom he pleases.

But we are told "that all the lands in Bengal, and the "greater part of those of Orissa and Behar, are in the "hands of great zumeendars, who claim to be the owners "of them in absolute right of property." From what has been said, however, it is obvious that the titles of these persons to the right of the soil will not bear investigation by the sure test of the law; nor, indeed, by any other standard whatsoever. On the contrary, it is beyond doubt, and a fact, a matter of undoubted history, that at a comparatively late period there was no such thing as a great zumeendar, either in Bengal or Behar.

"It is not," says the author of the Ayeen Akburee, "cus-
" tomary, in the soobah of Bengal, for the *husbandman*
" and *government* to divide the crop. The produce of
" the lands is determined by *nussuk;* that is, by estimate
" of the crop. The ryots (husbandmen) in the soobah of
" Bengal are very obedient to government, and pay their
" annual rents in eight months, by instalments, *themselves*
" bringing mohurs and rupees to the places appointed
" for the receipt of the revenue." And of Behar the same author says, "it is not customary in Behar to divide
" the crop. The husbandman brings the rent himself;
" and when he makes his first payment he comes dressed
" in his best attire.* "

The date of this authentic record is little more than two hundred years ago. How has, or by whom has the right of property in the soil been totally subverted, throughout a country containing twenty-five to thirty millions of people, in so short a period? If these, the great zumeendars, have acquired lawful right to the soil, it must have been subsequent to this. Let them shew the deeds by which they hold; for except by inheritance, a regular instrument is required to establish their title. Sunnuds from the *king*, as late *as the middle of the eighteenth century*, are quoted by Lord Teignmouth as establishing *undoubted right in the soil.* One in favour of the zumeendar of Rajshahy was granted, he tells us, "in con-
" sequence of the neglect of the former zumeendar to
" discharge his revenue." This may be good as a sunnud of zumeendary; but this was not a grant of the soil! not more than a commission, after superseding one collector of land-tax by the King of England, would be a grant of the estates within the district specified. So also the

Ayeen Akburee

the "zumeendary of Dinagepore was confirmed by a "firmaun of Shah Jehan about 1650." So the origin of the "Burdwan zumeendary may be traced to the year 1680, "when a *very small portion* of it was given to a person "named Aboo." Nuddea and Lushkurpore zumeendaries are of later date, about 1719. See Mr. Shore's minute.

We have seen above, that at the very end of the seventeenth century the "husbandmen paid their rents to the "crown." This goes to prove, that whatever be the antiquity of the families of the zumeendars just mentioned, they were at the date of the *Ayeen Akburee* considered "husbandmen:" and we know that the Viceroy of Bengal, Jaafur Khan, "dispossessed almost all the zumeendars." I would again ask, how this vast accumulation of property has arisen? Some of those zumeendars pay half a million sterling of public revenue. Did they purchase the lands? The value, at ten years' purchase, would be five millions! The malikana of ten per cent. at ten years' purchase, would amount to (four millions) four crores of rupees. Where was the capital to purchase this? It is evident no purchase ever took place; that, consequently, no transfer of the soil was ever made; and that, therefore, those zumeendars are not owners of it.

I shall conclude these remarks on the zumeendary tenure (referring to what I have said on the question of law) by quoting the authority of an intelligent native, questioned by Mr. Shore (the present Lord Teignmouth), on the received opinion and custom of India with respect to the right of a zumeendar in the soil, and of the sovereign to confer such right. This intelligent person was the son of the former Nazim of Behar, and author of the *Seeur-ool-Mootooakhereen*, Gholam Hoseyn Khan. *Query.* "How

" is a zumeendar appointed?" *Answer.* "According to the " strict right, no person can become the proprietor of " land but by one of the three above-mentioned modes, " *viz.* by *purchase*, by *gift* from the proprietor, or by *in-* " *heritance;* though, by usage, the emperor or his repre- " sentative may displace him (a zumeendar) for contuma- " cious and refractory behaviour and appoint another by " sunnud in his room. The person so appointed is by " usage considered as zumeendar and proprietor of the " soil, though according to strict right he be not so."—*Q.* " Is a zumeendarry hereditary?" *A.* " Whatever land a " zumeendar may have become the *proprietor of by any* " *one of the three above-mentioned modes* (*viz.* purchase, gift, " inheritance), descends in the line of inheritance; but " whatever is not *actual property*, is consequently not of " an hereditary nature" (alluding to his official capacity of zumeendar which is not "actual property" doubtless). " If a zumeendarry be the *actual property* of any person, " his heir has an undoubted right to succeed without the " sanction of the ruler."

Now here it is evident a distinction is intimated between lands the "*actual property,*" which may be called the "hereditary" estate, and lands belonging to the zumeendarry, not "*actual property.*" For example, by sunnud from the king, the zumeendar might be vested with the management of the revenue of his own hereditary lands, and other lands adjacent, and the charge of the police, &c. (for that was an essential part of a zumeendar's duty), also the care of extending the cultivation of waste land, &c.: and it is worthy of remark, that, throughout the whole series of answers to Mr. Shore's queries, Gholam Hoseyn invariably keeps this essential distinction in view; though from the questions, that great distinction

distinction seems to be entirely overlooked by Mr. Shore, who appears to take it for granted that an imperial sunnud is a full title to the actual property of the soil, as it is to the official rights of zumeendarry.

But a sunnud, firmaun, or by whatever name a grant from the crown may be called, can convey no right but what is vested in the sovereign; and that is, the collection of the public revenue: I mean over lands held by cultivators, such as I have defined. And let it be observed, that this distinction is marked by the names given to the allowances which government granted to zumeendars, "*malikana*" and "*nankar*:" the former meaning the dues belonging to a "*malik*," or real owner of land, the latter to a *manager*. "*Malikana*," says Gholam Hoseyn, "is the unalienable right of proprietorship; but *nankar* "depends upon fidelity, and a due discharge of the public "revenue. *Nankar* is expressly the reward of *service*. "If a zumeendar is displaced, it would be undoubtedly "taken from him. But *malikana* is the *right* of the "*proprietor* of land, who receives it (malikana) under "the ruler; and therefore, if he receive it (malikana) "under the ruler, how can an altumghadar, jageerdar, "&c. withhold it from him?"

There are instances of the sovereign purchasing land from a zumeendar. On this point Gholam Hoseyn is asked: *Q.* "Why did the king purchase lands, since he "was lord of the country, and might therefore have "taken by virtue of that capacity?" *A.* "The emperor "is not so far lord of the soil as to be able, consistently "with right and equity, to sell or otherwise dispose of it "at his mere will and pleasure. These are rights apper-

" taining only to such a proprietor of land as is mentioned " in the first and second answers. The emperor is *pro-* " *prietor of the revenue*, but *he is not proprietor of the soil.* " Hence it is, when he grants *aymes*, *altumghas*, and " *jageers*, he only *transfers the revenue* from himself to " the grantee."

It may not be unedifying to note in conclusion, what, in 1772, was the estimation in which the zumeendars and their titles were held by the English government. The government proclamation on this point is dated 11th May 1772, notifying the determination of the English government to assume the Dewanee, by order of the Court of Directors; and enumerating the several branches of business appertaining to the Dewanee, among which are: " the constituting *and dismissing of zumeendars*, with the " concurrence of the Nazim."

They then, 14th May 1772, proceed to divide the country into farms of purgunnahs; but so as not to exceed one lac of rent per annum. In this document the zumeendars appear to be understood merely as government officers. " That in like manner the zumeendars, " talucdars, shicdars, *and other officers of government*, be " forbid to lend money to the ryots."*

How far the practice of India coincided with the law, in the system of government generally in matters of revenue and finance, in countenancing the right of the sovereign, or of the zumeendar, or of the cultivator to the property of the soil, may be farther seen, in addition to what I have already quoted, by referring to the Institutes of Timour, which

which are formed so closely on the model and principles of the Moohummudan law, that it is impossible to mistake their origin. The Institutes of Akbar, in the *Ayeen Akburee*, are evidently formed from those of Timour; and are, in fact, in their most material parts, a copy of the former.

From the Moohummudan law, down through those two works, the eye of a Moohummudan lawyer has a view of the whole system of Indian government: obscure latterly, it must be confessed, but still sufficiently marked to admit of his tracing the original. There is also the code of the Moghul emperor of Persia, Ghaznan Khan, above-mentioned, promulgated about the year of our Lord 1260; all, as indeed might be looked for, scions from the same stock. Where, indeed, at that early period of Moohummudanism, may it be supposed a Moslem prince would go for law, save to the sacred repository of his faith?

But there are other documents extant, of still greater force and of recent date. Among these I shall mention Aurungzebe's firmaun, dated in 1668, directed to Moohummud Hashim, containing instructions for collecting the khurauj. These are eighteen in number, and profess to be issued "that the mutusuddees and amils, from "one end of Hindoostan to the other, may be informed "in all points regarding the khurauj, as directed to be "levied in the *enlightened law of the pure and holy religion*, "and as approved by the good and authentic traditions." These rules for the collection of the khurauj are entirely copied from the writers on the Moohummudan law; following the practice adopted by Omar, when he settled the

the conquered provinces of Iraak and Syria, before alluded to.

There is also another firmaun of Aurungzebe, issued about the year 1676, addressed to Rishuk Doss, containing the minutest orders respecting the collection of the revenue, the encouragement of cultivation, the keeping of, and transmission of regular accounts, formed after the rules of Akbar; to which he indeed specifically refers. "You are to inform yourself of the usage with regard to "the customs in the time of his majesty, when Rajah "Tudor Mull was Dewan."

This order contains fifteen regulations. It is collected in the *Rumoozat-e Alumgeeree;* and a translation of it and of the former may be seen in Patton's *Asiatic Monarchies*, furnished to that author, I believe, by the present Lord Teignmouth.

"It is proper," says the learned *Shums-ool-Aymah*, "that the sovereign appoint collectors to collect the "khurauj in the most equitable manner from the people." These collectors were called *amil-een* عاملين (the plural of عامل *amil);* and accordingly Akbar appointed a collector over every crore of dams, who was called عامل *amil*, or *amilguzzar*;* and the name is preserved to this day in the province of Oude, and other parts of India beyond the Company's territories.

"And," says Akbar, "let the amilguzzar agree with "the husbandman to bring his rents himself, that there "may be no plea for employing intermediate mercenaries."

Here

* Ayeen Akburee.

Here the written law says, the people shall pay to the government collectors, "and the practice of India was "such." *No intermediate mercenaries shall be suffered*, says Akbar, to come between the sovereign and cultivator.

"There shall be," says the Moohummudan law, "separate treasuries established. The first for the *khu-* "*rauj*, and the *jezzeeah* or capitation tax; second, for "the *ooshr* or tithes, and the *zukaut* or charitable imposts; "third, for the *fifth* of captured property, plunder, mines, "and of treasure trove; fourth, for *waifs*, *escheats*, *deeut*, "&c. All these shall be kept separate, because these "different branches of the revenue are appropriated by "law to different purposes. The sovereign, however, in "case of necessity, may borrow from one treasury, to "replace the same if in his power."*

Timour had seven establishments of this kind, "seven "wuzeers or ministers, all under the dewanbegee, to "regulate the affairs of the revenue and to lay them be- "fore him. One for the affairs of the ryots, the state of "cultivation, population, and police; one for the sub- "sistence and pay of the troops, assignments or jageers "granted for this, &c.; one to take charge of the pro- "perty of absentees, defuncts, escheats, customs and "zukat, duties on cattle and pasture ground, &c.; one "for the expenses of the imperial household, arsenal, "&c. There are three others placed over the frontier "provinces, the khalsah lands, &c., all under the "dewanbegee."†

Akbar established "provincial treasuries to receive the "khurauj

* Zeylaaee. † Institute 305.

" khurauj from the husbandman, and one grand treasurer " in the capital." There were also " treasuries for pesh- " cush, reversions (or escheats), offerings, charitable " donations, and for money for weighing the king. The " fauzdar, when he captures a place, must act with " fidelity in the division of plunder, a fifth part of which " he shall send to the royal exchequer."

The khurauj, and the jizeeah or capitation tax, &c. shall be appropriated, says the Moohummudan law, to the use of the troops, in building and maintaining fortifications, guarding the highways, in digging canals, in maintaining those who devote their lives to the good of the people (as kazees, mooftees, mooazzins, public teachers), in feeding the poor, paying collectors of the taxes, building and repairing mosques, bridges, &c. " Finally, every mos- " lem in want has a claim on the public treasury, accord- " ing to his exigencies, for himself, wife, and children " under age, for decent food and raiment; but holy men, " and those learned in the law, the descendants of Aalee, " and the nobles, have a claim to a greater share, because " dignifying them, dignifies the sons of Islaum." F. M. S.

" I appointed," says Timour, " as suddur (or chief " priest) a man of holiness and of illustrious dignity, to " watch over the conduct of the faithful, established in " every city and town a cazy and a mooftee, a supervisor " of markets, also a judge of the army (termed, as in " the Moohummudan law, *kazee-ool askur*), and sent " into every province an instructor in the law, superin- " tendants to watch over the cultivated lands and the " husbandman, ordered the ruined bridges to be repaired, " new ones to be built, and placed guards to watch the " roads, &c. &c. Also ordered that the descendants of " the

" the Prophet, the oolma, the foozla, the mushauekh,
" the durveshes, the gosha nusheen, should have سيور
" غلات *seyoor ghulaut*, and وظيفه *wuzeefah*, and مرسوم
" *mursoom* assigned them; also that the فقرا *fookra*, the
" عجزا *aajza*, the مساكين *musakeen*, should have مددو معاش
" *muddudo maaush*, and that the mausoleums and sepul-
" chres of the great should have فرش *fursh*, and آش *ash*,
" and روشناي *roshnaee* allotted them."*

" Four classes of men," says the Ayeen Akburee, " have
" land or pensions granted them for their subsistence.
" 1st, the learned and their scholars; 2d, those who
" have retired from the world, holy men and goshanu-
" sheen; 3d, the needy, who are not able to help them-
" selves; 4th, the descendants of great families [an error
" in the translator for descendants of Alee], who from
" false shame will do nothing for themselves. Besides
" the army, the pay of which amounted to rupees
" 77,29,652."†

But by the Moohummudan law the land-tax is assessed by measurement; so much per *jureeb* of sixty measures square. The measure was settled to be the *guz*, or cubit, of the king Nosherwaun, which is said to have been seven hands breadth including the thumb, or nine hands without the thumb: " accordingly," says the Ayeen Akburee, " his
" majesty, Akbar, adopted Nosherwaun's measurement
" of sixty squares, which he made to consist of that num-
" ber of *ilahee guz;* settled the *guz*, the *tenaub* and the
" beegah; after which he ascertained the value of the land
" and fixed the revenue accordingly."

Timour

* Page 359, Institutes. † Ayeen Akburee.

Timour ordered this before him. "The khurauj is to "be settled," says the Institutes, "according to the pro- "duce of the *cultivated* land. The lands irrigated by "water constantly flowing should pay one-third; if only by "rain-water, therefore uncertain, to pay one-third or "one-fourth. That the land should be measured and "divided into three classes, an average taken, and to pay "so much."* The *guz*, or yard, settled by Akbar was forty-one fingers; and he called it the *ilahee guz*, instead of the *badshahee* (the guz of the king, meaning Nosher-waun) as the Arabs did theirs.†

Akbar's beegah, or jureeb, consists of 3600 (or sixty square) guz. The same number specified by the Moohummudan law.

By the Moohummudan law there are two modes of settlement of the khurauj: the *mookautuaah*, and the *mookausumah*, which will be explained below; but the khurauj of green crop (رطبة *rutbah* signifying fresh, moist, green; which some commentators have translated by the word بقول *bukool*, green vegetables, pot herbs) was always paid in money: five dirhums for every jureeb which produced green crop. This crop is explained to be "all kinds of "green vegetables, flowers, roses, green dates, sugar-cane, "turmeric, melons, cucumbers, bazunjaun, marygold, "and the like."‡

"Accordingly," says the Ayeen Akburee, "from dry crops "one-third of the produce from each harvest was levied "as revenue; but for musk melons, ajwayn, onions, and "other

* Institutes. † Ayeen Akburee. ‡ Jaumeaa-oor-Ramooz.

" other greens, ready money at fixed rates was payable." And again, " the revenue for indigo, kuknar, pan, tur- " meric, singanhar, hemp, kutchalu, kuddoo, henna, " cucumbers, badinjan, radishes, carrots, kerelah, tyn- " dus, and ketcherah, was ordered to be paid in ready " money."*

Besides these an infinite number of examples might be adduced, to shew the identity between the regulations of the India Moohummudan government and the Moohummudan law. What I have quoted, however, must be fully sufficient.

Having, as I am persuaded I have, without doubt, established that the Moohummudan law and constitution is the " law and constitution of India;" that the Moohummudan law prevailed during the whole period of the Moohummudan government; that by that law, the right of property in the soil does vest in the cultivator, such as I have above defined, and not in the crown nor zumeendar, above described; that the usages which prevailed, distinctly shew that neither the sovereign, nor the person whom we call zumeendar (not owning land by inheritance, purchase, or gift), was ever understood to have had the shadow of proprietary right in the soil, and that the usages with respect to tenures, taxation, &c., are no where adverse to, but for the most part conformable to the principles and rules of the law in their leading features, I shall now notice the different kinds of tenures or modes, by which property in lands can be acquired, as recognized by the Moohummudan law.

These

* Vol. i. page 361.

These are, 1st. *partition* among the conquerors, when the lands are conquered.

2d. By fixing the *khurauj* upon the lands of conquered inhabitants, by specific assessment (and imposing also the capitation tax), they being suffered to remain upon the lands.

3d. By *compromise* entered into with the inhabitants of a country *before conquest.*

4th. By the *cultivation of waste land,* when with the express sanction of government. These four are the original tenures of land.

5th. Purchase, exchange, or other mutual compact for equivalents.

6th. Dower.

7th. Gift, bequest.

8th. Inheritance.

9th. Wukf, or endowment.

I shall not notice loan and lease, because these are temporary tenures, further than to state that they not only depend on the time for which they are granted, but are void of themselves by the demise of either party.

The 1st. *viz. Original partition at the conquest of a country.* This is the strongest of all rights. It can however exist only in the person of a Moslem, or one who has acquired by purchase, or other legal mode of conveyance, from a Moslem. It cannot descend to an unbeliever by inheritance; for an infidel cannot inherit of a Moslem. Consequently, had the lands of Hindoostan been divided among the conquering soldiers, no Hindoo could be in legal possession, without a formal title from a Moslem; for by the simple act of conquest, as above shewn, every right of a non-Moslem subject ceased and determined.

I say

I say, right by original partition is the strongest of all tenures, because it conveys a right of which the owner *cannot* divest himself, namely, that of treasure-trove. If a person, says the *Jaumeaa-oor Rumooz*, find hidden treasure in the lands of another, and it is not known to whom it belongs, a fifth shall go to the crown, the remainder to the proprietor of the land. And the proprietor here meant is the *person to whom the Imaum (the sovereign) assigned the lands when first conquered*, or his *heirs;* not the owner to whom the lands may have devolved by purchase from the original proprietor, or his heirs. Such treasure shall not go to a *purchaser*, but shall *rather escheat to the crown.* This is also mentioned in the *moheet.* The object of this statute is evidently to *create escheat.* Even now, probably, no land is to be found in the possession of an original owner or his heirs; consequently, all treasure-trove escheats to the crown.

2d. *Assessment of khurauj.* The Moslem conqueror has the legal right of suffering the conquered inhabitants to remain on their lands as freemen, but only on condition of their paying the khurauj and the capitation tax. On the khurauj being fixed (which must be by allotment and assessment), the land becomes the property of the individual, saleable and transferable, in the same way that, in the case of partition among the conquerors, the share of each individual becomes his property, as the law says, *on partition.*

3d. By *compromise;* as the Prophet did with several powerful Arabian tribes *before* conquest, on their paying a fixed tribute.

4th. A *grant of waste land* to cultivate. The grant is permanent. The sovereign has the power of *making* such grant, on condition that the grantee pay the assessment to which such land is liable for what he does cultivate. The nature of assessment, if the grantee be a Moslem, is

regulated by situation as to water for its irrigation. But the crown cannot make any such grant without stipulating for the legal land-tax, seeing that, by law, the sovereign is merely a trustee for the community, whose property the land, before partition, is; and a trustee cannot give away the property of his constitutent without an equivalent. If the grantee cultivate within a reasonable period (which the law limits to three years), well; if not, the land may be given to another. Timour allowed the ryot, in this case, the land for the first year rent-free; the second he took what the ryot chose to give; but the third year the full public tax was levied.

5th. *Purchase*, or *exchange* for equivalents, by any of the legal compacts.

6th. *Dower*, on marriage; which is also by the Moohummudan law held to be a civil compact, for an equivalent, namely, the connubial society of the bride.

7th. *Gifts*, with seisin, from an owner qualified to give; and *bequests*. These are compacts without an equivalent. So also is,

8th. *Inheritance*. All unbelievers may inherit among themselves, whatever their creeds may be, but none of them can inherit of a Moslem, nor the converse.

The 5th, 6th, 7th, and 8th, are all private contracts, and therefore do not weigh in this investigation.

9th. *Wukf*, or endowment, for some charitable or pious purpose. This tenure is absolute as to the *usufruct*, but does not convey the full right of property to the incumbent; though, as the law says, it annuls that right in the endower. The benefice lands, however, even though the endowment be from the crown, are liable to the land-

tax.

tax. The law says, "if tithe lands, they are liable to the "tithe; if khuraujee lands, to the khurauj."

ويجب العُشرُ في الأراضي المقوفة انكانتْ عُشريّةً وانكانتْ خراجيّةً ففيها الخراجُ. *Kazee Khan.*

But an endowment by *wukf* would not be valid, even from the crown, unless granted for the purposes sanctioned by law, and to some one or other of the descriptions of persons or establishments which the law recognizes as the objects of endowment. For example, a grant of lands by *wukf* to an individual who is wealthy, would be null *as a wukf*, according to all the lawyers, though according to some it would be held to be a *gift*. The object or purpose of endowment must be of a permanent, as well as a pious or charitable nature. This is doubtless the sound law; though in some books, it is stated as legal to appropriate by *wukf* in favour of individuals, and of people who are not poor. But this is mere difference of terms; for in these cases the grant is, by a legal fiction, held to come under the law of gifts, and not of benefices; and then the law of donation will rule the case, which of course does not cancel any *public* or private demand against the land-given; and if a tenure by wukf flowed from a subject, it would *à fortiori* be good, *quoad* the profits only. The land would still be subject to the revenues of the state.

These, together with tenures by *loan* and *lease*, both of which expire with the demise of either party, are those by which landed property may be acquired and held, according to the Moohummudan law

It will be perceived that none of those tenures convey

any right whatever to exemption from the public revenue. There is, however, a power vested in the sovereign by the Moohummudan law, which is too important in its consequences to be omitted here, *viz.*, that of appropriating the khurauj of a man's *own land* to the owner of the land. The sovereign cannot make a *donation* of the khurauj of the lands of an individual to the owner, unless the donee be of those to whom the law assigns a public maintenance (literally "an object of, or one entitled to a share of the khurauj.") But should the sovereign assign the khurauj to the owner, and leave it with him, the owner, being of those who are entitled by law to share in the khurauj, it is legal, according to Aboo Yoosuf's opinion: and this is decided law, as Kazee Khan states. Imaum Moohummud dissents.* This, however, it is evident, can only be a personal grant; and must, at all events, cease with the existence of the individual to whom it is made, in as much as the qualities, or circumstances, which render one individual an *object* entitled to share in the khurauj, *viz.* his being a soldier, kazee, mooftee, teacher, collector of revenue, a police officer, or other public functionary of government, a learned or holy man, are altogether personal.

And I may add, more for the purpose of shewing that I have not overlooked it than on any other account, that in some books on the law (for it is, in its very principle, strongly opposed in the most authentic works) a mode is stated, by which, as some interpret it, the khurauj may be cancelled by the sovereign; and thus an estate would become

* Aboo Yoosuf and Imaum Moohummud were disciples of Aboo Huneefah, the head of the Huneefeeah Soonnees: their authority therefore is great on points of law.

become lakhuraujee, or exempt from the assessment of revenue.

It is this. Lands escheat to the crown by the demise of last heirs, or otherwise. If government should *sell* these lands to any one, it is said by some lawyers, the khurauj would be annulled, and could not thereafter be levied from that land. This I have stated on the authority of some writers; but it is, at best, a mere evasive interpretation; for even these admit that the lands are nevertheless liable to government for *rent, oojrut.* It is maintained, however, by all the authentic writers, that escheats *may not be legally sold at all by the crown without extreme necessity;* in the same way as it is unlawful for a guardian to sell the property of an orphan ward, without such necessity.

First, then, the sale of escheated land by government is not countenanced; and, secondly, the lands sold are still liable to the public assessment, under the name of *oojrut.*

In the *Futh-ool Kudeer,* after stating, in conformity with other books, that the land of Egypt is khuraujee, the author says "the revenue collected from the lands of "Egypt now a days is *oojrut,* rent, not *khurauj,* for now "the cultivators are not proprietors of the soil. It so "happened, that for want of heirs it fell without owners, "and thus escheated to the crown; what is paid, there-"fore, is not *khurauj,* but (*oojrut*) rent."*

Here then, *if we admit the legality of sale,* is one way by which, technically speaking, the khurauj may be

 annulled;

* *Moon. Ghuff.*

annulled; but then it is, as I have observed, a mere change of terms: "*rent*" is paid. The crown cannot remit the rent; and the only effect, even under a Moohummudan government, which would be produced, is that, in case the government chose it, they might oust the cultivator and give the land to another, or sell the land to another, or release themselves from the legal restraint of appropriating the revenue, received under the name of *rent*, to the purposes specified by law for the appropriation of the khurauj.

My object, in dwelling upon this subject, is to shew that there are no legal means of emancipating the soil from the government revenue *permanently;* and consequently, that the multitude of lakhurauj tenures, which have been trumped up, during the imbecility and decay of the Moohummudan government, and the no less imbecile infancy of that of the English, are in themselves illegal, could not by law have been granted *as permanent rent-free tenures*, and that their ever having been considered as such by our government, must have been the consequence of ignorance on the one hand, and of imposition on the other.

I shall, in this place, take notice of the variety of illegal and fictitious tenures which have been erroneously recognized by the local governments of India.

By the Moohummudan law, the sovereign, as we have seen, has no power to give away public property, of any kind, without an equivalent. He cannot bestow a lakhurauj grant in any other way than that above mentioned, *viz.* by an appropriation of the khurauj of one's own estate to the owner himself, with the condition attached, of his

his being one of those classes of persons to whom the law assigns a public provision. An appropriation of this kind would be necessary to accompany even a religious endowment, if exemption from revenue were designed: and this would be permanent, if the body or class endowed continued to exist as objects of benefice; but would cease to be so with the existence of the last incumbent, who might come under the description of persons entitled by law to the benefit of a public maintenance.

So little power is, by the Moohummudan law, vested in the sovereign to give away the property of the public, that although, on the eve of a battle, he may hold out special rewards of an additional share of plunder in order to encourage the troops, yet after the battle is over, he cannot give away an atom of prize property, beyond the regular share; except, indeed, from the share of the crown, which is a fifth of prize property.

In the above power, which the Moohummudan law recognizes in the sovereign, of assigning the khurauj of one's own lands to the proprietor, however, I can see the seeds of the variety of anomalous tenures, which are recognized by our government in India as lakhuraujee, or rent-free and permanent, without their having ever been traced to their origin; and, in fact, without their nature ever having been ascertained; to the enormous diminution of nearly three millions sterling, perhaps, of the public revenue, under the Bengal presidency alone.

Setting out, therefore, with this, as a principle of sound law to be kept in view, that no permanent lakhuraujee tenure can, by law, exist in the person of an *individual*

under a Moohummudan government, let us examine the India tenures as they are known to our government.

1st. *Altumgha* التمغا. This tenure, I think, owes its rank more to its sound than to its sense. One who has read Latin is immediately reminded of something *high;* and when he is told that it is a "royal grant," he is prepared to believe any thing of it. The truth is, however, that the word conveys no idea of the nature of the tenure. تمغا *tumgha*, or as it is also written طمغا, signifies نشان *nushan:* "a distinguishing mark: a mark they put on the hip of a horse, especially of the royal stud." تمغا *tumgha* signifies نشانِ مُہر *nushané mohur*, 'the impression of a seal. *Turkish Dictionary.* التمغا *Altumgha* is a compound of آل *ál* a crimson colour سُرخ نیم رنگ and تمغا *tumgha* a seal; مُہر in Turkish مُہر بادشاہ the seal of the king: and sometimes they drop the word تمغا *tumgha* and the word ال *al* alone is used, to signify the royal seal.*

The meaning which the British Government attaches to an *altumgha* grant is, that it is a royal grant; not only in *perpetuity* to the grantee and his heirs, but that it is a transferable, and perpetual *lakhuraujee* or rent-free tenure. It is certain, however, that it by no means necessarily implies either *permanence* or *exemption from revenue*, or *right of transfer*. "And," says Timour, "I ordered that to "twelve of the forty *ouymauk* (heads of tribes of soldiers) "which had submitted to my government, تمغا *tumgha* "should be given, that they might be classed among my "khas servants." Inst. 309. The other twenty-eight *ouymauk*,

* Furhung Rusheedee, voce آل

" *mauk*, who had not received *tumgha*, I appointed over " their own tribes; that in time of war they might attend " with their quotas." 313.

2d. *Muddud maaush* مدد معاش this compound word signifies subsistence (lit. assistance in living), from مدد *muddud*, aid, and معاش *maaush*, living. It is also stated to be a royal grant in perpetuity, to be transferable, and to convey a rent-free tenure; but it was probably nothing more originally, than the grant of a pension to an individual in distress. " I ordered," says Timour, " that to the poor, " فقرا *fookra*, the helpless عجزه *aajzah*, and the indigent " مساكين *musakeen*, مدد معاش *muddud maaush* should be " fixed." Inst. 357.

3d. *Aeemah.* ايمه *aeemah* is the plural of امام *imaum*, which is, I believe, the true etymology. If so, it was probably, nothing more originally than the grant of a small living to maintain a priest, or *imaum*, at the neighbouring mosque to preside over the people at prayers; the person who guides the people at their public devotion being the *imaum*, or *leader* for the occasion. Or it may have taken its name from the donor, the sovereign, in his capacity of imaum. They are grants to Moohummudans.

The celebrated Bengal financier, Mr. Grant, tells us, that " *aeemah* is the popular general term for all charitable " or religious donations made by the sovereign to Moo- " hummudans in Hindoostan; and, technically, in forms " of sunnud, as well as of the exchequer, always more " particularly distinguished by the words *altumgha*, or " *muddud maash*."* It (*aeemah*) is also supposed by our government

* Grant's Analysis.

government to be a regular form of grant, conveying from the crown a free and perpetual transferable title.

When the prince, the *shahzaadah*, came to Bengal, he took upon himself to give away large grants of land, for charitable or religious purposes, under this appellation; but the grants were so extensive, that the king, though he did not choose not to ratify them, imposed a small land-tax on the lands granted; and they, in consequence, got the appellation of "*aeemah bazyauft*" lands, or *aeemah* resumed lands, from بازیافتن, to get back

4th. *Jageer*, جاگیر from جا *jau*, a place, and گرفتن *geruftun*, to lay hold of. This is known to be merely a life-rent tenure, but it is stated to convey a rent-free title. A *jageer*, when given in land, is known, in the Moohummudan law, by the name of اقطاعا *auktaa*, from *kutaa*, to cut; signifying a portion cut off for a particular purpose.

*Jageer* may be said to be a military tenure. Their origin in India may probably be traced to the following practice of Timour. "He ordered the whole of the revenues of "the country to be divided into lots of different amount, "and that these lots should be written on a royal assign- "ment یرلیغ *yurleegh*. These assignments were brought to "the Deewan Khana (exchequer, to be entered perhaps). "Each of the omrah and mingbaushees (officers of horse, "who received sixty times the pay of a trooper) received "one of these assignments. If the amount was greater "than his own allowance, he was to share it with another; "if less, he got another to make up the amount." Timour directed, however, "that no ameer or mingbaushee should "collect more from the subject than the established reve-

"nue

" nuę and taxes: and for this purpose, and to keep an " account of the jumma, and of the payments and shares " of the ryots, &c. to every province on which royal assign- " ments were granted, he appointed two wuzeers: one " of whom was to take care that the *jageerdar* should not " oppress the ryots. The jageerdar got the grant first " for three years; at the end of that period the country " was inspected. If it was found in a flourishing con- " dition, and the peasantry were contented, the jageerdar " was continued: otherwise, it (the jageer) was resum- " ed, and the jageerdar was punished, by withholding " from him his subsistence علوفه for the three years fol- " lowing."* Hence, perhaps, arose the *malikana* or *nan-kar.*

These four are stated by our writers to be the only tenures derived immediately from the crown: and in the province of Behar alone, in the year 1784, the present Lord Teignmouth mentions the amount of the annual produce of rent-free lands held under the above titles to be rupees 13,08,786 (about £130,000 sterling). Besides which there are stated to be other alienated lands in the same province to a large amount, under the titles of:—

*Nuzzeré durgah* نزر درگاه (lit. an offering at a sacred place), for maintaining places of worship.†

*Kharijé jumma* خارج جمع (lit. out of, or excluded from the public revenue), excluded from the revenue, and sold by the zumeendars.‡

*Maafee* معافي (lit. exempted, privileged, or revenue exempted lands), exempted on the authority of the nazim or the zumeendar.§

*Sir*

* Inst. † Lord Teignmouth's minute. ‡ Ibid. § Ibid.

*Sir shikun* سر شکن (lit. broken-headed, but stated to be) land broken or separated from the capital or head; granted in charity, by zumeendars, chowdries, canoongoes.* It is, however, a grant of parcels or portions of land to some public functionary of the village; the priest, or perhaps the village washerman or plough-maker, to induce him to reside there. It is taken a little and little from each zumeendar or head; *i. e.* breaking a little off each head to give for the above purpose: so called سرشکن head-breaking.

*Khyrautee* خیراتي (lit. alms-meaning, that which is given voluntarily with a good intent), land given in charity by the amil, zumeendar, or nazim.†

*Nankar* نانکار (lit. bread for work), stated to be land given by the amils or nazim, or the zumeendars, chowdries, talookdars, for some service performed.‡ It was, however, an allowance received by the zumeendar, while he administered the concerns of the zumeendary, from gvernment, without reference to proprietary right. When he did not administer the affairs of the zumeendary, no nankar was allowed.

*Enam* انعام (lit. gift, present), land given by zumeendars or amils as a favour.§

Land held by all these tenures is stated, in the document to which I refer (Lord Teignmouth's minute), to be in practice transferable, except lands held by *nuzzuré durgah* tenures: but as the right of transfer does not appear to be well founded, even of *altumgha*, *jageer*, and *muddud maash*, &c. tenures, I shall deem it necessary to inquire into that presently.

Besides

* Lord Teignmouth's minute. † Ibid. ‡ Ibid. § Ibid.

Besides these, however, there are a variety of other modes known in India, by which lands have been appropriated, and now escape paying revenue, to the great loss of the state. As 1 *chakuran*, 2 *moteran*, 3 *peeran*, 4 *fukeeran*, 5 *cheraghee*, 6 *burmootur*, 7 *bhoguewitter*, 8 *bhatotur*, 9 *bishnotter*, 10 *dewotter*, 11 *nij jote*.

1st. *Chakuran* چاکران, service lands, from chakur, a servant. This grant may be by a Hindoo or Moslem.

2d. *Mohturan* مہتران, from sanscrit مہت *muhut*, great, and ترانہ *turana*, to cherish; *i. e.* lands set apart for the maintenance of a great or revered person or place. A Hindoo grant.

3d. *Peeran* پیران from *peer*, a confessor or spiritual guide. Lands set apart for a peer. A Moslem grant.

4th. *Fukeeran* فقیران from *fukeer*, a mendicant (Moohummudan law *fookra* فقرا), to maintain the poor. A Moslem grant.

5th. *Cheraghee* چراغي from چراغ *churaugh*, a lamp: to maintain lamps burned at the shrines of saints. (Inst. Tim. روشناي *roshnaee*.) A Moslem grant.

6th. *Burmootur* برهموتر a compound of *bruhm*, a brahmin, and *oottur*, fit for, belonging to: a grant of land to a brahmin. A Hindoo grant.

7th. *Bhoguewitter* بهوگوتر from *bhogu*, enjoyment, possession and *oottur*, as above: a maintenance to any person. A Hindoo grant.

8th. *Bhatotur* بهاتوتر from *bhaat*, a class of brahmins: meaning a maintenance for the bhaat brahmins. A Hindoo grant.

9th. *Bishnotter* (should be *Vishnoottur* وشنوتر) from *Vishnoo*

*Vishnoo* and *oottur*, *i. e.* a grant of land for the worship of Vishnoo. A Hindoo grant.

10th. *Dewotter* دیوتر, from *devu*, a god, and *oottur*, as above; translated by my brahmin etymologist "a "grant of land for the expense of a deity." A Hindoo grant.

11th. *Nijjote* نجوت (but I think it ought to be نیچ جوت *neech jote*) from *neech*, under, and *jote*, to *plough*: *i. e.* land reserved by the zumeendar and excluded from the jumma, for cultivation under himself. Either Hindoo or Moslem grant.

It is evident that these tenures are not, in their nature, necessarily hereditary; and, by law, they are clearly not: nor does it follow that any one of them conveys a rent-free grant.

For example, the *altumgha* tenure. "Timour ordered "all the beggars to be collected, and maintenance to be "assigned to them, وایشانرا تمغا کنند *and that they should* "*be distinguished by a mark*, that they might not, there-"after, be permitted to beg any more: و بعد از تمغا *and if* "*after tumgha* they should be found begging they should "be banished."* We cannot suppose by such *altumgha* grants that his majesty designed to constitute a body of *hereditary* beggars.

The grants of *altumgha*, *ayma*, *jageer*, *muddud maaush*, were by law nothing more than grants of the *khurauj* or revenue, the property of the lands remaining unaffected by them, whether belonging to the grantee or to others; and

and so far were these grants of altumgha, ayma, jageer, &c. from being considered by the Moohummudan government of India to be grants of a proprietary nature in the soil, that they were generally, perhaps, latterly, universally made over the lands of *others*, over the lands of a hundred different proprietors, perhaps, whose right, as *bonâ fide* owners of the soil, was never questioned. And thus two distinct interests might exist in the same property: that of the *altumghadar*, or *aymadar*, or *jageerdar*, to the extent of the *khurauj* or public revenue; and of the *malik*, or real owner, to the surplus collections from the ryots, after paying the khurauj. This constituted the malikana, or malik's (owner's) share; of which the *altumghadar* could not deprive him. And here we have an easy explanation of the fact hitherto, so far as I know, unexplained, *of altumgha jageer and aymadars in Behar, in many instances, paying malikana to zumeendars* (meaning owners of land): a fact adduced by Mr. Shore as a proof of claims of the zumeendars to the ownership of the soil, and equally adduced against him as a proof that that right vested in the sovereign; seeing, as they said, an altumgha grant is hereditary and a royal grant, and were the right of property not vested in the crown, the crown could not have granted it. But both parties were wrong. They confounded the real zumeendars, the real owners of the soil, with zumeendars, the managers of the revenue of villages, tracts, &c.; and mistook the grant of the *khurauj*, or revenue, for a grant of the *soil*. For example, suppose A. to have an altumgha grant of the khurauj of B's land, and afterwards to get possession of the land from B., on paying him ten per cent. (or any sum) yearly. Here A., an altumghadar, pays B., a malik, for the same land over which he (A.) holds an altumgha title.

Mr.

Mr. Shore, on this subject, had good information, but did not avail himself of it. Gholam Hoosseyn Khan, the intelligent and acute author of the *Seeur-ool-Mootuakhereen* above mentioned, being questioned on various points, in answer to Question 19th, "When any land was given as "altumgha, jageer, muddud maaush, &c. out of the "zumeendarry, did the proprietor of the land receive "*malikana* from the person receiving the grant?" The answer is: "*Certainly.* Malikana is the right of the pro- "prietor of land; and if he, the proprietor, received it "(malikana) from the ruler (government), how can an "altumghadar, jageerdar, &c. withhold it?" And this intelligent man again says, in answer to the 29th Question, "The emperor is proprietor of the *revenue* issuing out of "his territory, but he is not the proprietor of the soil. "Hence it is, that when he grants aymas, altumghas, "and jageers, *he only transfers the revenue* from himself to "the grantee." Nothing can be more clear than this, as far as the property of the soil is concerned; that it was never, even in practice, conveyed to an altumghadar or jageerdar, &c. And, by law, even the revenue could not be alienated, except under conditions, as before explained, even by the monarch himself.

It has been above stated, that Lord Teignmouth understood that *lands* holding by the tenures of altumgha, jageer, muddud maaush, &c. were *transferable* in *practice;* but we now find that the lands were *not understood* to be conveyed at all by such grants of the crown, but only the *revenue transferred* by the crown; and a grant of revenue (khurauj) is, by law, not transferable by *the grantee,* though it may be *inherited* under certain conditions. Nor does it appear in *practice* that such grants were understood to be *transferable.* The words of the grant by altumgha, &c.

&c. are adverse to the construction put upon them by his lordship. It is not a grant to *assignees*, but *from father to son, in lineal succession:* and the reason of this is, as the answer to the 49th question of the document just quoted plainly shews, "the clause, *from father to son, in lineal* "*succession*, is inserted in an altumgha sunnud, in order "to secure the grant *to the posterity* of the original pro-"prietor (grantee)." But the right to *transfer* would be vesting any individual of that posterity with the power to defeat the right of all the rest; and this would be defeating the object of government in making the grant, which was to reward the faithful services of an individual, by a permanent and certain provision for himself and his offspring.

We have seen that, by the law of India, the right or interest conveyed by an altumgha, jageer, or muddud maaush tenure, is *not transferable* by sale, gift, or bequest, or by any other mode of transfer; and the tenor of the grant, as well as the understanding and practice of the Moghul government, appear to have corresponded with the law. It is scarcely necessary to remark, that the admission, by our government, of the altumgha tenure as being *hereditary*, by no means implies a right to *transfer* by sale or otherwise. The altumgha, therefore, may be considered in the light of an entail upon the grantee and his *heirs* for ever. In default of heirs, the lands themselves, if there be no malik, and at all events the public revenue of the lands, will revert to the crown. We must conclude, consequently, from these premises, that every estate held by an altumgha, &c. title, that has *ever been transferred by any deed of transfer whatsoever*, is, at this moment, both by the law and the usage of the country, liable to the revenue of the crown, the khurauj.

Mr. Shore himself, indeed, who states the altumgha title to be transferable in *practice*, tells the government distinctly, in his letter to the Committee of Revenue, 29th January 1784, "that the altumgha is a grant to the original grantee and his heirs in perpetuity, *but devolving to government in default of heirs.*"

It is necessary to take farther notice of the *due* here termed *malikana*, so confidently pronounced, in these extracts, the proprietor's right. This is supposed to be a due belonging to the real proprietors of the soil, to which they were entitled though their lands should have been subjected to the right of an altumghadar, jageerdar, &c. by the crown. *Malikana*, however, is a mere innovation, neither authorized by the law, nor was it by the practice of the Moghul government, till the latter days and disorganized state of the empire. It had no existence, probably, till oppression was practised over the *maliks* (owners), by the sovereign granting assignments, under the name of *altumghas*, *jageers*, *muddud maaush*, &c., to an oppressive extent over their lands. We hear nothing of malikana till then: for, during the regular government, a malik himself paid his *khurauj* to the officers of government; the residue was his own. This was his. Farther than his *khurauj*, he neither gave nor received from government.

There is, indeed, a way in which a *malikana* might have arisen; but then it would not be at all definite as to rate: nor, in many instances, might there be any at all. If an owner cannot cultivate his land nor will pay the khurauj, government, by law, may give the land to another person to cultivate for hire, or on paying the khurauj. In this case, the surplus, if any, is the right of the owner *(malik)*, and may, agreeably to the Persian idiom,

idiom, be called *malikana*. But, then, observe that this is not paid from the public revenue or government share, but from the profit, after the khurauj is paid. There is no possible way by which *malikana*, be it what it may, can be due by government.

The possibility of its being an allowance made in lieu of the wages payable to official collectors (amilguzzars), and to those owners who paid their rents into the treasury, is, strictly speaking, not admissable; because the officers of the revenue are, by law, ordered to be paid, not from the lands, but out of the public treasury. Malikana has, therefore, its origin doubtless in the necessity of providing for the oppressed owners (maliks), whose lands were usurped from them by royal *assignees*, as before described; who, wringing from the ryots the last farthing, would necessarily be compelled to maintain the starving maliks, and to pay them something, which might be called *malikana*, from their own funds; and hence it has been thought to be payable from the government share, or jumma of the lands.

The *dewanee*, as it is called, of Bengal, Behar, and Orissa, is held by the Company "in perpetuity, as a free "gift and *tumgha*;" but it was not granted "rent-free:" and the words, "from generation to generation, and for "ever and ever," form a clause of it.

So far from being considered a *rent-free* grant, though the deed itself calls it "a free gift," and no mention is made in the body of it of any payment, yet twenty-six lakhs of rupees annually were stipulated to be paid to the king out of the revenues of those provinces, by an agreement expressly referring to (and, in fact, being a part of the

agreement on which depended) the above grant; so that liability to the payment of the public revenue to the crown is not inconsistent with an *altumgha* tenure; whilst, on the contrary, the existence of such a tenure, without liability to public revenue, is inconsistent with the law of the country, though in practice it was otherwise.

The grant to the Company was not perpetual by the mere introduction of the word *tumgha;* nor, as we have seen, was it, in point of fact, *rent-free.* I should rather interpret the meaning of the word *tumgha,* if it be at all significant, to be "special royal favour. As a mark of "special or royal favour, I, the king, grant to the Com- "pany the provinces of Bengal, Behar, and Orissa:" subject, however, it must be understood, to the dues of the crown, otherwise the grant would have been by law altogether void and null *ab initio;* for, as I have repeatedly noticed, the sovereign has no power to give away the property of the Moslemeen without an equivalent.

The equivalent, in this case, was the "twenty-six lakhs "annually paid into the royal exchequer;" which, together with the maintenance of the requisite army for the defence of the provinces and other advantages specified, the expense of collecting the revenues and maintenance of the public establishments of Islaum, was probably more than, for many years before, the country yielded to the royal treasury.

So, also, the *muddud maaush* tenures. They are equally non-significant of perpetuity: indeed, I ought to say, are rather *essentially life-rent.* When granted to individuals, they are unquestionably so; and must cease with the life they are granted to maintain.

"I ordered,"

"I ordered," says Timour, "that the descendants of Aalee, "the Oolma, the Foozla, the Mushauekh, the Durvesh, "the Goshanusheen, should have سيور غلات *seyoor ghul-* "*laut*, and وظيفه *wuzeefah*, and مرسوم *mursoom* given them, "and that the فقرا *fookra* and the عجزه *aajza* helpless "مساكين *misakeen* should have مدد و معاش *muddud o* "*maaush* assigned them."*

"And that, for the support of the shrines and sepul- "chres of the saints مواضع lands should be appropriated "by *wukf* (benefice), and that فرش *fursh* carpeting, آش "*aush* food, and روشناي *roshnaee* light or lamps, should "be allowed."†

The word سيور غلات *seyoor ghullaut* is the plural of سيورغال *seyoorghal*, and has the same signification as *mud-dua maaush*, viz. چيزي كه براي مدد معاش كنند "that "which they appropriate as muddud maaush."‡

All the above appropriations of Timour are in strict and literal conformity to the Moohummudan law. How, then, the grant by muddud maaush, the origin and nature of which are here so clearly seen, should have been imposed upon us as a "perpetual rent-free transferable tenure," is difficult to be accounted for, unless we ascribe it to the extreme state of anarchy into which the country had fallen immediately preceding our accession to the Dewany; the enormously valuable "gift" which that conferred, pro-

 ducing

* Inst. p. 357. † Ibid. ‡ Madar-ool Afazil, Dictionary.

ducing on our government a proportionate disregard of minor objects; and, probably, what was then politic, a wish prevailed to leave things as much as possible as they were found, rather than by strict scrutiny into tenures, to give alarm, and to elicit the ill-will of the people.

*Aeemah* tenures differ in no essential way from muddud maaush; though, in some provinces, as in Bengal, a small rent is paid, as before noticed.

*Jageers.* The tenure by jageer is recognized by our government as resumable. It is resumable when the grantee ceases to exist: and so may the altumgha grant, though "from father to son in lineal succession," be strictly said to be resumable, when the series of grantees is at an end. By the law of India, the tenure by jageer would be legal, to the extent of a decent maintenance to the holder, his wife and children *under age.* Beyond that, it is not in the power of the crown to alienate the public revenue; and the grantee must be of the class of persons to whom the law allows public maintenance.

The prevalence of jageers seems to have had its origin in the mode practised by the Moghul government, following Timour, as above noticed, of paying its servants. Men of importance in the state, or who had performed services (or favourites, doubtless also) received titles: but jageers were appropriated peculiarly to military chiefs, called *munsubdars,* who ranked by their commissions for the command of so many horse. For each horse and horseman the munsubdar was allowed, if on full pay, eight thousand dams, or two hundred rupees yearly. For this the munsubdar, for instance, got an order on the province where he commanded, for the subsistence of his troops.

troops. This order is vulgarly called a *tunca* or *tunka;* but the word is تنخواہ *tunkhaw*, that is, "as much as is neces-" sary for the body," from تن *tun*, a body, and خواستن *khuwaustun*, to want or require; so that, in fact, its meaning is nearly synonymous with that of *muddud maaush*, a subsistence.

By the officers of government this order, or *tunkhaw*, was made more specific; and a particular pergunnah, perhaps, or village, or number of villages, were assessed with this tunkhaw; or the pergunnah, or village itself, given over in lieu of the stipend. The crown became weak, the assignee powerful; and thus a simple assignment on the revenue for subsistence has grown into an hereditary tenure.

These four are all the tenures existing in India, which were supposed by the English government to flow from the crown. The inferior tenures, as *nuzzuré durgah*, *kharigé jumma*, *maafee*, *sirshikun*, *khyraat*, *nankar*, *enaam*, *peerawn*, *fukeeran*, *churaughee*, are all either Arabic or Persian words, doubtless introduced by the Moohummudans, and were grants, by Moslem zumeendars, or talookdars, or choudries, &c.; but as none of these classes of persons could have, by law, any personal right in perpetuity to rent-free lands, they could, consequently, convey no such right to another; and therefore, in a question referring to the public revenue, such minor grants must be discarded entirely.

Still less can we attend to the residue of this long list, which is composed of grants of a similar nature, made by *Hindoos* for the maintenance of their religious and chari-

table establishments. It is quite impossible that any of those could ever have flowed from a Moohummudan crown; and, as private grants, they could not have affected the public revenue. *Burmutur*, *bogwutr*, *bhatatur*, *bishnotr*, *dewutr*, are grants of this kind: and with respect to the *neejjote*, also *khomar* lands, the former the zumeendar relieved from the revenue, by putting the whole sum of his assessment on the rest of his lands, and cultivating this spot under his own superintendence, as the word signifies; the latter, کھمار *k'homar* in Hindee, in Persian خرمن *khurmun*, probably originated from the name of a spot near the village, or in the most eligible place, where the corn and other grain was brought to be threshed and winnowed. This spot was excluded from the revenue by the zumeendars, and probably a considerable appendage adjacent. They are here noticed merely to shew that they are not overlooked.

The intelligent Ghoolam Hosseyn Khan, above quoted, was asked, "Can a zumeendar give, sell, or alienate from "the public assessment, any part of his land?" *Answer.* "If he be the *real proprietor* he may transfer his zumeen-"darry: but *since he is liable for the public revenue*, if a "deficiency in the revenues should be the consequence of "such alienation, the zumeendar must be responsible." He ought to have added; and so is the *land* transferred responsible, and cannot be relieved from that responsibility, into whose hands soever it may be transferred.

The loss of revenue which government has thus suffered by sustaining such titles as the above is beyond all belief enormous. The Moghul government, our predecessors, were not exposed to this; for, besides that they exacted from

from the persons who might hold rent-free lands services as an equivalent, such as keeping up a force to preserve the peace of the country, and to aid the king when occasion required, police establishments, &c. &c., when advisable, the crown, knowing its right, stood on no ceremony in resuming such grants.

In the reign of Akbar, the revenue of the province of Bengal, including however Orissa, as far as Rajahmundry, was 1,49,61,482 rupees; and the zumeendars (if they possessed rent-free lands, which doubtless they did) were bound to furnish, in addition to their assessment, 23,330 cavalry, 801,158 infantry, 170 elephants, 4,260 cannon, and 4,400 boats. The revenue of Behar was 55,47,985 rupees, and it furnished 11,415 cavalry, 449,350 infantry, and 100 boats.

Mr. Grant, in his Analysis, says, "it is not to be understood by this, that the zumeendars were bound to furnish that number of troops, &c. in addition to the revenue; but only that the province *was capable* of furnishing them in case they were required." But in this I do not agree with Mr. Grant. The meaning is, that when called upon, the province was bound to furnish that quota, the *capability* being of course implied. The small zillah of Tiprah is stated in the *Ayeen Akburee* to be subject to a chief whose military force is 1,000 elephants and 100,000 infantry; and Coach (Coach Behar) by a chief who commands 1,000 horse and 100,000 foot. The quotation is stated thus "also" to furnish 23,330 cavalry, &c., besides, are we to suppose that the whole province of Behar could only furnish 100 boats, its stated quota?

The British government has not only relieved the people from such burdens as these, but has continued the old,

old, and admitted a great variety of new exemptions from revenue; and, moreover, has seldom, if ever, availed itself of the customary exercise of the power of resumption.

The translator of the *Seeur-ool Mootuakhereen* pays the English a compliment to their liberality, at the expense of their management, on this point. "In their dominions "of Bengal and Behar," says he, "they indeed resumed a "number of grants; but it must be allowed that they con- "firmed an infinity of others, *one half* of which afforded "full grounds for resumption."

How far it is politic, or even just, to continue these exemptions from the public revenue, will, I think, admit of being very seriously questioned.

It is not where there is no stimulus to exertion that we are to look for improvement; nor should one portion of the people be made to bear the burden of the other in supporting the exigencies of the state. What would the people of England say, were a great portion of the finest lands in England, with all its inhabitants (for that is in effect the case here, there being no other tangible property to tax) totally exempted from taxation? On this point I do not, however, propose to enter at large; but shall content myself with having shewn the law applicable to such grants, in hopes that it may be useful, at least with reference to the provinces yet in the hands of government.

In the ceded and conquered provinces of the Dooab, &c. alone, there are now rent-free lands "beegahs 44,95,177," as reported by the Board of Commissioners; and stated to be "superior to the average value of the other lands, "and

" and equal to those of the highest rent;" in which case they would yield an annual income of 1,23,61,736 rupees, or pounds sterling, at two rupees per beegah, £1,236,173

and in the lower provinces, exclusive of Cuttack, there is stated by Lord Teignmouth, from the investigation held in 1777, to be beegahs 83,75,942; which, at one rupee and a half per beegah, would be..... 1,256,391

making together the enormous sum of..... £2,492,564

Mr. Colebrooke, in his Husbandry, states "the free " lands in some pergunnahs in Sherefebad and Tajpur, " to have been ascertained to be " more than one half of the whole " productive soil," thus,.....

| | Free lands. Beegahs. | Cultivated. Beegahs. |
|---|---|---|
| " And, again, in other places..... | 298,275 | 524,909 |
| | 143,042 | 301,131 |
| " Total | 441,317 | 826,040* |

Here, then, is a grand source whence much might yet be recovered to government. There is another in uncultivated land, which I shall now briefly notice.

The ancient tenures in existence at the Moohummudan conquest, fell, as I have already shewn; consequently no plea of exemption from revenue, founded on them, can be sustained.

By the Moohummudan law the land revenue of the crown was fixed on the arable land only. That alone was given away to the husbandman, who became the owner. All other lands remained the property of the state, and were

* Husbandry, p. 18.

were ready to be given away, on application, to any one who would undertake to cultivate them. If he did cultivate, well; if not, within a reasonable time, which was limited to three years, the land was taken from him, and might be given to another. By law, therefore, it is evident that no right can exist in any individual, or body of individuals, to any other description of land than that which is cultivated.

Timour says, "I ordained that the khurauj should be "levied agreeably to the produce of the *cultivation*, that "the jumma should be fixed on the produce of the land."* The revenue per beegah, by Akbar's settlement, is calculated at one and a half to two rupees. Had the uncultivated land been included, the amount of land-tax would have far exceeded the value of the whole *produce* of that which was cultivated. The produce of a beegah of ordinary land is stated in the *Akburee* at 4 maunds 12 seers wheat-value, 12 dams 12 40ths of a rupee per maund; or, per beegah one rupee five annas. A second crop might yield nearly as much; both about two rupees ten annas per beegah. If half the produce, or one rupee five annas, be given for the expense of cultivation, we shall have nothing to spare for uncultivated land.

We see, therefore, that the practice of India corresponded with the written law in this; for in the reign of Akbar it was the cultivated land only that was measured; it was the cultivated land whose value was ascertained, and it was the cultivated land that afforded the datum for making his decennial settlement: and it was from the records established on that basis that the revenues of these provinces

* Institutes, p. 363.

provinces were limited for ever, by what is called the permanent settlement. Consequently, by the law of India, all the uncultivated land (which is, according to Mr. Colebrooke, "one-half, and about half of which is capable of "cultivation, the other half irreclaimable, or in rivers "and lakes")* of the whole of the three provinces still remains the property of government; for without an *express equivalent and specification of revenue*, there existed no power legally capable of giving them away, by any lawful deed of conveyance or any legal mode whatsoever.

Nor, in equity, can these lands be deemed to have been given away, because no equitable value was put upon them by either party to the permanent settlement. It was the productive land, the rent-paying land, that was the subject matter of settlement between the parties; and that rent-paying land consisted of "villages;" for all the land of the country resolves itself into the land of such or such a village. There are larger and smaller divisions; but this is the most definite and best known, and, therefore, I follow the native registers in adopting it.

The quantity of land belonging to every village is stated in beegahs: the boundaries perhaps specified, but probably not well defined. One of the contracting parties, at least, (the zumeendar), was therefore bargaining for a specific quantity of land. This quantity of land was the land in cultivation, and must have been so. The zumeendar had no capital to enable him to offer a rent to government for land that was not immediately productive; nor could government have believed that he had, without entertaining the most extravagant fancy. I say, therefore, that not

not only the law, but even the equity of the case, is against the alienation of the uncultivated land.

But the discussions which took place on the occasion of the permanent settlement, do not lead us to suppose that government intended to give away the uncultivated lands. Mr. Shore, in his minute of 8th December 1789, speaking of waste land, says, "the limits of the villages are left "undetermined by any marked bounderies. The quantity "of land in each, *though stated in beegahs*, is confessedly "unascertained (by us, for otherwise this is a gratuitous "confession); the proprietors may therefore extend their "possessions and encroach upon the present waste lands. "The boundaries of villages ought to be, and may be "ascertained; and I think the government ought to know "what it gives, and the proprietor what he receives. Mr. "Law says that the boundaries of cultivated villages are "well ascertained: if so let them be marked and recorded. "If the plan (the permanent settlement) should be attend-"ed with the improvement expected, the limits of estates "will then become very important; and, some time or "other, there will be a necessity for defining them."

From this it is evident, that Mr. Shore, the only member of the government of that day who displays an accurate knowledge of the subject discussed, did not intend to convey to the proprietor of the village more than the land ascertained to belong to that village; which ascertainment was "by beegahs" (whether measured or by computation matters nothing), to which the jumma, or money-rent, had reference.

Lord Cornwallis, indeed, in his minute, February 3d 1790, gives us reason to think that his lordship designed

to

to be more liberal than his colleague; for he says, "the rents of an estate can only be raised (to the profit of "its proprietor), by inducing the ryots *to cultivate the* "*more valuable articles of produce, and to clear the extensive* "*tracts of waste land*, which are to be found in almost "every zumeendarry in Bengal." But his lordship, in the preceding paragraph, has just told us, in answer to an argument of Mr. Shore, "neither is prohibiting the "landholder to impose new *abuabs*, or taxes, on the lands "*in cultivation*, tantamount to saying to him he shall not "raise the rents of his estate." But his lordship has not told us, if a landholder may not raise the rents of his lands in cultivation, what profit he is to derive from lands paying *money rent* (or a specific quantity of grain named), by "*in-* "*ducing ryots to cultivate the more valuable articles of pro-* "*duce.*" And did his lordship intend giving away, for nothing, the whole of the "*extensive tracts of waste land* "in Bengal?" This is not understood by the government, nor by any one; and, therefore, we may fairly mark this as a most inconsistent paragraph of his lordship's, conveying no meaning whatsoever.

The act, under the authority of which the permanent settlement was made, gave no power to grant waste land. It is the 24th George III., chap. 25, sect. 39. By this section, the Court of Directors were required to give orders for settling and establishing, "upon principles of "moderation and justice, *according to the laws and consti-* "*tution of India*, the permanent rules by which the tri- "bute, rents, and services of the rajahs, zumeendars, "polygars, talookdars, and other native landholders, "should be in future rendered and paid to the United "Company."

Here

Here there is no authority to give away waste land, or uncultivated land, or indeed land at all; nothing in the most remote sense authorizing the giving any *permanent right* to land of any kind. It is "to fix *permanent rules* "for the payment of *rents*, tributes, and services due "from native landholders," such as rajahs, zumeendars, polygars, talookdars, to the Company; affording a presumption, indeed, in direct opposition to the idea of property in the soil existing in any of the classes of persons mentioned. And these "rules for paying rents" were ordered to be fixed "according to the law and constitution "of India;" which debars, even the Emperor himself, from giving away one inch of waste, or any other land, without an equivalent.

## CHAP. III.

### *On Taxation and Revenue under a Moohummudan Government.*

I NOW come to the sources of revenue available, and taxes leviable by law, under a Moohummudan government: in treating of which I shall endeavour, also, to state what imposts, *de facto*, existed under the Moohummudan government of India. It must, however, be previously remarked, that as the Moohummudan law was framed for a people, nine-tenths of whom were Moohummudans, when it came to be applied to a people, as in India, of whom nine-tenths were not Moslems, it could scarcely be hoped that a very literal adherence to it was practicable, or will now be found. The general principles of the law, however, were no doubt observed; and to shew this must suffice.

By the Moohummudan revenue laws a distinction is made between the *Moslem* and the *Zimmee*, or non-Moslem subject, to which it is necessary to attend. This distinction is great with respect to the land revenue; but it is applicable, only, to the land of *Arabia proper*, and to conquered provinces, when the lands are divided among the conquerors. There the Moslem pays the *oosh'r*, or tithe of his crop; the Zimmee, the heavier impost of khurauj, which by law may amount to, but cannot exceed, half the produce, *i. e.* five tithes. But, on the other hand, the Moslem is liable to several annual and occasional

taxes, from which the Zimmee is exempt, amounting to about two or three per cent. of his property (not of the produce merely), under the name of *sudukah* and *zukaut*, or pious benevolences. I use this word because the English reader will recognize it.

But as India was conquered by force of arms, and the inhabitants were suffered to remain in it, and their lands were restored to them on paying the capitation tax and the khurauj, or land revenue, by law the whole land of India is khuraujee land, the Hindoo and other inhabitants, unbelievers, are Zimmees, and the land is liable to the khurauj, whether it be in possession of a Moslem or of a Zimmee. This is the law of Moohummudan conquest; and the fact corresponds with the law. By law the *ooshr* and *khurauj* cannot both be exacted from the same land; consequently, in India, the land revenue payable by a Moslem and a Zimmee, by law, would be the same, and so *de facto* it was.

The public revenue, by the Moohummudan law, is drawn from the following sources. The *ooshr*, or tithes, from the *produce* of the soil; the *khurauj*, from the produce of the soil, or from the land, if fixed on the latter; *tribute*, of tributary states; the *customs;* the *zukaut* (or tax) on *pasture*, cattle, camels, oxen, goats, sheep, and horses; *zukaut*, on gold and silver coin, bullion, plate, jewels, on merchandize and goods; *offerings* at the *eeds* or festivals, *expiatory sin-offerings*, and things offered by vows: all exactions from Moslems only. The *capitation* tax on non-Moslems; the *fifth* of prize or plunder, of the produce of mines, of treasure-trove, of wrecks; *escheats*. The sovereign has the power also of raising a *war tax* from the people in case of war; but this is repugnant to the spirit

spirit of the constitution, and therefore held in reprobation, unless in case of necessity.

Timour had, attached to his dewaun or exchequer, *seven wuzeers*, or ministers, for the above purpose, as before noticed.*

The first of these Moohummudan imposts, *viz. tithes.* These are termed عُشر *ooshr*, which signifies a tenth-part, or ten per cent. on the produce of tithe land. This only Moslems paid. The *ooshr*, or tithe of produce, was never levied in India, as already stated, because the country having been subdued by force of arms, and the inhabitants suffered to remain in it as free men, their right to the soil was, on their agreeing to pay the legal imposts, established; and the lands became *khuraujee*, and not *ooshree* lands.

This Moohummudan impost is taken from the Jews, by whom it was called מעשר *maasher* معشر; that is عُشر *ooshr*, or *aasher* with the addition of *m*: in fact, another inflexion of the same word. When the Hebrews were contemplating the possession of Canaan, Moses ordained that they, when they got possession thereof, should, besides the revenues of forty-eight of the most flourishing cities, &c., grant to the priests and Levites a tenth-part of the annual produce of the earth; וכל מעשר הארץ ליהוה "and all the "tithe of the land (whether of the seed of the land or of "the fruit of the tree) is the Lord's."†

Secondly, the خَراج, *khuraij*. The revenue originally fixed on

* Inst. 305. † Levit. xxvii., 30.

on the land of conquered provinces, not inhabited by the conquerors, was called *khurauj*. It is said, in law, to be fixed "on the neck of the land." Meaning, that the land itself is liable for the land-tax, independent of the owner; which liability cannot be affected by any transfer, or other mode of conveyance. For example, the principle of the law is, that the lands of a *Moslem* shall only pay *tithe;* those of a non-Moslem subject, *khurauj*. But though a Moslem purchase the khuraujee land of the Zimmee (non-Moslem), it continues, nevertheless, to pay khurauj; because the law holds the soil liable: the right of government to the kurauj, or, as the law has it, "the right of the "troops (and other public officers to whose use the khu- "rauj is by law appropriated) must not be defeated."

The khurauj was fixed in two ways: one, on the principle of a share in the produce, as a half (the highest), or a third, or a fifth; the last considered as the lowest extreme. This settlement was termed *mookausumah*, from كسمت *kismut*, division, *i. e.* the cultivator dividing the produce with the state. The principle of this settlement, therefore, is similar to tithing: the rate only is higher; and in this settlement, if there was no cultivation there was no collection.

The other mode of fixing the khurauj (which was the radical mode, so that if the word khurauj simply is used, it is held to mean this mode of settlement) had reference to the quantity of cultivated land possessed, and the kind of crop produced. The rate of khurauj was fixed for the different kinds of crop the land was capable of producing. The land was measured, and each *jureeb* (or, as it is called in India, beegah) of sixty squares of nearly yards, if it produced

duced wheat, paid a measure of wheat and a dirhum in money. Other dry crop paid also in kind and in money per jureeb; but all green and perishable crops paid in money only. This mode of settlement was called *mookautuaah*, from قطع *kutaa* to cut or settle, definitely. Thus certain lands produce a certain crop. The quantity of the land is known by measurement: the rate is fixed; consequently the quantum of revenue is fixed. By the former, or mookausumah settlement, the quantum of revenue was not fixed, but depended on the harvest and on the cultivation.

The khurauj was leviable, under the mookautuaah settlement, whether the owner cultivated or not; provided he was not prevented from doing so by some inevitable calamity, as inundation, blast, blight: or if he was deprived of his field by *force*, he was not liable. A cornfield paid the khurauj of corn, a kufeez of wheat and a dirhum; a vineyard the khurauj of a vineyard, *viz.* ten dirhums per jureeb.

The word jureeb جريب Heb. גריב *jureeb*, vas, mensura, a vessel, a measure, *Buxtorf.* But its use among the Hebrews seems restricted to a measure of capacity, not of quantity or long measure, as understood by the Arabians.

A jureeb of wheat land, I have stated, paid a kufeez (or a measure of about nineteen pounds) of wheat, and a dirhum, in money; which is six annas and four elevenths, or about ninepence halfpenny sterling: calculating the rupee at two shillings, the intrinsic value of the silver being about two shillings only. The word قفيز *kufeez* is also Hebrew קפיזא قفيزا *kufeeza*, mensura, modius trium logorum,

*Buxtorf.* A log contained the fourth of a *kab*, a *kab* the one hundred and eightieth part of an *omer*, an *omer* eight bushels. The value of nineteen pounds of wheat might be about two or two and a half dirhums more. In the *Ayeen Akburee*, however, it is stated at three dirhums; so if we take that value for the wheat, the land revenue or assessment of a jureeb of dry crop is three shillings and a penny sterling, or one rupee nine annas per beegah.

It appears that before the time of Shere Khan the mookausumah settlement prevailed in Hindoostan. The *Ayeen Akburee* says, "Sher Khan and Selim Khan, who "abolished the custom of dividing the crop and made a "measurement of the cultivated lands, used this guz" of thirty-two fingers. And Akbar seems to have restored the mookausumah settlement, with conversion into money of the government share, in some of the provinces. Of the fifteen soubahs which composed his empire, *ten* were measured. The remaining *five* soubahs were not measured; but the revenue was settled by *nussuk*, or computation, and valuation of the crop before harvest, and was paid in money. This was the custom in Bengal.

The soubahs not measured were Cashmeer or Cabul, Tatta, Berar, Khandees, and Bengal: those measured were Behar (part at least), Allahabad, Oude, Agra, Malwah, Guzerat, Ajmeer, Dehli, Lahore, and Moultan. The measurement of the cultivated lands thus made, and the ascertainment of the average produce of a beegah, were the data on which the assessment was formed. One-third of the average produce was fixed as the revenue; but in cases of inundation, or other unavoidable calamity, the impost was less for the first four years following it. On the above basis, taking the average of ten years, Akbar made

made a decennial mookautuaah, or permanent-rate settlement, which is stated to have given great satisfaction to the people. This was done under the superintendance of Raja Tudar Mull and Muzuffur Khan. It is the settlement so often alluded to by writers on this question; and the amount is known by the name of the *ussul toomar jumma*, established A. D. 1582.

The Moohummudan law, as I have observed, allows the khurauj to be levied as high as one-half. Some lawyers say, as much shall be left to the husbandman as will maintain his family, servants, and cattle till next crop, and all the remainder shall go to the crown; but one fifth of the produce is deemed the equitable and commendable portion, being double the *ooshr*, or double tithe. The *Ayeen Akburee* says, "former rulers of Hindoostan took "one-sixth; but then they imposed a variety of other "imposts, equal to the whole quit-rent of Hindoostan, "which Akbar abolished: among these, the capitation "tax." And according to Pliny, the husbandman paid one fourth of the *increase*.

Ferishtah tells us, "that Allah the First ordered a tax "of half the annual produce; that he appointed officers "to superintend the collectors, who were ordered to take "care that the zumeendars levied no more from the poor "farmers than in proportion to the estimate of their "estates." The Moohummudan law, in cases of inundation, or when the crop was blighted or blasted, or otherwise destroyed by unavoidable calamity, granted a remission of the khurauj. It also says, that "if the hus-"bandman is unable to cultivate the land, government "shall lend him as much as will enable him to do so, "taking from him a surety: the loan to be recoverable

" by easy instalments, but to be a debt against the *person* " of the cultivator."* We accordingly see that Akbar, in his instructions to his amilguzzars, ordered them " to " assist the needy husbandmen with loans of money, and " to receive payment at distant and convenient periods." These advances are known to India at this day under the name of *tuccavi ;* and the custom of making them is practised, almost universally, by all land-holders.

We may compare the rates of assessment in India, during the Moghul government, with those recognized by the Moohummudan law. In the province of Behar, for instance, the measured land of 138, out of 199 pergunnahs, contained 2,444,120 beegahs. Suppose every beegah to be rated as *dry crop land,* the very lowest rate, at three shillings, it would give £366,618 sterling (rupees 36,66,180); and we find the jumma of that province stated in the *Akburee* at rupees 43,16,004 (£431,600 10*s.*); difference, rupees 6,49,824 (£64,982): which if we set off against the superior revenue which would fall to be levied from that part of the lands which produced *green crop,* which paid five shillings, and vineyards as high as ten shillings, the estimate will bring the amount of assessment fixed by Akbar on the cultivated lands of Behar as near the rate specified by the Moohummudan law as it is necessary, in an inquiry like this, to trace it.

The remaining sixty-one pergunnahs of the province of Behar, the land of which was not measured, were rated at sicca rupees 12,30,940. Total revenue of the province, sicca rupees 55,46,944, *minus* rupees 55,803 of *seyoorghal,* or charitable funds and poor's rates. It furnished also 11,415 cavalry and 449,350 infantry, and 100 boats.†

Timour

* Zey laaee. † Akburee.

Timour exacted from lands irrigated by water from rivers, canals, or rivulets (easy irrigation), one-third of the produce; convertible, at the pleasure of the ryots, into ready money, at the market price: and if the ryots were not pleased with this, the lands were to be measured into jureebs, and classed into first, second, and third classes. The produce of the first class was to be estimated at three kherwars or loads; that of the second at two; that of the third class at one kherwar; average two kherwars, per jureeb: half, or one kherwar, to be taken as wheat, the other half as barley. The settlement or assessment was to be for one-half of this: so that for twenty jureebs of land watered as above, ten kherwars of wheat and ten of barley were payable. The barley was reckoned half the value of wheat. Or if the ryot chose to pay in money he might, at the rate of five miskauls* of silver (value about five shillings and sixpence sterling) per load, for wheat, and two and a half miskauls per load for barley (two shillings and nine-pence value): so that, by this reckoning, the khurauj of a jureeb would be four shillings and two-pence sterling, or two rupees one ana, which would be one-half more than the rate charged by Akbar. But then a tax was levied by His Majesty Akbar, "in return for the cares of royalty, of ten seers of grain "from every beegah of cultivated land throughout the "kingdom."†

This would raise the land-tax of Akbar to about five shillings and sixpence per jureeb. Nor must we forget that Timour levied only a third, or a fourth, from lands which depended on rain for their fertility, which would probably diminish the general rate below those fixed by Akbar. Since

* A *miskaul* is equal to 7 dirhums; a *dirhum* is equal to $6\frac{4}{7}$ anas: so 7 dirhums are equal to $44\frac{1}{2}$ anas, or 2 rupees $12\frac{1}{2}$ anas.

† Ayeen Akburee, vol. i. p. 287.

Since Akbar's time another impost was, by royal authority, fixed; first upon the southern provinces of the Dukhun, and afterwards it became general over that part of India, to be paid to the Mahrattas, by a treaty of peace made with them, in Bahadoorshah's reign, in the year of our Lord 1701. This was called the *dusmuk'hee* or tenth handful: that is "the tenth of that part of the "crop allowed the farmer."* This was a tenth of two-thirds of the produce, for that was the general share of the farmer (or about 6. 6 dec. per cent).

Besides this, a fourth of the government share of the revenue was afterwards accorded to those marauders, apparently, at first, gratuitously and without authority, by Daood Khan Peni, who was left *locum tenens* for Zoolfukar Khan, Soobadar of the Dukhun. This was called the *chout*, or fourth; and has been erroneously supposed, by many, to be a fourth of the produce. It was not confirmed to them till the reign of Ferakhsere, who ratified it by an imperial firman, about the year of our Lord 1715. The *chout* of one shilling and three-pence of the produce, or about 8. 3 dec. per cent, making together with the dusmukhee fifteen per cent., or about one-seventh of the whole produce of the Soubah of the Dukhun and southern provinces, *viz.* Poonah, &c. was the acknowledged revenue of the Mahrattas on those provinces.

The third source of Moohummudan revenue was *tribute* of tributary tribes or states. This has no limit, but is settled by convention, and is arbitrary. The *Bunne Toghlib*, a tribe in Arabia, paid double *ooshr*, that is, one-fifth, as tribute.

The

* Seeur Moot., vol. iii. p. 221.

The fourth, the *customs.* This is known in law by the term *ooshr-oot tujaurut*, or tithe on merchandize, when in transit. A *modus*, or taxable amount, *viz.* two hundred dirhums, was fixed, below the value of which no tax was levied. It was to a *Moslem* about two and a half per cent.; to a *Zimmee*, five per cent.; and to a *Hurbee*, or subject of a foreign state, ten per cent., or whatever *his* government charged on the property of Moslems, when that was ascertained. If they charged no duties on Moslem merchandize in their country, then their subjects were exempt in the Moohummudan dominions. The Moslem and the Zimmee paid only once in one year, but the foreign merchant was charged as often as he passed into the Moohummudan dominions.

The sovereign, by the Moohummudan law, has the sole charge of the customs. They are levied, as is stated, "for the protection of the roads from robbers and "thieves;" and it is remarkable that it is the same by the old English law, and that the same reason is assigned by the English lawyers for levying customs, "that they "are vested in the king, and that foreign merchants are "to be chargeable with double customs."*

In India, therefore, five per cent. would be leviable from the merchandise of Hindoos, and other non-Moslem subjects, in transit, and two and a half on that of a Moslem. Timour had his collectors of customs and his minister to receive this revenue: "the duties on the merchandise of "comers and goers, also the taxes on cattle (as below) and "on pasture lands."†

It

* Blackstone, b. i, 68. † Institutes, page 303.

It is stated of Akbar, "that he remitted duties on ex-
" ports and imports by sea that would equal the revenue
" of a kingdom, and now nothing is exacted but a trifle
" of two and a half per cent."**

The fifth source of Moslem revenue is *zukaut on cattle*, or cattle tax: that is, on camels, oxen, sheep, and goats. The original signification of zukaut is purity; to purify, Heb: זכה *zukah*, "pure, clean," הזכו "wash you, make you clean," *Isaiah* i., 16. לא זכו *lazukoo*, "they are not pure," *Job* xv. 15. The word "*zukaut*" has evidently been introduced into finance with the view of creating a belief, that by giving a part "*to the Lord*," the residue, including the donor of course, becomes thereby more pure, and of a higher value. The giver derives spiritual exaltation from the act; and who is there that would hesitate to purchase so important a benefit on so easy terms?

It is, however, only "for *brood* cattle, which pasture out
" of doors for the greater part of the year," that this pious impost is payable. I call it an impost, because it is compulsatory. In case of non-payment, the magistrate has the power of compelling the individual to pay it, on pain of imprisonment. The way in which this power is expressed is curious. The lawyers say the judge *shall not force* the person to pay his zukaut; *but he may imprison him till he do pay it.* Moslems, only, are admitted to the privilege of paying zukaut. Unbelievers are not so easily purified; and they were not suffered to attempt it in this way. "Do not you see," say the grave doctors, "that even
" hell-fire itself is incapable of making the unbeliever
" pure: how then can they be purified by means so in-
" adequate

** Ayeen Akburee, vol. i. 296.

" adequate?" A very conclusive argument, and one, at all events, not likely to be impugned.

Labouring cattle, and cattle fed at home, were exempted; and of pasture cattle a rateable number was fixed, under which no zukaut was payable. The zukaut on camels was thus fixed. On five (the lowest taxable number of camels) one goat was payable; for one hundred camels, two three-year-old camels were paid: about two per cent, supposing a three-year-old to be of the average value. Young and old are reckoned together, of all taxable animals.

On *kine*, thirty is the lowest taxable number; and for that number a yearling calf was paid. For forty, one two-year-old. Sixty paid two yearlings. One hundred paid two yearlings and one two-year-old; which may be about the same value.

On *sheep and goats* forty is the lowest taxable number of these, and paid *one;* but for one hundred and twenty no more than one was chargeable. From one hundred and twenty-one to two hundred, two were payable; and one per cent. for every one hundred above that number; so that one per cent. may be stated as the zukaut on sheep.

On *horses*, meaning a brood stud. *Horses* paid nothing if by themselves, nor *mares* if by themelves, but only when they were kept together. The tax on horses was levied, either *ad valorem*, paying two and half per cent; or, if the owner chose, he might pay by number, at the rate of ten dirhums (ten shillings) a head. It was disputed, however, by the lawyers, whether even brood horses were taxable, or whether the law applied only to horses for sale. Mules and asses are also chargeable, but only when they are merchandise.

Timour

Timour and Akbar levied a tax on cattle, without reference to the creed of the owner, whether Moslem or Hindoo. "If," says the Akburee, "khuraujee land is kept " for pasture, let there be taken yearly from kine each " three dams, and from buffaloes six dams. Calves shall " not pay; and for every plough the owner shall be allow- " ed four oxen, two cows, and one buffaloe, that shall not " be taxed."*

By the Moohummudan law all labouring cattle are exempt.

6th *Zukaut on gold and silver.* The lowest taxable sum was twenty miskauls of the former and two hundred dirhums of the latter (both the same value), and paid two and half per cent; and the same per centage was levied on bullion, ornaments, and plate made of these metals.

6th. *Zukaut on oorooze*, or goods when merchandise, and not in transit. These pay *ad valorem*, yearly, at the same rate as gold or silver. The stock of an artist or tradesman even is liable to this impost. If a dyer, for example, purchase a stock of dye, should its value amount to two hundred dirhums and he keep up this stock for a year, he is liable to zukaut. Every thing that yields a profit or increase is liable to this tax, which may be called a species of excise. The hire of the dyer is the profit or increase which the law here contemplates. Every thing for sale, or which "yields a profit to the owner, or which by his " labour or art enables him to reap a profit, is included " in the word *oorooze*, with the exception of silver, gold, " coin of these, cattle, land, and its fruits," all of which, as

* Ayeen Akburee.

as above, are liable separately. This tax is two and half per cent.: and *note*, to make up a modus, or taxable amount, the value of goods may be added to money, and the duty levied from the whole.

7th. *Alms at the eed of fetr.* This is termed صدقة الفطر *sudukut-ool fetr.* Every Moslem, male and female, sane and of age, who besides his house, household furniture, wearing apparel, his horse, his armour and arms, his labouring slaves, has two hundred dirhums of property, is liable to this tax: "it is incumbent upon him." It is half a sauaa of wheat (about nine pounds and a half) or a whole sauaa of barley, or the same of dates, or of dry grapes, at the option of the *donor.* This eed, or festival, is held on the first day of the month of shuvaal, immediately following the fast of Rumuzaun, the Moohummudan Lent.

Under this head may be classed "expiatory sin offer-" ings" and "things offered by vows," as they all went to relieve the poor, and, consequently, to lighten the burden of them to the state.

To Timour's *third* minister was assigned the duty of receiving religious donations.*

8th *The capitation tax.* This is termed جزيه *jizeeah*, and signifies, in law, an equivalent given by the subjects who are unbelievers for protection; or, as some have it, "an equivalent for sparing their lives." The word جزيه *jizeeah* is derived from جزء *jooza*, a part or piece of, جز *juza*

* Institutes, page 803

*juza*, to give, to break in pieces, تجزیہ *tujzeeah*, to be satisfied with, or hold sufficient, جزا *juzau*, an equivalent, *soorauh* Heb. נזר *jooz*, or נזר *juz*, abscindere, excindere.

All non-Moslem subjects are liable to this impost, who are males, adult, and *able* to work, whether they work or not. There was an exception, however, to this, in Arabia proper. The capitation tax was not accepted of the idolaters of Arabia proper; their sin of infidelity being aggravated by the birth of the Prophet among them. These had the option of the faith or the sword. The idolaters of all other countries might pay the jizeeah: and in Arabia proper even the "ketaubees," اهل القتاب *ahl-ool kitaub* (lit. people of the book; that is, those who had a divine revelation, meaning Christians and Jews); also مجوسي the *majoosees*, the Persian majee, and foreign idolaters, عبدة الاوثان من العجم *aabdut-ool aousanmen-il aajume*. These are declared to be eligible, even in Arabia, to secure their protection by paying the capitation tax. The author of the Kamoos says the word مجوس *mujoos* is an Arabic corruption of مج گوش *maj gosh*, which signifies "small ear:" a name which the founder of the magi religion got from the remarkable smallness of his ears. The mujoosee are worshippers of fire. "مج *muj*, ماج *mauj*, the moon," also "مگ *mug*, مغ *moogh*, fire, a worshipper of fire."* The word "idolater" is عبدة الاوثان *abdut-ool ausaun*, from وثن *vusun* an idol. The author of the Soorauh says "وثن *visun*, "also واثن *vausun*, signifying firm, perpetual, water which "perpetually flows; also an idol." Hence perhaps the name of

* Farhung e Jehangeeree.

of the Hindoo god Visunah, or Vishuna. I say "hence," supposing the Hindoos to have borrowed; because the same root is found in the Hebrew with the above meaning אתן *authun*, or *asun*, stetit, constetit, pertinax fuit. "Hence אתון *asun*, "*asina*, an ass; because, says the lexicographer, it goes "slow and often stops. It denotes generally a notion of "constancy, also firmness, strength. It is also said of a "sea, because with force and impetus it goes to and fro; "also a torrent." *Stock.*

The amount of the capitation tax is, from the wealthy, forty-eight dirhums yearly; from the middle classes, twenty-four; and from the labouring classes, twelve dirhums, paid by monthly instalments. The owner of ten thousand dirhums (or fifteen thousand, as some say) is held to be in the first of these (the wealthy) classes; the second class consists of those who have property, but are not altogether independent of their labour; the third class requires no explanation.

This tax must have been enormously productive in India. An annual tax on adult and able-bodied males, of from two pounds eight shillings to twelve shillings sterling, on a population of eighty or one hundred millions, allowing one-sixth to be Moohummudans, and therefore not chargeable, would be enormous. Take fifteen shillings (seven rupees) as the average amount; and allowing for females, children, &c. take one-sixth, or fourteen millions, as the average taxable number of the non-Moslems, the amount in rupees would be ninety-eight millions, or about ten millions of pounds sterling; more than a twelfth part of the whole land revenue of India, even in the reign of Akbar, which, for his fifteen soubahs, was rated at about one hundred and sixteen millions sterling.

But the capitation tax was extremely obnoxious to the Hindoos, and was repeatedly abolished in India, and as often revived, till the reign of Moohummud Shah, who, at the intercession of Rajah Jey Sing, repealed it, for the last time, as before-mentioned. This was about the year 1745; twenty years only prior to the grant of the Dewanee of the provinces of Bengal, Behar, and Orissa to the Company: so that, if the tax was then levied, there must be many Hindoos now living who have paid it: all those of the age of ninety and upwards.

This tax, though well known in Europe, has been considered in India as a highly ignominious impost. The reason is two-fold; first, being levied only from non-Moslem subjects, it marked an obvious distinction among the people; but, secondly, the very words of the law which imposed it convey the most pointed degradation; it positively enjoins, that the jizeeah shall be paid by the Zimmee in a humble and humiliating posture. "They "shall pay the jizeeah with their hands و هم صاغرون *vu "hoom saugheroon*, and themselves in a humble posture;' but which words have been interpreted by some to convey a still more degrading meaning. These tell us the receiver of the tax shall call them to him, and say to them "pay "the jizeeah, you infidel dog," and when he has paid it, as he retires, he shall be kicked out. This no law-giver could ever have authorized, not even a Moslem. It is the interpretation of a fool and a bigot; but still it is of importance, as it tends to illustrate the remarkable degree of repugnance which the Hindoos evinced to the tax. It was not the amount they objected to: indeed a Moslem, who paid zukaut on his property, paid much more, probably, than the jizeeah. Whenever the question was agitated,

agitated, it was the total repeal of the tax which the Hindoos solicited. It is not my intention to recommend the revival of the jizeeah; but it cannot fail to be instructive to the Indian financier to know the taxes, and the nature of them, which have heretofore existed in this country.

9thly. *Fifths.* This is termed خُمس *khooms*, signifying a fifth. These are the fifth of prize or plunder taken in war, of the produce of mines, of treasure trove, wrecks. The fifth of prize or plunder, during the conquering days of the Moohummudans, must have been a very productive source of revenue. Of every thing taken in war a fifth went to the exchequer, the remaining four-fifths to the troops "who were present at the affair."

Akbar, in his instructions to his Fojdars, directs them "to act with fidelity in the division of plunder; a fifth "part of which he shall send to the royal exchequer."* The produce of mines of gold, silver, copper, iron, lead (some say quicksilver), paid a fifth; but not limestone nor sulphur, nor precious stones, as rubies, diamonds. Metals only were chargeable.

*Treasure trove.* This term was applied to "coin found "hidden in the earth:" it paid a fifth. But if it was of Moslem coinage, it was advertised for the owner; if of Infidel coinage, the fifth was immediately paid, and the remainder went to the original owner of the land wherein it was found; or if in one's own land, or in a desert, or in land belonging to no one, the remainder went to him who found it. The fifth of wrecks, also, went to the treasury.

Treasure

* Ayeen Akburee.

Treasure trove must also have often escheated. "If "a person find hidden treasure in the lands of another, "a fifth goes to the crown and the remaining four-fifths "go to the owner of the land (meaning the primitive "owner, to whom the lands were assigned at the con- "quest of the country, or his heirs), *not to a purchaser* or "owner by any other tenure; it shall rather escheat to "the crown." Timour's third minister had charge of the collection of these duties.

10th. *Escheats.* When property was left without a legal heir it escheated to the crown. In India, where there were frequent instances of conversion to the Moohummudan faith, it is probable that escheats often occurred; for, by the Moohummudan law, difference of religion bars inheritance: that is, if either party be a Moslem. A Hindoo cannot inherit of a Moslem, nor a Moslem of a Hindoo, but a Hindoo may inherit of any other sect of non-Moslems.

Timour's third minister was appointed to take charge of the property of absentees, insane persons, and of those who had no heirs, and of fines. In the same regulation the following is mentioned اموالِ ايندہ وروندہ *amwal-ē aeeunda va ruvinda* (lit. the property of the comers and goers), meaning, perhaps, the Moostaumin or foreign travellers with passport; also وحاصل بادي و هواي *hausil-e baudee vū huwāee*, which the translator does not translate, but which mean, things found without owners, known, in law, by the name of لقطہ *looktu*.

Akbar desired his amilguzzars, or collectors of revenue, "to

" to take proper care of the effects of absentees, and of " those who die without heirs."*

11th *War-tax.* This tax is not a constitutional tax, and the sovereign ought not to levy it, unless there be not sufficient funds in the treasury; in which case, however, he may freely levy it. The war-tax might be made, and no doubt was made, a fruitful source of exaction in India, as the occasion for such exaction could seldom be wanting.

These are all the legitimate sources of revenue under a Moohummudan government, but, *de facto*, under the Moohummudan government of India, there was a great variety of other imposts, which existed down to the reign of Akbar; and, as stated, were remitted by him, to the amount, including the capitation tax, of the whole quit-rent of Hindoostan. These were the

میر بحري *Meer buhree*, lit. admiralty dues, port duties.

کریعي *Kureeaaee*, tax on convocations assembled to settle business; on each person.

گاوشماري *Gaoshumaree*, tax on kine.

سر درختي *Siré derukhtee*, tax on fruit-trees.

پیش کش *Pesh kush*, introductory presents, as in cases of succession or introduction at court.

فروق اکسام پشه *Furookaksam peshah*, tax on artizans.

داروغانه *Daroghanah*, darogha fees.

تحصیل داري *Teheseeldaree*, tehseeldar's or subordinate collector's dues.

فوطه داري *Fotahdaree*, fotahdar or money-trier's dues.

وجه کرایه *Wujeh kuraeah*, lodging charges.

خریطه

* Ayeen Akburee.

خريطه *Khureetah*, bags for the money revenue.

صرافي *Surraufee*, shorffage.

حاصل بازار *Hasile bazar*, market dues.

نكاس *Nekaus*, dues on paying up arrears of revenue.

Besides which, a tax on the sale of cattle, and likewise a tax on hemp, blankets, ghee or oil, and on raw hides, and on measuring land, and on weighing; as also a tax for killing cattle, and on tanning; on gambling with dice; on sawing timber; also on rahdaree passports; and one that was called pug, a kind of poll-tax, as also hearth-money. There was also a tax on the buyer and seller of houses; also on salt made from earth; one called "bilkutty," on the commencement of reaping, also on putty numed (felt), on lime for building, &c., on spirituous liquors, on brokerage, on fishermen, and on storax.

We read in the Institutes of Timour of a سرشماري *sir-shoomauree*, a poll-tax, and also خانه شماري *khanah shoomaree*, house-tax; which he prohibited from being levied.* He also says, the impost on herbs and fruit, and the ساير جهات *sauer jehaut*, or dues of the towns and places, should be continued according to ancient custom, if the ryots were satisfied; otherwise they should be settled by هست و بود *hust-o-bood*, that is, by valuation or estimation, on the data of the هست *hust*, "is" or "present," and بود *bood*, "was" or "former" proceeds.

The same regulation also provides, that the dues of watering ابخور, and of النجرا common, and مراعي pasture, are to be levied according to ancient custom; with the above option, however, of valuation by hust-o-bood.

Akbar

* Institutes, page 349.

Akbar levied a tax on *marriages*, according to the rank of the parents; each party to the marriage paying the tax. This was, for a son or a daughter of a munsubdar, of

| | | | | |
|---|---|---|---|---|
| From | 5000 | to 1000 | horse..... | 10 mohurs |
| Do. | 900 | to 500 | ..... | 4 do. |
| Do. | 400 | to 100 | ..... | 2 do. |
| Do. | 80 | to 20 | ..... | 1 do. |
| People of condition | | | ..... | 4 rupees |
| Common people | | | ..... | 1 do. |
| Poor | | | ..... | 1 dam. |

Taking the population, and the Indian proportion of marriages, this tax would amount to a large sum.

The mint taxes were also a considerable source of revenue to Akbar. They amounted to six and a quarter per cent. for gold, besides the expense of assaying and of coinage, which was seven and a half per cent. more, paid by the owner of the bullion. Thus

| | Rs. | As. |
|---|---|---|
| Materials, ingredients, &c. cow-dung and charcoal, clay, quick-silver, and lead..... | 5 | 0 |
| Workmen's wages..... | 2 | 8 |
| Expense..... | 7 | 8 |
| Duty to the king..... | 6 | 4 |
| Total dues of gold coinage, Rs. | 13 | 12 |

The expense of coining silver cost the owner about one per cent., and the government duties were five per cent.; total six per cent.

The expense of coining copper was about six anas per maund; which gave about 1,170 pice, value twenty-nine

 rupees;

rupees; and the king's duties were one rupee eight anas, or five per cent. for one hundred rupees; total, one fourteenth, or six rupees nine anas per value of one hundred rupees.*

| | Rs. | As. |
|---|---|---|
| Total expense of coinage per hundred rupees value | 1 | 14 |
| King's duty ..... say | 5 | 0 |
| Total copper coinage | 6 | 14 |

The coinage, at the present time, in the three mints of Calcutta, Benares, and Furrukabad, is not known to me. For three years ending with 1818-19, it gave an average of about three crores; but since that period the coinage has diminished. The revenue arising from this, at five per cent., would be fifteen lakhs annually, exclusive of the cost and charges of the coining, which, as above, was payable by the owner of the bullion.

These are the sources of revenue which are recognized by the Moohummudan law, or were made available for the use of the state, under our predecessory Moghul government. If we compare them with the present single impost on the land, the only source of revenue worthy of notice except the salt and the opium monopolies (and a duty was levied by our predecessors on salt also), and advert to the very low rate of the land assessment of the provinces of Bengal, under permanent settlement, we cannot fail to see that, under the British government of India, the public exactions are infinitely lighter than they have ever been, and that those who represent them as exorbitant

* Ayeen Akburee.

orbitant are either themselves misinformed, or desire to misinform others.

Such are the restrictions imposed upon the present government of India, that even of the salt monopoly it is not permitted to realize the highest advantages. The prohibition of European merchants from purchasing salt at the Company's sales, has thrown the trade in salt into the hands of a few native monopolists, who regulate the price at will. Government receive about three rupees per maund; but the salt is re-sold, under their eye, at five rupees in Calcutta, by retail, after being adulterated with ten to fifteen per cent. of earth and dirt. The reasons which gave birth to this restriction have long ago ceased to exist. The restriction is obviously adverse to the interest of the Company, and no less so to that of the natives, who are now left at the mercy of a few native dealers. These lately availed themselves of the power which this restrictive law gives them, to such an extent, that in some districts the price of salt rose to ten and twelve rupees per maund, so that the poorer classes were compelled to deny themselves the use of it altogether: a circumstance which distressed the government beyond measure; but they were, for the time at least, without the means of affording relief.

If it be desirable to increase the surplus revenue of India, that it may be done, is sufficiently evident. A limited revenue, and boundless expense of indispensable military and civil establishments, have hitherto compelled government to place those establishmeuts on the lowest possible scale, both as to number and allowances. The policy of this is by no means apparent. More attention to the improvement of the revenue would produce ten thousand times

times the amount of saving, to be derived by retrenching from the already too scanty income of faithful and zealous servants of government. The system of retrenchment, which necessity gave birth to, has been kept up much too long. The capacity of the greatest dunce that ever came into office in India is fully equal to this, the lowest of all financial operations; and it is not unfrequently that we see such men so employ themselves. Their motive is not the good of the service—the welfare of their country: it is altogether selfish; to recommend themselves, as they hope to do, to the local governments, or the authorities in Europe. Nor can we wonder at, though we may regret, their success, seeing how difficult it is for the head of a government to get rid of a specific proposal that has economy for its object, however little disposition there may be to entertain it.

Upon what principal of good government, as applicable to a foreign province, such as India is of England, ought the public servants of the state, the individuals upon whose energy of mind, talents, virtue, and honour, the country is preserved to England, to be kept, in a foreign land on a bare subsistence?

The situation of the Company's servants in the military branch of the service, at this time, is, I fear, much worse than is believed, even by those in power at home. I say so, because my opinion of their liberality is such, that I feel convinced they would improve the condition of their army, were it fully made known to them, and they were convinced of the incalculable advantages which would result from that improvement. Numbers of their officers, men of family, all of education, and many of them men of talent, after fifteen, even twenty years service, are now dragging on an idle, and consequently a comfortless life.

Might

Might not many of those able, intelligent, and worthy men, be usefully employed, in time of peace, in carrying into effect the measures of government for increasing the revenue, till it should become sufficient to admit of a greater remuneration to themselves and their associates? Thus might all be enabled to maintain the appearance of respectability, even of affluence, so befitting an English gentleman, and, in the eyes of the natives of India, so becoming an officer of the English government: whilst those who preferred the enjoyments of their native country, would have the prospect of returning to it within a reasonable period, if not with riches, yet with a comfortable independence.

It is impossible to deny that England would be a gainer by this state of things, both immediately and ultimately: immediately, because the additional receipts of the servants of government would augment the capital available in India, the proceeds of which would be finally realized in England, and increase the general wealth of the country; and ultimately, because by thus raising the servants, who are in fact the organs of government, in the estimation of the people, by enabling every individual branch of the executive to be more extensively useful, or benevolent, or charitable, to those who are under his influence, the national character would be elevated, the good-will of the people secured, and by consequence, the stability of the government consolidated.

Those who consider the influence of our national character to have great weight in the system of our Indian government, will not look with the eye of indifference upon what is here but briefly hinted at. But it is not merely the moral influence that is concerned. The physical

sical powers of man are wonderfully affected by the state of his mind, and it would be just as hopeless to expect the most powerful pitch of tone from an unbraced instrument, as energy of intellect, or vigour of body, from the man whose mind is depressed, by dragging out a life of disappointed hope in a foreign land with scarcely a chance of visiting his own.

To suffer the scale of the European character to fall, especially of the European servants of government, we may rest assured, is very far from being the prudent policy of Britain in governing India. If, indeed, the influence of individual, and by consequence, of national character, be of any political importance, to preserve and maintain that influence, the standard of character must never be suffered to fall back. To maintain our distance we must advance, without which our ascendancy cannot be preserved. To effect this, the respectability of the service in both branches must be upheld; and liberality on the part of government can alone do this.

Nor let it be supposed that this would be a misappropriation of part of the surplus revenue of India. On the contrary, if we attend to the relative situation of India with respect to England, to the moral condition of the natives, and the state of the arts and sciences among them, it would be difficult to devise any other mode of application of that fund to the same extent, which would be equally advantageous to both countries. Pecuniary means alone are wanting to hundreds, I might have said thousands, of the Company's servants, to ensure their hearty exertion in an infinite variety of ways, for the benefit of India. Both India and England would profit by the augmented expenditure of individuals in India, of the productions of the respective countries;

countries; and what might be ultimately saved by those who preferred frugality, would necessarily find its way to England: thus realizing the two-fold advantages of increasing the consumption of our English manufactures, and augmenting the amount of the imported wealth of the kingdom.

It is evident that India can only benefit England in two ways; by affording a market for our manufactures, and by remittances (either on account of the government or of individuals), by investment or otherwise. It matters not to England though the proportion of private remittances be increased, so that the total of both public and private be not thereby diminished; and therefore, to enable the Company's servants to increase their hard-gained earnings cannot be attended with any evil, even in this point of view. But with respect to the consumption of our manufactures, this is not merely a matter of indifference: it is not merely a matter of indifference, whether those who are the principal consumers are, or are not, furnished with the means of purchasing. The whole consumption depends *entirely* on this: the Europeans in India are, as yet, the principal consumers of English goods; excepting cloths and metals, they are, it may be said, the only consumers. The Europeans in India consist almost entirely of the Company's servants: if, therefore, you augment the means of these servants, you will unquestionably improve your English export trade.

This improvement would be direct and immediate; but I think, the benefit would not rest here. A more extensive and general use of English articles by Europeans, would enable the importers into India to dispose of them generally on easier terms than the limited trade now carried on permits.

Many

Many articles would then be within the reach of the native population, which they now cannot afford to purchase. The taste for, or in other words, the habit of using them, would extend to a limit which our present experience does not authorize us to imagine.

This seems to be the most eligible way of increasing the consumption of English manufactures, though it appears to have been lost sight of; whilst the advantage of colonization, in respect of furnishing the wished-for market, has been much expatiated upon. But India is already colonized: that country is full of a peaceable and obedient population, living under the protection of the English government, which they acknowledge to be their government: they are subjects of the crown of England in every essential point of view. They are not, it is true, Englishmen, nor the decendants of Englishmen: but if this be objected to in India, the Cape of Good Hope, and other admitted colonies, peopled by the Dutch, French, and other foreigners, are liable to the same exception; surely their complexion will not be held to constitute a real distinction. The colony was not indeed planted by us; we found it full grown: but this does not alter the connection between the countries. It remains not the less, for that, our clear and decided duty to improve it, for the mutual benefit of both countries.

From the state of moral maturity in which our Indian colony was found, we ought to have expected that the inhabitants would with difficulty be made to yield to any change, however advantageous to themselves; and what more than this *have* we experienced? Nay, we have found them tractable, beyond the expectation of many; and there is no doubt that the influence of example will in good time

time realize the hopes of the most sanguine. It must, therefore, be indisputably the policy of England, to afford to her Indian subjects the fairest, as well as the fullest opportunity of profiting by such example.

We have got a population to the utmost extent of our wishes. Could we see them model their morals, their minds, and their manners, after the precepts of our holy religion, and the fashion of the best examples of our own countrymen, I am at a loss to conceive where would be the room left for a wish for colonization? We see, therefore, how idle it is to prescribe colonization, in the acceptation in which that term is applied by those who use it most, as the only means of improving India. For my own part, I believe it to be the worst that could be invented, and the least efficacious; whilst, at the same time, it would be the speediest to sever the connexion between the two countries for ever, and by consequence, as in the case of America, leave both imbued with mutual feelings of animosity, so indelible, that even time itself seems incapable of obliterating.

## CHAP. IV.

### ON THE PRESENT SYSTEM OF REVENUE.

*Permanent Settlement.*

NOTHING can be more important to the interests of India, than a well-regulated administration of the land revenue. When we consider not only the great proportion of the population engaged directly in the affairs of husbandry, but that the employment of so many is limited to, and consequently their entire thoughts are engrossed with, the single object of providing the bare necessaries of life, we shall be able, in some degree, to appreciate the vast importance to the happiness of the people, of the regulations which may be adopted for the adjustment of the revenue of the soil. The system authorized for the management of the land revenue of India, be it what it may, cannot therefore be put in practice without producing effects of the greatest magnitude, on the condition of the people and the prosperity of the country.

Many have been the plans recommended, tried, and abandoned, for their defects. The ancient system of India revenue is also defective: it is a human institution, and may well be imperfect. Its imperfections, however, were seen and experienced. Those of the new plans required experience, and that only to shew that they must fail. But the ancient system had one great and decided advantage: that it was known to the people, the people were reconciled to it, and, like all political institutions, however bad, what was wrong in it had doubtless acquired practical

practical correctives, of easy and general application, which rendered it at least sufferable to the community.

When the Emperor Akbar approved the settlement submitted to him by his able financial minister, Rajah Tudur Mull, and of which that valuable officer is by many erroneously supposed to be the author, his Majesty well knew the source was more sacred from which it sprung. The law of the land was not altered by his Majesty's Hindoo minister, and his able Moohummudan colleague, Muzuffur Khan: but a settlement was made, having the law for its basis; and the detail was ably projected and superintended by those valuable servants of the state, who neither did, nor would have dared to depart, in any thing essential, from the law and the usage of the country.

In modern times, conquering statesmen have greater confidence. They do not hold themselves hampered by custom, however sacred, antient, or universal! There is not in the history of the world a more extraordinary instance of disregard of the usages of a people, than is to be found in the conduct of those who swayed the councils of India when the great financial innovation of 1793 swept away the ancient landholders of Bengal, and limited its territorial revenue for ever!

Nor did those celebrated financiers better consult the interests of the British government. They appear to have forgotten altogether the distinction between the people of England, to whom luxuries are become necessaries of life, and may be touched by the tax-gatherer, and the subjects of their Asiatic territories, to whom even the necessaries of

life are luxuries. What source of revenue did they leave to meet the growing expenditure of the government?

A land revenue is well adapted to the present state of India; not only on account of the want of other sources, but because of the antiquity of the system, of its being so well understood by, and so familiar to the people; their being so thoroughly reconciled to it, as to submit, even cheerfully, to heavy exactions from the land, whilst, with reluctance not easily to be overcome, they are brought to pay even a petty tax otherwise laid on.

All are accustomed to pay for their land. It is not a tax upon their industry, but rather a premium to be industrious; for the more they produce by their labour, the lighter will their public burden be. A cultivator pays so much for his field or beegah. If by his exertions it produce much, the less will be the proportion of his assessment to the produce. Not so a tax on the produce of his land: a corn tax. As the produce is increased, so would be his assessment.

The ease with which men are apt to be imposed upon by words, has never been more successfully exemplified than in the case we are now about to consider. A "permanent settlement of revenue," a "permanent income," sound very imposingly in the ears of an Englishman. It means, he must conclude, something *secure*. A revenue permanently secured, though it should perhaps be not quite so large, is a good thing, he would say; and the old adage, "a bird in the hand is worth two in the bush," would occur to fortify his belief. But when this permanent settlement comes to be inquired into, even very superficially, it will be found to be no more than empty sound, so far as security

security for the revenue goes; and, in truth, to partake no farther of the quality of permanency, than as it is a permanent obligation, on the part of government, to cease for ever from increasing the India revenue, entered into with individuals who never had, indeed never can have, any security to give, beyond what government always did possess without them; namely, the *soil, and the labour, and wants of the people.*

The amount of revenue, instead of being fixed, has been, and must be ever liable to fluctuation, and always by diminution. The want of security for the revenue is inseparable from the state of society in India; but the defect, involving progressive diminution of revenue, is intrinsic, essential, and peculiar to the settlement to which I am adverting. A permanent limitation of land revenue must necessarily contain within itself the seeds of its progressive decay. There is nothing stationary: by all the laws, both of the moral and physical economy of this world, that which cannot increase must diminish.

In fact, instead of being what it professed to be, an engagement entered into with the owners (proprietors) of the soil for a specific revenue from their lands, with all that security for fulfilment which a wealthy landed proprietary necessarily gives, this far-famed "permanent settlement" is nothing more than a species of farming out of the land revenue to individuals; men, almost universally speaking, of no wealth or capital, consequently but little interested in the prosperity of the country; men who had no right of property in the estates now conferred upon them, and whose only object was to accumulate wealth, or to enjoy affluent sluggish repose, regardless even of the ruin of

their tenantry, which this unhappy measure gave them the power of doing.

It is absurd to talk of the *permanency* of the settlement affording any security to government for the revenue. This idea must be rejected by every person who reflects a moment on the subject, and knows who the parties are. There is, in truth, no security for a land revenue in India, but the security of a *moderate assessment, fairly distributed;* a regular and protecting government; protecting not to the zumeendars or farmers of the revenue, but to the ryots or cultivators, whose industry alone is the only source of, and security for the revenue.

It might have been expected, on the subversion of the Moghul government of India, and the sudden and unexpected acquisition of power and dominion which fell into the hands of a small body of foreigners, in 1765; such as the English in India then were (strangers, it may be said, utterly, if not to the languages, yet to the laws and usages of the country), that much difficulty would arise in settling, on a fair and equitable basis, the public revenue. Great difficulty was accordingly experienced, augmented by the chicanery of the native revenue officers, the natural disposition of the land-owner to withhold information, suppress, and falsify documents, and it must be confessed, in many instances, the want of probity in the European servants of government.

All this was to have been expected, and was really experienced; and it might have been supposed that a prudent regard for the interests of government, and of the governed, would have dictated to those in power the high importance of patient investigation. Twenty years, however,

ever, had scarcely elapsed from the cession of the provinces by the Emperor to the Company, till we find both the local government, and the authorities in England, loud in their denunciation of irregularities, which they ought to have expected, and resolute in their determination to terminate them at any sacrifice. The settlement of the revenue, limiting its amount for ever, was gone through with a degree of precipitancy which nothing short of absolute certainty, with respect to the rights of the humblest individual concerned, could justify.

An act of the British Parliament is consequently obtained, setting forth "that complaints, abuses, and grievances were made, perpetrated, and endured in India; "and that the native landholders had been unjustly "deprived of, or compelled to abandon, their respective "lands, jurisdictions, rights and privileges;" and by sect. 39, 24, Geo. III. cap. 24, "the Court of Directors were required to give orders for settling and "establishing, upon principles of moderation and justice, "according to the laws and constitution of India, the "permanent rules by which the tributes, rents, and services of the rajahs, zumeendars, polygars, talookdars, "and other native landholders, should be in future rendered and paid to the United Company."

This then is the text of law on which stands the validity of the permanent settlement. "The laws and constitution "of India" form the rule by which it was to be regulated; but it is material to observe, that there is not one word in this act authorizing the permanent *limitation* of the revenue of the country. "It is to establish *permanent rules, by* "*which the tributes, rents, &c. shall in future be paid.*" To fix rules for *paying* a tribute, and that too accord-

ing to the "laws of the country," is not the same thing as *limiting for ever the amount* of that tribute, and that too in a way discordant to all law, as really was done.

On the 12th April 1786, agreeably to the mandate of the act, the Court of Directors issued their orders to the Bengal government; but instead of adhering to the plain words of the statute, they direct the preliminary inquiry to be "what were the real jurisdictions, rights, and pri-"vileges of zumeendars, talookdars, and jageerdars, under "the *constitution and customs of the Moohummudan or* "*Hindoo government.* What tributes, rents, &c. they "were bound to pay to the sovereign; and, in like "manner, those from the talookdars to their liege lord, "the zumeendar." They, however, referred to the clause of the act of parliament itself, in which their power was specified, "which they directed the Governor-General in "Council to consider with minute and scrupulous atten-"tion, taking especial care that all the measures adopted "in the administration of the revenues be consonant to "the sense and spirit thereof."

It is evident, therefore, notwithstanding the inaccurate mode in which their orders are expressed, that the Court of Directors intended to conform to the tenor of the act of parliament, which ordained permanent rules to be established by which the rights of all native landholders "were to be settled and established, according to the "laws and constitution of India." But how they came to deviate so far from the tenor of the act, when in these instructions they express their opinion "that the spirit of "the act would be best observed by fixing a *permanent* "*revenue,*" it is difficult to comprehend. The perpetual limitation of the revenue on the lands is, therefore, the gratuitous

gratuitous creation of the Honourable Court of 1786: but by what authority that honourable body referred to the constitution or customs of the "*Hindoo* government," there is no possibility of forming any rational conjecture.

The proclamation by the Governor-General in Council, of the 22d March 1793, of the permanent settlement, the ultimate edict of government declaring it, expressly supports the "actual proprietary right in the soil," article III. "The Governor-General in Council accordingly "declares to the zumeendars, independent talookdars, "and other *actual proprietors* of land, with whom a set- "tlement has been made under the regulations (18th "September and 25th November 1789, and 10th Febru- "ary 1790), that no alteration will be made in the assess- "ment they have agreed to pay;" and this proclamation has likewise reference to the amended code of regulations relative to the decennial settlement, approved by the Governor-General in Council 23d November 1791, which it ordered to be translated into all the native languages, and published for general information. The third article states, "that the settlement, under certain restrictions "and exceptions hereafter specified, be concluded with "the *actual proprietors of the soil*, of *whatsoever denomina-* "*tion*, whether zumeendars, choudries, or talookdars." The restrictions and exceptions are stated to be, to exclude talookdars, who hold by special deeds of a superior zumeendar, and ayamadars, &c. also females, idiots, lunatics, and persons incapacitated on account of contumacy, or notorious profligacy of character.*

It would therefore appear, were we to attend to this alone,



* Article 19, Proclamation 23d November 1791.

alone, that the local government intended to admit to the settlement only the "actual proprietors of the soil," excluding such possessors of land as, by their own act were *known not to be actual proprietors*, as talookdars, holding by special deeds, or holders under crown grants, or persons incapacitated by their sex, or by the hand of God, from entering into such settlement.

Why this intention was departed from it is not easy to imagine. Necessity alone could warrant a proceeding so arbitrary; and it so happened that not only no such necessity existed, but that the ablest by far, as well as the best informed (perhaps the only well-informed) member of the Bengal government at the time, strenuously opposed the precipitancy with which the permanent settlement was urged to a conclusion. I need scarcely add, that the valuable man to whom I allude was Mr. Shore, the present Lord Teignmouth; whose minutes of that day evince a wonderful degree of industry in the attainment of information, and of talent, as well as temper, in bringing it to bear strongly, but meekly, on the important question which he and his less informed colleagues were called upon to discuss and decide.

Lord Cornwallis was an amiable and a virtuous man, and in carrying into effect the permanent settlement, no doubt thought that he was conferring a great blessing upon India. But it was one of those short-sighted benevolent-like acts, which men with good hearts sometimes rush upon, without seeing, in all its bearings, what they are about; and while they effect a partial good, they entail an enormous general evil. Lord Cornwallis, and his concurring colleagues, at home and abroad of that day, have the pre-eminent satisfaction of knowing, that by their celebrated proclamation

proclamation of 1793 they deprived the whole population of the three finest provinces of India of their hereditary, and hitherto undoubted right of property in the soil, the land of their fathers, the only thing which the anarchy of their country had ever suffered them to recognize as property, and vested this sacred right, *not* in the honourable, the benevolent, and humane breasts of the English government, but they transferred the real owners of the soil, like a herd of the inferior creation, into the hands of what we call the zumeendars, a set of men proverbial throughout their country for their tyranny, profligacy, and incapacity. This was the blessing for which India was expected to return thanks to those who were instrumental in bestowing it.

Let us see what their own country owe the government of that day? The supreme obligation of tying up her hands for ever, from availing herself, certainly at least of the best, indeed almost the only mode of increasing the revenue of several of the finest provinces of the finest portion of the world. I say the best mode, because I am persuaded, and I believe with reference to India it is admitted, that a land-tax laid on fairly, is the best of all modes of raising a revenue; and I say almost the only mode, because in India there are few other sources whence a revenue can be taken.

In Europe, the taste for luxury which prevails, enables governments to raise a large revenue by taxes on the articles of luxury; the necessaries of life form another source of revenue. In India, the luxuries of life are not known, except to a few; consequently, that source of revenue does not exist there. Even the necessaries of life are of so little value that they are scarcely tangible. What

What can the most expert financier hope to levy from a people who live in a state of nakedness, whose habitations cost perhaps a rupee, and where, in many parts of the country, labourers, heads of families, receive no more than five shillings a month? So that the soil, besides being the constitutional source of the revenue of the state, is almost the only one that can be made available.

The land revenue was, under the Moohummudan government, a source, too, which never failed to increase with the population and prosperity of the country. These have, under our government, unquestionably increased: their tendency is to be progressive. Think then of the temerity of the man, or of the set of men, or of the power, whatever it may be, who did venture, under such circumstances, to set perpetual bounds to the resources of the Indian government, by limiting for ever the land revenue of the country.

Many exceptions, in point of policy, have been taken to the permanent settlement, as carried into effect; but none, so far as I know, to its *legality*. Yet it may fairly be questioned, whether those who concluded the permanent settlement had any power so to do. So far as my judgement goes, nothing short of an express mandate in the act of the British legislature could have conferred that power. If this opinion be just, then the local government of Bengal, who are commanded by the charter, from which they derive their own authority, and acts of the British parliament, to "protect his majesty's Indian "subjects in their rights, *according to the laws and consti-* "*tution of India*," had no power to make such a settlement; a settlement which deprived nine-tenths of the people

people of their rights, as recognized by the laws and constitution of India.

To enter into such a settlement of the land-tax with the real proprietors of the soil, would, I think, have required the express sanction of an act of parliament; but to change entirely the laws and constitution of India which respect landed property, and to deprive of their rights those whom they were bound by an express statute to protect in their rights, appears to be an act altogether contrary to law: an act, however, that never could have been contemplated by those who were concerned in it, but under the fullest persuasion that they were committing no injustice, depriving no one of his property, but granting to the lawful owners of the soil privileges and benefits, not contrary to, but in conformity with, though in benevolence beyond the law. The consequence has been far otherwise than was anticipated.

I have already given Lord Cornwallis credit for his benevolent intentions; but I must say, there appears throughout the whole of his lordship's measures a precipitancy, and a want of regard for ancient rights, not easy to be accounted for. This is evident in most of his minutes. I select the following paragraph from that of the 18th September 1789. "Although, however, I am not "only of opinion that the zumeendars have the best right, "but from being persuaded that nothing could be so "ruinous to the public interest as that the land should be "retained as the property of government (never dreaming "of the claim of the people), I am also convinced that, "failing the claim of right of the zumeendars, it would be "necessary for the public good, to grant a right of property "in the soil to them, or to persons of other description. I "think

" think it unnecessary to enter into any discussion of the " grounds upon which their right appears to be founded."

An avowal such as this, was evidently beyond the power of the Governor-General. It was evidently contrary to the law enacted by the parliament of England. He was not to *grant rights*, but to confirm them, and " to protect " the people in their rights existing." It can, therefore, only be interpreted, as a proof that his lordship did not intend that his benevolence should be restrained, by being guided by any law or right whatever. In fact, he did so act; and the measures adopted at that period have more the appearance of those of a good and well-meaning civilized person, accidentally placed at the head of a nation of savages, passing his first acts of legislation, than of one charged with the government of a people, civilized almost since the infancy of time; the very slaves of method, of rule, of habit, and of their institutions; whose very foibles, even absurdities, deserved consideration, because to them they are neither foibles nor absurdities, but matters of importance. How, then, it so happened that their most sacred, most valuable rights, should have been thus held as nothing, is indeed difficult to conceive. It was a blameable neglect of the interests of the people.

The very first point to be inquired into was the " claim " to the soil," the right of property in which was to be confirmed, not granted. Mr. Grant argued in favour of the right of government; Mr. Shore, that of the zumeendar. Lord Cornwallis despises all right, and fairly avows " that he thinks it unnecessary to enter into the discussion " of the right to the soil." But the very first resolution of government, framed by his lordship, bound him to make this inquiry; for it says, " resolved, that a new settlement

" be

" be made *with the actual proprietors of the soil*," &c. Now the act of parliament of 1784 completely recognizes the right of possession of the people, according to the law of India, and that their " tribute and rents" should be fixed agreeably to that law.

Before this final limitation of the revenue was made, however, it might well be supposed that those who did thus most rashly act, had, by the most painful examination, research, and investigation, discovered data sufficient to enable them to make a fair settlement for a limited time. No such thing! Mr. Shore, indeed, urges this in the strongest terms. He says, in his minute of June 1789, " We require, 1st, a knowledge of the rents paid " by the ryots, compared with the produce; 2d, of the " collections of the zumeendars and of their payments to " government; 3d, detailed accounts of the alienated " lands, shewing the quantity, the grantor, grantee, " dates of grants, the occupant; to see how far resump- " tion can take place. All the material part of this infor- " mation is wanting" ! ! !

The information they possessed was not sufficient to warrant them in settling the bazar duties of a village. Our knowledge of India was much too limited then, it is so now, to furnish data for an act so important. They knew not the resources of the country. They even discarded the documents that were pressed upon them by the head Record-keeper at the time, Mr. Grant, who had taken great pains to exhibit the sources and the amount of revenue levied by our predecessory governments of the provinces. They did not even know to whom the lands in property belonged. Lord Cornwallis, in his minute of 18th September 1789, says, " Mr. Shore has most ably, " and

" and in my opinion, most successfully argued in favour " of the zumeendars to the right of property in the soil"!! They did not know the nature, or the condition of the tenures by which the lands were held, which they thus gave away; they have, consequently, not only constituted, generally speaking, a new race of landed proprietors, but have given away to persons who had no legal claim to them, whole tracts of country of the richest and best cultivated lands, not only in perpetuity, but *rent-free*, and without any consideration whatsoever.

In the small province of Bahar alone, as was before stated, lands to the amount of from thirteen to twenty lacs of rupees, or from £130,000 to £200,000 sterling annually, were thus diverted from the Company for ever. In Akbar's time, the pensioners on this province and public establishment (the only possible pretext for relieving the land from assessment) caused a defalcation of revenue of about 55,000 rupees only.

We have seen that the enormous amount of revenue lost, in name of land relieved from the public assessment, in the three lower Bengal provinces, is no less than £1,256,391 sterling, calculating at one rupee eight anas per beegah, exclusive of the province of Cuttack. Most of these lands, and all waste lands, are undoubtedly liable to assessment: they never could have been legally exempted from it; and policy, as well as justice, certainly make it a question whether they should not be assessed.

The value of the cultivable, but uncultivated land, appears to have been entirely overlooked; and instead of proceeding in the settlement on the basis of the land in cultivation alone being private property, the government of

of that day seems to have formed to itself a division of the whole country into great hereditary lordships, under the name of zumeendaries, the extreme boundaries of which were alone worthy of being noticed; forgetting that, in many instances, two-thirds of the circumscribed space had no value assigned to it, as yet, on the financial records of government; nor could it have till brought into cultivation.

I cannot help seeing in the permanent settlement of Bengal, a great lesson read to all future governments of India, to hold back their hands from limiting their permanent resources in perpetuity, until they have secured an equally permanent and available substitute.

If government were determined to make a permanent settlement, why did they not limit their settlement to all they could legally settle, the *per centage on the revenue:* a profit sufficient to call forth the best exertions of the zumeendars, whilst it would have secured the right of the husbandman, and admitted of a progressive increase of revenue to the state, in proportion to the progressive improvement of the country?

How far it might be possible, in the course of time, to remedy the great political error of the perpetual settlement, by government purchasing the zumeendars' right of estates as they were brought to sale, I merely suggest as a question. They might then attend to the rights of the real owners; and thus, in time, the whole lands of these provinces would revert to their former state, and would again be available to produce a progressive advance of revenue, as they advanced in cultivation and the country in prosperity.

The

The opportunity of sales would probably not be wanting. In ten years from 1796, Mr. Stuart informs us that lands were sold in the provinces of Bengal, Behar, Orissa, and Benares, on account of arrears of government revenue, the total amount of assessment of which was rupees 1,21,75,680;* nearly one half of the whole assessment of the lower provinces. The amount of the price these lands brought at the sales was rupees 1,08,55,537, shewing a depreciation below the government valuation of rupees 13,20,143.

This statement, however, it must be admitted, shews a very exaggerated picture of the rapidity with which property in Bengal has changed its owners since our perpetual settlement of it; because, at perhaps one-half, or two-thirds of the number of sales, the owners repurchased their lands.

Were it the object of government to become purchasers, for the purpose above noticed, the sale of lands for arrears might be encouraged; otherwise, it cannot fail to strike any one, that it must be the interest of government to discourage such sales, not only as they necessarily tend to produce a diminution of revenue, but as being often productive of the greatest hardship and oppression, as well as of much feud and dissention among the people.

This has been observed by all, and universally complained of. The Marquis of Hastings, in a minute on this subject, states those sales to be a source of much oppression; and asks, "whether it may not be practicable "to do away with sales for balances of revenue?" I answer, No! Why should government be placed in a worse situation

* Mr. Stuart's minute.

situation for recovering its debts than an individual? But that sales, with the right of pre-emption on account of vicinage, agreeably to the Moohummudan law, might be made, without exposing the people to the hardships complained of, because they would always have the power of excluding strangers. The village community, even in cases of village coparceners, whom his lordship specifies as sufferers in those cases, would derive great, if not entire relief, from the option of pre-emption. But as it is not probable that a whole village brotherhood would become defaulters wilfully, or indeed in any way, without some unavoidable calamity befalling them, were inquiry made, the whole village being held at the same time responsible for the public revenue, collectively as well as individually, sales would seldom be called for. If the real value of a village or zumeendarry were known to the officers of government, it would only be in cases of malversation that sales would be required to enforce the realization of the revenue; and then a change of management would be desirable, instead of being a source of oppression.

The different modes of settlement which have been proposed or adopted for the Company's territorial possessions in India, may be reduced to the following. The *permanent zumeendarry settlement*, so well known in Bengal, being essentially the same as the mootahdarry system of the coast, which word is there applied to distinguish the settlement with the zumeendars. *The zumeendarry periodical settlement*, the *mouzawar settlement*, meaning a settlement by villages; and the *ryotwar* or *koolwar* settlement, meaning a settlement with individual cultivators for individual fields. The two latter may be either permanent or periodical.

The first of these modes of settlement, namely, the permanent zumeendarry, has already been noticed, and will presently be again reverted to. The last, *viz.*, the ryotwar, has been so ably advocated by Colonel Sir Thomas Munro, and his powerful coadjutor, Mr. Thackeray, that I think the subject almost completely (and successfully) exhausted. After wading through the crude, meagre, general kind of reasoning, repeated by one and echoed by another of the late Bengal financiers, who have adhered too much to their favourite official phraseology of general principles, &c., it is really refreshing to see the accuracy, the minutiæ, and at the same time the extraordinary mass of information and most intimate knowledge of the subject, which their more accomplished brethren on the coast have brought to bear on the question they discuss. The one set of men you see at once are masters of their subject; the other may be said to have but a vague idea of it. The fact will prove to be, that the revenue officers of Bengal have not put themselves in possession of that minute knowledge of the state of the country and of its resources, which those of the sister presidency possess; and until they do, they must be content to talk of generalities, and by the lump, as they have done, and must continue to be frightened at the idea of entering into the minutiæ of Indian finance; whilst their better informed brethren smile at the bugbear, and actually tell them that there is, in fact, "more trouble in managing the petty concerns of "a frontier custom-house, than the ryotwar revenue "detail of a whole district."* That experienced and intelligent officer (Mr. Thackeray) declares, that "even "here, the customs in any frontier district require more "attention to accounts, and more intricate details, than "the whole ryotwar detail of land revenue."

The

* See Mr. Thackeray's Report.

The *ryotwar* settlement is precisely the ancient and constitutional mode of levying the land revenue in India, according to the Moohummudan constitution, provided the *rate* of impost be fixed, and on the cultivated land; and being so, it has consequently many advantages. The able officer who introduced it at Madras knew its origin, I doubt not, and doubtless adopted it because he knew it was known: at the same time engrafting such improvements upon the old system as his judgment suggested.

When the extent of land (in a given village, for instance) has been ascertained by actual measurement, and the assessment fixed, the same being at a moderate rate, so as to afford the cultivator not only a comfortable subsistence, but to leave him something which, if a frugal man, he may apply to the purchase of an additional bullock to extend his means of cultivation, or if otherwise disposed, lay out in buying a piece of finer cloth for his wife or favourite daughter. If such a moderate assessment were fixed, property would become valuable, the people would cling to it, the rent-roll of the present year would be the same, or nearly the same, as that of the preceding, the people would feel proud of their property, easy access to the collector would enable them to resist effectually any attempt at fraud among the inferior servants of government, and thus the revenue would become secure to government, easy of collection, and the people be freed from oppression; for when things thus fell into a regular train, with European revenue officers of ordinary vigilance, I do not think that their inferiors could practice fraud without detection: there would be no insurmountable difficulty in administering such a system as this.

Though there is in this system no restraint on the

transfer of property, and no artificial impediment to prevent its accumulating in the hands of individuals, yet as property in the soil would then be really valuable (which, under exactions that leave a bare subsistence to the cultivator, it is not), no individual would be able to acquire by purchase so large an estate that he could not manage it, while, at the same time, the industrious yeoman might aspire to extend his farm by the acquisition of that of his prodigal neighbour: and, in time, wealthy proprietors would be found in the country, not such as we now see, but men, or the descendants of men, who by their industry and ingenuity had really contributed to enrich their country; efficient proprietors, who would appreciate the value of their possessions, and feel a pride in improving them.

It is the worthlessness of property in the soil that enables bold and pennyless adventurers to become proprietors, as they call themselves, and we call them, of tracts of country equal to principalities. These are sold for nothing, bought for nothing. The purchaser promises to pay the revenue. If he succeed in collecting it, however great the oppression, he pays it, goes on in this way till he has pillaged the country, then it is again sold in whole or in part; and so on, till the country is ruined. The jumma, or government rent, must then be reduced; and government is the ultimate loser. This is a summary view of the case, and of the security we have in our zumeendars for the public revenue.

. . .

It has been confidently asserted by the advocates of the permanent zumeendarry settlement, that individual zumeendars will manage their estates better than government revenue officers could do; and this has been held as one of the strongest of their arguments. But I doubt this, and

and would beg of those who oppose me to name any one zumeendar in India who ever managed his zumeendarry in the style in which Colonel Munro did the territory under his charge? It is an argument that would be good in England, perhaps; but those who apply it to India forget the difference between Indian zumeendars and English landholders. Here is the rock on which all mere theorists and *general principle* men are wrecked.

But then, if we were to grant that zumeendars, having smaller estates than government collectorships, manage them better than government collectors, we must admit, on the same principle, that individual cultivators, whose estates are smaller than those of zumeendars, must manage them better still: and this is really the case; for be it remembered all along, that a zumeendar is not a manager of cultivation, but a *contractor of revenue*, whose interest in its realization is not equal to that of government nor of its European servants, who are, in fact, identified with the government. Being, therefore, on the one hand, less competent than the cultivators to produce a revenue, and on the other, less interested than the Company's servants in realizing it, the zumeendar is the least fit person to be employed in superintending either the cultivation of the country, or the realization of its revenue.

I hold it beyond doubt, that the *ryotwar*, or individual proprietary assessment, must be the basis of our land revenue system in India. But as in some parts of Hindoostan the state of village society is peculiarly formed, where certain casts monopolize and maintain privileges in certain villages, in such cases I would also admit the *mouzawar* or village settlement; and this, in every case where there existed joint and undivided, or indivisible, rights or immu-

nities: holding in all such cases, however, the whole village coparcenery responsible for the whole village revenue, both collectively and individually; whilst, at the same time, their separate, as well as their combined interests, ought to be inquired into, and ascertained and registered by the village register, in the same way as in villages under separate and individual tenure, to guard against oppression and usurpation by any individual among them. The names of the individuals who cultivate, and of the fields cultivated by them annually with the kind of crop, should be entered; allowing the individuals to adjust among themselves the mode of occupation, and quantum of rent payable by each. The above investigation is necessary, not only to prevent usurpation and injustice among the occupants, but in case circumstances should render it necessary for government to have recourse to individual settlement, the requisite information would be forthcoming.

A judicious combination of the *mouzawar* with the *ryotwar* settlement would secure to individuals, and to all classes of the community, not only their absolute rights, but their privileges, even indulgences; often, from habit, more important to them than their rights.

The mouzawar or village settlement, by itself, appears objectionable, perhaps impracticable; for where the state of the village community is not such as I have adverted to, it would be difficult to get the individuals composing it to assimilate sufficiently, without which the most helpless, and consequently those who most required protection, would be most oppressed.

These are the modes of settlement of the Indian land revenue

revenue generally adverted to. But there is the important question of the expediency of making *permanent* or *periodical* settlements still remaining. Whatever mode may be adopted, great difficulties may be suggested to *permanency*; but the ryotwar is the only kind of settlement by which government would not be compelled to make great territorial sacrifices, by giving up such tracts of uncultivated, though arable land, as might be included within the limits of the zumeendarry or the village assessed, without any equivalent; unless, indeed, a reservation and specification of the land uncultivated were made. I say without an equivalent; because there are no capitalists in India who can afford to give any thing for land unproductive on a speculation of future advantage: therefore, though one-half of the arable land of a village, for example, should be uncultivated, were that *mouza*, or village, assessed by mouzawar *permanently*, one-half of the property of government must be given away for nothing.

This alone is, I apprehend, a fatal objection to *permanency*, as applied to all the other modes of settlement. But the ryotwar being a settlement with individuals of individual fields, is made only on the cultivated fields, and is, therefore, not obnoxious to the above objection. And even were permanency a desideratum, the ryotwar settlement might be made, essentially at least, permanent also, by declaring at once the *rate* of assessment fixed. If in money, so much per beegah; or should the cultivator prefer it in kind, a certain share of the produce: as one-fourth or one-third, convertible into money at a price fixed every twenty years on the average rates for the five years preceding the period. Thus the rent-roll would stand of the fields that were assessed. Every additional maund of grain the cultivator caused his field to

produce would be an additional reward to his industry, till it enabled him to extend his cultivation; and then he would cultivate the adjoining spot, now a waste, which would then fall to be, in like manner, moderately assessed, till the whole arable land of the village produced a profit to the ryot and a revenue to government.

I shall now proceed to notice the arguments which have been urged in Bengal in favour of the permanent settlement.

Mr. H. T. Colebrooke, late Member of Council in Bengal, one of the most noted, perhaps best informed of the moderns in Bengal, who have written on the subject of the permanent settlement, in a minute dated 20th June 1808, as a member of the Bengal government, recommends the extension of the permanent settlement to the Ceded and Conquered Provinces in Bengal, on two grounds: "1st, because he approves of such a settlement "intrinsically; and 2dly, because such a settlement had "been solemnly promised to the inhabitants of those "provinces by the supreme government of Bengal."

But Mr. Colebrooke, in my estimation, destroys at the very outset much of the weight that would be due to his opinion. He refers to the discussions which took place in 1789 and 1790, and gravely says, "he trusts that ar- "guments which were not suffered to weigh against a "measure (the permanent settlement) recommended by "wise and enlarged views of policy, but not then promised "to our subjects, will not be allowed greater weight at "this momentous period against a similar measure, equally "recommended by liberal considerations of policy, and "solemnly promised by an express declaration in a legis- "lative act."

It

It is remarkable to see a man of information and talents so completely beg the question at issue, as to argue that, because the reasons assigned against the permanent settlement in 1789 were not suffered to weigh against the permanent settlement *then*, that *therefore* they should *now* be discarded. It is remarkable to see such a man overlook the essential difference between carrying into effect a measure of policy, which, in 1789, was but a matter of mere speculation, and the same measure after twenty years experience of it. It is not a little surprising, that he should have overlooked the difference there is between what may, or may not, be allowed to weigh in discussing a plausible theoretical speculation, and what ought to be allowed to have weight in judging of the expediency of a measure after experience.

Had this advocate of the permanent settlement got his opponents to admit, as a postulatum, that the permanent settlement in Bengal, &c. was unquestionably advantageous, and in itself perfect, his mode of arguing might have some weight. But his opponents would, and indeed must, deny that the Bengal settlement was in itself either advantageous or perfect. On the contrary, they with much earnestness deprecate its being held up as an example.

Mr. Colebrooke tells us, that the objections alleged by several of the collectors, and by the late Board of Commissioners of the Ceded Provinces, against the immediate conclusion of a permanent settlement, are principally the imperfect knowledge yet acquired of the resources of the country, the inequality of the present assessment, the great proportion of uncultivated lands (estimated generally at a fourth of the arable land), the deficiency of population

population and want of capital to extend the cultivation, the existing restrictions on commerce, the want of opulent consumers, the extent of resumable land yet unascertained, the necessity of continuing certain farmers in the possession of their farms, the general uncertainty with regard to the proprietary right, either at present contested or not ascertained, in respect of extensive tracts of waste land, the doubtful value of the standard coin, the risk of disappointment should the settlement be disapproved by the Court of Directors. "All these circumstances," he adds, "it will be remembered, existed in Bengal. Some were "urged in favour, others against the permanent settle- "ment, though they are all marshalled against me."

And, again, he states one of the principal arguments against the permanent settlement of those provinces to be, "that the jumma was then Rupees 2,25,00,000, with "*one-fourth* of the arable land uncultivated." Now, it does appear to me, that the objections "marshalled against" this gentleman here, are really a little formidable; and one would suppose, such as ought to have been met by better argument than reference, for their refutation, to the speculations of 1789.

It so happens, that the Ceded Provinces are in a far more flourishing state than Mr. Colebrooke's opponents anticipated when they wrote; and though little more than ten years have elapsed, the jumma, exclusive of the fourth of uncultivated land, is about three crores of rupees. In the year ending the 30th April 1820, the land revenue of the western provinces (the Ceded and Conquered), according to the printed report submitted to parliament, June 1822, was Sicca Rupees 3,44,16,078, including Benares, which is forty-two lacs. In 1815 it was Sicca Rupees

Rupees 2,91,76,724; which is an accession of revenue of about Rupees 66,76,724 in seven years: one of the best practical proofs that can well be adduced, that the proposal for the extension of the permanent settlement was at least premature.

If one-fourth of the arable land was uncultivated, and there were, "as the collectors urged," no capitalists to pay for such land, consequently the rent fixed on the permanent settlement would have fallen to be fixed on the cultivated land only. On what principle of equity could a settlement have been formed to give away this fourth without any equivalent?

In answer to this it may be stated, as Lord Cornwallis did in 1789, "that government, by reserving to itself the "internal duties on commerce, might at all times appro- "priate to itself a share of the accumulating wealth of "its subjects, *without their being sensible of it;*" and for the certain diminution of land revenue we may look to other sources of taxation, "and thus make the burden "more equal." But it has now been admitted, that the new sources tried have been altogether unsuccessful; and hence the arguments of 1789 must be given up.

It has been urged, I am aware, by some, on Mr. Colebrooke's side, that the great increase of revenue in the upper provinces, and extension of cultivation, have arisen in a great measure from the expectation of the permanent settlement entertained by the people. I admit, and indeed know well, the great increase of cultivation; but I deny that it has been owing to this cause: and so far as I am able to judge from a long residence among them, and from the opinion of others still better qualified to speak to the fact, I do not think that the people of the

Ceded

Ceded and Conquered Provinces, notwithstanding the promises of government, ever really looked for a permanent settlement. The additional cultivation, I believe, is entirely owing to the industry of the husbandmen, the cultivators, and real owners of the soil, under the protection of a just and settled government: a class of men of superior pretentions, identified, as it were, with the soil; and who, let it be remembered, have never, save in times of anarchy and oppression, been accustomed to any thing but a *permanent settlement;* that is to say, to permanent possession, on paying a fixed and definite *rate* of rent for their lands. But let us examine this a little farther.

The increase of land revenue in the Ceded and Conquered Provinces, from 1807 to 1813, six years, was fifty-five and a half lacs of rupees; and all this *after* the permanent settlement promise of the 14th July 1802, 15th September 1804, 11th July 1805, and Regulation X, 1807, had been made, and *as often put off.* And it is remarkable, that previously to 1807, the date of the last broken promise of a permanent settlement, the increase did not exceed ten lacs: ten lacs in five years! It may, therefore, with at least as much plausibility be maintained, that it was not till the people felt pretty well assured that there would be *no permanent settlement,* that they did heartily set about increasing the cultivation. We may, at all events, rest assured, that the people of Hindostan are not so credulous as to allow themselves to be guided by such promises: nor is it at all necessary to have recourse to a cause so remote, to account for increase of cultivation and of revenue, when we advert to the internal tranquillity of the country, the high prices the husbandman received for the produce of his labour, together with perfect freedom from oppression and undue exaction of every kind.

I have,

I have, in many parts of the Ceded and Conquered Provinces, seen grain selling at twenty-five seers per rupee, where we were credibly informed by the natives that three maunds (one hundred and twenty seers) were often, even generally, procurable for that sum. Such prices are better calculated to extend cultivation than promises of permanent settlement.

If, again, it be insinuated, which it appears to be, that the zumeendars paid a higher revenue to government, to allure government into the grant of a permanent settlement, how did they raise this vast capital of fifty-five and a half lakhs of rupees annually: a fourth of the whole rental of the provinces, when Mr. Colebrooke wrote? This is a question that can only be answered in one way.

Mr. Shore's (Lord Teignmouth's) estimate is quoted by Mr. Colebrooke, "that no less than a third of the amount "received from the cultivator is required for the charges "of collection, and intermediate profit between govern-"ment and the raiat."* On this estimate, Mr. Colebrooke says, the permanent settlement in Bengal and on the coast was formed. And Lord Cornwallis, at the same time, estimated no less than a third of the Company's territory to be a jungle, which Mr. Colebrooke confirms, and states that "the researches in which I (Mr. Colebrooke) "was engaged at the time, furnish me with grounds for "the opinion, that the estimate may, with great approx-"imation to accuracy, be understood as applicable to "lands fit for cultivation, and totally exclusive of lands "barren and irreclaimable." Here, then, we have confessedly one-third of the whole cultivable land, and one-third of the whole "gross collections from the cultivator," avowedly

* Vulg. "ryot."

avowedly relinquished by the government; and we are told that this should be the basis of the permanent settlement.

Let us apply this principle of a permanent settlement to the Ceded and Conquered Provinces, and exhibit to the world what those advocates for a permanent settlement were prepared to relinquish.

| | |
|---|---|
| Mr. Colebrooke wrote in 1808, when the jumma of the Ceded and Conquered Provinces was Rs. | 2,25,00,000 |
| In 1815, however, it was Rupees 2,91,00,000. It is now (1823) upwards of.....Rs. | 3,00,00,000* |
| Add one-third (the expense of collection) to make up "the gross collections," per Lord Teignmouth's and Mr. Colebrooke's estimate of charge of collection and intermediate profit between the ryot and government ..... | 1,00,00,000 |
| | 4,00,00,000 |
| Add one-third more for cultivable, but uncultivated lands, on the authority of Lord Cornwallis, corroborated by the writer above alluded to ..... | 1,33,33,333 |
| Total ultimate gross collections from the ryots, supposing the lands wholly cultivated ..... | 5,33,33,333 |
| The expense of collecting the revenue, as above, is stated by Mr. Colebrooke at | |
| Carried forward... | 5,33,33,333 |

* See printed papers laid before Parliament, June 1822. The land revenue of the western provinces, including Benares forty-two lacs, was 3,44,16,078 sicca rupees.

| | | |
|---|---|---|
| Brought forward... | | 5,33,33,333 |
| one-third. But the Governor-General, in his minute of September 1815, tells us, it did not in 1814 "exceed six per cent. on the jumma." But allow six per cent *on the gross collections* of Rupees 5,33,33,333, it is ..... | 31,99,998 | |
| And, on the same authority of the Governor-General, the balances for that year did not exceed three per cent, or ... | 15,99,999 | |
| Deduct expense of collection and balances ..... | | 47,99,997 |
| Total ultimate nett revenue ..... | | 4,85,33,336 |
| From this take the jumma of 1808, which the advocates for the permanent settlement recommended to be permanently fixed,..... | 2,25,00,000 | |
| Deduct expense of collection, six per cent; loss by arrears of rents, three per cent; equal to nine per cent..... | 20,25,000 | |
| Total nett revenue per permanent settlement, if it had been made in 1808, as recommended by Mr. Colebrooke ..... | | 2,04,75,000 |
| Total ultimate loss of revenue .....Rs. | | 2,80,58,336 |
| Or in pounds sterling, at 2*s.* 6*d.* per rupee, | | £3,507,292. |

Three millions five hundred and seven thousand pounds sterling, or at the intrinsic value of the rupee, £2,805,833 sterling, might have been eventually lost to the Company, and consequently to the nation, had the government in 1808

1808 " conferred so great a blessing upon the people" of the Ceded and Conquered Provinces, as Mr. Colebrooke, and others of the Cornwallis school, desired to bestow.

Nor have I, in this estimate, noticed the certain prospect there is that the present *rates* of assessment will, in most districts, experience a rise to a great amount. As a reason for this opinion let me state, that in the *Moradabad* district of Rohilcund, the average rate per beegah of cultivated land is ..... Rupees 1 12
In the adjacent district of Barrelly it is only..... 0 8
In Gorruckpore, first division, it is ..... 2 12
In the same district, second division, it is ..... 2 3

If land in Gorruckpore be let at two rupees and twelve anas, it must in Barrelly, which is a populous and fertile district, be worth more than eight anas. And, in the same district, the difference of nine anas per beegah is perhaps too great; as in Gorruckpore itself, where there does not appear any physical or accidental reason for so great discrepancy. The navigable river Gogra is the boundary between the two divisions of the district; and, of course, is equally available to the inhabitants of either side, for irrigation or transport of superfluous produce. And that the general rates are low we may be well assured by reference to the rates of former times, and indeed to the present rates in other parts of the country. In Guzerat " a general rate of assessment has been fixed, " throughout the greater part of the pergunnah, at four " rupees per beegah for the better, and three and a half " for the inferior sort of land: but in the immediate " vicinity of the Nerbuddah river the rent varies from " two to twelve rupees per beegah."* But look to facts, as

* Revenue letter, Bombay, 10th January 1810, Report of the Broach Commissioners.

as given us by Mr. Colebrooke himself. In his husbandry of Bengal, he states the quantity of land in Bengal and Behar actually under cultivation to be 95,000,000 of beegahs, and the jumma, or revenue, at twenty-five millions of rupees; which is but a fraction more than four anas, or in sterling money, five-pence per beegah.

The permanent settlement has been advocated "as an "indispensable step towards the prosperity and solid im- "provement of the country." Lord Cornwallis in 1790 argued, that if you, on the grounds of want of information, delay the permanent settlement, "the commencement "of the happiness of the people and the prosperity of "the country would be delayed for ever."....." I shall "think it," says Mr. Colebrooke, "a duty I owe to them "(the Court of Directors), to my country, and to huma- "nity, to recommend that no time be lost in carrying it "(the permanent settlement) into effect, and not to post- "pone for ten years the commencement of the prosperity "and solid improvement of the country."

This is a dutiful and philanthropic paragraph. But it remains for the writer yet to prove, that delay of the permanent settlement would have the effect ascribed to it: nay, that the progress of improvement is more rapid in the Company's permanently settled provinces than in those that are not permanently settled. There cannot be a doubt, that the very reverse is the case. In the lower provinces of Bengal, where nature performs the labour of irrigation, and almost of tillage, the average rent per beegah is probably not five anas. In the district of Kishennagur, in the vicinity of the great cities of Moorshedabad and Calcutta, the Governor General tells us it is six and a half anas, in Behar five and a half anas; but

Mr. Colebrooke gives, as above, an average of little more than four anas for Bengal and Behar; while the cultivators in the upper provinces, generally speaking, have to irrigate their lands by the sweat of their brow, and pay from eight anas to two rupees and twelve anas per beegah: and yet, compared with the lower provinces, the march of improvement advances in the upper, and non-permanently settled dominions of the Company, with tenfold rapidity.

We can shew this very distinctly in the Ceded and Conquered Provinces by the most satisfactory of all evidence, the increase of fifty-five and a half lacs in the land revenue in six years, or about three and a half per cent. annually. The same progress of improvement in the lower provinces would, at this day, have made, not indeed the revenue (for that is gone for ever), but the land rents of those provinces just double what the jumma of the permanent settlement was, when fixed thirty years ago. Is it so? Will the advocates for the extension of the permanent settlement and the Cornwallis school, admit, that the zumeendars of Bengal do really now pocket two crores and a half of rupees annually, by the "solid improvement of the country" consequent to the permanent settlement?

On the contrary, there is good reason to think that the permanent settlement has really retarded the improvement of the country. Let us take the district of Benares, one of the finest provinces. I select it, because it is that which lies immediately contiguous to the non-permanently settled districts. "The land revenue," says the Governor General, "of that district (Benares) appears to fluctuate in "its amount without improving, and was the last year

"*half*

" *half a lac below the rate assessed originally by Mr.* " *Duncan!*"*

Thus, while the adjacent districts, on periodical settlement, were advancing with a rapidity of improvement almost beyond belief, this fine province had long been stationary and was retrograding.

The appeal to humanity, on the part of Mr. Colebrooke and his colleagues, in this discussion, would really be ridiculous, were it not that the subject is far too momentous to admit of the excitement of our risible faculties. If it were "humane" in a handful of conquerors, ignorant of the rights of individuals (and I will, for the sake of humanity, declare them to have been so), to deprive the whole population of India of their property, possessions, and privileges, and to throw them, like so many herds of cattle, into the hands and bondage of a class of persons, proverbial throughout India as oppressors and extortioners, I mean the zumeendars; if this be humane, then, indeed, in the name of humanity, let us hasten the permanent settlement.

Lord Teignmouth's description of a Bengal zumeendar will edify us on this point; and then let us say, in the name of humanity, whether such a character be likely to improve the lot of those whom the advocates of the permanent settlement would place for ever under him. "If," says that enlightened and humane person, "a review of " the zumeendars in Bengal were made, it would be " found that very few are duly qualified for the manage- " ment of their hereditary lands, and that, in general, " they are ill-educated for this task. Ignorant of the



* Page 23.

" common forms of business and of the modes of transact-
" ing it, let a zumeendar be asked what are his rents, and
" the rules for demanding and fixing them in his district,
" the assessment of any pergunnah, the produce, whether
" it has increased or decreased, what manufactures, &c.
" his replies would probably be the same as if he had
" never entered it; or he would refer to his dewan for in-
" formation. On one point he is always clear and explicit:
" the inability of his lands to pay the assessment, &c. The
" business, in general, is exclusively transacted by the
" zumeendarry servants; and all that the zumeendar looks
" to is, a release from trouble, an exemption from the im-
" portunities of government, and a sufficiency to gratify
" his wants, either present or anticipated. But although
" the power of dismission and appointment of their ser-
" vants rests with them, and although this power is em-
" ployed as a source of traffic and emolument, the zu-
" meendars are as much dependant upon their servants
" as the latter are upon them. Their ryots have seldom
" access to them; and when they are permitted to
" approach, or force an intrusion with complaints and
" petitions, they are dismissed to wait a reference to the
" dewan, or perhaps sent back to their homes, with an
" order, in the name of the zumeendar, which the dewan
" has dictated: nor is the sale of justice unusual with
" them. The avowal of their hereditary rights, and great
" regard paid to them by the British government, has
" inspired the zumeendars with an idea that their rights
" are indefeasable. Its operation of late years has seldom,
" I believe, proved beneficial to the country. It has
" sometimes been attended with great evils: that of pre-
" venting the ryots from complaining against exactions,
" from the fear of future resentment."*

Is

* Minute, June 1789.

Is this a character which the dictates of humanity would induce us to place in power over the people? Shall we transfer the duty of the "solid improvement of the country" from ourselves into the hands of a class of persons, such as are here but too faithfully described?

It is a point, I conclude, now fully settled, that the law, as well as the custom of India, gave to the cultivator before described the right of *possession*. To give, therefore, "a right of property in the soil," as Lord Cornwallis did by the permanent settlement to the zumeendars, was virtually, if not absolutely, depriving the people of their right, and transferring it to others. Yes, I am told; but his lordship did not anticipate that the zumeendars would remove the cultivators: it was not intended that they should have that power. His lordship, in fact, states the supposition as an absurdity. "Why," says he, "should "they remove one man to take in another?" And he secured the people in their most valuable privilege, by enacting that the "landholders should not increase the "*pergunnah rates* of rent, as heretofore established." The zumeendar might, however, *oust* for non-payment of rent: and the amount of that rent might be fixed by the proprietor at any sum, however exorbitant, because the pergunnah rates were not uniform nor specified; and therefore, were the poor man able to drag his landlord through all the sinuosities of our courts, neither the pergunnah rate nor the exorbitancy could he prove against him. Consequently, unless he chose to submit, he must be ousted.

Lord Cornwallis tells us, "that Mr. Shore's proposi-"tion, that the landholders shall be obliged to grant "pottahs to their ryots, in which shall be entered the

" amount of their rents, and that no ryot shall be liable " to pay more than is specified in his pottah, if duly " enforced by the collectors, will soon obviate the objec- " tions to fixed assessment, founded on the undefined " state of the demands of landholders upon the ryots."*

But it so happens, that neither the zumeendar nor the ryot are willing to grant or receive pottahs: the former, that he may exact the utmost; and the latter, that he may not be bound beyond what he may be able to perform; both proceeding from the same cause, that want of good faith which is universal, and seemingly the legitimate offspring of the ill-defined situation in which the parties are unhappily placed.

The inconsistency, however, of an enactment not to increase the rents of an estate, with a declaration of a proprietary right, is obvious enough. But having bestowed the absolute property of the soil, absolute power over it naturally followed, if it did not accompany the grant; and to attempt to control the effects of this by a legislative order, displayed, in no small degree, a want of knowledge of the science of government and of mankind, which the best of men are often found most void of.

Thus, with every desire to do good, did Lord Cornwallis humanely commit the most manifest injustice, which those who follow him, as advocates for the permanent settlement, wish to extend, notwithstanding the experience of thirty years, which his lordship had not, but which they have, to guide their judgment.

An intelligent person, speaking of the zillah of Juanpore,

* Minute, 3d February 1790.

pore in 1819, on this subject, writes as follows: "the fact "is, that though the settlement which government made "with the zumeendars is unchangeable, and though these "persons have no right to raise the rents upon tenants "who live on the soil, or to oust them while they pay "their rents regularly; and although there is, *at the very* "*least*, one-third more land in cultivation now than at "the time of the permanent settlement, the rent of land "has risen *three-fold*, and no zumeendar will accept of "rent in kind (that is half the produce,) who can by any "means, fair and unfair, get his rent in cash. The "zumeendar has various means of evading the right of "the resident tenant to hold his land at a fixed rate, "independent of their power, by the regulations to oust "on failure of regular payment of rent, of which they "seldom fail to avail themselves. Should a zumeendarry "be sold by government for arrears of revenue, all leases "become void (by the Regulations); and a very improve- "able estate is frequently thrown in arrears to govern- "ment, that it may be sold to void the leases, and pur- "chased by the owner. Except for this purpose, from dis- "putes among joint proprietors, and intrigues in various "departments, I believe estates are seldom sold. The "settlement is so light, that all arrears of revenue arise "from the above causes.

"Now, from three to four rupees are given per beegah "for land to cultivate indigo: formerly, one rupee ten "anas to two rupees eight anas was the usual value. On "an average, it may be fairly stated, that of the land "held by resident tenants on lease, by brahmins and "rajpoots, seven-tenths have risen from ten anas per "beegah to one rupee eight anas; and of the lands held "by the lower casts of cultivators, half has risen from

" one rupee to two rupees eight anas, one-fourth from " one rupee eight anas to four rupees, and one-fourth " from two to five rupees. With such an inducement to " oust the ancient tenants, it is not to be wondered at " though every landholder should exert himself to do " so," &c.

So much for the question of humanity. Mr. Colebrooke next combats the objections which had been started by his opponents, on the score of our deficiency of information. He says, " the settlement, even if tem- " porary, must (Q. why, must) be made, in the first in- " stance, with the landholders or farmers. Minute scru- " tinies would be vainly undertaken; they would harass " the people with no real benefit to government; and " without such minute and vexatious scrutinies and mea- " surements, the same complaints of insufficiency of infor- " mation, obtained from the general inquiries or from " accounts of doubtful accuracy, would be made at any " future period." This was urged almost in the same terms by Lord Cornwallis, in 1790.

But, in answer to these assumptions, for they are mere assumptions, I may justly say, that we certainly possess infinitely more information than at that period was possessed; and after the labours of Colonel Reade and Munro, and many other valuable revenue servants, the Company need not despair of having not only every information, but of being able to profit by it in practice throughout India.

Nor is there any necessity for making a settlement with " farmers," or any class of intermediate personages; because, not only the village settlement, but even the field

field settlement, has been, and may easily be effected with the husbandman.

I also believe that minute scrutinies might not be "vainly undertaken;" because they have been successfully executed, and it has not been found that the people have felt harassed by them. Nor is it likely that they should; inasmuch as the people are perfectly accustomed to such minutiæ of scrutiny, however much the head zumeendars have been accustomed to be dealt with by the lump, in their transactions with us. Finally, while such minute scrutiny would be of real benefit to government, and I believe not less so to the people, the result of it would obviate all doubts as to accuracy of information.

It is, I apprehend, quite impossible to levy, with common fairness towards the people, even an extensive land revenue, without the most minute scrutiny. Common justice requires it. Unless, indeed, it shall be maintained that we can act towards them blindfold, more equitably than we could with our eyes open and thoroughly informed. Minute scrutiny is to be deprecated only, when it is made with the view to oppress the people, instead of imposing, equally, a moderate assessment.

Next we are told of the policy of the measure. "It is "of the utmost importance, it is essential for the safety "of the state," says Mr. Colebrooke, "to conciliate the "great body of landed proprietors, to attach to the Bri- "tish government this class of persons, whose influence "is most permanent and most extensive." And again: "the landholders enjoying their estates under a moderate "assessment fixed in perpetuity, are not ignorant that a "change of government would be followed by the exac-

"tion

" tion of an enhanced assessment, &c. If, on the con-
" trary, the utmost revenue be exacted, the landholders
" have nothing to fear, and every thing to hope from a
" change."

This is a fair copy almost of paragraph 95 of Lord Cornwallis' minute of the 3d February 1790. "In case " of a foreign invasion," says his Lordship, &c. See his Lordship's minute. But the fact is, that the "great body " of landed proprietors," to whom the above does in *reality*, though not intentionally, apply, are just that class of people which the permanent settlement of Bengal has completely destroyed, and instead of conciliating, has blotted out from among the different gradations of society in that province. The village cultivating zumeendars, the best of the people, honest, manly, independent men, that are now to be met with in every village of the upper provinces, the younger branches of whose families crowd our armies and crown them with incessant victory—the permanent settlement has annihilated this class of men in the lower provinces, or totally and entirely changed their character.

It is not only beneficial to, but unquestionably an indispensable obligation upon every government, to conciliate its subjects; but such men as the real landed proprietors, the most valuable men in the country, require not any particular conciliation. They are satisfied with the possession of their rights and protection in that possession: an act, therefore, which, in the neighbouring province of Bengal, has in its effects destroyed those rights, ought not surely to be had recourse to as a conciliatory measure, in our adjacent, and more recently acquired dominions.

The

The remaining part of the proposition, "that land-"holders enjoying their estates under a moderate assess-"ment in perpetuity, would be satisfied without our "government and not wish for a change; whereas if, on "the contrary, the utmost revenue be exacted, they would "have nothing to fear and every thing to hope from a "change," is stated in a loose and illogical manner, but is in fact a truism. That is, a *moderate* rent *in perpetuity* would be preferred to an exaction of the *utmost revenue*: a rack-rent. *True;* and true, also, whether "in perpetuity" or not. A rack-rent, perpetuated, would be no cause for satisfaction. The *moderation* of the assessment is not the question between us: all agree as to that. It is the question of the *perpetuity* of a *moderate* rent that we are discussing.

The village zumeendars of the upper provinces are not afraid of being turned out: they never have been turned out. The practice of ousting such people was introduced into India only by the permanent settlement; and to tell such men that they shall hold their villages in perpetuity, if understood at all, would be considered by them as a kind of matter of course speech, without value or import.

We are next told that the permanent settlement has secured the tranquillity of the lower provinces; and it is added somewhat prophetically by Mr. Colebrooke, "when-"ever the internal peace of the Ceded and Conquered "Provinces shall be as well secured, nearly the whole "military establishment will be available for the purposes "of active warfare. No measure would more essentially "contribute to this very desirable end than that of a per-"manent settlement."

The

The fact is, that the upper provinces are really as tranquil as the lower provinces; and I will venture to add, that, if reference be made to dates of conquest and cession, and to events, it will be found, that the upper Conquered and Ceded Provinces became more speedily tranquil without the permanent settlement, than the lower provinces did with it. The circumstance of a greater number of troops being stationed in the upper provinces than in the lower provinces has nothing to do with the internal state of the country, but with its frontier situation; and those very troops, it must not be forgot, tend to preserve the tranquillity of the lower, as well as of the upper provinces.

A last further reason for concluding a permanent settlement of the Ceded and Conquered Provinces stated by Mr. Colebrooke is, "that temporary settlements afford "opportunities of frauds; and the purity of the civil ser-"vice of the Company on this establishment, fixed on a "basis apparently secure, by Lord Cornwallis' system, "would be inevitably lost in the long continuance of tem-"porary settlements of the revenue in the extensive pro-"vinces above Benares."

I am not prepared to admit either that Lord Cornwallis' principle of high salaries, here alluded to, did secure the purity of the civil service; far less that temporary settlements of the Ceded Provinces would inevitably destroy the undoubted purity of that honourable class of public servants. But were government put in possession of ample data, founded on minute scrutiny, which Mr. Colebrooke so much deprecated, their revenue officers might form the settlement of the districts from such data, on basis which should render it difficult for any individual to be impure, without being so liable to detection that the risk

risk would over-balance the profit; and government would then, in every case, possess the means of judging themselves whether there were grounds of suspicion. Occasional changes of situation, too, among the revenue officers, would facilitate discovery, both of fraud and of the resources of the country.

Such occasional changes of their charge, among officers of high trust and extensive discretionary power, would, I venture to presume, be highly beneficial to the public interest. The risk of detection by a successor would prove a strong check to the fraudulent; and of those who are pure, if the individual moved happen to be an able and upright servant, his presence elsewhere will be highly advantageous, where he may relieve one whose qualifications are less estimable: and thus, in time, every district would derive the benefit of the highest order of talents the service afforded, till at length the system would be at least very highly improved.

It may lastly be remarked, that the most sanguine opponents of the permanent settlement do not recommend annual, nor even frequent settlements; but, on the contrary, most of them are advocates for settlements of considerable duration: so that frequency of opportunity to be dishonest would not exist; and consequently, the measure would prove at least less detrimental to the morals of the honourable Company's civil service. But it by no means follows, were the settlement even frequent, that the assessment should be always altered; the *rates* per beegah, perhaps, not at all. Any diminution of revenue would immediately call forth investigation; so that the former settlement would limit the power of the corrupt to the narrow field of increased cultivation.

The

The Bengal government of 1813, however, take at least a more plausible view of the permanent settlement than those who would have that settlement even at the expense of a great diminution of revenue. In their general letter of the 17th July 1813, which state paper was considered, probably, by those who framed it, to exhaust the subject: in that letter, the Bengal government say, that "if the permanent settlement were calculated "to reduce the pecuniary resources of the government "below the means which might otherwise be drawn from "the country, they must have hesitated to recommend it: "but in our judgment, taking any period of years, govern- "ment will derive a greater revenue, within that period, "from the Ceded and Conquered Provinces, than could, "with any sort of reason, be expected to be drawn from "those territories under temporary assessment."*

This is a very plausible introduction to such a subject; and, in the absence of facts, the high authority whence the opinion comes must give it more than ordinary weight. I do not say more against it, than merely to state that, at the very time this letter was composed, commencing with 1807, "the resources of the government" were increasing at the rate of three and a half per cent. per annum; in 1814 they had increased fifty-five and a half lacs, and in 1820, seven years only after the date of the above letter, seventy-five lacs of rupees, under temporary assessments.

How different the nature of a permanent settlement! It is essential to the nature of a permanent settlement, or limitation of the land revenue of a country, that its amount shall *diminish;* not merely from the depreciation of currency. Nothing

* Paragraph 2.

Nothing can remain stationary; every thing is liable to change; but no change can operate to the advantage of government. That which cannot increase must decrease. You cannot, under permanent settlement, raise the rent *of any one estate;* but many estates, by neglect or mismanagement of owners, or even by unavoidable calamity, must become depreciated. The jumma cannot be realized: the owner is ruined, the estate is sold, nobody will buy it. What is the consequence? The jumma must be reduced: government are the losers; and the permanent settlement has shut up every mode of reimbursement. A neighbouring estate has perhaps gained as much, by partial alluvion, or by increased value of its productions, to supply the neighbouring town before supplied by both: yet no reimbursement to government. The permanent settlement, therefore, is a system of finance, which carries within itself the seeds of destruction of the resources of the government; and therefore, on their own principle, the government ought to have "hesitated to recommend it."

The letter then goes on, professing to reply to (refute) the objections stated by the Honourable Court of Directors to the immediate conclusion of a permanent settlement. But the objections of the Honourable Court are not so easily refuted. They are stated to be,

First. Defective information. Bengal has been thirty years in our possession, and yet imperfectly known.

Secondly. The disappointment experienced in Bengal in being unable to augment the other branches of revenue.

Thirdly. The inexpediency of such a settlement, with reference

reference to the peculiar character of the natives of the upper provinces.

Fourthly. Loss from the depreciation of the precious metals.

To the *first* the answer of the Bengal government is, "you think our information must be in proportion to our "length of possession of the country: But there can be "no grounds for this, if the nature of the accounts and "sources of information are considered. These are the "accounts deposited in the offices of the collectors them-"selves, or what are usually called the *sudder serishta*, "the zumeendars' accounts, and the accounts of the ca-"noongoes and putwaries. The three latter descriptions "of accounts may be fabricated; but this objection must "apply equally whether the settlement be permanent or "temporary." True: but in the one case, the errors may be corrected next settlement; in the other, never! and moreover, these are not by any means the only sources of information attainable.

"If, again," they continue, "those documents cannot "be relied upon, the idea of a permanent settlement "must be abandoned; for, generally speaking, there are "absolutely no other documents which can be applied to "the object in view." Now this is precisely what the Court say; that government are, as yet, in possession of no documents or information on which to form the settlement. But surely government did not mean to say that no better data or information *can* be obtained than the collectors' *sudder serishta*, or "falsifiable, if not fabricated "zumeendars' or canoongoes' accounts"? These accounts are good for as much as ought to be required of them;

them; namely, as a guide through a more minute investigation, to which a long period of years must be devoted.

The government, in 1790, also asserted the extent and accuracy of *their* information, and their own superior capability to carry into effect the permanent settlement. Lord Cornwallis says, "I must declare that I am clearly "of opinion, that this government will never be better "qualified, at any given period whatever, to make an "equitable settlement of the land revenue."* Very confidently, and no less modestly expressed! But, probably, his Lordship's followers and disciples in the permanent settlement controversy would prove apostates on this point.

"It may be urged," continues this letter, "that this "want of information furnishes a strong argument for "those local surveys and valuations your honourable "court recommends. We, however, are adverse to them. "They may have answered at Madras or Bombay. We "know not that they have; but the experience in Bengal "formerly is adverse to them. The chicanery and cor-"ruption practised by the large body of natives necessa-"rily employed, and the heavy expense, have led to their "being relinquished; and we are satisfied that the most "experienced and capable of the revenue officers would "deem the revival of it an evil."

Here I may observe, that the revival of the practice of chicanery and corruption would indeed be an evil; but I cannot see how the minute ascertainment of the resources of the country could be deemed an evil by any set of men whatever: a practice, too, either really observed, or sup-



* Minute, 3d February 1790.

posed to have obtained for ages of ages throughout all India. Formerly corruption and chicanery were very prevalent in every department of our Indian government. Times are vastly changed, I am happy to say, for the better; nor do I see the necessity of confiding implicitly in native agency, in any department: and there can be no doubt, were government rigidly to adopt as a rule to employ none but able men in this department, that the most efficient control might be, and would be, established by the European officers over all natives that should be employed under them.

I have only farther to notice on this point, the expression of government as to the opinion of the most experienced and capable of their revenue officers against surveys. Allowing the individuals alluded to credit for an ample share of talent, their opinions could be formed only on conjecture, aided perhaps by the perusal of the official records of the "good old times," when such surveys were attempted. None of them could speak from actual experience; whereas we have actual experience to speak against them, in recent times, in other quarters of India.

Those surveys, &c. are stated as "being peculiarly "unsuited to the Ceded and Conquered Provinces, where "the lands are generally parcelled out into small pro- "perties, the joint-owners being themselves the cultiva- "tors. A minute scrutiny into the resources of estates "is, consequently, far more difficult than when the lands "are held by tenants, under a superior zumeendar; the "measurement there ascertaining the rents payable to "the zumeendar preparatory to the fixing of the public "demand."

Now,

Now, as such scrutiny is admitted to affect all, both cultivators and zumeendar, as it must be evident that a superior zumeendar would, at least, be as unwilling to have his estate subjected to this scrutiny as an inferior owner and cultivator would be, I cannot see how the absence of the difficulties which a superior zumeendar would be able to throw in the way (and assuredly he would be disposed to do so) of such a scrutiny ought to render it "far more difficult," where there are only small proprietors cultivators. The effect of the survey, &c., to the cultivator, in either case, would be the same, because it would develop the resources of his lands: the intervention of a superior zumeendar would, in no way, save him from this. But, at all events, the argument is only good, to shew the *difficulty*, not the impracticability of the measure.

Colonel Munro does not state any great difficulty he experienced, nor any disposition on the part of the people, to withhold information: or if they did, he took measures for obtaining it from disinterested neighbours He tells us, "he made them their own assessors." To measure and assess, by whole villages, in many cases would be found sufficient. The joint-copartenary proprietors would equalize the assessment among themselves, according to their several shares, if amicably disposed to one another; if not, there would be no fear of want of information from the conflicting interests of parties.

Whether such surveys, and minute scrutiny into the resources of the country, have answered at Madras and Bombay, as they were carried into effect there, I will not pretend to say; but this I will maintain, that until it shall be established that good information is less likely to lead to happy results in practice than bad information, until

knowledge shall be proved to be less useful than ignorance, that such minute scrutiny must be beneficial. But at Madras, and in Bombay, and in Bengal, the best measures may be attended with baneful concomitants, which may convert their good into evil. If accurate investigation be only a prelude to rack-rent and extortion, I would call it an evil, as I should the knowledge of anatomy to an executioner, who applied his knowledge only that he might torture his victim with greater accuracy of excruciation; but, possessed by the intelligent, able, and benevolent officer of government, who applied his accurate information to the *equalization of the moderate burden of the state* among an industrious people, who were all of them willing to bear his fair and just proportion, but no more, such information must be a blessing to the country generally, and to the individuals concerned particularly; who, instead of opposing, would doubtless forward its attainment. The late lamented Surveyor-General of India, Colonel Colin Mackenzie, has often told me, that in his extensive surveys on the coast, he found the natives extremely willing to afford every kind of information.

The expense of such investigation is, of course, a fit subject for consideration. But, as that is a matter of calculation, the question is not very intricate. Colonel Munro's survey and analysis of the resources of the Ceded Districts under him, he calculated would cost four per cent. on the revenue of one year; but, in consequence of his attention having been taken from it to other public duties, he took nearly five years to complete it; and, instead of four, it cost five per cent. At four per cent. on the revenue of the Ceded and Conquered Provinces of Bengal, the expense would amount to about twelve lacs of rupees.

Colonel

Colonel Munro's report of the method he adopted in forming the ryotwar settlement of the Ceded Districts is highly interesting. The following extracts will shew his plan of procedure. The first is the description of the *survey.*

" It (the survey)," says he, " was begun in June 1802, " by four gomastahs of my cutchery, who were, at that " time, the only persons in the ceded districts who un- " derstood land-measuring. It proceeded very slowly at " first, from the want of hands; but, several of the inhabi- " tants being instructed every month, the number of sur- " veyors, by the end of the year, amounted to fifty, and " was, in the course of the following one, augmented to " a hundred. The surveyors were at first formed into " parties of six, but afterwards of ten; to each of which " a head surveyor, or inspector, was appointed. With " the exception of hills and rocks, all land, of whatever " kind, was measured. All roads, sites of towns and vil- " lages, beds of tanks and rivers, wastes and jungles, " were included in the survey. Ancient wastes were " usually measured in extensive lots, to be subdivided " hereafter as they may be occupied; but, when it could " be conveniently done, they were also frequently divided " into fields of the ordinary size. As all fields that have " ever been cultivated have names, they were distin- " guished in the survey registers by these names, and " also by a particular number affixed to each, in the " order in which it was measured. The surveyors used " every where the same standard-measure: a chain of " thirty-three feet, forty of which made an acre. They " were paid by the acre, at such a rate at it was supposed " would enable them, with diligence, to earn about six " pagodas monthly. They were encouraged to be expe-

" ditious by the hope of gain; and deterred, at the same " time, from being inaccurate through haste, by the fear " of dismission; for no false measurement beyond ten per " cent. in dry land, and five per cent. in wet, whether " proceeding from negligence, from haste, or design, " was ever excused: and the frequent instances of loss of " employment, on this account, that occurred during the " early part of the survey, soon rendered the surveyors " so cautious, that their measurement was afterwards, in " general, sufficiently correct. The vacancies that were " continually happening among them from dismission, " and more frequently from sickness, were at all times " easily filled up, from among a number of persons who " always attended them with the view of being instructed " and employed; but these persons, on being appointed, " were, in order to guard against partiality, sent to the " party of a head surveyor, different from that by whom " they had been reported as qualified.

" The head surveyors, or inspectors, examined the " measurement of the surveyors placed under their charge. " They were paid by the month. To have paid them by " the acre would have defeated the end of their appoint- " ment, by preventing them from examining carefully " and deliberately the operations of the under surveyors. " But, to guard against remissness, and to leave them at " the same time sufficient leisure for investigation, they " were required to measure monthly one-tenth of the " quantity of land fixed for a surveyor. They were not " permitted to make this measurement all at once, in the " course of a few days, but were obliged to make it gra- " dually and uniformly throughout the month, by taking " a few fields every day. The whole of the inspectors " were frequently removed from one party to another,

" because

" because by remaining too long with one party they were " apt to entertain partialities and enmities, and to pass " over the false measurement of some surveyors while " they exaggerated the trifling errors of others; and, for " these causes, many inspectors were at different times " dismissed. Both inspectors and surveyors were, at first, " allowed a share of the produce of all extra collections " and unauthorized enaums which they brought to light; " but as they often earned more in this way than by the " survey, and with less labour, it was soon found that " the survey was impeded by these investigations, and it " therefore became necessary to confine them to the single " object of measuring the land.

" The surveyors were followed by assessors; two of " whom were allotted for the assessment of the land mea- " sured by each party of ten surveyors. The assessor, on " arriving in a village, went over the land with the *potail*, " *curnum*, and ryots, and arranged it in different classes, " according to its quality. In all villages, the land, both " wet and dry, had from ancient custom been divided " into first, second, and third sort, agreeably to their " supposed respective produce; but these divisions not " being sufficiently minute for a permanent assessment, " the classes of wet land in a village were often increased " to five or six, and those of dry to eight or ten. The " classification was made rather by the potail, curnum, " and ryots, than by the assessor; for he adopted their " opinion, unless he saw evident cause to believe that it " was wrong, when a reference was made to the head " ryots of any of the neighbouring villages, who fixed the " class to which the land in dispute should belong. The " quality of the land, where all other circumstances were " equal, determined its class; but allowance was made

" for distance from the village, and every other incident, " by which the expense of cultivation was augmented. " The ryots were directed to be careful in classing the " land, as the whole of any one class would be assessed " at the same rate; but they were not told what that rate " would be, because it was apprehended that they would " be induced, by such information, to enter a great deal " of the better sort of land in the inferior classes. It was " discovered, however, after a trial of a few months, that, " by following this mode, the potail and ryots not seeing " immediately the effects of classification, were not suffi- " ciently impressed with its importance; and sometimes " by entering too much land in the higher classes, and some- " times in the lower, the assessment of some villages became " more than they could possibly pay, and that of others " much less than they had ever paid before. To obviate " this mischief, the lands were both classed and assessed " at the same time; by which means the ryots perceiving " at once the effect of classification, in raising or lower- " ing their own individual rents, felt the necessity of " making it with care. After this principle was adopted, " the classification was in general sufficiently accurate; " except that, in some instances, the land of potails, cur- " nums, and a few head ryots, were inserted in too low " a class. These irregularities, however, were usually " corrected, either on the spot by the assessor, with the " advice of the ryots of the adjacent villages, or after- " wards, by persons appointed to revise his assessment.

" As the assessor did not always rectify fraudulent " classification, but sometimes remained ignorant of it " from negligence, or connived at it from bribery, and " as it was impossible to ensure from so many individuals " a punctual observance of the same method of proceed-

" ing,

" ing, it was thought advisable, for the sake of preserving " uniformity, and of checking abuses, to appoint five " head assessors, selected from the most intelligent of the " ordinary assessors. Each head assessor had four ordi- " nary ones under him: his business was to review their " classification and assessment, and to correct them when " wrong. He looked particularly to the classification of " the lands of such persons as he suspected might have " been favoured by the assessors; and when he was con- " vinced, both from his own opinion and that of the " principal ryots of the neighbouring villages, that par- " tiality had been shown, he transferred such lands to " higher classes; and, in the same manner, when he " found that the lands of any ryots were classed too high, " he removed them to their proper classes. If he saw no " occasion for changing land from one class to another, " he examined whether whole classes were not assessed " too high or low, and raised or depressed them to dif- " ferent rates, wherever it appeared that an alteration " was necessary; but he was not permitted to make any " alterations in the accounts of the ordinary assessor. " Such alterations as he thought requisite were entered in " those accounts, in columns left for that purpose; so " that when the settlement came to be finally made, in " the collector's cutchery, all alterations might be seen, " and the reasons examined upon which they were " grounded. As an interval of one or two months usually " elapsed between the investigation of the ordinary as- " sessor and that of the head one, there was full time for " every ryot to ascertain whether his own land was pro- " perly classed; and, if he thought that it was not, he " had an opportunity of stating his objections to him on " his arrival in the village: and, as the ryots of all the

" neighbouring

" neighbouring villages were assembled, the head assessor,
" by means of arbitrators from among them, easily deter-
" mined all complaints of this nature.

" If entire dependence could have been placed on the
" judgment and impartiality of the head assessors, nothing
" more would have been required, in fixing the assess-
" ment, than to have adopted their estimates; but as
" these estimates were sometimes incorrect, and as they
" would have been still more so had the assessors been
" relieved from the fear of a future examination, the
" whole of the classification and assessment underwent a
" complete investigation, in the collector's cutchery. On
" this occassion, all the potails, curnums, and principal
" ryots of every village in the district to be settled, were as-
" sembled at the cutchery. The business was begun by
" fixing the sum which was to be the total revenue of the
" district. This was usually effected by the collector in a
" few days, by comparing the collections under the native
" princes under the Company's government from its com-
" mencement, the estimates of the ordinary and head as-
" sessors and the opinions of the most intelligent natives;
" and, after a due consideration of the whole, adopting
" such a sum as it was thought would be the fair assess-
" ment of the district in its present state, or what the in-
" habitants in similar circumstances, under a native go-
" vernment, would have regarded as somewhat below the
" usual standard. The amount fixed by the collector was
" usually from five to fifteen per cent. lower than the es-
" timates of the assessors; for it is the nature of assess-
" ment, proceeding from single fields to whole districts,
" and taking each field at its supposed average produce,
" to make the aggregate sum greater than what can be
easily

" easily realized. After fixing a certain sum for the district, " it next remained to determine what share of this sum " was to be imposed on each village. Had the detailed as- " sessment been perfectly correct, it might have been done " at once by an uniform remission of five or ten per cent. " to every field; but, as this was always objected to by " many of the inhabitants, who thought their lands were " not so favourably assessed as those of their neighbours, " either in the same or other villages, it therefore became " necessary to examine again the assessment of every vil- " lage. Such villages as claimed more than the average " remission were investigated by the principal ryots of " other villages; and each claim was admitted, either fully, " or with such modification as both parties agreed upon. " The extra remission thus granted to one set of villages " was to be deducted from another; and it was effected in " the same manner, by employing the ryots of other vil- " lages. After settling what proportion of the whole re- " mission was to be allowed to each village, it was still " necessary to ascertain whether or not any alteration was " requisite in the classification of lands. In some vil- " lages, where none appeared to be necessary, and where " no objections were made, the classification of the head " assessor was confirmed, and the rent of each class, and " consequently of each field, determined at once, by " lowering the assessment by the rate of remission granted " to the village. In those villages where complaints were " made of the classification, the objections were exam- " ined; and, if they were allowed to be just by ryots not " interested in the matter, the necessary alterations were " made. Complaints of whole classes being rated too high " or too low, were much more frequent than those of par- " ticular fields being entered in a wrong class, because " each ryot, knowing the produce of his own and his " neighbours'

" neighbours' lands, took care to see, where their quali-
" ties were equal, that his own were not placed in a higher
" class by the assessors; but he was not so anxious about
" the rate at which the class was assessed, as he con-
" sidered that, whatever it was, it would be as favour-
" able to him as to others. Where some classes were rated
" too high or too low, it was usually owing to the potail
" and curnum of the village contriving to make the as-
" sessor underrate the class which contained most of
" their own land, and overrate some other one, com-
" posed principally of the land of the inferior ryots. But
" as the collector's cutchery always inquired minutely
" into the assessment of the lands of the leading men in
" each village, and as the whole district was present at
" the discussion, and every man ready to prevent another
" from obtaining an advantage in which he did not him-
" self share, no fraudulent assessment of any consequence
" could possibly be concealed.

" The classification and assessment of the land having
" undergone three several investigations, by the assessor,
" head assessor, and collector's cutchery, and all objec-
" tions having been heard, and admitted when well found-
" ed, nothing remained but to ascertain and register the
" rent of every field. This was an easy operation; for
" as each class of land had been already rated according
" to its quality, it only remained to calculate the number
" of acres in the field by two, three, or four fanams, as the
" rate of the class might happen to be to which it belong-
" ed. As this was a mere arithmetical process, it was
" performed by persons hired for the purpose, who were
" paid at the rate of one and a half cantaray fanams for
" a hundred fields. They were superintended by two
" gomastahs from the cutchery: and when they had made

" out

" out two copies of the register of fields, one for the col-
" lector and the other for the tehsildar, the survey of
" the district was closed for the time. It still, however,
" remained to ascertain by experiment, whether the as-
" sessment might not be too high in some cases. In the
" course of collecting the first year's survey rent, a list
" was made of such fields as were asserted by the cultiva-
" tors to be overrated. Their rent was, at the end of
" the year, again examined, in the presence of the prin-
" cipal inhabitants, and either lowered, or confirmed, as
" circumstances appeared to require. This was the last
" operation of the survey; and it usually occasioned a
" reduction of from one-half to one and a half per cent.
" on the assessment. The equivalent might easily have
" been made up from lands which had been underrated,
" for the assessment was as often below as above the pro-
" per point; but it was thought better, in this case, to
" make no alterations, lest it should weaken the confidence
" with which it was wished to impress the inhabitants in
" the permanency of the survey rent. The final correc-
" tion, abovementioned, has been made in all the dis-
" tricts which were settled by the survey rent in 1215;
" but in those districts where the survey rent was not
" established till 1216, and in those where it will not be
" introduced till 1217, the correction cannot be effected
" until 1217 in the one case, or till 1218 in the other.
" It will occasion a decrease of about ten thousand pa-
" godas in the total assessment of the land inserted in the
" statement. The mode of measuring and assessing the
" land has been explained at so much length, that it can
" hardly be necessary to say more upon the subject; but
" should any further information be required, it will be
" more easily gathered from the accompanying copies
" (Nos.

" (Nos. 1. 2. 3. 4.) of instructions to surveyors and asses-
" sors, than from any description whatever."

What remains of these interesting documents will be seen in the Appendix, being much too long for insertion here, yet much too valuable to be entirely omitted.

The above is the outline of the plan, by which the ryotwar assessment, or settlement of the *Ceded Districts* of the presidency of Fort St. George, was effected by Colonel Sir Thomas Munro. I think the document so valuable, that, however reluctant to make long extracts, I could not omit any part of it. The instructions to the inferior agents will be found in the Appendix.

It will be seen, that the data assumed for fixing the total amount of assessment, in any given district, or division, or purgunnah, as it is called in Bengal, were the collections under the native governments, under the Company's government from its commencement, the estimates of the assessors and of intelligent natives, and a comparison of the whole, attending to present cultivation; so that the duty of the assessors was chiefly the allotment of the total revenue of each village on the different fields, verifying, it must be observed, however, former assessments in the most satisfactory manner, by shewing the quantity of land cultivated and the rent paid.

In concluding this extract, it is pleasing to mark the result of the labours of this invaluable officer, and to see that his services were appreciated, and ultimately rewarded. Mr. Petrie, a member of the Madras government at the time, gives a summary view of the result of what had been effected. " He reviewed the services of Colonel Munro
" in

" in the Ceded Districts, where he had raised the revenue " from twelve and a half to eighteen lacs of star pagodas " per annum, and the manners and habits of the people " in amelioration and improvement had kept pace with " the increase of the revenue. From disunited hordes " of lawless plunderers and freebooters, they are now as " far advanced in civilization and in submission to the " laws, as any subjects under this government. The " revenues are collected with facility, every one seems " satisfied with his situation, and the regret of the people " was universal on the departure of Colonel Munro."

And again: " The example, we believe, is unparalleled " in the revenue annals of this presidency, of so extensive " a tract of country, with a body of inhabitants little ac- " customed to submit to the ruling authority, reduced " from confusion to order, and (in eight years) a mass of " revenue, amounting to no less than 1,19,90,419 star " pagodas, being regularly, and at length readily collected, " with a remission on the whole of only 3,415 pagodas, " being one fanam and twenty-two cash per cent."*

In opposition to this, what weight can we give to all the arguments of the Bengal government without trial of the measure?

The General Letter of the Bengal government, to which I have been adverting, farther admits, that there were errors committed in the settlement of Bengal; and it notices, also, " the warning given to them by the Court of " Directors, by holding up to them the permanent settle- " ment of Dindigul, which failed entirely, and compelled " the

* Madras General Letter.

" the government of Madras to have recourse to village " leases."

To the former (the admitted errors of the Bengal settlement) they oppose the regularity, propriety, and care of individual interests, with which the preparatory settlement of the Ceded and Conquered Provinces was made; and to the latter, the success with which the revenue was realized, even to a balance in some districts as low as nine anas and five pice per cent. The jummas thus realized were, by Regulation X of 1807, to become the permanent assessment. " Thus," they conclude, " there can be little " error and no danger of a failure."

But the measure of a permanent settlement, applied to the Indian possessions at all, is, in my estimation, essentially erroneous; and no regularity, propriety, or care of individual interests, can purge it of error. That the revenue, if fixed at a low rate, might doubtless be realized, in spite of great error, impropriety, or disregard of private or public interests, is sufficiently proved by the permanent settlement of Bengal: at least until the inherent tendency in a permanent settlement to diminish the government revenue, as above noticed, shall have operated sufficiently; and then will end the realization of the revenue.

The second point at issue in this letter is the Court's observation, " that the hopes entertained, at the period " of the permanent settlement in Bengal, of raising a " revenue there from other sources, have failed." The reply to this is: " It is impossible to say to what extent " such hopes went; but, if you compare the produce of " the different branches of revenue stated in the margin, " (*viz.*

" (*viz.* salt, opium, spirituous liquors, customs, stamps)
" you will find great increase."

Now this does not appear to me to be any answer to the observation of the Court. All these branches of revenue (except, indeed, the stamps, which netted in 1811 about four lacs), were in existence before the permanent settlement. The hopes held out at the permanent settlement, here alluded to by the Court, must evidently refer to sources *other* than those then existing: to new sources. We do not talk of " raising a revenue " from sources in being, but of augmenting, improving, or increasing it; and it would not have been matter of *hope*, but of certainty, that as the government became more regular, as our experience increased, and good management prevailed, and moreover as conquest extended, the sources of revenue then existing would become more productive, would improve, its amount increase, even without any reference to the talismanic operation of the permanent settlement. Good management, wonderful increase of territory, great increase of trade, both among the European and native population, are fully sufficient to account for the increase in the branches of revenue alluded to; and would be so, indeed, were the increase much greater than it really is.

The letter says, " the population will keep pace with the
" increasing improvement of the country; consequently,
" a greater demand for salt, opium, spirits and drugs,
" customs and stamp duties, will increase: but so far
" from realizing the hope of profiting by any new source
" of revenue," the letter under review goes on to state,
" But we confess that we rely more on the improvement
" of the present resources than on imposing new taxes,
" which is attended with great, and, in the present state

" of the country, insuperable difficulties." This alludes, doubtless, to the house-tax; which occasioned considerable riots throughout the country, as well in Bengal, Behar, and Benares, as elsewhere, and was ultimately abolished.

It must be confessed, that in all this there is not much encouragement given to the Honourable Court to sanction the permanent limitation of the land-revenue; the principal and constitutional resource of the state. The stamp-duties were then a mere trifle: they were instituted in lieu of fees on law proceedings, and might perhaps be well laid out in ameliorating the administration of justice. The customs as yet are not great. In 1810-11 they did not realize above twenty-seven lacs of rupees.*

The salt monopoly is productive. In 1810 the amount of sales exceeded the amount of charges by Current Rupees 1,31,00,000, as appears in the accounts for that year laid before parliament.† Mr. Hastings is entitled to the chief merit of the formation of this source of revenue while yet in its infancy. In 1785, the sales are stated by him to amount to Sicca Rupees 53,00,000; and so rapid was the progress of its advancement, that the sum realized for that year exceeded that estimated by no less than 23,00,000: and all this without the influence of a permanent settlement. Mr. Colebrooke states the average quantity of salt sold for five years, ending with 1793, at thirty-five lacs of maunds; but

* In 1819-20 the customs and town duties in the lower and upper provinces amounted to ..... Sicca Rupees 65,42,953
Charges ..... 8,97,705
Nett ..... 56,45,148

See printed statement, June 1822.

† In 1819-20, the amount of sales exceeded the charges, Sicca Rupees 1,11,82,222.—*Ibid.*

but he calculates the quantity consumed in Bengal and Behar alone at forty lacs of maunds, exclusive of Benares.*

The opium monopoly has been also productive. In 1810 the amount of sales exceeded that of the charges by about eighty-three lacs of current rupees, and exceeded the estimated amount, for the same year, about twenty-four lacs.† This rapid increase, I apprehend, would rather exceed the power of the permanent settlement, great as it may be. But I may remark in this place, that giving that settlement the most unlimited credit for "increasing the population of the country," and by consequence, as the letter states, "the consumption of opium and drugs," yet that children born of parents united since 22d March 1793, the date of the permanent settlement of Bengal, on the strength of the celebrated proclamation of that date, could not, in 1813, have been great consumers of *opium* or of drugs!

But in 1785 Mr. Hastings states the sale of opium to amount to about seventeen lacs. In 1799, six years after the permanent settlement, it fell to about eight lacs; and, on an average of four years ending with 1811, under different management, it netted about sixty lacs.‡ In fourteen years, from 1785 to 1799, it fell eight lacs. In about the same space of time since that period it has risen nearly eighty. And is all this fluctuation the effects of the permanent settlement? If so, it is but a very changeable consequence of so permanent a cause.

The letter in question goes on farther to state, that

 "although

* Husbandry of Bengal.

† In 1819-20, the excess in the amount of sales was Sicca Rupees 60,40,648. —See printed statement, June 1822.

‡ Fifth Report.

" although the zumeendars in Bengal have derived very " considerable advantages from the improvement of " their estates, government has suffered no loss whatso- " ever:" and "for this plain reason; because, without " such settlement (permanent settlement), such improve- " ments, generally speaking, would not have taken place."

But, I ask, is it no loss, after twenty years of the greatest exertion, the greatest and most strenuous efforts to administer the government of the country, and to preserve its tranquillity, at enormous expense, that no part of this enormous expense has been, or can be reimbursed; and that, after twenty years of this, we shall be content to receive a no greater, but rather a less return than at the commencement? Does such exertion, toil, and improvement in every other branch of administration, require no return? and is it " no loss," that no advantage can be derived from the " considerable advantages of the zumeendars," to those who have been the means of securing to them those considerable advantages?

Suppose no farther conquest had been effected, beyond the three provinces permanently assessed, that the revenue could not have been increased from the land, and that no new sources were available, as the government now admit, what would have been the situation of the Company's affairs in Bengal at this moment? Here the effects of a permanent limitation of the revenue will shew themselves.

They continue: " You speak of a sacrifice in Bengal. " Let us enquire what can be justly called a sacrifice? " In fixing assessments, the usual process is to deduct from " the gross resources about five per cent. on account of " charges

" charges of collection, to set apart ten per cent. for the " support of the zumeendar and his family, and to con- " sider *the remainder* as the public assessment: that is, " to take the largest possible share for the state. Can " any country be expected to improve under this, unless " it be counteracted by an assured prospect to the land- " holders of future advantages from the gradual improve- " ment of their lands?"

This mode of making a settlement I do not clearly understand. How are the "gross resources" ascertained? Is there no enquiry into them? It is impossible that this is, or can be, the way of making a settlement. But passing over the mode of making settlements described, let us fairly examine this plausible passage. First, " the " improvement of estates." From this an English gentleman would be led to suppose, that the great landed proprietors of India laid out immense capital on the improvement of their estates. Perhaps in facilitating irrigation in the higher lands, in embanking and in draining the lower, in enclosing and manuring their fields? No such thing is known among them! Mr. Colebrooke himself, who published his Husbandry in 1804, shall answer for them. He says, " Reservoirs, ponds, water-courses, " and dikes, are more generally in a progress of decay " than of improvement." Indeed, " that there is no " capital in Bengal employed in improving agriculture." It is quite evident that there is no such thing as improving estates; except, indeed, by the simple operation of extended cultivation, the necessary consequence of increased population, which has its origin in nature itself, and not in the permanent settlement. If, then, the zumeendars have done nothing to improve their estates, which is really the fact, and they have nevertheless derived

very considerable advantages, these advantages must be derived at the expense of government, and to which the zumeendar has no apparent right, being himself in no way instrumental in their production.

The reason assigned, which induces the engaging zumeendar to agree to give "so high and oppressive "rates," namely, "the assured prospect of future advan- "tages from the gradual improvement of their lands," I consider as altogether fanciful. First, when we know that the assessment is fixed on the cultivated land only, and that, in Bengal and Behar, the average jumma does not exceed four to six anas (about six to nine-pence sterling) per beegah, and that nine to twelve maunds even of rice (unhusked) are not more than the usual produce of a beegah, which will yield from seven to eight maunds of clean rice, worth from eight to nine rupees (sixteen to eighteen shillings), at the very lowest price; thus (allowing one-third for the expense of cultivation) affording the cultivator a profit of twelve shillings on what cost him nine-pence: knowing this, we are not to give the zumeendar much credit for looking only to futurity to reimburse him.

Secondly, where, it may be asked, are the funds, the capital of the zumeendar, to bear his immediate losses, or to support him under such "heavy exactions?" And lastly, under such supposition, where is the capital to arise from, that shall enable him to improve his lands?

The truth is, the "heavy exactions" here mentioned are altogether fanciful: they have no existence. It may not be amiss to give here the result of the opinion of an able and industrious writer on the resources of Bengal, who

who wrote nearly forty years ago (Mr. Grant), notwithstanding the opinions which have been maintained against him. Let us see what the following table of Mr. Grant, shewing the resources of the now permanently settled territory of the Company in Bengal, Behar, and Orissa, proves with respect to "heavy exactions."

*ABSTRACT*

*ABSTRACT of the NETT ANNUAL REVENUE, Mehal and Sayer, of the several British Provinces in Hindoostan, Dimensions 180,000 British Square Miles, as rated at different Periods, from the Original Assessment of Turrul Mull, A. D. 1582, to the present time, ending in 1784, by Mr. Grant. (Fifth Report).*

| PROVINCES. | Ausil Jumma Toomary, or original Rent Roll of Turrul Mull, established A.D. 1582. | Akber Jumma Toomary, or improved Crown Rent, to the death of Moohummud Shah, A. D. 1747. | Gross and Nett Revenue as found established in 1765, the period of Territorial Acquisition to the Company. | | | Gross and Nett Revenue actually realized to the Company in 1784, after sixteen years Financial Administration. | | | Total Nett Revenue estimated as collected by the zumeendars, and due to the sovereign, after deducting twenty per cent. for charges. |
|---|---|---|---|---|---|---|---|---|---|
| | | | Gross Rent. | Charges of Managements as then established. | Nett Revenue. | Gross Rent. | Charges paid from the Treasury, besides Sebundy, &c. | Nett Rent. | |
| BENGAL. | Rupees. | Rupees. | Rupees. | Rupees. | Rupees. | Rupees. | Rupees. | Rupees. | Rupees. |
| Dewanny lands..... | | 1,08,65,285 | 2,29,21,097 | 3,35,822 | 2,25,85,275 | 1,37,20,683 | 47,75,284 | 89,45,399 | 3,09,00,000 |
| Ceded lands ..... | 1,06,93,152 | 27,05,826 | 41,17,105 | 65,454 | 40,51,651 | 62,86,955 | 11,93,064 | 50,93,891 | 55,00,000 |
| Salt lands ..... | | 5,45,000 | 22,05,000 | deducted. | 22,05,000 | 54,50,000 | 19,50,000 | 35,00,000 | 39,00,000 |
| Total of the Soubah | 1,06,93,152 | 1,41,16,111 | 2,92,43,202 | 4,01,276 | 2,88,41,926 | 2,54,57,638 | 79,18,348 | 1,75,39,290 | 4,03,00,000 |
| Behar, the Soubah ... | 55,47,984 | 95,56,098 | 84,35,856 | 10,72,030 | 73,63,826 | 53,33,492 | 9,50,745 | 43,82,747 | 76,00,000 |
| Orissa, Midnapore ... | 9,09,934 | 11,43,878 | 14,33,657 | 2,75,010 | 11,58,647 | 8,73,355 | 2,10,000 | 6,63,355 | 14,00,000 |
| Allahabad, Benares ... | 14,07,475 | 25,36,837 | 71,26,114 | 22,23,373 | 49,02,741 | 51,07,955 | 11,07,955 | 40,00,000 | 50,00,000 |
| Total Bengal Provinces | 1,85,58,545 | 2,73,52,924 | 4,62,38,829 | 39,71,689 | 4,22,67,140 | 3,67,72,440 | 1,01,87,048 | 2,65,85,392 | 5,43,00,000 |
| Hyderabad, the Five Northern circars | 39,45,348 | 52,07,700 | 78,93,243 | 19,68,000 | 59,25,243 | 74,62,468 | 25,68,000 | 48,94,468 | 83,00,000 |
| Total British Territory | 2,25,03,893 | 3,25,60,624 | 5,91,32,072 | 59,39,689 | 4,81,92,383 | 4,42,34,908 | 1,27,55,048 | 3,14,79,860 | 6,26,00,000 |

Defalcation from what the Nett Revenues were in 1765, .....Rupees 1,67,12,523.
Defalcation from what they are or ought to be in 1781, .....Rupees 3,11,20,140.

Here then, instead of "heavy exactions," Mr. Grant, from original documents which he translated and laid before government, and on the authenticity of which he pledges his character, estimates the revenue of the Company's lower Bengal provinces, including Benares, deducting twenty per cent. for collection, at about five crores and a half of rupees. It is now, including Benares, which is forty-two lacs, about three crores. In 1813 it was Rupees 3,15,33,947: it was in 1765, when transferred to the Company, Rs. 4,62,00,000. In 1784, after twenty years management, it fell off to Rs. 3,67,00,000, exclusive of the salt and opium revenue, shewing a defalcation of a crore of rupees; and since 1784 there appears a farther defalcation of sixty-seven lacs, exclusive of the expense of collection, which amounted, in 1811, to twenty-four lacs, including pensions and charitable allowances.

Colonel Sir T. Munro, in his report of the 15th August 1807, proposing a plan for settling the Ceded Districts on the coast, says, "if by fixing the government rent at one-"third of the gross produce of the land the ryot were "allowed to enjoy the remainder, and all such future "increase as might arise from his industry, he would "never quit his farm. If more than one-third is de-"manded as government rent, there can be no private "landed property. It is also found by experience, that "one-third of the produce is the rate of assessment at "which persons who are not themselves cultivators can "rent (hire) land from government without loss. The "present assessment of these districts is about forty-five "per cent. of the produce. To bring it to the proposed "level would require a deduction of twenty-five per "cent. of the produce. Thus,

"Total

| | |
|---|---|
| " Total gross produce of lands ..... | 100 |
| " Government's share by present assessment..... | 45 |
| " Deduct twenty-five per cent. of produce or " of the assessment per cent..... | $11\frac{1}{4}$ . |
| " Remains Government's share of produce per " cent. ..... | $33\frac{3}{4}$"* |

If, therefore, Sir T. Munro actually collected forty-five per cent. of the gross produce of the soil from the Ceded Districts, as above, it is absurd to talk of "heavy exac- "tions" in Bengal, when the whole land revenue under that presidency was in 1813 only Rupees 5,94,54,352: little more, perhaps, than one rupee per annum for each individual of the population. If you take this as a basis to get at the gross produce, and add to it the two-thirds, or two rupees for the ryot's share, you will have a gross produce equal only to the value of three rupees per annum, for the subsistence for a year of each individual, exclusive of cattle. But not even in Bengal can man be supported at three rupees per annum of land produce. Twelve rupees even is two low an estimate; but at twelve rupees the gross produce would be quadrupled, and by consequence ought to give to government, at one-third assessment, four times the present land revenue, or Rupees 23,78,17,408. Mr. Colebrooke reckons the annual consumption of grain for man at nine maunds a head, besides cattle:† and Colonel Sir T. Munro, in his statistical account of the Ceded Districts, states the average expense of subsistence of one-fourth of the population at forty shillings; of one-half or two-fourths, at twenty-seven shillings; of one-quarter, at eighteen shillings; general average, twenty-eight shillings, which is equal to about fourteen rupees. But let it not

* Fifth Report. † Husbandry.

not be forgot that one-third of the produce of the soil is the antient rate of assessment. "Of dry crops," says the Ayeen Akbury, "*one-third* of the produce was levied; but for "green crops, *ready-money*, at fixed rates, was levied." And it is remarkable, that in every essential point that able officer, of whom I have just spoken, appears to have conformed to the antient practice of the country, exercising of course, in so doing, the discretion of a man of research, experience, and sound judgment.

Moreover, as before stated, we find that in England one-third of the produce is reckoned ample to defray the expense of cultivation. If so in England, surely in India the same allowance must be equally ample. Out of this third share the cultivator and his family are of course maintained. There is a surplus of two-thirds, to be divided as rent and government dues.

In 1811 the "rental of land in England and Wales "was £29,476,852 sterling, the population 10,150,15: "nearly £3, or 30 rupees, a head. The number in a "square mile 175, of which 36 were agricultural."

Now, if there were fifty-nine millions of people under the Bengal Government, and each consumed nine maunds of grain per annum, the produce would be five hundred and thirty-one millions of maunds, worth as many rupees. The government revenue, at one-third of the produce, would be in rupees, 1,77,000,000, instead of 59,454,352, as above: exactly three times as much as it is now. None of these facts and data shew "extreme exaction."

Under the third head is considered the remarks of the Court of Directors as to the "necessity of attending, not "only

" only to the principles of political economy; but to the " character and manners, the habits and predjudices, of " the natives." The answer is: " We have invariably at- " tended to the manners, prejudices, &c. of the people; " but we cannot see how a permanent settlement can be " contrary to their prejudices."

No government on earth, most certainly, ever more anxiously wished to attend to the feelings and habits of the people than our Indian government, both at home and abroad, has invariably done. But their great anxiety to do the people good led to the greatest of errors; and so far from the permanent settlement, as carried into effect, being conformable to the constitution of society in India, its effects have not only opposed the manners, habits, and prejudices of the natives, but have produced a total revolution in the frame of society, both political and social.

In Bengal, where shall we look for the constitution of an Indian village? The "brotherhood" all independant of, but all interested about one another; giving and receiving mutual aid, mutual kindnesses, sympathizing with, and receiving consolations from, one another. Confident and secure in their possession, on the simplest of all tenures, the easiest, perhaps, of all terms, a definite and moderate share of their labour, as a return to the state for protection. If sickness overtook one, he relied on the help of his brother: if death left a widow or an orphan, in every house had the fatherless a father, the widow a protector. The accumulated bones of generations were mingled in the same cemetry, or consumed at the same funeral pile: and the pious peasant fancied that the pure spirit of his father yet hovered around his peaceful abode.

How

How different the picture now to be seen in the lower provinces of Bengal! The abject slavery of the cultivating classes could only spring from the necessity of absolute submission; submission, not to the revered representative of an antient family, but to the upstart of the hour: the Bengal Baboo, the new malik, the absolute lord of the soil, who has no feelings in common with the people, whom he fancied he had purchased with his estate; whose knowledge of the regulations told him he could, not only without violation, but with all due conformity to the words (not indeed to the intent) of them, destroy the happiness of his slave for ever, by banishing him from the village of his birth, the companions of his youth, the associates of his manhood, the support of his old age. Those ephemeral lords of English creation were not, indeed, vested with the power of life and death, not with the power of tormenting the body, but the happiness of the people was placed entirely at their mercy, and their minds were subdued. Instead of the manly spirit of former times, which a very small portion of independence will nourish, the native of Bengal knows now that even the privilege of residing in his native village he owes to his subjection alone.

May it then not be asked, whether such a state of things as this has been produced by "attending to the character, "manners, habits, and prejudicies of the people of India?

We are further told, that to the efforts made for the better administration of justice, and to the limitation established in regard to the demand of government on the lands is attributable a change in the character of the Bengalese; from being, like the inhabitants of the upper provinces, owing to the vices of former government, more refractory

refractory subjects, they have found it more advantageous to cultivate the arts of peace.

From this we should be led to understand that it was owing to the vices of former governments that the people were refractory, but that they become quiet well-disposed people, not owing to the virtues of their present rulers, not to being relieved from the cause of their turbulence, but, forsooth, "to the better administration of justice and to "the limitation of the government demands on the lands."

But is there really such limitation? This limitation, whatever limits government may have set to the government demand, has no existence in regard to the people! The "demand on the lands," *quoad* the people, has no "limitation," but that which the rapacity of the proprietor may set to it. The demand of government from the zumeendar is indeed fixed; not so the demand of the zumeendar from the ryot; except, indeed, by the laws and regulations, which, on this point, have been accused of the very great absurdity of first granting absolute property in the soil, and then restricting the grantee in the management of his property: and this not by any specific rules, but by the general term of *the custom*. He is to levy his rents "according to the custom to the pergunnah rates;" which custom being different in every different place, was necessarily left for the owner to dictate. The *dictum*, therefore, of the zumeendar is the *custom*. The contrary cannot be established against him, were the poor man, as I have before noticed, with barely enough to exist upon, able to carry his opulent oppressor into court, to attempt so hopeless a cause.

Yet, notwithstanding all this, which is now seen and

admitted by every one, are we told in the letter under consideration, "that whatever be the character of the "people in the upper provinces, the universal principle "of self-interest must render the permanent settlement "more satisfactory to them than temporary assessment."

"More satisfactory" to whom? Let us examine this, and we shall see that the "universal principle of self-in-"terest" cannot apply to the "*people*;" were it even applicable to the comparatively few who might be parties to the permanent settlement. The *people* in the Ceded and Conquered Provinces may be estimated at twenty-three millions; nearly twenty millions of whom would have no "self-interest" in the question, because they are neither zumeendars not "engaging cultivators:" nearly three millions more would be *interested* in *opposing* it. I mean the cultivating ryots, whom I estimate at 2,978,383, on the datum of allowing an average of twelve beegahs for each cultivator (the known number of beegas in cultivation, by the report of the Board of Commissioners, being 35,740,598 beegahs), and 45,000 persons might peradventure be the number to whom "the universal principle of self-interest" in favour of the permanent settlement might be made to apply; that number being "the number of village zu-"meendars under engagements to government" throughout the Conquered and Ceded Provinces, as stated by the same unquestionable authority. Forty-five thousand persons, then, out of twenty-three millions, might thus possibly be supposed friendly to the permanent settlement, "from the universal principle of self-interest"; three millions would oppose it, "from the same universal principle of self-interest;" and twenty millions of "*people*" would either not care about it, or if they did, they would oppose it from the "universal principle" of dislike to all innovation,

tion, which prevails among the people of the upper provinces and of all India.

We now come to the fourth head, " Loss of revenue from the depreciation of the precious metals:" an argument of the Court of Directors against the permanent settlement.

Whatever the Bengal government may say, this is unquestionably an admissable argument against the permanent settlement; but, before I notice the reply given to the objection of the Court, the following remarks occur to me on the point. The extraordinary waste of the precious metals in India by their universal use, not only in coin and in plate, but in cloth and in personal ornaments, reduces them more nearly to a level with the ordinary perishable articles of commerce, in India than in Europe. There is scarcely a living creature of the human species, on the whole continent of India, from the moment of its birth, that does not contribute directly to the destruction of the precious metals. A hundred millions of people may be aiding in this consumption; and if we allow them to possess ornaments to the average value of a rupee each, the actual wastage of the metals, even by wear, will be immense. The constant conversion of their ornaments, by melting them down and making them up into other kinds or fashions (a propensity well known, and which may be established by adverting to the extraordinary number of silver and goldsmiths to be found all over the country, whose livelihood depends on this alone), adds amazingly to this source of waste. There is also the wear and tear of an immense metallic currency, the loss of money by secreting it and otherwise. When all these sources of consumption are considered, the increase of the precious metals must, I think, be very slow; but nevertheless

nevertheless, however slow, if progressive, as an argument against the permanent settlement it is good; and those who, overlooking these sources of destruction of gold and silver, attend only to the rate of depreciation of these metals in our own country, will hold this argument as invincible against the permanent limitation of the revenue, in currency of the present or of any definite value.

The following prices of the most common necessaries of life and rates of labour are taken from the Ayeen Akburee, and will afford some ground for conjecture on this subject. If it should appear that the quantity of those articles *then* procurable for a given quantity of the precious metals was nearly what is now to be procured, the apprehensions of the Honourable Court would be relieved.

| | Former Price | | | | Present Calcutta Weight, | | | |
|---|---|---|---|---|---|---|---|---|
| | Md. | Seer. | | | Md. | Seer. | | |
| Wheat | 3 | 13 | | per rupee | 2 | 0 | | |
| Barley | 5 | 0 | | per do. | 3 | 2 | | |
| Dal | 2 | 10 | | per do. | 1 | 16 | | |
| Atta Flour | 1 | 36 | | per do. | 1 | 0 | | |
| Ghee | 0 | 16 | | per do. | 0 | 10 | | |
| Milk | 1 | 24 | | per do. | 0 | 36 | | |
| Sugar-candy | 0 | 7½ | | per do. | 0 | 6 | | |
| Chenee or Raw Sugar | Rs. 1 | A. 6 | P. 0 | per maund | Rs. 2 | A. 6 | P. 6 | per Calcutta maund. |
| Salt | 0 | 5½ | 0 | per do. | 0 | 2 | 0 | |
| Dry Ginger | 0 | 1 | 10 | per seer | 0 | 2 | 9 | |
| Huldee | 0 | 0 | 9 | per do. | 0 | 1 | 1 | |
| Round Pepper | 0 | 6½ | 0 | per do. | 0 | 10 | 0 | |
| Mangoes, per 100. | 1 | 0 | 0 | | | | | |
| Sheep, each | 1 | 8 | 0 | | | | | |
| Geese, each | 0 | 8 | 0 | | | | | |
| Ducks, each | 1 | 0 | 0 | | | | | |
| Mutton | 1 | 10 | 0 | per md. | 2 | 8 | 0 | |

RATES OF LABOUR.

| | Rs. | As. | | Rs. | As. | |
|---|---|---|---|---|---|---|
| Bricklayers, four classes, from ..... | 5 | 4 | to | 3 | 0 | per month |
| Carpenters, do. ..... | 5 | 4 | to | 1 | 8 | |
| Sawyers ..... | 1 | 8 | | | | |
| Belders ..... | 2 | 12 | to | 2 | 4 | |
| Grammies ..... | 2 | 4 | | | | |
| Coolies ..... | 1 | 8 | | | | |
| Bheesties ..... | 2 | 4 | to | 1 | 8 | |
| Soldiers . ..... | 6 | 4 | to | 2 | 12 | |
| Porters ..... | 3 | 0 | to | 2 | 12 | |
| Attendants } Mewattees } ..... | 3 | 0 | to | 2 | 8 | |
| Bearers, Surdars, ..... | 9 | 8 | to | 4 | 12 | |
| Bearers, common ..... | 4 | 0 | to | 3 | 0 | |

*Note.*—The seer is stated at 28 dams, each dam being 1 tolah, 8 mashas, 7 ruttees. $12\frac{1}{2}$ mashas make 1 rupee, 8 ruttees make 1 masha; each dam is therefore $21\frac{1}{2}$ masha. So $21\frac{1}{2}$ masha multiplied by 28 dams——602 masha, which at the rate of $12\frac{1}{2}$ per sicca rupee weight, gives a seer, equal to the weight of 50 sicca rupees.

The seer here specified is equal to fifty Calcutta sicca rupees weight. The Calcutta bazar seer is equal to eighty sicca rupees weight; the Lucknow and Allahabad seer equal to ninety-six sicca weight; in some other parts it is ninety-eight sicca weight; which makes one maund equal to two maunds of the Akburee weight. When I was in the vicinity of Dehlee, in 1804, I was informed that gram had been known to sell there at four maunds ten seers, and wheat at three maunds and thirty seers per rupee: so that holding the report we received to be correct, since the days of Akbar, two centuries and a half nearly, we do not find any great change in the value either of the necessaries of life or in the wages of the labourer: the only

only criteria by which the value of currency can be appreciated.

Mr. Colebrooke says, in 1804: "A cultivator enter- "tains a labourer for every plough, and pays him wages "which on an average do not exceed one rupiya (rupee) "per mensem: and in a cheap district he himself had "found the monthly hire as low as eight anas (half a "rupee)."

Lord Teignmouth positively says, "it is obvious to any "observation that the specie of the country is much di- "minished." * To this I may add, that as commerce with the western world has increased, and the demand for European goods has become augmented, the balance of trade no longer continues to be in favour of India; it must necessarily follow, that the precious metals will decrease there. Nothing can prevent the acceleration of this to a great extent, and to the great derangement of the permanent settlement, indeed the whole system of revenue, but the capability of India to produce articles of commerce in demand in Europe (or in other countries where specie abounds), not only equal to the value of goods received in exchange, but, beyond that value, to the extent of the consumption of the precious metals in India.

It may be said, that the scarcity will raise the value of money in India, and that again will ensure a supply of specie from other countries. But without some production of India to take in return, who will bring specie? The high interest of money, consequent on scarcity, will indeed

* Minute, June 1789, par. 142.

indeed tempt monied men to send specie to India to be put to interest; but the loss in remitting both interest and capital, and the limited extent of such speculations, will by no means preserve the equilibrium.

It appears by various statements, that from the year 1700 to 1793, the amount in value of bullion remitted by the Company alone to India, including, as I calculate, ten or eleven millions to China, was ... £42,680,859
and we are told by Mr. R. Grant, that the Americans, in ten years, from 1795 to 1805, "imported into India in bullion," no less than ..... 26,720,470

Making together ..... £69,401,329

It does not appear whether Mr. Grant includes in his account the bullion carried to China by the Americans: but at all events, we have to take into the account the bullion and specie brought by the other European states, and that imported by the Company since 1793, and by the Americans since 1805, which at present I have no means of ascertaining: and then, after making the most ample allowance for the share which China has received, the importation into India Proper will remain enormous, and impress us with an idea of the extraordinary consumption of the precious metals, that has swallowed up so much without making the slightest impression on the value of the currency, which is still higher by twenty-five per cent. than in England, and, as I have shewn, has undergone but little change, in point of value, since the days of Akbar, compared, I mean, with the rates of wages, prices of grain, &c.

The

The reply given in the letter now under consideration is: "the specie may have increased, but the population "and consumable commodities have increased also, and "the proportions may be still equal." It does not appear to me that this bears upon the question. Besides, the precious metals are not the only currency in India. Copper, tin, lead, even shells, the first and last in great abundance. In several districts the government rents are paid in shells alone.

"But," continue the advocates of the permanent settlement, "the effects of the deterioration of value of the "precious metals might be obviated, as proposed by Mr. "Colebrooke, by changing the engagements from specie "into the market value of a specific quantity of corn, to "rise and fall accordingly; but this is objectionable," they add, "because of the difficulty of adjusting the "value."

But a settlement "for the market value of a specific "quantity of corn" is, essentially, neither more nor less than fixing by limitation the government share of the crop. A zumeendarry, for example, is let for one thousand maunds of corn, or its market value in specie; or rather for the market value in specie of one thousand maunds of corn. Unless some standard has been previously fixed for ascertaining the market value, as the payer and receiver would unquestionably differ, the corn itself would become the demandable article, and thus the settlement would be virtually that which I have stated.

In India, however, when a settlement of this kind is made, agreeably to the native system, no difficulty is experienced. It is common to make such settlements;

and when they are made, the conversion into money is settled, not annually, but periodically, or rather at the will of the lessor, with reference, of necessity, to the capability of his ryots, and the produce of the soil. A field (zumeendarry, if you please) is let for so many maunds of wheat: the price (if converted into cash) at so much per maund. This rate continues, perhaps, for half a century; but if the price of grain should rise (that is, if the *difference* between a given weight of grain and a given weight of precious metal should decrease, to the depreciation of the latter) the landlord requires more metal per beegah for his land to restore the original difference, and says the conversion must now be made at one rupee four anas per maund, instead of one rupee as before. There is no *difficulty* in this; but it would not obviate the objections to a permanent settlement.

It is, thereafter, attempted to combat the suggestions of the Honourable Court of Directors, "to establish a "variable land-tax, that shall enable government to par- "ticipate in the growing resources of the country, as by "revising the settlement at given periods, or on the acces- "sion of every new proprietor."

It must be confessed, that the pretensions of the Honourable Court "to participate in the growing resources "of the country," are not very unreasonable; yet they are told, with little ceremony, in the letter to which I advert, that both the plans suggested "have unsurmount- "able difficulties."

Let us see the difficulties. First, it is said, in the precise language of 1790: "It would be to the advantage of "the proprietors to deteriorate their estates during the "latter

" latter years of the assessment, in order to get them " valued low at the succeeding settlement." But this appears to me an assumption altogether gratuitous, and not very liberal. It, in fact, implies not only universal fraud on the part of the zumeendars, but relentless oppression on the part of government. But admitting, for the sake of illustration, the truth of the assumption, may it not be asked how the zumeendars are to effect this deterioration of their estates? They cannot legally remove the cultivators. The land in India requires, at least receives, with little exception, no manure, that by withholding it the crops should fail. The land is annually under some crop; and are the *people* to cut the throats of their cattle, to cease from cultivating their fields, and to starve, " during the latter years of the assessment," that the *zumeendars* may procure " a low valuation at the suc- " ceeding settlement?" Are the zumeendars to give up the *certainty* of their rents " for the latter years" of their leases, for the *chance* of being required to pay *a little advance* (though but a fair value) for their estates, for the next lease, which they may not live to enjoy? This is neither probable, nor is it conformable to the genius of the people, were it practicable, and the success certain, to act with so much regard to futurity.

In a subsequent paragraph, the district of Goruckpore is given as an example of this deterioration of estates. There was, in 1813, a balance " in the latter years of the " assessment of 6,02,869 rupees; owing chiefly to the " landholders, who are most part village zumeendars, " throwing their lands out of cultivation to obtain a light " assessment." But was the collector of Goruckpore at this time mindful of his duty, and a competent person? for in 1815 (but two years afterwards) we find that the

Governor-General states the balance due by this district at only upwards of "two lacs;" and this is considered great, "owing to the incomplete state of the new settle-"ment.*"

To the next proposition, of revising the settlement on the accession of every new proprietor, "the unsurmount-"able difficulty" is *joint tenancy.* "It would be unfair," they say, "to revise the settlement at the death of one of "the tenants; and this would hold *ad infinitum.*" But we may ask, why unfair? The revisal might occur more frequently, but there would be nothing unfair in it; and a revisal does not necessarily imply an additional impost. Or if this were objectionable, why not make the revisal to take place on the demise of the last of every *series* of co-partners, and then the argument is reversed? It would fall to be made at longer intervals, and would be advantageous, instead of being unfair to such estates.

"But," it is added, "exclusively of this, estates would "be of little value when exposed to sale for arrears of "rent, if the jumma were to remain fixed only during "the life of the former proprietor." But why *former proprietor?* It is the incumbent proprietor's demise that is supposed to give occasion to revisal of the settlement; and the "incumbent proprietor," at a government sale for arrears, would be the purchaser.

"It is," they continue, "the *permanency of the settle-*"*ment alone,* that renders the lands substantial security "for the public demand." Now this is plainly an error, and an error but too well calculated to mislead. It is not the

* Governor-General's Revenue Minute, 21 Sept. 1815.

the *permanency* of the settlement, but the actual value of the property, the difference between the jumma, or government demand, and the receipts from the ryots, that makes an "estate valuable when exposed to sale for "arrears of rent;" and which alone affords any security whatever to government. It is only when the thing *fixed* is good, is valuable, that *permanency* of possession is advantageous. It is no advantage to be saddled for ever with a valueless commodity of any kind! Government can have no security for their revenue, but that which a moderate assessment gives them, leaving those who are assessed, and those who cultivate, a valuable consideration for the parts they take, the labour they bestow, in realizing the dues of the state. Who would give any thing for a rack-rented estate, however permanent the tenure might be?

The fact is as clear and as obvious as noon day, that, settle the country as you please, there is no security for the revenue but that of the industry of the cultivators of the land whence the revenue is derived: and the more middle-men between them and the government, the less sure the security becomes, because the channels of embezzlement are multiplied.

A zumeendar is a *drone:* an unproductive animal, of the worst kind, too, that must have his drones also about him; all a burden upon the industry of the cultivators. Government employ and pay these drones as agents to collect the revenue, merely to save their European servants the trouble: and, however paradoxical it may seem, it is nevertheless true, that government is, in fact, security for the zumeendars, instead of the zumeendars being security for the government revenue; for if the zumeendar mismanage

mismanage his estate, government must pay the defalcation, that is, suffer the loss.

The Honourable Court suggested, "that a variable "settlement induced government to look more to the "cultivation of the lands: and doing so, if they dug "canals for irrigation and made roads, it would be diffi- "cult to deny their right to indemnification for the "expense of such." The answer to this is remarkable. "If," say the Bengal government, "a variable land tax "cannot be established without discouragement to agri- "culture, it would be preferable to limit such improve- "ments to works that are indispensable than to check "agriculture." This hypothetical reply is, in fact, a postulate of the question at issue; otherwise it, at best, amounts to this: "it is better to make only such improve- "ments as may encourage agriculture, than to make such "improvements as will check it." The court maintain, that a variable land tax may be established, and would not check, but improve agriculture. Government assume, that a variable land tax would discourage agriculture; and *therefore*, say they, it is better for your Honourable Court not to persist in your plan of digging canals, and other projected or contemplated improvements.

Another argument in support of the permanent settlement, which is expected, seemingly, to have great weight, is given us. "The great difficulty, it is stated, of admi- "nistering the government of the Ceded and Conquered "Provinces, is the refractory spirit of the zumeendars, "their resisting government and harbouring robbers. "These zumeendars are bound, under the penalty of "confiscation of their estates, not to harbour such; but "if they have no permanent interest in the estate, the "penalty

" penalty is nugatory." But why *permanent* interest? If the zumeendar had, indeed, *no* interest in his estate, the penalty would truly be nugatory. But whether " perma- " nent " or not, if he had *an* interest, the penalty would not be nugatory. May we not, however, be permitted to remark here, how much the premises differ from the conclusion of this paragraph? The zumeendars are stated to be ungovernable, refractory, so independant even as to resist government; *therefore*, we, this government, though resisted by them, recommend that they shall be made still more independant, by confirming them in their estates for ever!

It must be admitted, however, that the penalty of confiscation, above specified, suspended over the heads of refractory and government-resisting zumeendars, is indeed nugatory, and must be, on whatever condition their tenure may be held. But, on the other hand, it is pleasing to think that, at the time I am writing, and in spite of the obstinacy of the Honourable Court, that resisted the irresistible arguments for the permanent settlement, the Ceded and Conquered Provinces are administered with as great ease as the more favoured permanently settled districts of Bengal, and that the zumeendars are as good and peaceable subjects as any in the Honourable Company's dominions. It will be remembered, morever, as before noticed, that the revenue is realized with little balance; and whether we look at the files of the courts, or the calendar of crimes, the comparison will fall greatly in favour of the subjects of the provinces that are not permanently settled.

The permanent settlement, we are told, would improve the police, in proportion to the stake held by each zumeendar,

dar; "which might be extended to the support of govern-
" ment against external and internal enemies."

God forbid that the government should ever be obliged to trust to such support against enemies of either description. But if such a case of necessity did occur, I doubt not that the zumeendars of the Upper Provinces would prove equally loyal with those of the lower; and, as I believe, that if they have any wish, it is not for a change of governors, but for their own independence of all government, I am persuaded, if they had the means, they would support our government against any other power that should pretend to the privilege of ruling over them in our stead.

Another reason advanced in favour of the permanent settlement in this letter also, *viz.* " that variable settle-
" ments keep alive a spirit of intrigue and corruption,
" both among the native and European servants of
" government," has been already noticed, in reply to the same stated before by Mr. Colebrooke.

In a subsequent despatch, of date 2d October 1813, we are told by the government of Bengal, " that they do not
" dispute Colonel Munro's opinions on matters that have
" come under his own observation at Fort St. George re-
" specting ryotwaree settlements, but do not think them
" applicable to Bengal;" and they place the opinions of Sir E. Colebrooke, Mr. Rocke, Mr. Lumsden, and Mr. Deane, in opposition to Colonel Munro; adding, " but
" the great extent of the collectorships, and the paucity
" of revenue officers, render it absolutely impossible in
" Bengal."

Now

Now this is nothing more than adding the opinions of the members of government, or the majority of them who wrote the despatch, to those of Sir E. Colebrooke, Mr. Rocke, Mr. Lumsden, and Mr. Deane, upon a point and subject of which they, none of them, have had any experience, against the opinion of Colonel Munro and his colleagues on the coast, who have had very great experience of the measure in question; to whom we may add the opinion of Colonel Wilks, who speaks of the permanent settlement of Bengal thus: "With unfeigned "deference to the great men who applaud the *permanent* "and *unalterable* landed assessment of Bengal, I must still "be permitted to doubt the expediency of the irrevocable "pledge. It is not intended to discuss whether those "provinces (Bengal) have flourished in *consequence* of the "present system, or in *spite* of it. I admit, any thing "was better than our incessant fluctuation; but there is "a wide difference betwixt capricious innovation and "such an irrevocable law. To terminate abuses by shut-"ting out improvement, to prohibit the possibility of in-"creasing the land-tax, to render probable, nay certain, "its decrease, this is the system which has succeeded to "former errors."*

Objections to the ryotwar settlement have been made, "that they require a personal acquaintance with every "cultivator and an estimate of produce every year."† The ryotwar settlement is a settlement of every *field* with its proprietor, which may be made every twenty years instead of annually. But why a mode of collecting the revenue that answers well (if the ryotwar do so) at Madras should fail in Bengal; why there should be larger districts, and

* Wilks' Mysore. † Lord Hastings' Minute, 21st September 1815.

and fewer revenue officers in Bengal, than at Madras, I can see no reason. None of these are substantial objections to the continuance of periodical settlements.

Nor, indeed, after having gone through and now noticed all the reasons for the introduction of the permanent settlement in the Upper Provinces, urged in the minute and despatches to which I have adverted, can I fix upon one that is at all satisfactory, *without first assuming that the permanent settlement is essential to the tranquillity and the prosperity of the country and to the security of the public revenue.* And this is contrary to all experience; for the country is tranquil, the country is highly prosperous, the revenue has increased nearly a crore of rupees since the permanent settlement of the Ceded and Conquered Provinces was urged upon the Court of Directors by the Bengal government; and it is secured in the best of all possible ways, by the free, unrestrained, and protected industry of the people.

Finally, the permanent settlement, as carried into effect by us in Bengal, I have shewn if not contrary to "the law, "of England, is at least contrary to the law and constitu- "tion of India." It is contrary to the custom and universal practice of that country; consequently contrary to the manners, habits, and prejudices of the people. It is not, in my humble opinion, calculated in the slightest degree to ameliorate the condition of our native subjects, but, on the contrary, it has proved itself to be highly instrumental in their debasement; and by its necessary tendency to throw and to keep the great mass of the respectable yeomanry of the country at an immeasurable distance from us, it will prove itself to be no less instrumental in perpetuating that debasement, which a closer intercourse, the

the necessary consequence of occasional agricultural and official dealings, would, in God's good time, probably have removed.

The permanent settlement has lost to government, in fact, all knowledge of the country and of its resources. There are revenue officers in Bengal, I doubt not, that cannot even tell you the number of villages in their districts, far less give the slightest information as to the state of cultivation, of population, description of people, their employment, trades, manufactures, stock, as cattle, ploughs, horses, sheep, the improvability, or otherwise, of the country.

The permanent settlement has not tended, in any degree, to accelerate the improvement of the country, either in cultivation or in commerce; but, on the contrary, it must tend to check both, inasmuch as it must take away from government, if not the obligation, certainly the means of making any great or expensive improvements: leaving them no prospect of advantage that would even prove a bare reimbursement for so doing, and throwing such task of amelioration upon the short-sighted and careless India land-holder, who will assuredly neglect it.

The permanent settlement has all these, and innumerable other disadvantages, referable to the people of India and the improvement of the country; whilst, with respect to the interests of the British nation, it must be attended with every *baneful*, and not one beneficial effect. I may conclude this part of the subject by referring the reader for information to the opinion of Lord Teignmouth on the subject, as expressed in his minute of the 8th December 1789.* Let

* See Fifth Report.

Let us, in conclusion, inquire, with reference to the permanent settlement of the Lower Provinces, admitting it to be held as valued, how far any, and what relief can be granted by government, under that settlement, to the cultivating ryots? The permanent settlement was formed with a condition, reserving to government the power of preserving the *rights* of the cultivators. "The Governor-"General in Council will, whenever he may deem it pro-"per, enact such regulations as he may think necessary "for the protection and welfare of the dependant talook-"dars, ryots, and other cultivators of the soil; and no "zumeendar, independent talookdar, or other actual "proprietor of land, shall be entitled, on this account, to "make any objection to the discharge of the fixed assess-"ment which they have agreed to pay."*

This is a very broad clause, and if fully acted upon, government would doubtless be at liberty to introduce any regulations which the government might deem necessary to effect this "protection of the cultivators of the "soil." If the zumeendars did not choose to comply with these regulations, their tenures might be of course set aside; for it was on this condition that they were granted and accepted.

The right of the cultivator is possession of his field, at the rate, per beegah, at which it was assessed, at or prior to the permanent settlement. It never was contemplated by the grantor, that the zumeendar should be at liberty either to eject or to raise the rate of rent on the cultivator *ad libitum*. Lord Cornwallis says:—

"Mr. Shore

* Governor-General in Council, 1st May 1793.

" Mr. Shore observes, that this interference (on the " part of government in effecting an adjustment of " the demands of the zumeendars upon the ryots) is in- " consistent without proprietary right; for it is saying to " him that he shall not raise the rents of his estate, and " that if the land is the zumeendar's, it will only be par- " tially his property whilst we prescribe the quantum he " is to collect, or the mode of adjustment between the par- " ties. If Mr. Shore means, that after having declared " the zumeendar 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 zumeendars. Every " beegah of land possessed by them must have been cul- " tivated under an express, or implied agreement, that a " certain sum should be paid for each beegah of produce " and no more. Every abwab, or tax, imposed by the " zumeendar, over and above that sum, is not only a " breach of that agreement, *but a direct violation of the* " *established laws of the country.* I do not hesitate to give " it as my opinion, that the zumeendars, neither now nor " ever, could possess a right to impose new taxes, or ab- " wabs, on the ryots; and that government has an un- " doubted right to abolish any such, and to *establish such* " *regulations as may prevent the practice of like abuse in* " *future.* Neither is the privilege which the ryots in " many parts of Bengal enjoy, of holding possession of " the spots of land they cultivate so long as they pay the " revenue assessed upon them, by any means incompa- " tible with the proprietary right of the zumeendars. " Whoever cultivates the land, the zumeendar *can receive* " *no more than the established rent.* To permit him to " dispossess one cultivator, for the sole purpose of giving

" the land to another, would be vesting him with a power " to commit a wanton act of oppression. Neither is pro- " hibiting the landholder to impose new abwabs, or " taxes, on the lands in cultivation, tantamount to saying " to him that he shall not raise the rents of his estate, &c. " *No zumeendar claims a right to impose* new taxes on the " lands in cultivation, although it is obvious that they " have clandestinely levied such. The rents of an estate " can only be raised by inducing the ryots to cultivate " the more valuable articles of produce, and to clear the " extensive tracts of waste-land which are to be found in " almost every zumeendary in Bengal,"* &c. &c.

The above is a pretty full account of the conditions, relative to the rights of the cultivator, on which the proprietary title of the zumeendars was granted by his lordship: from which the power of government to protect the ryots in their rights is sufficiently evident, at least by law. How different the fact is! What a different situation the poor ryot is now in, from that contemplated for him by the good, the benevolent, but in this case, short-sighted Cornwallis! How far it would be practicable, peremptorily to enforce this right of interference here reserved, is a point worthy of the most serious consideration: but, to my humble comprehension, it does appear that his lordship's ideas of proprietary right, and of restrictions to limit the exercise of such right, are not a little confused.

Be that, however, as it may, it seems abundantly certain, that the Marquess Cornwallis did never intend to convey by the permanent settlement many powers now assumed

* See Lord Cornwallis's Minute, 3d Feb. 1790.

assumed by the Bengal zumeendars, highly obnoxious, and no less oppressive to the people; and it does, therefore, seem to be the sacred duty of that government, to inquire into, and to afford the people such relief and protection against such usurped powers, as may be practicable.

The utmost extent of right of a zumeendar, as conferred by Lord Cornwallis, when analyzed, is nothing more than that of collecting the revenue from the ryots, *at the established rates*, on the land then in cultivation. If he reclaim waste land, he may not levy on it even what rates he chooses, though he may let it to whom he pleases. The ryot, by established usage, for example, paid a rent equal to half the produce. If the zumeendar can induce him to cultivate a valuable crop, by aid or otherwise, the zumeendar's right to half gives him thus an additional profit. If he dig tanks or wells, or throw up embankments, and thus assist the cultivators to improve their lands, the returns will be great; the zumeendar's share will increase; the government demand is limited, and does not extend perhaps beyond a tenth or twentieth of the produce; the difference is the right of the zumeendar. But here, again, the zumeendar's profit from increase of, or more valuable kind of produce, is restricted to farms paying in *kind*. Where the rent is a money-rent, the zumeendar has no immediate interest in the nature of the crop. This is all the right which the permanent settlement appears to have conveyed to the zumeendars: beyond this they have absolutely no right whatever. We call this a proprietary right; and so it is, because it is a right proper to the individual, which he may exercise or dispose of; but it is different from that of an English proprietor of land, and ought not to be confounded with it.

The application of the same technical terms to rights, interests, and immunities, which are similar, but not the same, has thrown obscurity over this, and over every subject that has been discussed relative to India.

Should the Bengal government be disposed to adopt measures for extending to the cultivators in the permanently-settled districts, the benefits which that permanent settlement contemplated for them, the means must be immediately adopted. It is late, but not yet too late. These means are, to institute one or more commissions in each of the provinces of Bengal and Behar. These must be composed of men of talent and undoubted qualifications for that duty, in whatever line or branch of the Company's service they may be found; and they must be sought for and obtained immediately, because there is no room for delay: every day that the investigation is put off incurring the loss of oral evidence, and other information, as yet to be obtained from living witnesses. The several commissions will be furnished with instructions and powers to call for and collect evidence of all kinds, to shew what the rates of land-rent in the different pergunnahs, zumeendaries, and villages, were at the period of the settlement which was afterwards declared permanent (that is, between the years 1789 and 1793), and to ascertain in what mode these rates were paid—whether in produce, as reaped, in any given species of produce, as in grain (rice, wheat, barley, the different kinds of pulse, &c.), or in any specific kind of grain, or in money, or in grain convertible into money at a given quantity per rupee; and, in short, every information necessary to exhibit the payments, services, immunities, received and rendered by the cultivators to and from the zumeendars, including pasturage, fisheries, wood and water, fruit-trees, &c.

&c. Connected with this indispensably will fall to be ascertained the price of the grain and other produce at that time, including even some species of manufactures, as cloth of all kinds, which it is usual for zumeendars to receive in lieu of money, at a valuation agreed upon at the time between the parties: as also the value of cattle, ghee (the produce of the dairy), oil, &c.; for without the general prices of produce, the rents of the zumeendar, paid partly in kind, cannot be estimated.

The sources whence this information is to be attained will be various. In many pergunnahs the putwarees' accounts may be forthcoming; many of the cultivators of the more respectable class, especially the remnants of the hereditary agricultural ryots, will be able to produce their books and other written documents. Old ousted canoongoes, putwarees, and public functionaries, will be found either able to produce or to procure written evidence, and to give oral testimony as to facts, which will either be sufficient to convince, or to lead to other sources where information may be obtained, to satisfy the commission in doubtful cases. At all events, to the extent of inducing the present owners to produce conflicting testimony, in all cases in which relief to the ryots may be contemplated to an extent unjust or injurious to the owner: by means of which conflicting evidence an approach to the truth may be attained.

There is also the records of the different collectorships, and especially of the old suddur serichtah office and of the old revenue or dewannee department, all of which ought to be examined by the commissions, assisted by an establishment of expert natives conversant with revenue records and accounts to be employed for the purpose.

To guide the commissioners and to correct erroneous evidence, there is the general jumma of the pergunnah, of the zumeendaree, of the village, to which the rents paid by the ryots must necessarily have had some relation. In short, there are yet extant the means of attaining the information here pointed out: and there must necessarily be so, because the period of thirty years is not sufficient to obliterate the sources both of living testimony and documentary evidence, which judicious investigation would be able still to bring to bear upon a point of infinite interest, not only to government, but to the whole body of the people, whose aid in facilitating the investigation would accordingly be at command.

The information required is not of a rare or abstruse nature, known only to the wise and the learned native. The agricultural economy of a village is the constant and daily subject of conversation and of discussion among all. All are engaged in it, either as principals or as assistants; and it would be idle to suppose that so great a change in their condition, as that of unlimited increase of rent exacted by the zumeendar, should so soon be forgotten.

It would be difficult to enumerate the beneficial effects of such an investigation, judiciously and ably conducted. The first object, however, in view, was the relief of the cultivating ryots from the oppression of undue exactions and disproportioned land rents; and this object would unquestionably be attained. As a reasonable consequence, we might expect from the establishment of moderate, even very low rates of rent, a great extension of cultivation; for the cultivation or waste of many a field must in India, as elsewhere, depend on the rate of rent demanded for it. The little theatre of each individual's

exertions would become enlarged, because the rent, now exacted from him for one acre, would then give him two, which he is now able to cultivate, but afraid to engage for: and here the zumeendar would also derive advantage, and the aggregate wealth of the country be augmented.

The general cultivation being thus increased and the rents low, the cultivation of export produce may be immediately extended: an object of the most vital importance both to India and to England; but more important, perhaps, to England than even to India.

It is matter of infinite wonder, that a country like India, producing with less labour than in any other quarter of the world almost every thing in nature and in great abundance, should at this moment be in a state in which it is incapable of exporting a ton of its produce, either raw or manufactured, except the single article of indigo, to any part of the world, with a profit to the exporter; though the cost of conveyance may scarce exceed a shilling, and sometimes not a sixpence, per hundred miles. Even to England, the whole freight does not average more than four shillings and sixpence per hundred weight. At the time I am writing, although the interest of money in Calcutta is lower than in London, even less than three per cent., indicating thereby a superabundance hitherto unknown, no man can invest capital in any kind in India produce, for exportation to any part of the world, to return even a small profit.

Now it is sufficiently obvious, that unless India can be brought to export to England more than she does, she cannot increase her imports from England. It is thus that the manufactures of England are excluded from "one

" hundred millions of customers," as the free-trade parliamentary petitioners of former days humbly set forth, and not so much by the effects of restrictive laws, as is now made manifest to them. I say, therefore, that England is no less interested than India in promoting the agricultural prosperity of her Asiatic dominions; and that to create a market for British manufactures in Asia, the very first step to be taken is to create a surplus exportable produce there to pay for them.

Not a forced exportation, such as took place in the article of cotton a few years ago, which drained India, raised the price there to more than double what it was ever known before, and which has yet not subsided, but a regular, increased, and increasing supply, to meet the augmented and augmenting foreign demand, and to enter the markets of Europe and elsewhere, so as to compete not merely with the produce of other countries, when those countries labour under the extraordinary embarrassments of war or of crooked policy, but in ordinary times, on ordinary occasions, and under their wisest regulations.

To say that India is incapable of this, would be to suppose that the most productive soil in the universe, abounding with a population of free men, fond of agricultural pursuits, is nevertheless incapable of being brought to yield a produce equal to that of those countries which are less luxuriant, thinly-peopled, or depend for their cultivation on careless and compulsory labour. But this cannot be; and we may therefore rest assured of the most extensive capability of India.

But to avail ourselves of this capability, India must not be left, as she has been, almost to nature; for nature deals

not in exports. The local governments of India are deeply responsible to their superiors at home, and to their country, for what they may do or omit in this respect. They have every encouragement which the prevailing taste of their countrymen for improvement can secure to them, and they have both the power and the means, in India, to do what certainly "eye hath not seen," but even what it is not easy to conceive, for the mutual benefit of both countries.

Wise regulations, having for their object the encouragement of the agricultural classes, as well, however, as the security of the capitalist, whether native or European, who may advance his funds, are the very first object. The Indian cultivator is poor; and to extend his cultivation he must borrow, or take "advances," to render his crop at a price fixed on before it is reaped. The regulations of government give the person whose money is advanced no power over the crop: the temptation is therefore so great, and the opportunity so enticing, that were that class of persons not the most virtuous of the people, there would be no possibility of dealing with them at all; and even with all their honesty, it is only in indigo, now, where the chance of high profit is so great, that any capitalist can prudently venture to engage in the cultivation of exportable produce. Sugar, at present, cannot be ventured upon, because the certainty of loss by advances, would do more than balance the gain. But were it practicable, by an equitable law, to diminish the risk in aiding the cultivator, which the capitalist would then gladly incur, I have no doubt, in spite of the protecting duties at home, sugar to any extent might be exported with a profit. I mention this point, and that particular article of produce, merely as an illustration.

Then we come to the improvements in the interior of the country which might be made. These consist of public works, such as roads of communication, canals with the same view, and for the additional purpose of irrigation. There is nothing that tends so much and so rapidly to the improvement of a country, as facility of communication. By effecting this, you bring virtually, at least, the various parts and provinces nearer to one another; the whole becomes more compact, more vigorous; the circulation, before languid and sickly, now becomes rapid and healthy. You can exchange commodities in an *hour*, which before required a *week*. The expense will be a *farthing;* it was before a *pound*. Thus every thing is brought every where at the cheapest possible rate, and may consequently be exported with an advantage which at present cannot be obtained.

Notwithstanding the innumerable water-tracks which pervade the lower portions of the Bengal province, there is no part of India where communication by means of good roads or navigable canals is so much wanted. There are few nullahs navigable even for the lightest craft, except in the rains, and no roads; so that it is only whilst the country is inundated that any thing like free intercourse prevails between one quarter and another. Every place is consequently left almost entirely to its own resources for four-fifths of the year, like a beleaguered city suffering every privation, whilst a general superabundance reigns perhaps throughout the country.

Then, again, canals for irrigation. In Bengal irrigation is scarcely known; yet there cannot be a doubt of the incalculable advantage to agriculture which it would produce. The soil of the lower parts of Bengal is not

refreshed in the moderate degree congenial to cultivation. It is either inundated, or parched almost to absolute sterility, like the effects of intoxication on the human frame; for having been the more drunk it becomes the more dry. And the soil is of that nature, that as soon as the moisture is evaporated, which a few days after the waters subside are sufficient to accomplish, the face of the earth becomes so indurated, that it resembles a surface of rock intersected by fissures, its miniature ravines, which no tender plant can perforate. It requires no more to convince one of the advantage which the command of refreshing moisture would give to the cultivator of such a soil. The more elevated parts of the province of Bengal, and all the other parts of the Company's dominions, are equally in want of the means of easy irrigation. At the same time, it must be confessed that the inhabitants stand no less in need of some stimulus, to induce them to use the means now within the scope of their exertion; for the Bengalese most fully verify the observation, that wherever nature has been found to do most for man, there man has ever been found to do least for himself.

The Bengal husbandman awaits the vernal showers before he can deposit the seed of some of his most valuable crops. But the vernal showers are sometimes very scanty; sometimes they do not come at all, and often so late that the periodical inundation finds his crop on foot, and levels it to the ground, to rise no more. An artificial sprinkling of water, two or three times repeated, would have secured his seed-time and his harvest, and a certain, perhaps superabundant crop; for nature rejects not the aid of man, but delights in it, and assuredly rewards his labour.

It is difficult to estimate with any precision the value of irrigation in a tropical climate. Even in Spain, Italy, and the southern parts of Europe, access to water for irrigation raises the value of land to three, nay four times that which the same land would fetch without water for irrigation. It enables the husbandman to keep the ground constantly under crop, without impoverishment or diminution of produce. Whoever will take the trouble of perusing Mr. Arthur Young's Tour, will at once be satisfied of the importance of the aid which government ought, and undoubtedly will give, in facilitating this all-powerful process of the practice of agriculture. I say the aid which government "ought to give," because in India, among the natives, there are neither the energy to undertake, nor the means to accomplish improvements, on a scale so extensive as that contemplated here.

If government should think fit to admit participation in attempting such undertakings, it is not to be doubted that the co-operation of individuals might be obtained among the wealthy and enterprizing European population. In our own country, many highly valuable public works have been executed by private associations; and there is at least one advantage attending this mode of proceeding, which is by no means unimportant, the ultimate expense of the work is exceedingly reduced, and the public may consequently be accommodated with its use on proportionately easy terms.

In all countries government pay more for work than individuals do; and I believe India is no exception. Instead of diligence and economy, neglect and peculation more frequently prevail in the execution of government works in all quarters of the world. The expense is in-

creased beyond the most ample estimate; delay and disappointment necessarily follow, till the patrons and warmest supporters of the work are disgusted. The consequence is, that no man loves to be deceived, whether intentionally or otherwise; the most patriotic governments and individuals get tired of proposing and supporting schemes, however valuable they may seem, which are nevertheless in the end so likely to "let them in" for a share of the well-merited obloquy attached to the execution of them.

The Bengal government has lately appropriated a large fund, from the town duties of the several cities and towns, for the internal improvement of the adjacent country. But until some better plan be devised than has hitherto prevailed in the *Moufussil* for controlling the disbursement of public improvement—funds, I will venture to say that the amount, whatever it may be, will be spent to very little purpose. Great virtue is required of those who have the expenditure of such money. But virtue alone, even virtue, will not do here. Science and judgment, and practical abilities, are indispensable in those who have the direction of permanent public works.

With every disposition to praise this premature benevolence, I think government "have begun at the wrong end." Who can approve entirely of voting away money without any specific object, without even having a competent body qualified to direct the liberality of the state to the object in view? The first thing to be done on an occasion of this kind, is to fix upon one or more individuals, men of science, and possessed of that species of practical knowledge which will enable them to appropriate the funds in the best possible mode, to the substantial improvement of the agriculture and commerce of the coun-

try. Such men ought to be employed first in the business of investigation and inspection, with the view of pointing out to government specific plans of improvement. It would then be the time to vote funds and to appropriate them; and government would then have the security of these men for their due application, as far as able superintendence went, strengthened by the universal feeling which every one possesses to promote the success of his own plans.

This subject, however, is altogether of so great importance, as it relates to the welfare both of India and of England, that to touch it in the casual manner in which I am permitted here to do, is in fact, I fear, rather doing it an injury. My motives cannot be misunderstood. But I earnestly hope that it will not be lost sight of, and that measures will ere long be adopted, for realizing to both countries the full value of the liberal disposition and intention of the Bengal government.

## CHAP. V.

### *On the Judicial Administration.*

I HAVE endeavoured to shew, and I trust with success, that the "constitution" of India is purely Moohummudan; and although the Hindoo code has been recognized by "the laws and regulations" of the Governor General in council, yet that the Moohummudan law is the only public written law of India. It appears to follow, therefore, that as successors to the Moohummudan monarchy of India, or rather administrators of it, the Moohummudan law is the only law which the British government is legally authorized to recognize.

The ashes of the Hindoo law have indeed been raked up by the curiosity of individual research; but they have certainly not been found worthy of the pains bestowed on their exhumation: and although the Hindoo law has found a place in the laws and regulations of the English government, in my judgment it is in no way worthy of that distinction. From Mr. Halhed downwards, we may certainly be permitted to say that no one has yet discovered any thing of value in that code: and the only value, perhaps, of the research of the Hindoo lawyers is, that of letting us know that there is really nothing valuable to be found. This has its value; and I do not mean to depretiate it. But of the law, as expounded by them, who can say any thing favourable? far less can it be admitted to supersede the constitutional law of the Indian empire, as

try. ɔmulgated and administered throughout India for so
of any ages.
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w It would be, in my opinion, as profitable to search for the laws of the Angles or more early Britains, and to revive them as the law of England, as it is now to search after and to introduce the meagre fragments of the Hindoos as the law of India.

Nothing but intrinsic excellence in the Hindoo code, or its former universal and uniform administration throughout India, could justify so great an innovation as its re-adoption. The very reverse of this, however, is the fact. The Hindoo law, as a body of jurisprudence, has no intrinsic value; and instead of having been universally and uniformly administered throughout India, what there is of it is different in almost every soubah. Even the law of succession, wherein uniformity in the same state is generally found, whatever usages may in other matters be suffered to prevail; even the Hindoo law of succession is found to differ essentially in different districts. We find Mr. Colebrooke, the translator of tracts on the law of inheritance, talking of the "Bengal school" and the "Benares school" holding different laws; as if the question were one of taste or of the fine arts.

With respect to comparative merit, the superiority of the Moohummudan over the Hindoo law, so far as the latter is yet known, cannot be doubted. Some, indeed, suspect that what there is of worth in the code of the Hindoo is taken from the Moohummudan law; but this is an unnecessary conjecture, for the laws of the Jews were open to them, whence the Moohummudans borrowed still more freely, as well as from the code of the Romans; the juris-

prudence of those ancient people being the common sources of the laws of so many nations of the world.

A late writer on Indian history (Mr. Mill) enters into the question of comparative merit of the two Indian judicial systems apparently with considerable information, though not without a tinge of irascibility. After treating the Hindoo law with the utmost contempt, he adds, "from "the above delineation of these great outlines it will appear, "that a much higher strain of intelligence runs through "the whole of the Moohummudan law, than is to be "found in the puerilities, and worse than puerilities, of "the (law of the) Hindoos."* And again: "this indicates "a considerable refinement of thought, &c. far removed "from the brutality which stains the code of the Hindoo."† Farther. "There are some absurdities in the Moohum-"mudan law, in the reasons assigned for rejecting the evi-"dence of women in criminal cases; but there is nothing "in it to compare with the many absurdities of the Hin-"doo system, which make perjury, in certain cases, a "virtue."‡ "The laws of the Hindoos could not originate "in any other than one of the weakest conditions of hu-"man intellect. The Moohummudan law is defective, "indeed, as compared with any very high standard of "excellence; but compare it with the standard of any "existing system, with the Roman law for instance, or the "law of England, and you will find its inferiority not so "remarkable as those who are familiar with these systems "(the Roman and English), and led by the sound of "vulgar applause, are in the habit of believing."§

This

* Vol. I. page 639.
† Ibid. page 640
‡ Ibid. page 644.
§ Ibid. page 636.

This is high praise bestowed by Mr. Mill on the Moohummudan law, and ought assuredly to rescue it from ever being again put upon its trial of comparison with the "puerile code of the Hindoos."

Again, with the intention of raising in estimation the Moohummudan law to a level with the laws of the Romans and English, speaking of the necessity of strict and accurate definition, to secure rights by laws, he says, "in "affording strict and accurate definitions of the rights of "the individual, the three systems of law, the Roman, "English, and Moohummudan, are not very far from "being on a level."*

Now, Mr. Mill has fallen far short of the truth here; for if there be any point in which the Moohummudan law remarkably excels, it is in its remarkable accuracy and strictness of definition; which, however, is not so perceptible in an English translation, because of the difference of idiom, and because the English language is not so well formed for strictness of definition as the Arabic, the structure of which is more perfect and better fitted for grammatical and logical reasoning; and in this, perhaps, the chief excellence of that ancient language consists. Had Mr. Mill read the Moohummudan law in the original, this superiority would not have escaped him.

Nor would he have failed to see, that although many of its laws are defective, perhaps worse than defective, yet as a body of jurisprudence, as a system of law, it has no equal. I do not now speak of its intrinsic merit, or the excellence

* Vol. I. page 636.

excellence of its political regulations, but of the singular and systematic mode in which it has been digested, arranged, and subjected to the government of rules and principles, for the purpose of guiding its application in practice; and I am persuaded that, as a body of logical and analogical reasoning, shewing on the one hand, the real similitude of things, and on the other, the minute shades of distinction which the human mind is capable of perceiving, in cases apparently similar, yet different, it must leave certainly the English law very far behind.

My opinion of the Moohummudan law may possibly be biassed. Be that as it may, the rank it holds as the basis of the constitution, as indeed the written law of India, raises the value of that code to an extent that must be fully admitted. An exposition of the Moohummudan law is a desideratum of infinite importance; and I shall be glad to find that any thing I may be able to say here, may induce those who have the power to adopt the measures necessary for cultivating a knowledge of it, so truly indispensable both to those who legislate for, and those who administer the laws to the people of India. Were it, indeed, of no other use but as an exercise for the intellect, the study of the Moohummudan law would be intrinsically valuable. I will venture to say, that no one can study with attention a good treatise on the Moohummudan law, without having his reasoning faculties improved. He may, sometimes, indeed, smile at their philosophy; but he will, at the same time, learn of them how to think with accuracy in the search of truer wisdom.

With respect to the English law, and its fitness to be made, either a part of, or to supersede entirely the ancient law of India, it is necessary for me to say something.

In Mr. Mill's estimation the law of England has very much suffered in comparison with the Moohummudan code. But Mr. Mill is not the first that has expressed an unfavourable opinion of the English law. It has often been censured by Englishmen of the greatest wisdom and experience. What encouragement, then, have we to transplant it into India? The English have, in fact, no regular code of law. A multiplicity of statutes they have, indeed; but they are unintelligible to many, most of them altered or partially revoked, many altogether rescinded, so that an English gentleman knows not where to look for law. He is, therefore, compelled on every occasion to refer to a practitioner; and this practitioner refers not to any standard authorized by the *constitutional* legislature of England, but to a body of decisions on particular cases, which have been passed from time to time in the courts, by men, some of whom were wise, and some perhaps not so "full of wisdom," but whose said decisions have, in fact, now become the law of England.

Such law being founded upon no general principles, but piled up, as it were, upon particular cases as they arose, must ever be uncertain, because there can be no two cases, occurring at different periods, precisely similar in every point of view: and, at best, it is but a crude mode of law-making. It is a kind of *ex post facto* manufacture, which must ever have been influenced, in some degree, by the peculiar circumstances of the parties to the case on which the decision was passed, as well as by the sentiments and feelings of the times.

This mode of legislation is completely reversing the order of things. The duty of a judge is to explain and to administer, not to make laws.

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The English criminal law is by a Moohummudan lawyer esteemed barbarous in the extreme. It certainly has ever been found inadequate to the purpose for which it was designed. It has failed to check crime; and only by the permission of Providence has it succeeded in peopling the wilds of America and New Holland. Its severity has become latterly the means of rendering it in many cases a dead letter. The feelings of the people are inimical to it; and the officers of the Crown have often failed, notwithstanding the clearest evidence, to get the constitutional tribunals to convict under it.

A Moohummudan lawyer would naturally ask, upon what principle is it that the life of a human being should be taken away for stealing the value of a few pieces of silver, when the most notorious adulterer and seducer, the destroyer, perhaps, not of the life, but certainly of the honour, peace, and happiness, not only of the individual more immediately injured, but of whole families, is suffered to pass unpunished by the law: nay, to live openly in the sin of adultery, in the face of all mankind?

He would also ask, on what principle is the severity of the law of forgery founded? Why is a man to suffer death for making an imitation of one thing which has no *real* value (a scrawl or engraving on a bit of worthless paper), when he may imitate every thing else of value which the same person possesses? He may imitate even his best invention, and utter it with the intention of defrauding the inventor. If the inventor has obtained a protection for his invention, the imitator is at most liable only to fine. If no protection has been obtained, the imitator has acted legally, though he has defrauded the other perhaps of thousands: but if he thus

imitate and sell, that is issue his note, for twenty shillings, he is hanged.

The Moohummudan lawyer will think farther. He will refer to his own law, and there he will find that it is the duty of every owner of property to adopt proper and effectual means of a physical nature, sufficient (generally speaking) to secure his property. If he have not done this, its abstraction from him, though a misdemeanor is not theft, under the statute. Analogy would therefore immediately suggest to a Moslem, that if an individual, or body of individuals, shall choose to create a property on a bit of worthless paper, and that that property shall be found from experience not to be under that degree of protection which is required by law over all other property, but to be constantly exposed as the easiest prey, as notes are, by being so easily forged, he would immediately conclude that such property is not sufficiently guarded by its owner, and consequently is without the protection of the law.

Forgery, in its effects with reference to him whose name is forged, is a wicked attempt to ruin his credit. This is done every day in fifty different ways, and the law awards damages only. With reference again to the person to whom the forged paper is tendered, it is an attempt to defraud him of his property wilfully, by giving him in lieu of it that which has no value. I say wilfully, because the act of giving him the true note of a bankrupt would be an equal fraud and injury, *quoad* the person imposed upon. A nefarious act certainly, but, essentially, not in any uncommon degree atrocious.

These are the elements of this great crime. It is prosecuted

secuted by the party whose credit is attacked, not by him who is defrauded of his property; and instead of damages, his due, he procures the death of the defendant.

Nor could a Moslem lawyer admit (and all India will agree with him), that the having more wives than one is a crime meriting capital punishment: nor that it is felony to go about on a high road, or to hunt deer with a black face (9th Geo. I. c. 22). Nor would he think it a felony, without benefit of clergy, for a soldier or mariner wandering about the realm without a testimonial, or pass, from a justice of the peace; but yet it is so by 39th Eliz. c. 17. Nor that it is criminal to ride or go about with arms; nor would he think it a felony to solemnize a marriage in any other place than a church, except by licence from the archbishop of Canterbury (26th Geo. II. c. 33). Nor that he was liable to suffer death for having carnal connexion with a female under ten years of age, whether with or without her consent.

A Moohummudan lawyer, were he to sit down and compare his own law with ours, would no doubt pay us home, by developing all our legal deformities, as we have with very great pains done the foibles of his law. Nor would he estimate, perhaps so highly as we do, its excellencies. Even its two great and pre-eminent towers, the *habeas corpus* and the *trial by jury*, might not extract any uncommon eulogium. He would approve of the former, because, by his own law, every judge is not only empowered to inquire into the state of prisons, and into the case of all prisoners, but he is strictly enjoined, above all things, to visit the jails, and to inquire personally of *every individual* the grounds of his confinement and nature of his case, and to give him relief according to law. A most merciful law it is too, com-

pared with the English. I say he would approve of the Habeas Corpus (if it did not indeed give his wives the power of relieving themselves from the incarceration of his zunanah); but he would tell us, that but for this statute, of which we boast so much, we should be no better than slaves, who might, at the nod of our master, be imprisoned to remain during his pleasure; and that, after all, it was no great matter to boast of that we were not slaves.

Of the trial by jury, so fondly cherished by us, that of late years it is doubtful whether it may not possibly have induced many a patriot to commit crime for the sake of enjoying the pleasure of a trial, he might think differently from us. Its advantages, though highly extolled, have often been questioned even in England. In other countries it has not been so highly valued. It was introduced into the French criminal code by Bonaparte; and if we credit the Edinburgh Review, it required the introducer to apologize to the people for its introduction, though the whole criminal code, and the mode of procedure of the jury, are, in the estimation of those writers, far superior to our own. Men of the lower orders in France are not allowed to sit on juries.

By "the code d'instruction criminelle" of Bonaparte, juries can only be formed from seven classes of persons, all of the age of thirty and upwards.

1st. Members of electorate colleges.

2d. From the three hundred domiciliated persons who pay the highest amount of taxes.

3d. Functionaries of the administrative order, nominated by the emperor.

4th

4th. From doctors or licentiates of the four faculties, members of the Institute or of learned societies recognized by government.

5th. Notaries.

6th. Bankers and merchants taking out a licence, of one of the two highest classes.

7th. From among the agents (query deputies) of the administrative authories, who have a salary of four thousand francs.

On special application or recommendation of the minister of justice, individuals, though not of the above orders, "eminently qualified," may be put on the list of jurymen.*

From sixty summoned, thirty-six are *chosen*, and from thirty-six, the twelve are balloted who are to sit; and the accuser and accused, equally, each may challenge peremptorily. No questions asked; but twelve of these thirty-six *must* be taken. They are to decide: have you a clear conviction that the accused is guilty of the matter charged in the indictment? The Reviewers say of a jury: "Is a "jury in its best state, the best possible instrument of judi- "cature? We have often frankly acknowledged that our "estimate of its utility is very far from raising it so "high as a very great proportion of our countrymen "hold it." Vol. xvii. p. 110.

The Mooftee, also, might perhaps find some difficulty in comprehending the advantages of jury-trial, as it is carried into effect in practice. If he were sure that he had not offended against the law, he would prefer being tried

* Edin. Rev.

tried by judges who knew the law that must acquit him, and could of their own knowledge tell that he had not transgressed it. He would prefer this to the horrid uncertainty of depending upon the chance verdict of ignorant men, biassed perhaps by the eloquence of a pleader, more eager to shew his powers of oratory than to elicit the truth, and treating (as the honorable compeers in the box are now accustomed with us in England to treat, occasionally) the opinions of the judges with "*proper* contempt."

The Mooftee would be surprized to be told that the jury are "to judge of the law as well as of the fact;" and would naturally ask, how can a man judge of the law who does not know the law? And if juries are to judge of the whole issue, not knowing the law, where is the use of your laws? Call your trial by jury, arbitration; or, he might add, if you choose, a *punchayet* (as our Indian peasantry call their village-courts; and from which your trial by jury is perhaps descended, from times when there was no, or very little, written law among you): but it is absurd to talk of being tried by the laws of one's country, and after all to have for your judges men who know nothing of those laws, and will not be instructed unless they please.

"These," would the Mooftee say, "are some of the "objections I would submit; but still," he would add, probably, "if you will assure me that you have never had "innocent individuals condemned, or guilty culprits ac- "quitted, by the influence of vulgar error or of popular "clamour, I shall not urge the point farther, but admit "that I have been out theoried. You must not, however, "commend this law for leaning to the side of *mercy*, till "you have first shewn that the acquittal of a criminal *is*

"*mercy*

" *mercy.* Remember that every instance of such *mercy* is " an allurement to the commission of crime. It gives " the vicious the hope of one more chance of escape, and " perhaps casts the trembling balance, which before indi- " cated to him to refrain. God forgive me a sinner," the learned Moohummudan would say, " and the sins of " all mankind, for I cannot think this *mercy;* but rather " that mercy in a law consists in the certainty of its pro- " curing the punishment of the guilty, and the certainty " of its ensuring the acquittal of the innocent.

" The punishment of every crime, by every law, is a " greater evil to the individual who commits the crime, " than the advantage that could arise to him from its " commission. Every person who is sane will balance " consequences, and choose that which is least irksome: " therefore he will choose to refrain from crime, rather " than incur the certainty of punishment. Consequently, " as an absolute certainty of punishment, which you may " call cruelty if you please, would put an end to all " crime, and an absolute certainty of acquittal would " promote every species of transgression, your mercy " would be cruelty, and my cruelty *mercy.*

" Upon the whole," the learned Moslem would add, " permit me to say, that although our law, having been " framed for a state of society now no more, is doubtless " defective, it is nevertheless not inferior to yours; and " farther (which is of greater importance), that it con- " tains principles which will admit of its improvement " and extension, so as to become applicable to the change " of the times; and which principles, if judiciously ap- " plied, might, without destroying or even injuring its " original fabric, be made the basis of a code that should " hold

" hold a high place even in your own estimation: a far " more perfect code than those who know it not can be- " lieve. If you desire to legislate for this empire forget " not this! Do not despise the wisdom of our God and " yours; of our prophet, of our holy men, of our fore- " fathers, which has been the guide of our actions here " and is the source of our hopes hereafter, the standard by " which our ideas, our morals, and those of our fellow- " subjects (though religious foes) have for ages of ages been " formed: the very bond which unites society. If you " take away this, we shall no longer know in what rela- " tion we stand to one another. A father will not know " the propinquity of his child, nor the child that of his " father; a husband that of his wife, a wife that of her " husband: a law which age has rendered venerable, " both to the believer and the unbeliever. As you are " humane, you will preserve and reverence it, for its own " sake and ours; as you are wise, you will preserve and " improve it for your own."

You cannot change the law of any country for that of any other, even for a better, without offering great violence to the people. To the people of India above all others. The following authentic anecdote will illustrate this and the subject I am adverting to. That it may suffer as little as possible by translation, it shall be told as near as can be in the manner in which a venerable and grave personage might be supposed to narrate it.

" We all, men of my age, I mean," said the venerable Aabd-ool Waez, " remember when the English law was " administered to us by the English judges of the King's " Supreme Court (pronounced by my friend Shubreem " Koorut): but God forgive us poor ignorant people,

" our

" our fathers not knowing the intention of those great " judges, had never taught us to read English nor to " understand that law. When a man came to us to " deliver an order to appear before the Supreme Court " of Calcutta many knew not how to act. The distance " was great, and they had no means of defraying the " expense of so long a journey. In the midst of this " dilemma they were perhaps seized and dragged many " hundred miles to the great court of Calcutta, where " they were told, perhaps, that they were to be sent to " prison for contempt by an order of court (which he " called the *Lord Justey Saheb ka hookm).*

" Other respectable men again were carried to Cal- " cutta, the distance of five hundred miles, on the affida- " vit (pronounced by my friend *abidabi)* of some mis- " creant, perhaps, the truth of which had not been " inquired into; and there, removed from all his friends, " in the land of strangers, ordered either to find bail or " to go to prison, to the everlasting disgrace of his family. " The alternative of bail was nugatory; for removed " from all who knew him, who would be his bail? He " was, therefore, obliged to go to prison till the ses- " sions: perhaps for six months. He knew not whether " he was to be made innocent or guilty; for he was pro- " bably not a rich man, to be able to employ attorneys " and lawyers to tell his tale to the Lord Justey Saheb, for " he could not himself, as he did not understand his lan- " guage; and although there were doubtless gentlemen " in attendance to explain, yet every one knows how " much the spirit of discourse vanishes in passing through " the mouth of an interpreter: the mental communion, " indeed, which exists between the speaker and hearer,

" in

" in earnest and direct communication, being altogether " lost, and cannot be interpreted.

" You will scarcely believe me," continued the old man, " for you was not born till more favourable times, " when I relate to you the following story of the great " judge's court, and of the English law of Calcutta: In " the year 1192 of our era, Meer Moohummud Jaafur " died at Patna, leaving considerable property but no " children. His heirs, by the Moohummudan law (which " was then administered by a kauzee and two mooftees " under the Provincial Court of Patna), were his widow, " who took her share, and his nephew, who took the residue. " The distribution was made, by order of the Company's " Court, according to our own law; but the widow, insti- " gated by base persons, produced a forged will and " claimed upon it. The forgery was detected. She then " absconded, carrying away with her the title-deeds be- " longing to the estate, and the female slaves, and went " to live among a gang of fakeers in the neighbourhood, " refusing to give up the title-deeds and slaves. The " nephew complained to the Provincial Court that she " had disgraced the family, by thus absconding, and " prayed that she might be ordered to return, and also " to give up the slaves and deeds belonging to the estate. " His prayer was granted; and the kauzee issued his " order to call upon the widow to conform. She declined " to do so, and watchmen were ordered to watch her: a " species of constraint which the Moohummudan law and " customs of the country authorize. She still refused, " and at the end of six weeks the guard was withdrawn.

" The widow, instigated as before mentioned, brought " an action against the nephew and the kauzee and moof-

" tees

" tees in the Supreme Court of Calcutta, on the ground " of their proceedings, and she laid the damages at six " lakhs of rupees. The nephew pleaded that he was not " amenable to the King's court; but the judges said that " he was. How I know not, as he had never been nearer " Calcutta than Monghyr (three hundred miles), in his " life. They said, however, that he was a zumeendar, " and that every zumeendar is a servant of the Company; " which is very true. Indeed, we are all slaves of the " Company, and so they may have been right. But to " be servants of the Company without receiving any " wages, merely to be dragged to Calcutta jail, was what " we did not before know; and we were all so greatly " alarmed at this, that many of the most respectable " zumeendars and talookdars in Bahar petitioned the " most excellent Governor Hastings (whom we all knew " did not wish for such service from us his willing slaves) " to protect them from this great court; or if this pro- " tection could not be granted, entreating him to take " their zumeendaries back, and to suffer them to depart " in peace to another country.

" The kauzee and mooftees pleaded that they acted " under the orders and authority of a competent court, " and that a judge and his law officers thus acting, could " not be responsible in damages to those who might com- " plain of his decrees. The great Lord Justey Saheb, " however, would not hear of this, but declared them " liable in damages; and after entering minutely into the " case, and holding voluminous proceedings, they sen- " tenced those helpless becharrahs to pay three lakhs of " rupees in damages, and nine thousand two hundred and " eight rupees expenses.

" The

" The defendants, especially the kauzee and the moof-
" tee, had never seen so much money in their lives (for
" with us the law is not the road to riches), and were
" utterly unable to pay. They were therefore seized
" and dragged to Calcutta; but the kauzee, who was an
" old man, who had been chief kauzee of the province
" for many years, was unable to endure so much vexa-
" tion and dishonour, and he expired by the way. The
" rest were carried to Calcutta and lodged in the com-
" mon jail, where they remained till they were released
" by the interference of the King and Parliament of Eng-
" land (whom God preserve) in 1781; who ordered a
" large sum of money to be given them to soothe
" them for their disgrace and sufferings, and to be
" not only re-instated in their offices, but to be raised to
" the office of Moohummudan counsellors to the court of
" Patna.

" The Governor-General, the protector of the poor
" and the justifier of the just, did indeed order that those
" becharras (helpless persons), as they had acted under
" legal authority, and only in discharge of their duty,
" should be indemnified by government. But, at that
" time, as I have since heard, the Lord Justey Saheb
" said that the Governor himself was amenable to their
" court. Nay, I have been credibly informed, that the
" Governor and Council themselves were summoned to
" appear in the Supreme Court, in an action, to answer
" at the instance of Causseenaut Baboo: till at length,
" the wisdom of government made them set at naught
" the vain and presumptuous pretension of this court,
" and to issue a proclamation, telling all their subjects in
" the provinces to do the same, unless those who were
" really servants of the Company, or who had agreed to

" answer

" answer in that court; which relieved the whole of the " provinces from the greatest consternation. And thus " by the blessing of God, we were released from the jaws " of this monster, whose head we had only yet seen, whose " size no man could fathom, but which threatened the " inhabitants of these provinces with destruction, and the " provinces themselves with desolation."

" This," added my venerable friend, " was long before " your time, Sir, and you may not believe my word; but " no doubt your historians, who leave nothing unrecorded, " have not forgot so great an affair."

My friend here finished his discourse; and on making the necessary inquiry, I found that all he had said was quite true, and that government itself, in their letter to the Court of Directors dated 15th January 1776, thus state the conduct of the judges. " That Mr. Justice Le- " maistre declared, in his address to the late grand jury, " that a very erroneous opinion had been formed by the " Governor-General and Council, distinguishing between " the situation of the East-India Company, as Dewan, " from the common condition of a trading company. He " (the justice) made no scruple in avowing a decided " opinion, that no true distinction, in reason, in law, or " justice, can, or ought to be made, between the East- " India Company as a trading company, and the East- " India Company as Dewan (or Sovereign) of these " provinces; and that, in matters of revenue, the ma- " nagement of government was not exclusive, but subject " to the jurisdiction of the King's Court: to disobey the " orders and mandatory process of which would be " equally penal for the Company, or those acting for " them in matters of revenue, as in all other matters

" whatsoever; and that the said court held out *in terro-*
" *rem* over them the penalties of high treason, in refusing
" obedience to their court. That under pretext of
" requiring evidence, this court had demanded the pro-
" duction in court, of papers liable to contain the most
" secret acts of government. That the secretary to
" government had been served with a writ, called *sub-*
" *pœna duces tecum:* and attending the court without the
" papers, he was told that he had brought upon himself
" all the damages of the suit. That upon his represent-
" ing the impossibility of his producing the records in
" court, having been forbidden so to do by government,
" he was ordered to declare which of the members of
" Council voted for the refusal of the records, and which
" (if any) for their production. He demurred, but was
" made to answer; and every member of the Council who
" concurred in the refusal was declared liable to an action.

In forwarding this statement to government, the Court of Directors themseves most justly state: " that the penal
" law of England was utterly repugnant to those laws and
" customs by which the people of India had been hitherto
" governed; that nevertheless Mata Rajah Nuncomar
" was indicted, tried, convicted, and executed, for an of-
" fence (forgery) which is not capital by the laws of India;
" that the judges seem to lay it down as a general prin-
" ciple, in their proceedings against this Rajah, that all
" the criminal law of England is in force in India upon
" all the inhabitants."

They ask: " shall all the species of felony created by
" the black-act be introduced? Shall a man convicted for
" the first time, of bigamy (which is allowed, nay, almost
" commanded by their law), be burnt in the hand if he
" can

" can read, and hanged if he cannot? These are only " some of the consequences we hint at.—If it were legal " to try, convict, and execute Rajah Nuncomar for for- " gery, on the statute of George II. it must, as they con- " ceived, be equally legal to try, convict, and punish the " Viceroy of Bengal, and all his court, for bigamy, under " the statute of James I !"

I have, I am aware, dwelt on this topic longer perhaps than might be deemed necessary. The question of the introduction of the English law into India, however, it must be admitted, is one of great importance; it cannot, therefore, be without its use to exhibit, even in this way, what may be part of the consequences of such introduction, by shewing what distress and universal dismay it did really occasion, when, though erroneously, the zemeendars and others were supposed to be amenable to the English law.

Whether, therefore, we view the English law with reference to its intrinsic worth, or to its fitness for the people of India, forming our opinion of it from the experience the unfortunate inhabitants of these provinces had of it during the short, but eventful, period they were cruelly held amenable to it, we can only come to one rational conclusion; and that is, that its introduction into India would be equally iniquitous and impolitic: that, however suitable it may be in an enlightened country, among people who have made it, and who have been formed by it, administered by judges, certainly as upright and independent as our India judges are, but still acting under the eye of a thinking and a searching public, yet it requires no great stretch of thought to be convinced, that where none of these circumstances and correctives exist, the administration of it might be very pernicious.

Speaking of the reformation of the courts of justice of Bengal, the author of "Plans for the Government of India" says: "The hints of Lord Clive discover to us, that "however simple the principles of natural justice may "be, and however perfectly it may have been copied in "the laws of England, yet it was impracticable to intro- "duce those laws as the measure of right and wrong in "Hindoostan. The laws of that country, as well as the "courts of justice, proceed from a government perfectly "opposite in its spirit to that of England; and the appli- "cation of them had become familiar to the people "through customs not less dissimilar to ours. Time has "shewn us, that we may improve, but cannot alter the "India jurisprudence. Though the laws of Rome fur- "nished a fine system of jurisprudence to our ancestors, "they preferred their own common law to this model; "and yet the one had sprung from the refined maxims "of the Stoics, and the other from the military establish- "ments of the Goths."* And again: "The experiments "which have been made to engraft the laws and practice "of England upon the jurisdiction of India, have proved "to us that the most laudable efforts we have been able "to make have not answered the beneficial ends in- "tended."† "The conclusion is, that we must go on gra- "dually to improve the courts of justice known in that "country, till time and habit shall give them such a de- "gree of perfection as the prejudices and manners of the "people admit."‡

Yet, have I heard of judges of his Majesty's court of Calcutta who have spoken with unqualified opinion of the great advantage which the introduction of the English law

* Vol. I. page 70. † Ibid. page 404. ‡ Ibid. page 406.

law would prove to India; and I have been informed that some of them have gone the length of recommending, in writing to the government, the introduction of the English law into India. But when we consider the education of these men, we ought not to be altogether surprised at their partiality. Their intimate knowledge of the law, as well as of its practice, makes them insensible of the intricacies of its ways: or they may believe even its tortuosities partake of the beautiful, though they are doubtless horrid in appearance and destructive in experience to those to whom they are less familiar. There is, moreover, at present, a perfect anarchy of law (if I may so express myself) in India; which, to a systematic lawyer, must doubtless appear the worst of all evils.

I have heard the same doctrine broached by individuals of the Company's service. It is needless to add the forfeiture this caused them in my estimation; but, in justice to the service, I must say, that I never knew such a sentiment entertained by any one, whose knowledge of the people, or of either law, rendered his opinion valuable; and should such an opinion be ventured in England by any one, who from having been in India, or even having held a judicial situation there, may be thought qualified to judge, let me tell the reader that there have been, and still may be, judges in India, who understand but little of any law under the sun, and who have probably never taken the trouble to think on the subject. That a knowledge of the law, or of any law, is not a qualification always found in an English India judge; for that the Indian government are constrained to place men in judicial situations who have no previously acquired knowledge of the law. One of themselves (Mr. James Stuart, lately a member of the Bengal government) shall speak for them

on this point. "The courts," says he, "have no fixed "principles of jurisprudence to direct their investiga- "tions and govern their decisions; and the judges are "not only destitute of legal knowledge, but, from cir- "cumstances beyond control, cannot be selected for dis- "cretion and knowledge of business."*

Lord Clive, in his celebrated plan for the government of India, declared "that the attempt to introduce the "English laws throughout our possessions in India, "would be absurd and impracticable."†

The question then is, what law ought to be introduced? I answer, at once, the Moohummudan law; and my opinion is corroborated by many: among others, the author of the sensible work last quoted, *Plans for India.* "First," says he, "it is proposed that the Moohummudan law "shall, in general, be held the rule of conduct for all "authorized native courts."‡

The Moohummudan law is, I have said, that which ought to prevail. It is the law which has prevailed throughout India for seven or eight hundred years; the law of the government to which we succeeded; the law which, in one instance, at least, we became bound to administer, by the acceptance of the solemn grant which gave us the country from the fallen emperor, whom we now chuse to represent. I do not say, however, that the Moohummudan law should be introduced blindly, with its obvious defects. Take that law, properly understood, adopt it as far as can be done, revise it, improve it, adhering

* Minute on Judicial System of India, page 12.

† Plans, page 67. ‡ Ibid. page 414.

hering to it in every case where practicable; and I venture to say, we shall find that there are few points in their code, where justice and sound sense have not been advocated.

If, as I have said elsewhere, government abandon the laws which for ages prevailed, which of necessity have greatly influenced the habits of the people, and which the British legislature has in fact guaranteed to them, for laws and regulations of its own, however good and equitable as we may think, we can hardly expect the people to go along with us. We must be prepared for opposition, in the hearts at least, not only of our subjects, but of our own native law officers. And, at best, it is but a rude way of repairing a fabric, to neglect the symmetry of the antient building, or to demolish it. How much more masterly, how much more becoming so great a government, how much more beneficial, effectual, to carry with it the minds of its subjects and the strenuous efforts of its own public officers, by engrafting whatever may be approved of our own more enlarged system of justice on the antient stock of their venerated laws: a measure equally desirable and practicable; for it does not admit of doubt, that there is no point of importance to be met with in the Moohummudan code, on which sound sense and reason have not had their respectable and (by themselves) respected advocates; and if government would but thus proceed, they would unquestionably get the native learning, both of the dead and of the living, to co-operate with them in the formation of a system of jurisprudence, which should not only prove the greatest blessing they could bestow on the people, but be a lasting monument of the wisdom, and not less so of that rarest but greatest of all qualities of a

government, that of being able to rule its subjects by means of their own prejudices and affections.

It has been said by a great man, that "there is some-"thing else than the mere alternative of absolute destruc-"tion or unreformed existence," and "that a true poli-"tician always considers how he shall make the most of "existing materials. A disposition to preserve, and an "ability to improve, taken together, would be my stan-"dard of a statesman."*

All innovations introduced into the laws of India in any other way, must tend, in their very lowest degree of inconvenience, to set at variance the European judges and their native advisers; and thus obstruct, instead of advancing, the public service, create endless references, produce partial or equivocal answers from the native lawyers, and, in the end, mutual disgust.

The introduction of a code of laws, such as there alluded to, would unquestionably be the greatest blessing that could be conferred on the people of India. It is indispensable in my estimation. If we desire to elevate them one step in moral improvement, it is the fulcrum on which they must be raised.

The law must, then, be thoroughly understood by the judges; for, without this, vain will be all our efforts. The purity of its administration is no less important. At present, as Mr. Stuart says, they have no fixed law; the judges are ignorant; and he might have added, we profess to administer the Moohummudan and Hindoo codes through our native

* Burke

native lawyers, whom we can neither trust for their knowledge or their integrity. Surely this system will not be continued.

We strive to moralize the people: but, let me ask, is it possible to conceive a more prolific source of depravity in any country, than that which is laid open by the bare chance, the bare possibility of success, in corrupting the courts of justice?

How vain is it for those good men who spend their lives and build their hopes, through immortality, on their exertions to inculcate the principles of morality into the minds of the Indians, to hope for success, when their pupils, by looking around them, see that morality itself has no real existence, that even the highest and the most sacred are yet the most demoralizing of our institutions, and that the shrine of justice herself is to be approached by the hand of corruption. We cannot expect the natives to distinguish accurately between those members of our courts who may be corrupted, and those who may not. They do not inquire, probably; and, to say the truth, it is not much worth their while to do so. The effect to them is the same, whether the English judge be pure or not, or whether he partake of the plunder of his corrupt *aamla*. The general impression is that which is most to be thought of; and that is, that in our courts there is enormous expense, enormous delay, that every thing else is uncertain, and that there is nothing more terrific to an honest native, under the sun, than our courts of law; except perhaps the Supreme Court of his Majesty in Calcutta, wherein they say suits are ended only with the means of one or other of the parties to carry them on.

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If we would impress on the minds of the natives of India the precepts of morality, it must be exhibited to them practically, not only by ourselves, but by every one holding important or confidential situations under us. They must be shewn that we are not only willing, but able to detect, as well as to discard the wicked.

The manners of the people of India are extremely artificial. There is no openness and plainness of dealing among them: they are always, as it were, *acting*, even in their common intercourse with one another. Truth, therefore, has not that value among them, which it is allowed to possess among a people who practise a plainer and more undisguised intercourse. Thus the people of India scruple not to lay aside what they do not much esteem; and, along with it, every regard to justice and integrity. They are, therefore (generally speaking, I mean, for doubtless there are exceptions), not in their present state to be safely trusted with the exercise of power, without a very efficient control; and certainly not with power under the cloak of laws, which at present they must think mysterious to us, seeing that they never meet with any judge who possesses a competent knowledge of them.

To instruct the judicial servants of the Company in the Moohummudan law, has been an object most anxiously desired by the greatest men who have ever governed India, and by many illustrious characters in inferior stations. Their motive for this is so apparent, that it requires no illustration, to those who know that, though all profess to administer the Moohummudan law of India, there is not, nor has there ever been, so far as I know, any judge in the Company's service who has had a competent knowledge of that law. But as this is almost incredible, and

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as the fact is, I apprehend, not generally known, it is right, and I trust it will be useful, to notice it. It is but just, as well as necessary, however, at the same time to state, that there is no work in any language, except the Arabic, whence a competent knowledge of the law can be attained. The Arabic language, till lately, was unknown, and is even now known to so few, that these scarcely form an exception; and when of these few we inquire how many know the law, the answer may be given, not one! for the Moohummudan law is not to be acquired without laborious study, more than the laws of other nations.

When the great oracle of the English law said, "should "a judge, in the most subordinate jurisdiction, be defi- "cient in knowledge of the law, it would reflect infinite "contempt upon himself and disgrace upon those who "employ him," how little could he have anticipated, that half a century should not elapse, when one hundred millions of people should be governed by Britain, under laws administered by judges really deficient in legal knowledge.

Among those governors of India who have zealously endeavoured to procure to the people a pure administration of their law, I may mention the illustrious names of Clive, Verelst, Mr. Hastings, Marquess Cornwallis, Lord Teignmouth, the Marquess of Wellesley, and the Earl of Minto; and of the many individuals of inferior station, I must distinguish as pre-eminent the learned, amiable, and philanthropic Sir William Jones, whose professional knowledge and experience, himself an English judge in India, and well acquainted with the Moohummudan as well as Hindoo law, combine to render, not his opinions merely, but his extraordinary efforts, to diffuse a knowledge of the law, stronger testimony of the necessity and importance

importance of its cultivation than is generally attainable in matters of a similar kind. He had founded the Asiatic Society of Calcutta, and may therefore be called the parent of the systematic pursuit of Oriental knowledge. "But my great object," says he, "is to give our country "a complete digest of Hindoo and Mussulman law, &c. "I would write on the subject to the Minister, Chancel- "lor, the Board of Control, and the Directors, were I not "apprehensive that they who know the world, but do not "fully know me, would think I expected some advantage, "by purposing to be made the Justinian of India; where- "as I am conscious of desiring no advantage but the "pleasure of doing general good."* And again: "San- "scrit and Arabic will enable me to do this country more "essential service than the introduction of arts, by pro- "curing an accurate digest of Hindoo and Mussulman "laws, which the natives hold sacred, and by which both "justice and policy require that they should be go- "verned."†

Sir William Jones suggested a plan for completing the digest here alluded to: and in his letter to the Marquess Cornwallis, then Governor-General, on the subject, he thus expresses himself. "Perpetual references to native "lawyers must always be inconvenient and precarious; "and at best, if they be neither influenced nor ignorant, "the court will not, in truth, *hear and determine the cause*, "but merely pronounce judgment *on the report of other men.* "For these reasons, it appears indubitable that a know- "ledge of Moohummudan jurisprudence is essential to a "complete administration of justice in our Asiatic terri- "tories,"

* Sir Wm. Jones to the Governor-General, 1786.

† September, 1787.

" tories," &c. And again: " For the Hindoo and Mus-
" sulman laws are locked up for the most part in two very
" difficult languages, the Sanscrit and Arabic, which few
" Europeans will ever learn, because neither of them leads
" to any advantage in worldly pursuits; and if we give
" judgment only from the opinions of native lawyers and
" scholars, we can never be sure that we have not been
" deceived by them. It would be absurd and unjust to
" pass an indiscriminate censure on so considerable a body
" of men; but my experience justifies me in declaring,
" that I could not, with an easy conscience, concur in a
" decision, merely on the written opinion of native law-
" yers, in any cause in which they could have the remotest
" reason for misleading the court. Nor how vigilant
" soever we might be, would it be very difficult for them
" to mislead us; for a single obscure text, explained by
" themselves, might be quoted as express authority,
" though perhaps, in the very book from which it was
" selected, it might be differently explained, or introduced
" only for the purpose of being exploded."

It was an object of the highest ambition of this benevolent judge, to put government in possession of a code of the antient laws, by which he presumed they were to govern the people of India; improving of course those laws where necessary. He undertook to superintend the compilation of, and to translate, the digests above-mentioned. His letter to the Governor-General, Marquess Cornwallis, will be read with no small interest, when it is known that so much at heart had he the laborious undertaking, that for it alone, with an infirm constitution, he suffered himself to be separated, alas, for ever! from a beloved wife, who was compelled by sickness to return to England;

England; and that, in a short time afterwards, his own life fell a sacrifice to his great design.

The translation of the Hidayah, a celebrated work on Moohummudan law from the Arabic, both into Persian and into English, were projected by Mr. Hastings and effected under his government. The foundation of the Moohummudan college at Calcutta, for the express purpose of affording the natives an opportunity of learning that law, exclusive of the often-expressed sentiments of that great man, leave us the strongest and most unequivocal proof of his desire to promote the knowledge of that law. "Mr. Hastings," said Lord Teignmouth, "with "the view of promoting a knowledge of Moohummudan "law, as essential to the due administration of justice "to the natives of India, established a college in Cal-"cutta."*

"Fully sensible," says Lord Teignmouth," of the uti-"lity of a digest of a Hindoo and Moohummudan law in "facilitating, what he was ever anxious to promote, the "due administration of justice to the native subjects of "the British empire of Hindoostan, the Marquess Corn-"wallis considered the accomplishment of the plan (the "digest above-mentioned by Sir William Jones) as cal-"culated to reflect the highest honour upon his admi-"nistration."†

Lord Teignmouth, when Governor-General, employed Lieutenant-Colonel (then Lieutenant) Baillie to translate this digest of the Moohummudan law. A translation of one

* Life of Sir William Jones. † Ibid.

one volume of it was made; and the Marquess of Wellesley (who in the interim had established a professorship of Moohummudan law in the college of Fort William, and bestowed the professorship upon the translator), when the volume was printed, which was done at the expense of government, presented Captain Baillie with a reward of 20,000 rupees.

The Earl of Minto held in no less estimation the cultivation of the Moohummudan law than the greatest of his predecessors had done; and although, with that innate and most amiable modesty so conspicuous in his character, he made no display of the patronage and encouragement he gave invariably to those who dedicated their time and acquirements to the advancement of useful literature, yet we have had no one in the high station which he filled, who cherished them with more real sincerity than this lamented nobleman.

Notwithstanding that several tracts on the Moohummudan law had been translated, a complete exposition of that code, by compilation, translation, and explanation, rendered into our vernacular tongue, was still a desideratum to the Indian government. A work of the nature here described was in the year 1809 undertaken, and patronized, in the fullest and most earnest manner, by his Lordship's government, and subsequently by the Honourable Court of Directors. The Earl of Minto bestowed one of the most valuable appointments in his gift upon the author of that work, with an assurance that on a vacancy, soon expected, he should succeed to a higher situation, which he named, and which would afford the facility requisite for superintending its publication in Calcutta. The

The expected vacancy, unfortunately, did not occur till after the arrival of the Earl of Moira, who, when the vacancy occurred, did not consider himself bound to fulfil the intentions, and enter into the views of his predecessor. The publication was of course suspended. Other endeavours were made by the author to promote the publication of the work; but obstacles were still opposed, which probably prevented the author from making any farther attempts. The value of this work was highly appreciated by many of the most distinguished of the Company's servants in Bengal; and in the language of one of the most eminent of them, "I have no hesitation in declaring my "opinion to be, that it is a work more deserving of public "encouragement and support, than any that has yet ob-"tained the patronage of government in India." Justice to a former government of India, and to the Court of Directors, who readily patronized the work, required that it should be noticed; and it is but justice to them and to the author, to state the cause which has delayed its publication, if not suppressed it for ever.

The patronage which the Bengal government had invariably shewn to those who had endeavoured to expound the Moohummudan law ceased with the government of the Earl of Minto; but no accession to the opinions of that lamented nobleman, and his illustrious predecessors, is either required, or indeed could add weight to their sentiments. We are, therefore, fortunately relieved from the necessity of wishing for farther testimony, as to the the necessity and the importance of the study of the Moohummudan law to those servants of the Company, whose duty it is to administer the law of India.

The best means of promoting and of ensuring the attainment

ment of a knowledge of that law becomes the next object of inquiry.

There are only two modes of doing this. If the Company's servants cannot be brought to learn the Arabic language, in order to study the law in the original, that law must be rendered into their own language, that they may study it in English. The experience of more than half a century has fully shewn that we cannot trust to the former; the latter alternative must therefore be adopted. An ample, clear, and faithful exposition of the Moohummudan law rendered into English, is therefore as essential to its cultivation, as a knowledge of that law is to the due administration of justice to our Asiatic subjects.

But this is not all. The Moohummudan law, though rendered into English, would not be more easily acquired than are the laws of other nations, which are written in their vernacular tongue. All those who have benefited by the advantage of public instruction must fully acknowledge its utility, not only in directing the student in the proper path of his research, but in furnishing a field for that emulation, which, when duly cherished, tends so strongly, not only to the advancement of particular talent, but to raise, throughout the whole, the general standard of acquirement. I need scarcely add, that it would be worthy of the rulers of India to revise the establishment formed by the wisdom of the Marquess of Wellesley in the college of Fort-William for instructing their servants in the Moohummudan law; that it would be worthy of the enlightened governors of eighty or one hundred millions of their fellow-creatures, to instruct their servants in the law which they are called upon to administer to them. It would be quite incredible, if we ourselves were

not an instance of it, that a civilized nation should profess to administer a law to eighty millions of people, without having one institution for teaching that law to those whom they ordain to superintend the administration of it. Government pays upwards of a million and a half to its European civil servants, and about £600,000 sterling to those in the judicial department alone. I cannot but think, that two or three thousand a-year, towards teaching them the sacred duties of their profession, might well be added to this large sum.

Government must not think that their covenanted servants are, by a little elementary knowledge of the Persian language, or peradventure, in a few instances, by reading one or two elementary works in Arabic, to be converted into Moohummudan lawyers, competent judges of the Moohummudan law. Must a man be instructed in the meanest occupation of life, and shall he step to the bench, where he has to administer a foreign law, without any previous education?

Thus it is, I am grieved to say, that our Indian judges do really answer Mr. Stuart's description of his "learned "brethren" (he himself was a judge when he wrote), "that they are ignorant of the law."

Nor do the regulations of government admit of Europeans to officiate as counsel or advocates, even before the Sudder Dewannee Adawlut, the Supreme Native Court. If the counsel were learned in the law, they would, as in Europe, take care that the law was at least unfolded to the judge; so that even ignorance on his part would be less felt; and, at all events, there would be greater security against corruption.

There does not seem to be any good reason for such exclusion: and there is now a considerable body of well-educated young men, the offspring of European gentlemen, who might, perhaps, with advantage be admitted to the privilege of practising at the bar of the sudder and provincial courts.

A course of lectures delivered in English to those who could not be prevailed on to learn Arabic, accompanied by translations from different authors, on the most important points of law, would be the necessary course to be pursued, generally, in instructing the civil servants of government; together with copious explanations of the technical terms, phrases, and language of the law; and for the more accurate understanding of which a comparative elucidation of the similitude or difference between such, and the technical language and terms of our own or of the Roman law, should be given: noticing, if required, at the same time, where the government regulations affected the law, where they did so with good cause, and where unnecessarily, as in many cases he would discover to be the case.

Blackstone somewhere laments the enormous load which ignorance of the law has unnecessarily added to the Statute-Book. What would he have thought, had he seen the "Laws and Regulations" of the Indian government, and been equally capable of appreciating their application?

Encouragement, at the same time, must also be given to those few (and some there would be) who would attempt to master the original law in its primitive tongue. These

ought, by all means, to be cherished; for from these alone could be looked for the propagation of the science.

The difficulty of procuring a professor sufficiently qualified might at first be experienced; but, as it would be an object worthy of pursuit, so the qualifications would be deemed worthy of acquirement, and would soon be found.

The expense of an establishment of £3,000 or £3,500 a-year, is too trifling to be named, as worthy of the least consideration in such a case.

The next and last point to be considered is, the mode of administering the laws; or, in other words, of ensuring the administration of justice to the people, and protection to their persons and property. How, by whom, and by what courts, can justice be best administered in the British provinces in India?

The object of law, in every country, is to protect the individuals, and the community of that country, in the enjoyment of what they hold estimable. This definition is very comprehensive: it includes questions of property usually so called, of person, of civil and religious liberty, of contract, succession, the public revenue; for, to the community, that is matter of concern and of value, and is the property of the state.

This protection is afforded in two ways: first, by measures which are calculated to prevent aggression; secondly, by laws duly administered.

Under the former of these heads will fall to be considered

dered what is usually termed *police;* under the latter, the *administration of justice.* But as the administration of the law is more immediately connected with what has gone before, I shall reverse the order of discussion, and in this place offer such remarks as I have to make on the judicial system of India, considered executively, reserving for a separate chapter what I may have to submit on the subject of police.

However trite the observation, yet as it serves to collect our wandering thoughts, I must remind the reader that there is nothing perfect under the sun; that in entering upon the consideration of this, as well as of every other practical question, he must divest his mind of every ideal standard, and meet the case attended by its concomitant circumstances, and like every wise man, instead of aiming at perfection, be satisfied with endeavouring to discover what is the best of expedients; for it is only a choice of these, as has been well observed, that we are permitted to realize in human affairs.

The Company's judicial establishment of Bengal (to which I shall restrict myself) consists of one supreme native court, called the Sudder Dewannee and Nizamut Adawlut (lit. chief, civil and criminal court), of four judges; six courts of circuit, of four judges each, and one judge in every zillah or district; besides a judge in each of the four cities of Moorshedabad, Dacca, Patna, and Benares. There are, likewise, some assistant-judges; and the registers of the zillahs who hold courts: and besides all these, many native petty judges, under the names of suddur ameens and moonsifs. The former appellation signifying "chief arbitrator," and the latter "a justice," or one who distributes justice.

From the inferior courts lie appeals to the zillah judges, and from the zillah courts appeals lie to the courts of circuit, and from the courts of circuit to the Sudder Dewannee Adawlut, in all civil causes of any considerable amount, in questions of real property, and even in personal actions amounting to 5,000 rupees: and from the courts of circuit to the sudder a reference is necessary in all criminal convictions involving life or transportation. Thus, in fact, except in matters of comparatively trivial importance, it may be said that there is only one court of justice for the whole of the Bengal provinces; every cause appealed coming loaded with the rubbish of the records of two inferior chambers through which it has passed.

No wonder, then, that the judges of the Sudder Dewannee and Nizamut Adawlut complain of having too much to do, and that the administration of justice has been represented as, in fact, at a stand. The other presidencies have each its sudder; and thus it is, that eighty millions of people, like pilgrims at a scanty fountain, are left to scramble for justice.

Mr. Stuart, abovementioned, late one of the judges of the Calcutta Sudder Adawlut, in a minute which has been printed, proposed a remedy for the "oppression of busi-"ness" under which the court laboured. A very obvious remedy, to be sure, but still it was one; namely, to have *another* sudder court instituted for the Upper Provinces: and by way of improving the administration of justice, he proposes instituting also *nine* different tribunals in every district; some composed of natives as judges, others of Europeans: all, however, linked together by *threes*, in the old way of appeal, and ultimately falling into the sudder courts.

Mr.

Mr. Stuart's avowed object was to relieve the present sudder from part of the "overwhelming press of business" on their rolls; but so that he does this, he seems not to care much who else sinks under it. He divides the provinces into districts (very large ones, however); puts those districts under the entire management of *one* person, to whom he gives the title of "*resident*;" and he makes this resident not only hold several courts himself, but exercise a control over all the other nine courts in his district, and to receive appeals from them all, and the sudders to hear appeals again from him. The resident is moreover to superintend the affairs of the district revenue, justice, and police. The former residency of Benares is Mr. Stuart's model; but he is to modify it "so as to combine the prin-" ciples of native administration with order, stability, and " justice:" a very laudable modification, certainly.

Mr. Stuart's formidable list of tribunals consists of,

1. *Minor Maal Adawlut*, under a native darogah.
2. *Major Maal Adawlut*, under the Sudder Dewannee Adawlut and board of commission.
3. *Minor Dewannee Adawlut*, under a native judge.
4. *Major Dewannee Adawlut*, under the resident.
5. *Cazie's Court.*
6. *Punchayets.*
7. *Fouzdary Major*, under control of resident and assistants.
8. *Fouzdary Minor*, under a moulovee and pundit.
9. *Resident's Criminal Court.*

What Mr. Stuart means by the word *maal*, applied to adawlut, he has not told us; nor has he said why he has changed the old designation of the Benares resident's court, which was called the "Moolkee Adawlut." There

was a "Moolkee Dewannee" and a "Moolkee Fouz-dary Adawlut" in 1788. Mr. Stuart's *maal* is probably meant to represent the word مال māl, which signifies property; but, in technical language, *moveable* property only: and yet he gives his "maal adawlut" cognizance of ejection, boundaries, water, and premises, landed estates. The old "moolkee adawlut" was no doubt intended as a translation for "country court" or "provincial court," from *moolk*, in one sense, a country; but it is similar to one of those happy translations which a lady is said to have made when she intended to desire her coachman to take her carriage into the shade: she said, "Garee fanoos me lējaoo;" literally, "take the carriage into the lanthorn," the word *fanoos* meaning a wall-shade or lanthorn.

Nor does it appear how Mr. Stuart was "to combine the principles of native administration" by the institution of tribunals such as he specifies; none of which were ever heard of under any native administration whatsoever.

But before Mr. Stuart had written his preface another arrangement occurred to him, which he describes in his preface, and which he seems to prefer, an objection to the former being the difficulty of finding any one individual qualified to be a resident. This other plan is to empower the collectors to hold maal adawluts, with assistants, European and native, and a native judge; with cognizance to the amount of 1,600 rupees. That there shall also be six European judges formed into two courts of circuit and appeal, and to try all great causes; but the three frontier districts of Bundelkund, Laharunpore, and Gorruckpore, to be made residencies.

It

It is, however, so much easier to point out defects in the plans of others than to form better ones, that I will apologize to Mr. Stuart for the liberty I have taken with his, and observe that, after what has been written on the subject already, by such men as Lord Clive, Mr. Verelst, Mr. Hastings, Mr. Francis, Sir William Jones, Lord Teignmouth, Sir William Chambers, and many enlightened servants of government, it is not easy to find much new matter to communicate; nor is it very disreputable to fail in such company. But I may take leave to say, that to *simplify*, and not to render more complicate, is, in my estimation, the more likely way to improve the present judicial system of India.

The first object of all governments ought to be to diminish, as much as may be, the sources of contention among their people, and thus to render an appeal to the laws as seldom as possible necessary. This is to be done by a vigilant police with reference to criminal matters, and by municipal regulations and precautions in civil affairs.

In Bengal it has often been said, that a great majority of questions of civil litigation and cases of criminal prosecution arise out of disputed boundaries. Contention arises, affrays follow, which often end in the commission of atrocious crimes, as murder, arson, and destruction of property of all kinds.

Here, then, much might be done, as I have already noticed, by obtaining minute surveys of every purgunnah and every village of the country, by keeping correct purgunnah-registers of the lands of individuals, every transfer or division thereof to be entered into such registers. The marriages, births, and deaths which occur in the families of

of every landholder and principal inhabitant of the purgunnah might be registered, and a body of record obtained, which, if it did not altogether prevent litigation, would assuredly facilitate its termination when instituted. A record of boundaries, alone, would be of the utmost importance.

All this might be done in the strictest conformity with the usages of the country; and thus, not Mr. Stuart's "*principles* of native administration" (a phrase, by the bye, which I do not understand), but the *practice* of native administration might be combined with order, stability, and justice. And could our government but only re-establish, what they at one time took pains to demolish, the ancient purgunnah canoongoe, and village putwaree records, on the basis of these a system of regular record of principal events, and even minor occurrences, might be founded (to be abridged periodically, and the abridgement kept at the principal town of the district), which should not only aid in no common degree the administration of justice between individuals, but afford such an insight into the state of society and the transactions of the people, as would guide the active and discerning magistrate of police through his most intricate investigations. A simple list of the records kept by the canoongoe (as given by Mr. Davis), and of the putwarees' accounts (as given lately by Mr. Newnham, an active and intelligent Bengal revenue officer of the present day), will shew the mass of information collected, or which might be collected, by these provincial officers.

*Records of the Canoongoe.*

دستور العمل *Dustoor-ool uml.* The orders of government for the guidance of its officers and the customs of former governments.

عملالدستور *Uml-i dustoor.** Customs or orders, in opposition to, or in addition to the above, or practice of the present times.

فهرست دهات *Ferhest-é dehaut.* Account of the villages.

سياه امدني *Sehahy amdany.* A daily treasury account of payments from ryots.

اوارجه جمع خرچ *Awargy.* A running account of receipts, remittances, &c. made annually, or oftener.

دول تشخيص بندوبست *Doul tushkhsees bundobust.* Nett settlement rent-roll, or estimates of receipts for the year, whether paid by muzkoory talookdars, or ryots, to the zumeendar.

جمع بندي خاص *Jummabundy khas.* Special rent-roll.

جمع ساير *Jumma sayer chubootra cutwally o' chokeyaut o' guzoore ghaut.* Sayer and town duties.

جمع ٥محال مير بحري *Jumma mahal-e-meer behry.*†

جمع پچوترہ *Jumma patchoutra.*†

جمع ٥محال بدرقي *Jumma mahal budderky.*†

اسمنويسي زميندارن *Ism nuveesy zumeendaran.* List of names of zumeendars.

حقيقات

* It will be seen that Mr. Davis's orthography is not very accurate.

† These are land, sea, and transit custom-house duties.

حقیقات بعضي زمین *Hukkeekaute baze zumeen.* State of rent-free lands.

جمع مقرري و استمراري *Jumma mokurrery o' istumrary.* An account of permanent or fixed payments.

واصل باقي *Wassul bakee.* Collections and balances.

حقیقات روزینه داران *Hukkeekaute rozumdaran.* State of public pensioners.

The records of the putwarees are as follow:—

1st. The *Mouzeenah* or *Rukbah bundee.*—An account of the total quantity of land belonging to the village, stating that which pays revenue, that which is rent-free, that which is appropriated, that which is cultivated, and that which is incapable of cultivation.

2d. *Nuklé puttahjaut.*—An abstract copy of agreements with every ryot, containing the number, as Nos. 1, 2, 3, and so on, the name of the ryot, the quantity of land and gross rent, in one line. In the next, the name of the field, its extent in beegahs, the rate per beegah, the total rent of each field. This is made out in June and July. Puttahs are not always executed; but this account protects the ryot from undue exactions.

3d. The *Tukmeenah* or *Kusserah.*—This is an annual inspection-statement of the quantity of land, the crops in kind, and in which harvest produced. First, the name of the ryot, extent of field, in which harvest cultivated, species of produce, name of the field and quarter (har) of the village; exhibiting at the end an abstract of the whole, under the heads of rent-free, jageer, fallow, payable

able in kind, ketwaree. This is of great consequence, as it may check all others. It contains the mauzenah in abstract at the bottom of it. This is partly made out after the Dussarah (October), for the khureef (winter) crop, and in April for the rubbeea (summer) crop; and at the end of the year (June) both accounts of inspection are united. This account exhibits the total cultivation by its different parts and kind of produce.

4th. *Mehr kuttee*, called also *Lugtewar*, also *Mehbawan*.—This is a kind of ledger, exhibiting (like No. 2) the number and name of the ryot, the number of beegahs and his total rent. Under this the harvests, as khureef and rubbeea, are entered. Under the head khureef are entered the name of the field, extent thereof, species of crop, rate per beegah, and total rent of the fields reaped in the khureef harvest: the same for such fields as are cultivated and reaped in the rubbeea harvest.

The difference, therefore, between this and the *Nukl-e puttahjaut* is, that it specifies the kind of produce and the harvest in which it is reaped; and thus it is useful to shew when the ryot can best pay, to ascertain the real value of the field, to enable the zumeendar to prohibit the repetition of searching or injurious crops.

5th. The *Tukavee account*, or account of advances.—This contains the names of the ryots who receive, the amount (and date) given, the interest at two anas per mensem, the total.

6th. The *Bhoalee*, *Buttaee*, or *Kunkoot*: that is, the account when the rent is paid in kind, *or in kind convertible into money*.—The *Bhoalee* account contains, first, the name

name of the ryot, the number of beegahs, the name of the field, the kind of grain, the total produce in maunds, the assl (original) share of the ryot, the assl share of government, the deduction taken from the ryot on account of charges. This added to the government share makes the total taken by government. Lastly, the total in money. Then, at the bottom, the total quantity of each kind of grain is taken at its own valuation, which makes up the total sum paid in money.

7th. The *Putthur*, or *Futthur*, or general *Toujhee*, or the *Jumma wassul bakee*.—This is an account containing the names of every ryot; opposite which the quantity of land, the amount of rent, the rusooms or extra dues, as d'hannee nemannee (half an ana) batta on rupees, tuccavee, former balance, total rupees, sum recovered, total balance. The names of such of those ryots as owe balances, who are dead or fled, are kept in this account till their balances are paid.

8th. The *Roz namah*, or day-book.—It is a cash account of receipts and disbursements, of whatever kind, whether of expenditure, or of payment of rent to government, balanced every day, and the balance only brought forward to the following day. This account also contains entries of produce in kind. Thus: "received from A, "five maunds of barley, at two maunds per rupee, two "rupees eight anas."

9th. The *Khutteeounee*.—This is an account of cash received from every ryot, containing a separate entry for each name and number, as "No. 20, sunkarsing;" the date of the payment, and total.

10th.

10th. *An abstract account of receipts and disbursements;* containing on one side, the total received under general heads, and on the other, the general items of disbursement, and balanced.

The canoongoes keep, as a check over the putwarees' or village accounts,—

1st. The *Mauzeenah.*

2d. The *Tuccavee account.*

3d. *Seeah,* daily or account of receipts from the malgoozars.

4th. The *Futthur,* or *Jumma wassul bakee,* shewing the demands, receipts, remissions, nankar, and balances.

From the nature of these accounts, it is obvious, I think, that, if regularly kept, little room for dispute could exist. But these officers, to be efficient, must be considered officers of government. It has been objected to this, that "when the putwaree ceases to be a servant of "the zumeendar, he will cease to be the depository of the "village accounts. Now the putwaree is often not entrusted with the accounts of the neechjote and chakeran lands; so he might remain unemployed, or only "get his information from the under proprietors."*

But there is no reason to fear these. Were those officers under the control of the collectors, and a regulation made holding the canoongoes' and putwarees' accounts as legal evidence in courts of justice, the zumeendars and cultivators, and all persons concerned, would soon find it for their interest to inspect and preserve their correctness. Those

* Minute of Governor-General, Lord Hastings, 21st Sept. 1815.

Those who feared oppression and undue exaction would doubtless not decline giving information and employing these accountants; and this would necessarily compel the zumeendar to do the same, and to see that the accounts were correctly kept. The establishment of such a body of *written evidence* (witnesses that could not lie) would, in the present state of morals in India, be of incalculable utility. This would be making the native system of administration available to some good purpose.

"The tepeekchy," says the Ayeen Akburee, "shall write "down whatever agreements are made with the husband- "man, keep separate accounts of the boundaries of each "village, draw out statements of the waste and arable "lands; to which he is to subjoin the names of the mun- "sif (appraiser), the land-measurer, the thanadar, the "husbandman, the naeks, or head-men of the villages, the "articles of cultivation, villages, purgunnah and harvest." The putwaree, or village accountant, "kept the accounts "of the husbandman's receipts and payments, of the quan- "tity of land cultivated by each villager: no village was "without one. That is, the advances which the ryot re- "ceived, the rent he promised to pay, the quantity of "land he agreed to cultivate, the kists he paid, and the "balances either for or against every ryot of the village; "a memorandum of which he is to furnish in writing to "every individual to whom it concerns."

Would not all this, imperfect as it is, almost stifle litigation? Where boundaries are defined, where accounts are regular and clear, there can be no dispute: at least none that may not be speedily and readily settled, both to the satisfaction of the judge and of the parties.

But the servants of government, it must be confessed, though

though they transact the whole of the business of the state, are, almost universally speaking, but too little informed of the customs of the people and of their antient usages; so that the bare suggestion of any thing like minute detail in the affairs of government, presents first to their minds the immense extent of country, to which such minutiæ must be applied, and they look upon the attempt in the same light as if they were desired to reckon every particle of sand on the sea-shore. It appears to them a vast expanse, full of unknown, perhaps unheard-of objects; and they treat the idea as visionary.

They forget, however, that by division and judicious classification, it is scarcely possible to conceive any thing that may not be investigated and subjected to regular and systematic control; that each, of themselves, will have only to act his own proper part in the general scene; and that before we can attain any thing like true knowledge, either in the moral or physical world, we must first decompose, reduce our materials to their primitive state, to ascertain the nature of the elements we are to act upon. When this is done, we can combine them at will, and make the most advantageous uses of them.

But that what I have suggested may not be deemed impracticable, even by Englishmen, we have only to recollect, as before stated, that much more *was* done by our own countryman, whom I shall again mention, being the first to accomplish the undertaking. The able and distinguished officer I allude to was Colonel Reade, in whose school was bred the no less distinguished manager of the Ceded Districts, Colonel Sir T. Munro, both of the Madras establishment; besides several distinguished civil servants who were educated under them.

Colonel Reade was put in charge of the Baramahal, a district consisting of no less than twenty-five purgunnahs, which paid a rent to government of 7,12,530 pagodas, or about twenty-five lacs of rupees. He first ordered the actual measurement of the district, ascertained the dimensions of its purgunnahs, villages, and farms, the quality of the different soils producing various articles of cultivation; classed these, and valued the yearly crops, which he divided according to the established rates of division, by means of the puteels or mukuddums, between the government and cultivator. The superficial extent of the district was 6,259 square miles; which, deducting 1,262, the area of unproductive hills, &c., left 4,997 miles, or 3,195,000 acres of plain, consisting of twenty-five purgunnahs, of 4,865 villages, peopled by 612,871 inhabitants; of which 85,227 were shudrs, or government farmers, and 17,314 possessing charity lands or private proprietary holdings officially, or by inheritance, or by grant. They had in the district 51,198 ploughs, 564,730 head of cattle, 63,339 sheep; cultivated acres only 1,125,025, little more than one-third of the superficies, which yielded in gross produce, chiefly in rice and other grain, annually, at the average of the local markets, 19,39,054 pagodas, deducting of seyur 57,425 pagodas. There was, besides, 140,593 acres capable of cultivation, but not cultivated. The rent paid to government was rather more than one-third, *viz.* 712,530 pagodas, or about five shillings per acre.

In the Ceded Districts, under Colonel Munro, the whole was measured and assessed, "village by village, field by "field. A census of the people was taken, shewing the "different castes; statistical tables were formed, shewing "the price of labour, subsistence, &c. The price of agri-

"cultural

" cultural labour was from four to five shillings per " month; the cost of subsistence of the first class (about " one-fourth of the whole) per head forty shillings per an- " num; of the second class (about one-half of the whole), " twenty-seven shillings; of the third class, consisting of " the residue, eighteen shillings per annum, for food, " clothing, and every requisite."*

Even in Bengal we have had individuals who have collected information of some importance. Mr. Colebrooke, in his Husbandry of Bengal, mentions an actual " census, " which gave, in 2,784 *mouzas*, or villages, occupying 2,531 " square miles, 80,914 husbandmen holding leases, 22,324 " artificers paying ground rent. The size of the villages " was estimated from knowing that 21,996 of them stood " on an area of 18,023 square miles, or about nine- " elevenths of a square mile to each. Estimates of the " population were attempted from a census of inhabitants " found in a few villages; the result gives 197 as the aver- " age, *viz.* 92 males and 87 females. The whole number of " *mouzas*, or villages, in Bengal and Behar is not less than " 180,000."† So 180,000 × 197 would give a population for those two provinces of 35,460,000 souls.

But Mr. Shakespear, superintendent of police in the Lower Provinces, gave in a statement to government, in the end of the year 1815, of the number of villages within the provinces of Bengal and Behar—not including Benares, but *including* 10,298 villages in Orissa (Cuttack), which Mr. Colebrooke did not, of course, reckon, because that province then belonged to the Marhattas. This statement was made on the authority of the police darogahs,

* See Minutes of Evidence, 1813. † Colebrooke.

gahs, as ascertained by them. The total is 150,748 villages in twenty-eight zillahs; giving an average of 5,383 villages to each zillah. So, taking Mr. Colebrooke's rate of population, *viz.*, 197 per village, 150,748 × 197 would give 29,697,356; from which deducting the proportion for Cuttack, 10,298 × 197 = 2,028,706, leaves for Bengal and Behar 27,668,650: exhibiting a difference between those two authorities of about eight millions in the estimate of two provinces!

Mr. Bayley, again, in his statistical sketch of Burdwan zillah, states the square miles at 2,400; the *mouzas*, or villages, at 3,496. The average number of houses in each village, seventy-five; and the average of persons in each family, at five and a half; Hindoos to Moohummudans, as five to one; males, 100 to 95⅝ females; the population at 1,444,487; number of inhabitants to a square mile, about600. Now, 75 houses + 5½ persons = 412½ total in each village, exceeding Mr. Colebrooke's average by 215½ persons per village: in fact, being eighteen persons more than double. But, in number of villages, Mr. Bayley falls far short of Mr. Colebrooke's and of Mr. Shakespear's average; though Mr. Shakespear states the number of villages in the zillah of Burdwan itself, of which Mr. Bayley speaks, to be the same number which Mr. Bayley makes it, *viz.* 3,496.

These instances, notwithstanding that their discrepancy shews inaccuracy, proves sufficiently the *practicability* of obtaining the most satisfactory information on every point required. There is no country in the world, perhaps, in which revenue and commercial transactions are more regularly and minutely recorded than in India. The poorest

poorest shopkeeper has his books; and may be seen, in every bazaar in India, bringing them up regularly every night. The Hindoo is proverbial for regularity of habit in every way. We must presume that information regarding agricultural and statistical matters is obtainable from him, these being his daily concerns and the most important matters of his life.

Even the superficial information obtained in Bengal is creditable to the individuals who obtained it: but it is obvious that it is far too superficial to be of any real use, and too uncertain to be made the foundation of any hypothesis; but still it shews that information may be obtained,

Take the district of Burdwan, for instance: there could be no difficulty in effecting an actual survey and measurement of it. The Baramahal, above-mentioned, is nearly three times its extent, being 6,259 instead of 2,400 square miles. Burdwan district is not two-thirds of the extent of the county of Perth, an actual survey of which was made by an individual (Stobie), who has published a map of the county, shewing every estate, village, and hamlet in it.

In the Baramahal and Ceded Districts we have seen the minutest survey and information obtained in the course of a very few years, proceeding entirely after the custom of the country; and, I may add, precisely as an officer of a Moohummudan government, following the principles and practice enjoined by his law, would have done. In proof of which I beg to refer the reader to the Moohummudan law itself, and to the instructions given by the Emperor Aurungzebe; in 1668 and 1676, to his governors and others, respecting the collection of the *Khurauj*

and the management of the accounts of the districts before noticed.

The great impediment, in all countries, to the decision of causes, is the difficulty of procuring satisfactory and clear evidence. In this country that difficulty is amazingly increased by the notorious want of credibility in oral testimony. Where prevarication is so prevalent, and there are even professional perjurors, the judge has not only to discriminate, as in other countries, what parts of evidence bear upon the question, but here, when he has done this, it will require infinitely more discrimination and infinite practical experience, to satisfy himself what part of it is true, what part is at all founded in truth but exaggerated, what is altogether false.

The necessity for written documents is therefore obviously greater in India than in our own country; and any expedient suggested with the view of multiplying them ought of all things to be encouraged.

Our India judges, both of the King's and of the Company's courts, have long invariably and loudly complained of the prevalence of perjury in their courts. To so great an extent does it exist, that they fairly declare they have no faith in oral testimony.

This want of veracity is a vice among the Asiatics which it was not left for us to discover. Although under our government its effects have been felt more severely than during that of our predecessors, because the English government admits, as equally good and equally credible witnesses, persons of all descriptions, of all castes, of all denominations, following the maxims of the English law. But even

even in England, where the standard of morals is so much higher than it is in India, so much higher than we can expect to raise it for ages in India, the necessity of cross-examination is so great, and so much is the talent for it in a lawyer prized, that he who excels is universally celebrated for it. Our India judges, from their imperfect knowledge of the multitude of dialects, and of the customs, manners, and ideas of the natives, are peculiarly ill-qualified for cross-examination, and rarely succeed in effecting any thing by it.

If with English law we could introduce English morals, the maxims of that law, which are founded upon them, might be maintained in India. In India, with so low a standard of morals for all ranks, and where, if I may so express myself, whole classes of society are in the eyes of the people, and even in their own estimation, infamous by birth, it appears to me quite a solecism in government to make no distinction between the veracity of one individual and that of another. There is, however, in reality, an immense difference, and will continue to be till a notable change take place in the state and condition of society.

In such a state of society as exists in our Asiatic dominions, it was a good precaution, perhaps, as established by the Moohummudan law, to take care that the character and credibility of a witness should be first certified; and really it seems to be not very unreasonable, when a man's life or property are at stake upon the word of another, that the person whose word is taken shall be *known* to be credible.

At all events, whether we follow the law of our prede-

cessors and practice of India, in the mode laid down by them for ascertaining the credibility of witnesses in every case, it certainly ought to be done when practicable. No judge ought to receive the testimony of a person in an inferior or degraded class of society, when other evidence is procurable; and with such witnesses it would be highly desirable to have others to speak to their probity. No objection could be made to such scrutiny, because it is conformable to the law and usage of the country; and I should think every upright man sitting in judgment would anxiously desire to see established the character of the witnesses whose testimony was to guide his decision. Professed perjurors could not maintain themselves, as they now do, about our courts, were they liable to have their credibility called upon for certification by credible and respectable persons.

The Moohummudan law of evidence provides for the depravity of society; and although the provisions it contains are not altogether satisfactory, yet the principle being admitted might be improved upon; and I have no doubt that some of those provisions might be made available with advantage. The Moohummudan law, with deference be it spoken, is not so absurd as the English law, which admitted of compurgators to swear to the truth of the testimony *after* it was given: but it requires that the general character for credibility of the witnesses be vouched by persons themselves credible, *before* the evidence be received.

With such preventive measures as a body of registered facts, such as that above pointed to, available as evidence when required, and such precautions as I allude to, to secure the most upright oral testimony procurable, I cannot but think

think that litigation would be not only greatly diminished, but that judicial proceedings would be greatly simplified; for it is the conflict between suspicious testimony for both sides, that constitutes the chief intricacy of most causes that come before our courts.

It remains now to notice the mode of administering the law. But before I suggest any expedient for its more effectual administration, I must premise, that in what I am to say, when I speak of a judge, I do not understand an officer such as Mr. Stuart's judges, whom he states to be "destitute of all legal knowledge," but men who are really acquainted with the law they administer. It is, indeed, a perfect solecism in language to speak of any other as a judge. A personal knowledge of the law he administers is an indispensable qualification of a judge: without this, it is really idle to talk of courts at all, or of any amendment in the administration of the laws.

Holding the judges, then, to possess a competent knowledge of the law, I should think it highly desirable that the pleaders be also men who are educated lawyers, and that none should be suffered to practise in any court till their qualifications as lawyers, as well as their moral character, have been duly certified.

In India the native pleaders have little or no knowledge of the law. They are, indeed, a distinct class of society from the native judges. I believe no instance was ever known in India of a promotion from the bar to the bench.

Having, as briefly as the subject would admit, carried my remarks through the preliminary, yet essential requisites, I now come to the actual administration of justice: "What

" What is the best mode of carrying into effect the due " administration of justice to our Asiatic subjects?" This question involves two points, *viz.* first, the most perfect; secondly, the speediest mode of its administration.

The tardiness with which the law is administered has been hitherto the subject of complaint, more than the want of a just and perfect administration: not, as I believe, that tardiness is the only or the principal ground of complaint, but because it is a defect open to the eyes of the most humble in point of intellect: the intrinsic justness, or otherwise, of a decision is only known to the individuals whom it concerns.

The stability of our government, the character of our country, however, are at stake, more upon the former (the intrinsic justness of decision) than upon the latter of these two grand desiderata in our Indian government.

It will tend to throw considerable light on this subject, to advert to the number of causes which are decided or disposed of by the different courts, European and native. It appears, from a report of the judges of the Sudder Dewannee and Nizamut Adawlut, dated the 9th March 1818, that the number of regular civil suits depending before the different European and native tribunals, on the 1st of January 1817, was as follows:

Sudder

| | No. on the Files, Year 1816. | No. decided in 1816. |
|---|---|---|
| Sudder Dewannee Adawlut ..... | 442 ..... | 108 |
| Provincial Courts of Appeal and Circuit..... | 3,581 ..... | 1,131 |
| Zillah and City Courts ..... | 12,387 ..... | 6,618 |
| Registers' Courts ..... | 8,339 ..... | 12,066 |
| Sudder Ameens } Native Courts | 29,041 ..... | 38,922 |
| Moonsifs..... } Native Courts | 38,730 ..... | 72,055 |
| Total number of causes depending in the courts of the Bengal Presidency on the 1st Jan. 1817, and decided in 1816. | 92,520 ..... | .....130,900 |

The following statement, from the same authority, shews the number of causes disposed of by decision, adjustment, or nonsuit, for four years, ending December 1816:

| Years. | Courts. | Causes. |
|---|---|---|
| 1813. | Sudder Dewannee Adawlut ..... | 72 |
| | Provincial Circuit Courts..... | 1,128 |
| | Zillah ..... do. ..... | 8,208 |
| | Registers' ..... do. ..... | 7,585 |
| | Sudder Ameens ..... | 22,602 |
| | Moonsifs..... | .....136,200 |
| | Total..... | 175,795 |
| 1814. | Sudder Dewannee Adawlut ..... | 69 |
| | Provincial Circuit Courts..... | 1,096 |
| | Zillah ..... do. ..... | 6,070 |
| | Registers' ..... do. ..... | 7,833 |
| | Sudder Ameens ..... | 22,671 |
| | Moonsifs ..... | .....127,471 |
| | Total..... | 165,210 |

| Years. | Courts. | Causes. |
|---|---|---|
| 1815. | Sudder Dewannee Adawlut | 85 |
| | Provincial Circuit Courts | 1,106 |
| | Zillah | 5,744 |
| | Registers' | 8,953 |
| | Sudder Ameens | 26,702 |
| | Moonsifs | 93,947 |
| | Total | 136,537 |
| 1816. | Sudder Dewannee Adawlut | 108 |
| | Provincial Circuit Courts | 1,131 |
| | Zillah | 6,618 |
| | Registers' | 12,066 |
| | Sudder Ameens | 38,922 |
| | Moonsifs | 72,055 |
| | Total | 130,900 |

*Average Number of Causes decided annually by the different Courts for Four Years.*

By European Judges:

| | | |
|---|---|---|
| Sudder Dewannee Adawlut | 84 | |
| Provincial Circuit Courts | 1,116 | |
| Zillah | 6,660 | |
| Registers' | 9,108 | |
| | | 16,968 |

By Natives:

| | | |
|---|---|---|
| Sudder Ameens | 27,724 | |
| Moonsifs | 107,418 | |
| | | 135,142 |
| Total annual average | | 152,110 |

| | |
|---|---|
| The average of 1815 and 1816 shews the number of criminal trials referred to the Court of Sudder Dewannee and Nizamut Adawlut to be..... | 378 |
| Average civil suits disposed of annually in four years ..... | 84 |
| Total trials and civil causes decided in the Sudder Dewannee and Nizamut Adawlut yearly ..... | 462 |

But the average number of civil appeals to the Sudder Dewannee Adawlut, for sixteen years ending in 1814, was only 66 yearly, according to Mr. Stuart's statement. Of these the average number decided was $50\frac{3}{4}$ yearly. The average number of criminal trials submitted during those sixteen years was $311\frac{1}{2}$ yearly; and the average number decided was $296\frac{3}{16}$ yearly. But on 8th January 1818, "the court had the satisfaction of reporting, that at the "beginning of the present year, 1818, not a single cri- "minal trial was depending before the court."*

From these statements it appears, that four, and occasionally five judges in the Sudder Dewannee and Nizamut Adawlut, have been occupied in deciding about seventy civil causes annually, on an average of eighteen years, and in revising about from three hundred to three hundred and fifty criminal trials. I call it *revising*, for there are really no trials conducted in that court. The trials are conducted in the courts of circuit; and only the capital and long transportation cases, where conviction has been adjudged, are submitted to the revisal of the Nizamut court.

The

* Report of the Sudder Dewannee Adawlut, p. 58.

The business before this court has been stated by many, and particularly by Mr. Stuart, to be so heavy, as to render the institution of another similar one absolutely necessary to the due administration of justice.

I believe that the business of the court of Sudder Dewannee Adawlut, as it now exists, and has done for many years, to be as described by Mr. Stuart.

To facilitate the administration of justice, however, instead of multiplying such courts as the Sudder Dewannee and Nizamut Adawlut, I am of opinion that the one now in existence ought to be abolished, and the enormous expense attending it distributed in another way, to secure to the people immediate, instead of protracted justice, administered in their vicinity, instead of making them go, in fact, to a foreign country in quest of it; for to an inhabitant of Dehlee, or of the Himalayah mountains, Calcutta may well be called a foreign country.

In my humble apprehension, the principle on which our Indian courts are established, that progressive system of appeal from the lowest upwards, is erroneous. It holds out a temptation to litigate, by multiplying the chances of success; and to the wealthy litigant, with a bad cause, it furnishes the means of distressing his opponent, though he himself may be but hopeless of ultimate success.

This system of eternal appeal, this ordeal, through the different courts, consumes justice itself, and renders it a perfect *caput mortuum*, at last not worth having: engendering, however, a spirit of litigation, unknown in India till our time. Thus our most benevolent intentions have been

been attended with the very reverse of success. A long purse and a bad cause, doubtful issue, "no fixed principles of decision" (as Mr. Stuart says), and delay, chiefly occasioned by the power of going through so many courts, are the great parents of litigation. He whose cause is good will never *choose* to become a litigant. Make the decision speedily attainable, and thus take away from the wealthy litigious the power of prolonging his repast, and you diminish his pleasure so much, as to render it scarcely worth his while to desire it. To admit of appeal from one court to another, whose principles of decision are avowedly the same as those of the court appealed from, supposes not only error but incapacity in the inferior court; and, forsooth, neither error nor incapacity in the superior. It is not always so in India.

It is not by multiplying courts, but by simplifying the system, and by selecting fit persons for judges, I apprehend, that justice can be best administered to our Asiatic subjects.

To be particular. I hold the principle of revisal, in criminal convictions, not only quite unnecessary, but contrary to the best established maxims of criminal jurisprudence. To try a criminal in his absence, and in the absence also of his accusers and witnesses, on proceedings held, and on evidence taken in the absence of the judges, who never see either the accused, the accuser, or the witnesses, is no improvement, certainly, in judicial administration.

It is true, the Nizamut Adawlut cannot condemn those whom the circuit court has acquitted, because the acquittals are not referred to them. But they may still affirm a sen-

a sentence of conviction which they would not have originally passed; and they may acquit some whom they would have condemned, had the trial been held in their presence; and thus again let loose upon the people, the atrocious disturber of the peace of society.

It ought never to be forgot, especially in the dispensation of criminal law, that no human being is capable of representing to another the impression made upon himself by a third person, either in asserting his innocence if the accused, or in giving his evidence if a witness. When persons communicate with one another *viva voce*, besides the words that are uttered, the eyes and the ears have their share in the converse. The countenance, the voice, the colour, the action, the manner, have so great a share in communication between man and man, that the most accurate account that can be written of it must fall far short of the original, supposing the language uttered to be the same as that written. How little satisfactory, then, must be the proceedings and evidence transmitted to the Nizamut Adawlut through the medium of a foreign language, the Persian, which neither the accused nor witnesses used! nor was the language they did use perhaps sufficiently understood by the interpreter and recorder, or the language transmitted fully known by those to whom it was transmitted. I may also add a doubt, whether the liability to revisal may not often render the inferior judge less careful on the trial than he would be, did he know that the life of a fellow-creature rested, at the last resort, on his own judgment alone.

I hold it, therefore, to be indisputable, that the power of revisal of criminal trials by the Nizamut Adawlut may be dispensed with, with advantage to the due administration

tion of justice; and that the judges of the courts of circuit being competent persons, may be safely entrusted with the conduct of such trials, reporting to government through the judicial secretary, and if deemed proper, receiving warrants for the execution of sentences through him. The revisal of criminal trials is calculated by Mr. Stuart to take up one-third of the time of the court. Here, then, is an easy, and, in my estimation, an advantageous mode of lightening the labour of that court.

And with respect to appeals in civil causes, we have seen that the whole number brought annually does not exceed seventy or eighty. A proportion of these are doubtless to that extent (*viz.* above £5,000 sterling value), which, by act of parliament, are appealable from the sudder to the King and council; and consequently, as to them, the decree of the Sudder Dewannee Adawlut can only be considered as interlocutory. Whether the parties abide by it or not, it matters not, as to the point now before us. If the parties are satisfied with the decree, it being the decree of the highest tribunal in this country, though not the last resort, their being so satisfied would afford an argument to shew that the decree of a provincial court, were there no higher tribunal in this country, would be equally satisfactory.

Suppose the causes appealed to the Sudder Dewannee Adawlut annually to be seventy, and that thirty of these are appealable from the decision of that court to the King, the appeal to his Majesty might be made to lie, with equal advantage, I presume, from the provincial court, the judges of both being equally competent. The remaining forty causes are all which are annually decided by

the sudder *in the last resort.* To this number we shall speak.

We are not to conclude that all those forty causes are erroneously decided in the inferior courts; nor are we to presume that all those which may be reversed by the sudder are rightly decided. We shall suppose, therefore, three-fourths of the appeals to be affirmed; so that thirty of the forty causes might, so far as the advancement of justice is concerned, as well not have been appealed. The remaining ten causes may be put down as doubtful. If six are reversed rightfully, four will probably be reversed wrongfully; leaving, on the whole, a balance in favour of justice of *two causes* annually, on decisions *of the last resort.*

So much for decisions of the last resort; and if we allow the same proportion to the thirty interlocutory decrees, *viz.* two-fortieths, that will give one and a half, and the whole will amount to three and a half causes yearly; so that we can scarcely raise the maximum of advantage to the cause of justice obtained by the existence of the Sudder Dewannee and Nizamut Adawlut beyond the decision of three or four causes annually.

Here, then, for the sake of affording the people of India another chance of a more just decision of three or four suits annually, a court is maintained, to which, in principle, I have stated the above objections, and at an expense to the state of £50,000 or £60,000 sterling annually.

But supposing that a few of the seventy causes appealed annually

annually to the sudder were erroneously decided, in the lower courts, it may be fairly questioned whether prompt justice, easily obtained in all the other causes, would not be far more than an equivalent to the people.

I am, however, of opinion, that the chances are much in favour of the local courts for justness of decision. Local knowledge, recency of the transaction, matter of decision, oral and *viva voce* testimony, the appearance of the parties and witnesses, the selection of the individuals who are to give evidence, selected for their respectability of character; these, and many other most essential circumstances, in fact, cast the balance much in favour of the local courts.

What is called the "miscellaneous business" of the present Sudder Dewannee Adawlut is the third and last branch of the duty of that court. Mr. Stuart calculates that this business occupies a third of the time of the court. It is composed chiefly of a species of general superintendence of judicial matters and police, answers to references from the subordinate courts. But as much of this business must, after all, be referred by that court to the decision of government, through the judicial secretary, that officer might as well receive it from the referring-court direct; and thus, as I doubt not he would be perfectly competent to relieve the sudder of all the anomalous correspondence here alluded to.

Taking all these circumstances into full consideration, therefore, it appears to me by no means impossible that the present Sudder Dewannee and Nizamut Adawlut, might be, with great advantage, totally abolished.

Secondly, I would also suggest, that no criminal trials be referred by the provincial courts, except to the Governor-General in council, and then only in cases of convictions; the judges stating when they may see grounds for mitigation of punishment or pardon.

Thirdly, That in civil causes, no appeals be received from the provincial courts, where the subject matter of litigation does not amount to Sicca Rupees 100,000; and that those appeals shall be made to the Governor-General in council, and not, as at present, to the King in council. That no references of any cause from the native courts, shall be made to his Majesty and council; a tribunal which neither can itself be supposed to know any thing of the law by which its decision ought to be guided, nor can it have the means of deriving a knowledge thereof from others, as it always has in appeals, in cases of English law; whereas the local government of the country, having several of its members servants of the Company in India, may be supposed to be acquainted with the laws of India: at all events, have every opportunity of consulting those who are known to possess that knowledge.

Fourthly, In the event of the abolition of the Sudder Dewannee Adawlut, the judicial secretary to government should possess, as an indispensable qualification, an intimate knowledge of the law of India; and, if found necessary, that an officer be added to the establishment of government, as an Indian law adviser, who shall be known also to possess the above qualification.

The provincial courts come next under consideration. These courts are in number six, and consist of four judges each. Before them, all criminal trials are brought. Their jurisdiction

jurisdiction extends to all civil suits, and their decision is final in causes not exceeding Sicca Rupees 5,000. In criminal matters they may acquit indefinitely; but all convictions involving life or perpetual imprisonment, or transportation, must be referred to the Nizamut branch of the Sudder Adawlut.

Under the Bengal presidency, there are six provincial courts, four of which are for the Lower Provinces below Benares, and the other two for the Upper Provinces, including Benares, *viz.* Calcutta, Dacca, Moorshedabad, Patna, Benares, Barelly.

The average annual number of civil suits decided by those six courts, for four years, ending with 1816, was, as above, 1,116, averaging about 178 causes in every court annually.

But this average does by no means exhibit the proportion of business before any given court.

The following table will tend to shew this; and it will be observed to exhibit, in a striking degree, the spirit of litigation that prevails in the Lower Provinces.

On the first January 1815, the number of appeals depending before the Sudder Dewannee Adawlut, from the several provincial courts, was respectively as follows, shewing also the number received within the last six months of 1814, from each:

| COURTS. | Appeals depending. | | Appeals received between 1st July 1814, and 1st Jan. 1815. | |
|---|---|---|---|---|
| Upper Provinces: | | | | |
| From Barelly ..... | 22 | | 4 | |
| .....Benares ..... | 52 | | 13 | |
| Carried forward ... | —— | 74 | —— | 17 |

| COURTS. | Appeals depending. | | Appeals received between 1st July 1814, and 1st Jan. 1815. | |
|---|---|---|---|---|
| Brought forward ... | | 74 | | 17 |
| Lower Provinces: | | | | |
| From Patna ..... | 130 | | 23 | |
| ..... Moorshedabad ..... | 45 | | 7 | |
| ..... Dacca ..... | 77 | | 15 | |
| ..... Calcutta ..... | 85 | | 14 | |
| | | 337 | | 59 |
| Grand Total ..... | | 411 | | 76 |

Average in each, $68\frac{1}{2}$ *

Thus it appears, that whilst the revenue (and probably the population) of the Upper, to that of the Lower Provinces, is, as in the above-mentioned report, stated as 2,63,67,368 to 2,88,19,069 rupees (now three lacs of rupees), the proportion of appeals shews that government is burdened with litigation in the Lower Provinces, more than in their newly-acquired possessions, in the proportion of 337 to 74, or nearly as five to one.

*Table, shewing the Number of Regular Suits depending before the whole of the Courts, both of European and Native Judges, under the Bengal Presidency, on 1st Jan.* 1817, *in the Lower and Upper Provinces respectively.*†

| COURTS. | Upper Provinces. | Lower Provinces. | Total of each Court. |
|---|---|---|---|
| European Judges: | | | |
| Provincial ..... | 603 | 2,978 | 3,581 |
| Zillah and City Judges | 2,668 | 9,699 | 12,367 |
| Registers ..... | 1,294 | 7,045 | 8,339 |
| | 4,565 | 19,722 | 24,287 |
| Native Judges: | | | |
| Sudder Ameens ... | 4,114 | 24,927 | 29,041 |
| Moonsifs ..... | 3,700 | 35,030 | 38,730 |
| Total ..... | 12,379 | 79,679 | 92,058 |

* Mr. Stuart, p. 44. † Printed Accounts laid before Parliament, 1812.

Exclusive of 442 appeals depending in the Sudder Dewannee Adawlut; exhibiting a proportion of litigation in the Lower, compared with the Upper Provinces, of upwards of *six* in the former to *one* in the latter; a fact which, I fear, does not exhibit a very flattering proof of the progressive improvement of our judical system.

The grand stock whence this odious spirit of litigation sends forth its ramifications is situated in his Majesty's good city of Calcutta; and I have no doubt that the parent tree is sufficiently healthy to extend itself in good time over the whole of our Indian dominions.

The habit of litigating (for it has now become a habit) among the natives in, and in the vicinity of Calcutta, is prevalent beyond all belief.

The following statement will shew this; whilst it will afford some consolation to those who, contemplating the enormous number of ninety-two thousand suits depending in the courts of the provinces, may be inclined to despair of ever attaining any thing like a regular administration of justice for India, by shewing how easily a very long file may be got over.

In the Court of Requests of Calcutta, consisting of three commissioners, a court having jurisdiction (only within the limits of the town of Calcutta) in debts and demands to the amount of 250 rupees only, the number of causes instituted in one month, the month of January 1819, was 3,672. So 3,672 + 12 = 44,064 annually, equal to about half the whole litigation of the Bengal presidency.

| | |
|---|---|
| Of these ..... | 3,672 causes, there |
| were compromised or adjusted, before decision..... | 2,416, or two-thirds. |
| Remained for adjudication ... | 1,256, or one-third. |

| | Causes. |
|---|---|
| Brought forward..... | 1,256 |
| Decrees, defendants having absconded.... | 111 |
| Non-suits, plaintiffs not appearing..... | 155 |
| Judgments for plaintiffs on confession..... | 97 |
| Deduct on proceedings held, but without litigation..... | 363 |
| Total litigated..... | 893 |

These were disposed of as follows:

| | |
|---|---|
| Exparte judgments for plaintiffs..... | 167 |
| Judgments for ditto, on issue joined*..... | 449 |
| Judgments for defendants..... | 252 |
| Total decided..... | 868 |
| Remain undecided for cause shewn (1st August 1819) ..... ..... | 25 |

*Note.*—By proclamation, in November 1819, the jurisdiction of the Court of Requests has been extended to 400 rupees.

If of the 92,058 causes on the files of the courts beyond the metropolis, especially if of the 67,771 causes of small amount depending before the native commissioners throughout the country, the same proportion of them, *viz.* three-fourths, are so easily adjusted as the above on the files of the Court of Requests, the rolls of the courts would

* Of these 210 were founded on bonds, notes of hand, and written documents, other than open accounts.

would not be so formidable. So, also, if the judges of the Calcutta Court of Requests are able to decide, justly, so great a number of litigated causes as 868 monthly, or 10,416 annually, that is, 3,472 to each judge in the capital, or about eleven causes daily, we might look with less dismay upon the files of the courts in the provinces. The number of courts held by European judicial officers, zillah judges, registers, joint registers, and magistrates, exceed one hundred; which, if we take the whole number of causes annually depending before all our provincial courts, both European and native, at 92,000, laying aside the native judges altogether, would leave about 900 for each European judicial officer's court to decide annually, or about three per day; whereas eleven are, as above, decided by each judge of the Calcutta Court of Requests daily. But if we take the whole of the Company's European judicial servants, about one hundred and eighty, the above number of suits will give only 511 annually to each, or daily about one and three-fourths, instead of eleven, as above.

The country under the Bengal presidency may extend to about 260,000 square miles.*

| | Square Miles. |
|---|---|
| Bengal, Behar, and Benares, and Midnapore | 162,000 † |
| Bundlekund | 10,000 |
| Upper Dooab, and Agra and Dehlee | 25,000 |
| Cuttack | 10,000 |
| Allahabad, Rohilkund, Lower Dooab | 53,286 |
| Total ..... Square Miles | 260,286 |

Take

* This calculation was made before the late conquests.

† Rennell.

Take the population, per Mr. Colebrooke's estimate and census, at 203 per square mile, it would give a tota number of inhabitants of 52,830,000, exclusive of the inhabitants of cities and considerable towns, as those were excluded by Mr. Colebrooke.

Suppose then the population is, in even numbers, fifty-three millions under the Bengal presidency. There are forty-five zillah and city judges, which for 260,000 square miles gives one judge to a space of 57 × 100 miles, or 5,700 square miles, and to 1,177,777 of population.* But suppose there are forty-two zillah judgeships, and that six of these judgeships (exclusive of the cities) are put into one circuit, it would give seven circuits, each of an area of 150 × 250 square miles, 37,000 only; not four times the extent of one English county, Yorkshire, which is 10,350 square miles. So that were the local position of the courts judiciously selected, their distance from the extreme limits of their jurisdiction need not exceed from 70 to 125 miles, or from 35 to 60 coss: a distance, in India, short enough to render courts of appeal sufficiently easy of access.

There are, at present, under the presidency of Bengal, six district or provincial courts of appeal and circuit. Of these there are four in the Lower Provinces, *viz.* Calcutta, Dacca, Moorshedabad, Patna, each of which contain the following cities and zillahs; and, according to the police returns, have the following number of villages under their jurisdiction:

*Calcutta:*

* The extent of England and Wales is stated at 57,960 square miles, and the population at 10,150,615 souls, giving 175 inhabitants to the square mile.

| | No. of Villages. | |
|---|---|---|
| *Calcutta:* | | |
| Burdwan | 3,496 | |
| Hoogly | 4,934 | |
| Jungle mehals | 4,241 | |
| Midnapore | 10,675 | |
| Cuttack | 10,298 | |
| Nuddea | 4,784 | |
| Twenty-four pergunnahs | 2,907 | |
| Suburbs of Calcutta | 763 | |
| | | 42,098 |
| *Dacca:* | | |
| City of Dacca | 2,594 | |
| Dacca Jelalpore | 2,713 | |
| Mymen Sing | 8,667 | |
| Shylet | 9,800 | |
| Tipperah | 6,203 | |
| Chittagong | 1,307 | |
| Backergunge | 2,051 | |
| Jessore | 4,775 | |
| | | 38,110 |
| *Moorshedabad:* | | |
| Moorshedabad, zillah and city | 2,855 | |
| Purneah | 4,785 | |
| Dinagepore | 12,315 | |
| Rungpore | 5,788 | |
| Ragashye | 8,710 | |
| Beerboom | 5,129 | |
| | | 39,582 |
| *Patna, inclusive of Ramgurh:* | | |
| Patna, zillah and city | 1,069 | |
| Behar | 5,541 | |
| Shahabad | 4,507 | |
| Tirhoot | 7,223 | |
| Carried forward | 18,340 | 119,790 |

Sarun

| | No. of Villages. | |
|---|---|---|
| Brought forward ..... | 18,340 | 119,790 |
| *Patna, &c.*—(continued) | | |
| Sarun ..... | 7,051 | |
| Bajulpore ..... | 5,567 | |
| Add for Ramgurh the average of the whole ..... | 5,383 | 36,341 |
| Total number of villages in the four Lower Provinces ..... | | 156,131 |
| Average villages under one provincial court | | 39,032¾ |

I have here added Jessore to the Dacca division, and Bagulpore to that of Patna, to make the average number of villages in each circuit more equal than they are as at present settled.

The criminal trials at the circuits of the four courts of the Lower Provinces, for five years ending with 1807, averaged annually 5,831: about 1,400 for each circuit, or 700 half-yearly; one half of which may be convictions.*

And with respect to civil suits, it is to be observed that in a population such as that of India, where so many exist upon the precarious earnings or collections of the day, and where so a small proportion of the people have any property, no estimate of the probable amount of litigation can be formed on the basis of population. Property alone is the subject of litigation. The number of persons that may become litigants must therefore depend on the amount of those who possess property, and may therefore be guessed at from what follows.

Mr.

* Fifth Report.

Mr. Colebrooke* states, that by an actual census, 80,914 husbandmen holding leases, and 22,324 artificers paying ground-rent, were found in 2,784 villages. So, if we take these two classes together in round numbers at 100,000, the number per village will be about $35\frac{3}{4}$; and the total number of villages in the above four provinces being 156,131, will give us about 5,600,000 persons in the Lower Provinces below Benares, who may be considered to possess propery, that may become the subject of litigation, or to each of the four provincial courts 1,400,000 persons who may become litigants.

That this number, however, is much too high may be shewn thus. We must suppose all leaseholders and artificers paying ground-rent to be heads of families; and if we allow even five persons to a family, it would give $5 \times 5{,}600{,}000 = 28{,}000{,}000$: a population of twenty-eight millions of these two classes of society alone, *viz.* of husbandmen and artificers paying ground-rent, leaving out even artificers who do not pay ground-rent, labourers and servants of all descriptions, merchants, shopkeepers, and all the other denominations of the people. Mr. Colebrooke's calculation we must therefore lay aside.

In the Ceded and Conquered Provinces, the number of persons holding engagements for land directly from government was, in the year 1815, forty-five thousand. Colonel Reade's census of the Baramahal gives of husbandmen, shudurs, or government farmers..... 85,227

Carried forward..... 85,227

besides

* Husbandry of Bengal.

| | |
|---|---|
| Brought forward..... | 85,227 |
| besides possessors of charity-land and private property lands ..... | 17,314 |
| Total husbandry class..... | 102,541 |
| to a population of 612,871, about one-sixth of tenantry. To which, if we add one-fourth for artizans, as above ..... | 25,635 |
| will give a total of..... | 128,176 |

There were 4,865 villages, however, so that the number for each village will be about 26⅓: which for the above number of villages in the four provinces, 156,131, will reduce the number of persons of the above description from 5,600,000 to 4,105,000 (which is still far too many), or to each of the four provincial courts, 1,026,250 persons who may become litigants. But if we deducted one-fourth from this, the number would be nearer the truth; and it would give, by the above calculation of five to each family, a population of 15,393,750 of persons of those two classes of society alone. If we take this, we shall then have about 770,000 persons who may be litigants for each of the four provincial circuit courts of the Lower Provinces.

For the Upper Provinces, including Benares, three courts of appeal and circuit would perhaps suffice; to be fixed at the following places, *viz.* Allahabad, Furrukhabad, Meerut; and the whole circuits, both of the Lower and Upper Provinces, would stand thus:

*First Circuit.*

*First Circuit.*

| | No. of Villages in each Zillah. | No. of Villages in each Circuit. |
|---|---|---|
| Calcutta: | | |
| Calcutta, twenty-four pergunnahs and suburbs | 3,670 | |
| Hoogly | 4,934 | |
| Nuddeah | 4,784 | |
| Burdwan | 3,496 | |
| Jungle mehauls | 4,241 | |
| Midnapore | 10,675 | |
| Cuttack | 10,298 | |
| | | 42,098 |

*Second Circuit.*

| | | |
|---|---|---|
| Dacca: | | |
| Dacca and Dacca Jelalpore | 5,307 | |
| Mymun Sing | 8,667 | |
| Shylet | 9,800 | |
| Tippera | 6,203 | |
| Chittagong | 1,307 | |
| Backergunge | 2,051 | |
| Jessore | 4,775 | |
| | | 38,110 |

*Third Circuit.*

| | | |
|---|---|---|
| Moorshedabad: | | |
| Moorshedabad, zillah and city | 2,855 | |
| Purneah | 4,785 | |
| Dinagepore | 12,315 | |
| Rungpore | 5,788 | |
| Ragshye | 8,710 | |
| Beerbhoom | 5,127 | |
| | | 39,582 |

*Fourth Circuit.*

| | | |
|---|---|---|
| Patna: | | |
| Patna, zillah and city | 1,069 | |
| Behar | 5,541 | |
| Carried forward | 6,610 | 119,790 |

| | No. of Villages in each Zillah. | No. of Villages in each Circuit. |
|---|---|---|
| Brought forward..... | 6,610 | 119,790 |
| Patna—*(continued.)* | | |
| Shahabad ..... | 4,507 | |
| Tirhoot ..... | 7,223 | |
| Sarun ..... | 7,051 | |
| Baglepore ..... | 5,567 | |
| Ramgurh, take at average..... | 5,383 | |
| | | 36,341 |
| *Fifth Circuit.* | | |
| Allahabad: | | |
| Allahabad ..... | 6,329½ | |
| Benares (not known, but take average of Lower Provinces)..... | 5,383 | |
| Mirzapore (not known, take average) | 5,383 | |
| Juanpore (not known, take average) | 5,383 | |
| Goruckpore ..... | 11,617 | |
| | | 34,095½ |
| *Sixth Circuit.* | | |
| Futtyghur: | | |
| Furruckabad ..... | 2,880¾ | |
| Caunpore ..... | 3,439 | |
| Banda or N. Bundlekund ..... | 2,493 | |
| Barelly (not known, but take average of Upper Provinces)..... | 4,760 | |
| Etayah ..... | 4,014 | |
| | | 17,585¾ |
| *Seventh Circuit.* | | |
| Meerut: | | |
| Agra (not known, but take average of Upper Provinces) ..... | 4,760 | |
| Allyghur ..... | 4,529½ | |
| Moradabad ..... | 9,052¾ | |
| Carried forward..... | 18,342¼ | 207,812¼ |

North

| | No. of Villages in each Zillah. | No. of Villages in each Circuit |
|---|---|---|
| Brought forward..... | 18,342¼ | 207,812¼ |
| *Seventh Circuit—(continued).* | | |
| Meerut—*(continued).* | | |
| North Suharanpore ..... | 1,753 | |
| South Suharanpore ..... | 1,495 | |
| Dehlee (not known, but take average of Upper Provinces)..... | 4,760 | |
| | | 26,350¼ |
| Grand total villages..... | | 234,161½ |

Thus it would seem that seven courts, having jurisdiction as above, would be fully sufficient for the dispensation of justice in the first resort, in important causes in appeal, and for holding the criminal courts of sessions and of circuit throughout the whole of the Bengal presidency. But for the better performance of the business of the circuit, to ensure the presence of three judges in court for the decision of civil causes, for the review of criminal matters, and the general superintendence of the police, five judges should be the number attached to each court of circuit, instead of four as at present: two of whom to take the circuit in opposite directions, which would give each the circuit of three zillahs, and render the business sufficiently easy to be performed without any risk of want of consideration from too great hurry to get over a tedious and heavy duty.

One thing which contributes to make the circuits in India so irksome is the extremely tedious mode of travelling. The journey from one seat of court to another, at the rate of twelve, or at most sixteen miles a day, makes what in England would be termed a very short circuit, in India a very long one.

I have already suggested that the provincial courts ought to be the courts of last resort, unless in very special and important causes; and for these, that an appeal should lie to the Governor-General in Council. These courts ought also to be vested with special power with respect to the police, in preserving the tranquillity of the country; and might be expected to bring to the notice of government all circumstances which should come to their knowledge relative to the good government of their district, in whatsoever department such circumstances might arise.

At present the provincial courts are, I fear, held in but very little estimation, either by the natives or by the judicial branch of the service generally. The reason seems plain enough: they are really vested with very little power; none at all, indeed, unless in cases of a comparatively trivial nature. The more severe punishments are beyond their jurisdiction, and the more important causes are appealable from them: *quoad these*, therefore, the courts of appeal are little better than offices for the transmission of such causes to a higher authority. The respect accorded to courts so constituted must be secondary. A dernier resort jurisdiction given them, equal to that now belonging to the Sudder Ádawlut, would raise the provincial courts in the estimation of the people, and give them a degree of weight in the provinces, which would render them instruments highly valuable in the administration of the government in every department, generally; and would be attended with the most beneficial effects, in improving and facilitating the administration of justice in particular.

I would therefore suggest:

1st.

1st. That the present courts of appeal and circuit be abolished.

2dly. That the Conquered and Ceded Provinces, the province of Benares, Behar, Bengal, and Orissa, be divided into seven separate and distinct jurisdictions.

3dly. That a court, denominated a Dewannee and Nizamut Adawlut, consisting of one chief judge and four puisne judges, be established in each province.

4thly. That the jurisdiction of these courts be limited to their own province, respectively: in which they shall be supreme, both in civil and in criminal matters, except in very peculiar or important causes, when an appeal shall be admitted to the supreme government; who might, besides the opinion of their own legal advisers, call for that of any number of the ablest judges, selected from the different courts above mentioned, to assist them in the decision. But that in all personal actions, where the amount disputed is under 100,000 sicca rupees, their decision shall be final.

5thly. That causes of an important nature, or of the value of 20,000 rupees, or upwards, be instituted in these provincial courts only; and that appeals be received from the inferior courts, if of a special nature, whatever the amount in dispute may be; and in all other causes of the value of 5,000 rupees or upwards.

6thly. That these courts, in their nizamut department, hold a sessions, at regular and short intervals, for the trial of all criminal offences committed in any zillah, the court of which is situated within the distance of thirty miles. The sentence of the court at sessions to be final in capital cases of conviction; reporting for the orders and warrant of the Governor-General in Council previous to execution; and submitting for the consideration

ration of that high authority, any circumstances which might be deemed extenuatory of the offence, tending to mitigate punishment or to call forth clemency.

7thly. That the puisne judges of each court shall perform the duties of the circuit twice a year, or oftener if necessary, two going on their respective circuits.

8thly. That those courts be vested with the control of the police within their respective jurisdictions; or the chief judge of the court only, should this be deemed more expedient: the magistrates reporting to him, and through him to government.

*

I am persuaded that this establishment and distribution of the courts, provided they were filled with competent judges, would be fully equal to the due administration of justice in criminal matters, in appeals, and in important causes. I speak, however, of their being filled by competent judges; for it is with that condition that I would be understood in writing on the subject.

The constant chain of appeals from one court to another, combined with the deficiency in legal knowledge and of business in general, which prevail in our judicial department, and not the want of judicial officers, are the great causes of that inefficiency which appears, and which has been so often and so much lamented in the administration of justice. Innumerable difficulties must, on very trivial occasions, arise to a person who is but ill-informed of his duty; and it is thus that besides very unsatisfactory decisions, the most precious of all commodities, the time of the court, falls a sacrifice to the ignorance of the judge. Proceedings are heaped upon proceedings, delay follows delay; a desire on the part of government to remedy obvious defects, occasions establishments to be multiplied upon

upon establishments, equally inefficient perhaps with the original; and it is thus that no advantage is gained, and no result appears but disappointment, and enormous expense to government.

I now come to speak of the inferior courts. The next in gradation to the provincial courts of appeal are the courts of the zillah and city judges and magistrates; the judicial and magisterial offices being at present combined in the same person.

To all of those zillah and city courts there are judicial officers, called registers, attached, who are assistants to the judges, but who also hold courts of their own for the decision of minor causes. There are also, in gradation inferior to the registers, junior civil servants, called assistants to the judges and magistrates, to whom the judge assigns a portion of the business of his court. All these are subordinate to the judge: but the number is not fixed.

There are in some zillahs a higher class than the last-mentioned, of judicial officers, that have been termed "joint magistrates," and also, "additional registers," whose jurisdiction is co-ordinate with that of the zillah judge. In fact, a judge of part of the zillah, or perhaps part of two zillahs, the limits defined: in short, as Mr. Stuart designates them, "judges on worse pay" than the regular zillah judges. These situations are filled by civil servants younger than the class of regular judges. There may thus be about four Europeans to administer the law and to superintend the police in every zillah. There are, at the moment I am writing, about one hundred and eighty civil servants employed in the judicial department, employed as functionaries, mostly invested

with judicial power, holding courts and passing decrees, and not, as in England it would be, with a part of them performing the inferior offices of the law.

The number of causes disposed of in the zillah and city courts, by decision, adjustment, or nonsuit, for four years, ending in December 1816, exhibit an annual average of decisions by the zillah European judges, &c. as follows:—

| | |
|---|---|
| By the zillah and city judges ..... | 6,660 |
| By ... do. ..... do. registers ..... | 9,108 |
| Total annually ..... | 15,768 |

which, if we reckon the *judges* at forty-five, will give for each, to decide annually, about one hundred and forty-eight causes; and reckoning about sixty registers who officiate as judges, and about fifteen additional or second registers, who are deciders of causes, in number altogether about seventy-five, we have for them each about one hundred and fifty decisions annually; or it gives (making allowance for Sundays and holidays) about two days to a judge, and as many to those inferior officers for every cause they decide; and if we take the whole number of 15,768 causes, and divide them among the above number of one hundred and eighty judicial officers, we shall have for each to decide annually about eighty-seven causes.

We can scarcely allow, then, that the judicial branch of the duty of those officers, in civil matters, is very heavy; though to what I have stated, falls to be added, in their capacity of magistrates, criminal jurisdiction in the lighter offences. The chief part, however, of the duty which the

zillah

zillah and city judges have to perform, is in their capacity of magistrates, or police officers. But as those duties are at present united, the proportion of time required for the performance of each branch has not been ascertained; and hence the combined duty being too laborious, it is doubtful whether the police or the judicial department of government has suffered most.

In my estimation, it would be wise to separate the two functions. The guardianship of the police, and the magisterial duties of a zillah, would undoubtedly be quite enough for the labour of any one individual, even of the most active and zealous of the Company's servants; and I think that one judge, however active and zealous, might also be fully employed in performing the duty of judge in a zillah; though under the proposed arrangement of the courts of circuit, it might perhaps be found that thirty, instead of forty-five zillah judges, might be sufficient for the whole of the Bengal provinces.

Many reasons might be assigned for separating the magisterial office from that of the judge. Justice requires that every judge should enter upon a cause he is to decide free from all bias. The duty of a magistrate renders him liable to prejudice. The nature of a judge's duty requires him to investigate patiently, and to decide deliberately; that of a magistrate requires him to be prompt and decisive. He must act quickly, though he should act sometimes erroneously. A judge ought to possess a complete knowledge of the law. The same degree of knowledge is not necessary in a magistrate and police officer. The habits likely to form the one, are not calculated to perfect the other; and hence it must seldom happen that

the two-fold qualities of a good judge and a good magistrate, are united in the same person.

The zillah judges have original jurisdiction in causes to the amount of 10,000 rupees. Their decisions might with advantage be held *final* in mere personal actions, in demands, debts, and matters of account, involving merely a definite sum of money, or value of goods or chattels, to a very large amount: probably 4,000 or 5,000 rupees might not be too high. But, on the other hand, in cases of real actions, questions of inheritance, of landed property, and generally, in every cause involving an indefinite amount, or question of general importance, an appeal to the provincial courts ought to lie, whatever the value of the subject matter in dispute may be. Special appeals to be received in all, even of the former class of causes, should the inferior judge see reason; or should the judge of circuit, on a petition from the party desiring it, see grounds for admitting an appeal to the provincial court.

The same principle with respect to appeals from the decision of the assistant judges and registers to the judges should prevail; and, in that event, the limit, in point of extent, of their final decisions, in cases of personal actions, debts, and demands, &c., might be raised to 800 rupees: their jurisdiction to extend to 5,000 rupees. But no cause of any description exceeding 400 rupees, to be brought before them in the first instance; and those under that sum, only in matters of debt, demands, and personal actions as above: all other causes to be instituted before the judge, who will *remit* to his deputies and assistants, for investigation and adjudication, such of them as he may deem proper; exercising, in this respect, a judicious discretion

cretion as to the complicated or simple nature of the case remitted.

Three essential points would be effected by this. The nature of all suits, except simple demands of a trifling amount, could be known to the judge, his power reserved of deciding all such causes as should appear important or complex, and every assistance attained from his inferior officers, which they may appear to him capable of affording.

Thus, I apprehend, an ample provision would exist for the distribution of civil justice; or if it should be found to be still deficient, notwithstanding the full adoption of all the precautionary means, for the prevention of litigation, and for the speedy adjustment of disputes, which I have above suggested, a few natives of acknowledged respectability, and of tried character, might be employed in each district in further aid of the judge: men of family, of education, and of irreproachable reputation and habits of life. A respectable salary of 300 rupees per mensem should be allowed them; and the antient and constitutional appellation of "*kazee*" would raise them in the estimation of the people, and remind themselves of the sacred character they ought to maintain and the high duties expected of them. Two or three of these in each zillah, placed in eligible situations throughout the zillah, would be as many as would be required or ought to be employed; for I hold the present practice of employing so many natives, under the appellation of sudder ameens and moonsifs, invested with judical powers, erroneous in principle, and objectionable in a degree proportionate to their number.

The

The extent of jurisdiction of the kazee might be limited to demands and personal actions, to the extent of 800 rupees; and their decisions to be final to the amount of 40 rupees, exclusive of costs.

The Court of Directors have wisely authorized the employment of persons, such as are here described, with liberal salaries, instead of paying their native judges, as at present, by taxes, and per centage on the causes they decide; which holds out a strong temptation to these people, not only to promote litigation, but to decide hastily, and to prevent amicable adjustment, which, by the Regulations, would deprive them of their fees.

The number of sudder ameens and moonsifs, or native petty judges, now employed, is not limited, but is very great in the district of Burdwan, which I mention here, knowing the number of thanahs in it: holding each thanah to be furnished with its little judge, there may be no less than sixteen, perhaps twenty, of these gentlemen of the bench in that zillah; assuming which number as an average, would give for the Bengal provinces about nine hundred persons invested with judicial powers, in causes under 150 rupees, in the courts of the sudder ameens, and 64 rupees in the courts of the moonsifs. But if we take the average number of villages in each thanah, as in Burdwan, at about two hundred and eighteen, and estimate the number of villages under the Bengal presidency at 400,000, or at the least at 360,000, as assumed by the court of Sudder Dewannee Adawlut, in their report of the 9th March 1818, the number of moonsifs would exceed 1,800, instead of 900. This estimate of villages, however, is known to be incorrect.

My

My own experience of the natives of these provinces makes me adverse to employing them in situations of power and of trust. That feeling is particularly applicable to the inferior classes, to which, owing to the small lawful emoluments of those native judges, the selection is necessarily restricted. To multiply, then, the number of individuals who have power, is only to increase the sources of oppression to the people.

For these reasons, I would recommend that the respectability of the individuals, thus vested with authority, should be increased, and their numbers greatly diminished. But, should it be found practicable, adverting to the state of society in India, I would strongly recommend that native agency, in situations of responsibility, should be dispensed with entirely, unless in situations over which there is a most efficient European control. With such control, however, they are valuable servants, and may be employed with the greatest advantage to government, and with benefit to themselves, sufficient to uphold all the dignity now extant in the native character. If we desire to elevate them beyond this, we shall succeed only, in general, in affording them the means of evincing, in a more prominent manner, their total unworthiness of such advancement. I speak generally; for among so many there must be found some honourable persons; but the few of this description, I fear, will only prove the force of the rule, by appearing as exceptions from it.

I am well aware that I shall have to combat the opinions of many far abler and more experienced men than myself on this point. Many recommend the employment of the superior classes of the natives, in order to keep up the respectability of what they term the aristocracy of the country

country, and to make what they are pleased to call the gentry subservient to our views in the government. Nothing is more apt to mislead than the use of terms, highly significant in our own country, as descriptive of persons or things in another. The great value to the executive government of the enlightened aristocracy of England, stamps a high significance on the word; but people forget that, if there be an aristocracy in India, it is an aristocracy distinguished from the people by no moral quality, by no superiority of education, by no strength of mind, by no power of communicating the ideas the individual may chance to possess, superior, often indeed not equal, to the husbandman that turns up the soil on his estate.

Allowing three provincial kazees to each zillah, or about one hundred and twenty for the whole of the Bengal provinces, and supposing they had to decide as many causes as the sudder ameens and moonsifs now do (though I presume the number might be greatly reduced), let us see how many suits would fall to the file of each kazee. On the 1st of January 1817, as above, the number of suits on the files of the sudder ameens and moonsifs was 67,771,* the kazees being 120. The average gives to each 564¾ causes annually; or, allowing for holidays, not two a day.

Were the number of kazees, therefore, limited to two in each zillah, their business would be light indeed. But then I am told the distance from the courts would, in that case, be so great, that the people would be thereby deterred from seeking justice, and every facility ought to be given them. This requires consideration.

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* See Sudder Dewannee Report, March 1818.

I am one of those who think that very great facility to litigation is not desirable, but, on the contrary, very objectionable. I am of opinion, that the principle of forbearance with one another ought to be inculcated among the people, and that disputes in matters of small amount and trivial quarrels should be left, as much as possible, to be adjusted by the people themselves; and to this end, I conceive, ready access to courts of law by no means conducive. The most ignorant of mankind know very well how to balance inconveniences; and if they find it less irksome to put up with a trifling loss than to go a journey to court to complain, they will refrain from going, and have their dispute adjusted by their village peers, their punchayet; who, besides administering justice, will make a point of reconciling the parties, which no court will or can do; but which nevertheless is, in most cases of the nature here alluded to, of far greater consequence to the good and peace of society, than the mere decision of the matter in dispute, even though just.

Nor, were it possible, do I think it incumbent upon a government to provide for the decision of minor causes, so as to ensure to them the same minuteness of investigation as in important questions. It is not sound doctrine to tell us, as some do, that the greatest cause and the smallest are precisely the same in the eye of justice, and that the lawgiver and the judge ought to make no distinction between them: that the poor man's mite is as much to him as the bushel of the rich. They forget, however, the relative situation of individuals in society. The importance of a thing is precisely in proportion to the power or influence it is capable of exerting, or of being made to exert, in the sphere in which it may be placed. The loss of the poor man's mite, though perhaps his all,

is

is felt by himself only; that which affects the rich, extends its influence over hundreds who depend upon him. The decision of any one small matter of dispute, though wrong, provided it be unbiassed, cannot be attended with important consequences to the community, more than the accidental demolition of a petty hovel could affect a city; and, therefore, such disputes may, and indeed must, be left to the decision of inferior persons, and must be decided in a summary manner.

What I should desire to see established in India are able European judges; the courts open to all, ready of access, but by no means inviting to the litigant; prompt decision; not that every hamlet should have its lawyer, every village its judge. The temple of justice, though open, should be made approachable only with reverence; not on trifling occasions, nor even without some anxiety, if not difficulty: let no one linger therein.

I cannot omit expressing, under present circumstances, my humble opinion, in this place, that great advantage might be derived, by investing with judicial, as well as magisterial power, European gentlemen, not in the Company's service, resident in the interior, who are known to have an intimate knowledge of the customs of the country, of the people around them, and by whom they are respected. Many most worthy, intelligent, and highly respected gentlemen are to be found all over the country, to whom jurisdiction to a certain extent might be given in civil disputes, such as those of boundaries, of right to water, to fish, to pasture, to wood, disputed rents between the cultivators and landlords, difference between these about pergunnah rates of rent, and every matter having reference to husbandry. It often happens, that men carry

on

on disputes for want of a person to whom they can appeal, which at first are trifling, but in the end become very serious. The natural respect accorded to such a man as I have described would at once point him out as the fountain of justice between them, and they would submit to his decision.

In criminal matters, to what extent it would be advisable to empower the zillah judges to sit, and to sentence on conviction, next requires our consideration.

In the trial and conviction of criminals, the duty of the magistrate and public prosecutor is, generally speaking, the most intricate and difficult to perform. These have the proof, the grounds of conviction to search for and to display before the judge. It seldom happens, in criminal matters, that a case of great intricacy in regard to decision occurs.

But supposing it were otherwise, as the law by the Regulations now stands, the selection is between an individual zillah judge and an individual circuit judge. The experience of the latter may, generally, be greater than that of the former; but, on the other hand, he is more likely to be pressed for time: and several other disadvantages attend an itinerary judge to which a fixed court is not liable.

I would, therefore, admit the jurisdiction of the zillah judge, in criminal cases, to every extent; but direct that he should postpone all trials which may involve life, or transportation, or imprisonment for life or for more than seven years, until he should be joined by the judge of circuit, who would sit along with him, and preside on capital and

and perpetual, or more than seven years' punishment trials; their unanimity to be required to convict. All trials before the zillah judge alone, involving imprisonment for one year or more, to be reviewed by the circuit judge, in presence of the prisoner, with power to call witnesses; and if he coincided with the zillah judge, sentence to be executed. If he differed from the zillah judge, the prisoner to have the benefit, and the lighter punishment to be awarded. So, if the united judges did not agree in all trials at which they both sat, the prisoner should have the benefit of their difference of opinion, and be acquitted, if they differed as to guilty or not guilty. If their difference related to extent of punishment, the lesser to be inflicted.

Thus the circuit judge would both prove a check over, and himself have the benefit of, the local information of the zillah judge; and justice would be benefited by the combined wisdom and united exertions of both, in matters of the higher importance.

I have not the means of ascertaining what proportion of the criminal business of the courts would thus be dispatched by the zillah judges, and consequently, how much most harassing and tormenting, and I may add disgusting duty, the public would escape from, of repeated and tedious attendance as prosecutors and witnesses at the courts; nor how much money, for the maintenance of accused persons and witnesses, would be saved to government. But, unquestionably, in all points of view, the relief here contemplated would be highly desirable.

The crimes and offences that would come under the sole jurisdiction of the zillah judge would be libel, defamation,

mation, adultery, fornication (including seduction), all of which are criminal offences by the Moohummudan law, theft, shoplifting, housebreaking in the day or by night, furtively, and not by force or by gangs; and, generally, all offences which are not usually accompanied with a breach of the peace, unless they be attended with dangerous violence against the *person*: excluding, however, perjury and forgery, unless these happen in cases in which decisions and sentences of the zillah judges are held to be final, as above.

The combined judgment of the circuit and zillah judges would be made available in trials for the greater crimes, as murder, homicide of all descriptions, maiming, wounding, rape, highway robbery, dakoity, burglary, larceny attended by force and terror, arson, burning or destroying of corn-fields or crops, cattle stealing, perjury and subornation of perjury; in the more important causes, forgery, fabrication or falsification of deeds or other documents, riot, rebellion, destruction of public records or registers; and, generally, all heinous and aggravated crimes and offences, involving the security or peace of society, or of the government, or of individuals.

The native judges ought not to be entrusted with criminal jurisdiction at all, unless perhaps in light affrays and abusive language, where a fine of five rupees or so might be the award.

How far the scale and degrees of punishment, as at present established in Bengal, are suited to the nature of offences and to their prevalence, I very much doubt. One thing, however, is certain, that in fixing a scale of punishment, it is of the highest importance to attend to the

feelings and ideas of the people. The *Mookummudan law* recognizes this as a principle, and does not, in cases of mere misdeameanor, award the same punishment to all ranks of society. It is impossible to feel that the pillory, some time ago awarded in the case of a noble lord guilty of a frolic, though a legal fraud, the high-minded and gallant partizan of the Spanish Independents, and in the case of the grovelling wretch pilloried and pelted for perjury or a more abominable crime, are in degree or in essence the same punishment.

I have, lastly, on this head, to notice a subject which seems to have given rise to great difference of opinion among the Company's civil servants in the revenue and judicial branches of the service, *viz.* whether it would, or would not, be desirable to give the collectors and revenue officers jurisdiction in questions connected with the revenue, rents, disputed boundaries, &c.

The judicial officers, as appears from the opinions of those who have been consulted, generally, almost universally, indeed, have shewn a disinclination to give up any part of their judicial authority; while, on the other hand, the opinions of the collectors, who have been consulted, and revenue officers, are pretty generally in favour of this additional power being conferred upon themselves. The Board of Commissioners for the Ceded Provinces, in their Report, 25th April 1817, state their opinion to be, "that "all questions between landlord and tenant will be ad- "justed more speedily, more satisfactorily, and with more "consistency, in the principles of decision, by the reve- "nue authorities. A right decision," they alledge, "in "cases of summary process for arrears of rent, &c. must "depend on an intimate knowledge of village accounts, "and

" and on the minutiæ of revenue *operations*, which the " courts of judicature cannot possess." Why not possess?

The principal reason assigned by the collectors is, that they are, generally speaking, better informed on such subjects than gentlemen who have been only in the judicial line of the service.

The judges, again, say, " that a zealous collector has no " time; and if he had, that there is not that confidence " subsisting between the collector and the people; who " look upon him as a person whose situation places him " in direct opposition to them and their interests; and " moreover, that most cases of controversy, among the " people even, are more or less connected with, if they " do not arise out of, the acts of the collector himself, or " of his officers; whereas the judge is looked upon by " them, if not as their protector, at least as a disinterested " person."

With respect to the point of superior qualification possessed by the collectors, I must enter my protest against its admissibility, because it would go to the extent of proving total disqualification for the judicial office; and from having already made ample provision for the administration of justice, the reader will, I conclude, infer that I am not an advocate for employing the revenue officers as judges, in any matters whatsoever. I am, however, of opinion, that they may be employed, and with great advantage, as magistrates and justices of the peace; but of this in its proper place. I shall farther remark, that most of the writers, on both sides of the question, have taken too extensive a view of the proposition submitted by the Court

of Directors for their sentiments upon it. The suggestion of the Court of Directors, to which the whole is referable, is "whether the collectors, and other revenue officers, "might not be employed in settling disputes respecting "land-rent between landholders and their immediate "under-tenants, and between the latter and the ryots, "including complaints of the latter for undue exactions, "subject to the revisal of the regular courts of justice, by "way of appeal, in cases of sufficient importance; also in "disputes respecting boundaries."*

In all these cases, there seems nothing in the official duty of a collector to disqualify him, on the ground of partiality, from being a judge. But how far the number of collectors in the permanently settled provinces of Bengal, &c. (in which advocates of the permanent settlement have so often told us the revenue is so fully and easily realized), might admit of their performing more duty than they now do, I am not competent to say. If, however, their duty be too light, their numbers might be diminished. But adverting to the mode which I conceive to be the most approved, of collecting the land revenue of India, I cannot hesitate to think that no collector who performs his duty will have leisure for other employment.

Were I to propose that the zillah judges, supposing them to have leisure, should be empowered to collect part of the revenue, I should expect to be told that the proposition could not be listened to, for many and substantial reasons. But still it would in no way essentially differ from that of those, who propose to empower the collectors to sit as judges.

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* General Letter, 9th November, 1817.

The collectors, however, and revenue officers, might in one way be employed, in a most essential and satisfactory manner, in the settlement of disputes respecting land-rent between landholders and their tenants; or rather in preventing such disputes, by attending to the village and pergunnah records, which might with propriety be put under them; and if they executed that branch of their duty carefully, there would seldom, indeed, be any room for dispute between "the landholders and "their under-tenants, and between these and the ryots," because those records are intended to register every transaction between these classes of the people; and where accurate accounts are kept there can seldom be room for dispute.

We may farther remark, that every decision relating to disputed boundaries involves in it the interest of government; and it is not to be doubted that the courts of justice have often been made the blind instruments of defrauding the state. By the mode of settlement in Bengal, every zumeendaree has a fixed jumma or rent; but, generally speaking, the boundaries are but ill-defined. It is evident that if the boundaries are disputed by one zumeendar, and by fraud he establishes his right to part of his neighbour's estate, or if two neighbouring landholders should collusively effect this through a decree of a court, the estate robbed of part of its lands, though less valuable, being still liable to the same jumma, will probably be in the first instance confiscated for arrears of revenue, and ultimately government will be obliged to reduce the revenue demandable from it, whilst the fraudulent neighbour enjoys his additional village, or villages at the old rate of jumma; and thus, either by fraud on one side, or by collusion on both, the court is made the instrument of de-

frauding government of part of its just revenue. The collector, therefore, whatever be the mode of adjusting a disputed boundary, ought to be made a party to it, in order to watch the interests of government; and how far their acting as judges in the same cause would be consistent may be questioned.

The question, how far punchayets are useful, or might be made available to the administration of justice, is worthy of attention. A punchayet is an assemblage of persons for the purpose of settling disputes between parties of the same cast or class of society with themselves. This is essential; but it is not essential that the disputants should be assenting to the arbitration of the punchayet. This very antient and self-created tribunal will pass its decrees and proceed against the parties, to the extent of excommunication, if they are not obeyed. From the very nature of the tribunal, therefore, the high with the low, the rich with the poor, could but seldom, if at all, be brought before it; and these classes, for the most part, form the oppressors and the oppressed. Neither could persons of different sects, though in other respects equal, be brought before the punchayet. Its efficiency, I apprehend, could therefore not be relied upon; though it would be highly advisable to encourage it, as well as every species of arbitration, by every means practicable.

The idea of *authorizing* persons to be arbitrators, of vesting individuals with the powers of arbitration, as suggested by some, appears to be very unnecessary, if not superfluous. May I ask, is there any objection to allowing parties so settle their disputes themselves? If there be not, can there be any objection to allow them to refer the adjustment to *any* third person *they may select*, whether

ther such third person be an authorized arbitrator or not? The law and usage of India, and I believe of every country, authorize voluntary submission to the decree of an upright and disinterested arbiter; and I cannot see on what principle it can be disallowed. All that is required of the law in cases of arbitration, is to authorize judges to execute the written decrees of arbitrators, unless fraud can be established against them.

Nor do I imagine that any advantage could arise from giving heads of villages, such as choudries, munduls, mokuddums, judicial authority. To have a court of law in every village would be of itself a nuisance. It would, besides, generally occur, that these persons would have, directly or indirectly, an interest in the issue, or at least a bias. The influence of the zumeendar among a village community, and the part he has to act in most of the disputes which occur, render highly doubtful the propriety of investing persons with judicial authority so much under his power; so that, although, like other respectable individuals, they might be highly useful as arbitrators, I should think encouragement, as such, preferable to conferring upon them any direct judicial authority whatsoever.

Thus, on a review of what is here suggested, the judicial divisions in Bengal would be,

7 circuits or provinces,
42 zillahs and cities;

and the establishment for the administration of justice would be as follows:

ESTABLISHMENT *of* JUDGES *and others having Judicial Authority, proposed for the Bengal Presidency; shewing the Extent of Jurisdiction and of Final Decision of the several Courts in Money Demands and Personal Actions.*

| DESIGNATION. | No. in each Province. | Total in Seven Provinces. | JURISDICTION in MONEYDEMANDS, &c. | | |
|---|---|---|---|---|---|
| | | | Minimum. | Maximum. | Decision, Final. |
| | | | S. Rupees. | S. Rupees. | S. Rupees. |
| Judges of Provincial Courts | 5 | 35 | 20,000 | No limit. | 100,000 |
| Judges of Zillahs and Cities ... | 6 | 42 | No limit. | No limit. | 5,000 |
| Assistant Judges, Zillah & City | 12 | 84 | No limit. | 5,000 | 800 |
| Total Europeans | 23 | 161 | — | — | — |
| Kazees..... | 12 | 84 | No limit. | 800 | 40 |
| Total, European and Native .. | 35 | 245 | | | |

## CHAP. VI.

### *On the Police.*

I NOW come to the last proposed branch of the subject, the Police.

To protect those who obey, and to bring to justice those who break the laws, I consider to be the immediate object of a police establishment. The former part of the definition, indeed, may be said to be included in the latter; for as there is no crime for which the punishment, when inflicted, is not a greater evil to the offender than the advantage he can derive from the commission thereof, so, if all criminals where sure of being brought to punishment, all would refrain from crime. Thus perfect security of person and property would follow; and this is the ultimate object of police, as well, indeed, as of all criminal laws.

Police has been divided into *two* branches: *preventive*, or that which is intended to prevent crime; and *detective*, or that which is designed to discover and bring to punishment the criminal.

The first branch is necessarily the most important. But to *coerce* an immense idle, generally speaking, and immoral population, as that of India is, and to restrain such from committing offences, must be allowed to be a task of no ordinary difficulty. If we look at such an undertaking, and the population in the aggregate, we must at once

once declare it impossible; yet if we ask ourselves, could we restrain the inhabitants of a small village from crime, or detect the offenders, we should answer in the affirmative, and think the task by no means arduous. We see, then, that to attain the object is possible, perhaps practicable; and the first step towards it is indicated, *viz.* by *division.* It is in this, as in every undertaking, physical or moral, there must be a regular well-defined mode of conveying the impetus from the mover to the body moved or influenced. The intermediate instruments, or agents, must be distinct, that they may not clash, and that each may perform just what is expected of it.

After this subdivision, the processes of classification, and combination are to be adopted. So many of the smallest divisions must be combined into a larger one, and so many of these into a still larger one, and so many of these again into one larger still, under their several designations, till the whole are united into grand districts, each under a chief superintendent, who shall be in direct communication with the supreme government. The movement of one thousand men, or of one hundred thousand, in military array, is a practical demonstration of the wonderful effects of such division, and classific combination, and assures us that methodical arrangement of a similar nature, alone, is wanting to give us most extensive command in this department also.

For example, take, as a grand district, a district of circuit before specified in speaking of the administration of justice. Such a district is composed of towns and of villages. Suppose the lowest police division to be formed on an average of two hundred houses; and that this were established throughout the district, as well in cities and towns

towns as in the country. Thus, the Lower Provinces, as before, are stated to contain villages ..... 156,000
and the Upper Provinces may be rated at ..... 78,000

Making together..... 234,000

If we assume the average of houses in each village, both in the Lower Provinces and the Upper Provinces to be forty-five, the number would be..... 10,530,000

These formed into police divisions of two hundred houses, give divisions ..... 52,650

Formed into seven circuit districts, give for each district, police divisions ..... 7,521

And for each of the six zillah magistracies in the district police divisions of two hundred houses, each division ..... 1,253

Or number of houses ..... 250,600
which, at the average of forty-five per village, would give... ..... Villages 2,563

These placed under charge of the zillah magistrate, with his assistants, European and native, under him, would form the basis of the police arrangements.

It is impossible for any government to keep up an establishment in regular pay, sufficient for the purposes of an efficient police, independent of the people. Could it be done, it would be highly objectionable. All that is, or ought to be requisite, is an establishment sufficient to conduct the details of the duty, and to afford the people a rallying point, when their more active exertions are required to preserve the peace or to apprehend offenders. This is sufficient: for, as the peaceable and well-disposed in every community, must far out-number those who are disturbers of the peace, the latter must always be over-

powered,

powered, whenever it is found necessary to call forth the other part of the community against them.

To discover, then, what individuals of a community are evil disposed, is an essential, indeed indispensable step in the formation of an efficient system of preventive police. This can only be done through the medium of the individuals that compose that community; and only with safety through the respectable part of them. The hired officers of government are not sufficiently admitted into the confidence of the people to be competent to give this information; nor could their information always be safely relied upon. They would be apt to attempt extortion by threats of informing, or to exaggerate the information they gave in order to enhance their own importance and the value of their services. A respectable individual, or individuals, residing among the people, one of themselves, I mean one of those that are good among them, would have the welfare and the reputation of his village or community at heart; and these honourable, yet somewhat opposite feelings, would make him loth to accuse, but just in his accusations. Thus the worst effects of *espionage* would be avoided; and the certainty of discovery, not perhaps all minor offenders, but all criminals, would be effected. For I take it to be impossible that any individual, an offender to the extent of *crime*, could reside in a small community or subdivision, such as I have before noticed, without being known to the community to be a "*bud maash*," as he would be called, or one who procures his livelihood by unlawful means. This would become still less possible, were a respectable person among them, one in the confidence of his neighbours, specially appointed, and expected to be informed, and to give information, of the mode of life of suspected characters.

This

This special nomination is, however, necessary; for it is that only which rescues the person nominated from the odium attached, in all countries, to an informer, makes the people among whom he resides, as well even as those against whom he informs, or whom he may detect, respect, obey, or submit to him.

When thus I have wished, as far as possible, to avoid the system of espionage, I would by no means be understood to reject, or to under-rate the value of secret intelligence. For, procure it how you will, in fact it is indispensable. No efficient system of preventive police can possibly exist without it. The machinations of wicked persons are necessarily secret; and to discover them, secret means must be had recourse to. It is, however, an arm of immense power in the hands of the police; and ought, therefore, to be used with great caution and discretion, and to be confined entirely to its own proper object; which, indeed, it is likely to be in India, where breaches of the peace have no reference to political principles or purposes.

The system of espionage, when it embraces politics as well as police, as it has done in neighbouring countries, perhaps in our own, has been justly execrated, because it exposes all, indeed the most zealous promoters of the public good, to injury from those in power, even for their opinions. Limiting, therefore, police to its legitimate end, the individuals who are objects of its watchfulness are, thank God, few in number, and are found, indeed sought for, only among persons of bad fame. It may nevertheless happen, that an innocent individual may be accused: I will not say convicted, because of the rigid strictness with which the evidence of such persons, I mean of spies, is

is received; but, as human society is constituted, no great general good can be attained without some partial inconvenience or evil; and, in my mind, it would be but a liberal sentiment of such an individual to overlook the temporary suffering, and temporary injury his character might receive, considering his sufferings the price which some of the community must occasionally pay for the protection and security of the whole.

It is not merely the actual fitness of such a system for the discovery and apprehension of offenders that renders it so powerful, but the moral effect it produces on the minds of the wicked, who can never be sure of not being detected, even deceived by their accomplices, or those in whom, to make their crimes successful or profitable, they must place confidence.

It would, perhaps, be impossible to place this part of the system of preventive police in a more favourable point of view, than by contrasting the horrid murders and assassinations which have of late years, been perpetrated in our own country, even in London and its vicinity, some of them without detection, on unoffending virtuous families, by which the whole of the metropolis, and indeed of England, were thrown into the utmost consternation, unable to retire to their chambers without apprehension for the safety of themselves, their families, and property. I say the value of such a system cannot be better appreciated, than by contrasting this horrid state of insecurity with the system of police which Monsieur de Sartine had established at Paris before the French Revolution, as exemplified by the well-known anecdote told by Colquhoun.

"A Bordeaux merchant came to Paris on commercial
"business,

" business, with bills and money to a large amount. He " was stopped at the gate of the city by a genteel-looking " man, who told him he had been waiting for him; that " according to his notes he was to have arrived at this " hour; that as his person, his carriage, and portmanteau " exactly answered the description he held in his hand, " he begged permission to have the honour of conducting " him to Monsieur de Sartine, declaring at the same time " to the traveller, his ignorance of the cause of his deten- " tion. After some conversation the gentleman suffered " himself to be conducted to the lieutenant-general of " police, who received him politely; and after requesting " him to be seated, to his great astonishment described " his portmanteau, the exact sum in bills and money it " contained, where he intended lodging, and a number of " other circumstances, which the gentleman thought were " known only to himself. Monsieur de Sartine, after " thus exciting his astonishment, put this extraordinary " question to him. 'Sir, are you a man of courage?' " After his surprise had subsided, he answered that his " courage had never been doubted. 'Well, Sir,' said " Monsieur de Sartine, 'you are to be robbed and mur- " 'dered this night. My object is to prevent this, and to " 'lay hold of the assassins. If you are a man of courage, " 'you must go to your hotel, and retire to rest at your " 'usual hour, put your portmanteau in the place you in- " 'tended it, and discover no suspicion: leave the rest to " 'me. But if you do not feel your courage sufficient, I " 'will get another person to personate you and go to bed " 'in your stead.'

" The gentleman, who had acquired confidence from " what he had seen and heard, refused being personated, " went to bed at his usual hour, eleven o'clock. At half-

" past

" past twelve, the time mentioned by M. de Sartine, the " door of the bed-chamber burst open, and three men " entered with a dark lantern, daggers, and pistols. The " gentleman, who was of course awake, perceived one of " the robbers to be his own servant. They rifled his port- " manteau undisturbed, and settled the plan of murder- " ing him; when, at the moment the villains were pre- " paring to commit the horrid act, four police officers, " who were concealed under the bed and in the closet, " rushed out and seized the criminals."

Who is there, after reading this anecdote, but would wish for such efficiency in the police of his own country? This able superintendant of police is stated by Mr. Colquhoun to have had, at that time, on his register, the names of not less than twenty thousand suspected and depraved characters, whose pursuits were known to be of a criminal nature; yet crimes were much less frequent than in England, and security to person and property infinitely greater.

The Indian Society is already organized to our hands, and may be formed, I think, into the most efficient police. There is no community without its head; no *mouza* or hamlet without its *mundul*, *mukuddum*, or by whatever denomination he is known; no profession without its *sirdar* or *choudry;* and, what is still more advantageous to this purpose, there is no village without its regular watchman or *passee*, or *g'horaeuyt*, or *chokedar*. It would indeed, be wonderful, if such a state of society did not afford much facility to the formation of a regular system of police; towards the acomplishment of which these institutions seem evidently to have been designed.

It

It is, besides, a general principle of the law of India, that it is a duty incumbent upon every individual member of society to *prevent*, by their personal interference and efforts, the commission of crime and offences of all kinds, whether public or private. The practice of India, during the Moohummudan government, corresponded with this. There was an establishment of government officers, who received regular salaries; but every town was divided into its several *mohullahs*, or wards; and one, the most respectable, or at least competent of its inhabitants, was appointed its head. This *meeré mohullah*, or head of the ward, was expected to know or make himself acquainted with every individual in his ward, their mode of life and means of living, to note if any or what strangers were seen in it, together; in short, with every unusual circumstance that occurred within his limits. The heads of crafts or professions were also responsible; and the officers of government collected the reports of these masters of divisions and of trades, and communicated the same to the chief police officer of the town. Can we make nothing of all this?

Let us see Akbar's instructions to his police officers.

"The office of *kutwal* requires one who is courageous, "experienced, active, and of quick comprehension. He "must be particularly attentive to the night patroles, that, "from a confidence in his vigilance, the inhabitants of the "city may sleep at ease, and every attempt of the wicked "be prevented or frustrated. It his duty to keep a regis- "ter of all houses and frequented roads: and he shall "cause the inhabitants to enter into engagements to aid "and to assist, and to be partakers in the joy and sorrow "of each other. He shall divide the city into *mehals*,

"wards, and nominate a proper person to the superin-
"tendence thereof, under whose seal he shall receive a
"journal of whoever and whatever comes in or goes out
"of that quarter (mohullah), together with every other
"information regarding it. He shall also appoint, for
"spies over the conduct of the *meeré mehal*, a person of
"that mehal, and another who is unknown to him; and
"keeping their reports in writing be guided thereby.
"Travellers, whose persons are not known, he shall cause
"to alight at a certain *seraee*, and he shall employ intelli-
"gent persons to discover who they are. *He must care-*
"*fully attend to the income and expenses of every man*, and
"he must make himself acquainted with every transac-
"tion. Out of every class of artificers he shall select
"one to be at their head, and appoint another their
"broker for buying and selling, and regulate the business
"of the class by their reports: they shall regularly furnish
"him with journals attested by their respective seals. He
"shall endeavour to keep free from obstruction the
"small avenues and lanes, fix barriers at the entrances,
"and see that the streets are kept clean; and when night
"is a little advanced, he shall hinder people from coming
"in and going out of the city. The idle he shall oblige
"to learn some art. He shall not permit any one forcibly
"to enter the house of another. He shall discover the
"thief and the stolen goods, or be himself answerable for
"the loss. He shall see that the market prices are mode-
"rate, and not suffer any one to go out of the city to pur-
"chase grain (forestalling); neither shall he allow the rich
"to buy more than is necessary for their own consump-
"tion: examine the weights, prevent making, selling,
"buying, and drinking of spirituous liquors; but need
"not take pains to discover what men do in secret (in this
"way). He shall not allow private persons to confine the

"person

"person of any one, nor admit of people being sold as "slaves. He shall not suffer a woman to burn herself "with her husband's corpse, contrary to her inclination. "Let him expel from the city all hypocritical mullungees "and kullunders (sturdy mendicants), or make them quit "that course of life; but he must be careful not to "molest recluse worshippers of the Deity, nor offer vio- "lence to those who resign themselves to poverty from "religious principles."*

In villages again, and throughout the country, it is well known that each zumeendar was held responsible for the police; that is, for the safety of person and property within his zumeendaree. This was an essential condition of his tenure. His lands were granted to him subject to this burden; and there were, besides, allotments of land set apart for the maintenance of a regular force: and having under his immediate orders the village watch, and other individual members of the village community, whose services, either occasional or permanently, were available for such purpose, he found no difficulty in affording the protection required. The zumeendar, by his sunnud, is bound "to keep the highways in such a state that travel- "lers may pass in the fullest confidence and security; to "take care that there be no robberies or murders com- "mitted within his boundaries: but (which God for- "bid!) should any one, notwithstanding, be robbed or "plundered of his property, he shall produce the thieves, "together with the property stolen. If he fail to pro- "duce the parties offending, he shall himself make g "the stolen property."†

* Ayeen Akburee.

† Firmaun of zumeendaree to the zumeendar of Bisher

Mr. Holwell, in speaking of Bishenpore, says, "The "equity and strictness of the ancient Hindostan govern- "ment remains. Property and liberty of the people are "inviolate; no robberies are heard of. The traveller, "on entering the district, becomes the immediate care of "government, which allots to him guards free of ex- "pense, to conduct him from stage to stage; and these "are accountable for the accommodation and safety of "his person and effects."*

But this was not peculiar to Bishenpore. It was, in fact, the custom of the country: and when we consider the means they possessed, it will not be thought more than a necessary and reasonable obligation placed on the zumeendar.†

Timour says, "And I commanded that on the high- "ways, at the distance of one stage from another, seraees "should be built, and that guides and guards should be "stationed on the roads. And at every seraee I esta- "blished a village, and charged the people thereof with "the protection of the travellers, holding them answer- "able for what might be stolen from the unwary tra- "veller."‡

Here, then, we have discovered two things: first, how the police establishments were formed; and, secondly, we have proof of its efficiency. But the state of society is changed; the condition of the zumeendars is altered.

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*Holwell's Historical Events, part ii. page 198.

†Hurrianah, now under the Company's government, the zumeendaree held responsible for robberies committed within their limits.

How, then, under these circumstances, is the police establishment now to be organized, so as to be efficient? We have already judges and magistrates in the different zillahs. I have before expressed my opinion in favour of separating these offices. The magistrate would remain, then, at the head of the police, with his European assistants of the Company's servants under him. But as these official persons cannot be every where present, it will be admitted that it would be desirable to have others to co-operate with them, provided such coadjutors were really trust-worthy and capable persons.

In every zillah of the country there are now many most respectable English gentlemen, settled as planters or in business of various kinds; men, many of them, who, from their long residence in the country, and their intimate and unreserved communication with the zumeendars, cultivators, muhajuns, and in short every class of society, seem to me peculiarly well qualified for giving the most efficient assistance in the department of police.

The unreserved intercourse of those gentlemen with the natives gives them a knowledge of the people, and of their real national and individual character, which no officer of government can ever acquire. No native ever approaches either a revenue or magisterial officer of government in his real character. If he go to either without being called, it is only when his case becomes extreme: he da not approach them with his little ailments; they h not leisure, indeed, to listen to these. There is a ki official repulsion between them; not from any fau officer, probably, but because he is a direct s government, and his office is one of check r over the people, or of exaction from them.

over, it is not improbable that the very grievance by which they are affected, has been caused or occasioned by the crime or neglect of the inferior servants of the official person, to whom the complaints would fall to be made.

I would, therefore, recommend that European gentlemen, such as I have alluded to, be requested by government to accept of commissions of the peace, and be vested with power over the thanahs and village police in their neighbourhood, so far as to receive reports from the thanadars and heads of the village police, who should be directed to obey all such orders as they may issue; in concert, of course, and communication with the magistrate, so as not to interfere, however, with any orders he (the magistrate) may choose to send, nor in any way to interrupt the regular reports such officers are ordered to furnish to the magistrate direct.

The presence of such gentlemen, if vested with authority, would prove a most salutary check, it is believed, over the provincial native officers, both of police and of revenue, in their vicinity, whether officers of government or of the landholder. They would doubtless also be of great service, by their personal exertions in the prevention and detection of crime: and what would be of no less importance, such men, from their local knowledge, om their personal acquaintance with the people, the chment between them, and their influence over the 'ing classes of society; such men, I say, would be get the people to become more zealous in the r they now are, or can ever be brought to be by neans. They would unite with these gentle- with them, partly as neighbours and equals. If

If they now act it is under the police, by compulsion, and in the degraded state of inferiors; and to whom? to a petty police darogah, perhaps a peon.

It may be thought by some, that the regular magistrates would look upon a division of their authority with such gentlemen with an eye of jealousy. My answer is, it does not appear to me that any real ground exists for such a feeling. The division of authority is to assist, not to control the magistrate; who ought to be jealous lest the police of any other district be better managed than his own: and if he be so, he will gladly avail himself of every species of aid accessible to him. I believe, universally, no one conscious of his own ability and attention to his duty, will ever be jealous of any interference, save that which counteracts him and impedes the service he has to perform.

The danger of oppression might also be urged; but I conceive there is no such danger. The respectable gentlemen whom I have in view (and certainly none other but the most respectable ought to be thought of) are not in the habit of oppressing the natives. It is their interest not to do so, but, on the contrary, to treat them with the utmost tenderness, which they almost universally obser towards them; and which highly praiseworthy conduct advantage (for indeed there would be none) arisir of their new situation would ever compensate th discontinuing. They accordingly make a poin ciliating the people; their very style and l them is different from ours of the Comp Commercial dealings have a decided and to humanize the intercourse of mank founded on mutual and reciprocal

with known respectability of character, form as perfect security as any government can desire against the danger here anticipated.

But, then, would such gentlemen accept of such authority? I think they would. It would be a mark of the confidence of government, and consequently a distinction, not only in the eyes of the natives but of their own countrymen. It would, moreover, enable them to do much good in their neighbourhood; and thus they would become more active contributors towards the general welfare of mankind than stations in life altogether private admit of: a motive of itself far too strong, and a feeling laudable, and far too general among such men, to admit the want of candidates.

Under the magistrates we have now the *thanahdaree* system; that is, there are, on the highways and most frequented parts of every district and in towns, guards placed at convenient distances and situations, for the protection of the people and of travellers, each under a police officer called a thanahdar, also darogah. In 1815, Mr. Stuart, whom I have before mentioned, states "the number of "thanahs under the Bengal presidency at 901, and the number of peons attached to them, in the immediate ay of government, at 22,000;"* which would give twenty thanahs or police posts to each zillah includ- cities, and about twenty-four men to each post. doubtless, however, many more now; so that, te the number at one thousand thanahs and eons, we shall still be within the mark pro-

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Report.

Is this a constitutional mode of forming a police establishment? and if so, is it efficient? The former question is asked, not on account of its own consequence, but because it has been thought by some to be entirely new and unknown in the country, and therefore those who dislike innovation may object to it. The Marquess of Hastings, though he approves of it, calls the thanahdaree establishment "a sudden and violent innovation on all "existing institutions." But it must be evident, by merely changing the name, the word *thanahs* into *guards*, that it is as old as the constitution of India itself. Indeed, if there was occasion for magistrates at all, I do not see how some such establishment could have been entirely dispensed with. To place a magistrate in a district to preserve its tranquillity, without some sort of organized force to be immediately and instantly ready to obey his orders, would be placing an officer in a situation of great responsibility and of equally great inefficiency.

There is no doubt of the necessity of such establishments; and I think as little that they ought to be placed directly under the officers of government, who are themselves directly responsible to government for the police of their districts. To commit the charge of the police to the zumeendars, as some have proposed, and to hold them alone responsible for it, I should consider as almost tantamount to a declaration, that in that department of government there shall be no responsibility. It would be shifted from one individual to another, and would become so dissipated as to be totally untangible and altogether lost.

It might be asked, too, seeing that government retains the immediate guidance and control in their own hands, and

and in those of their immediate servants, in every other department, why this department should be an exception; a department, too, on which the safety and happiness of the people so much depend?

A regular establishment, then, I conclude, we must have, properly distributed, and under the immediate orders of the magistrate. But, as I have before said, that establishment cannot be made so extensive as to be of itself sufficient. The question, therefore, comes to be, what is the most efficient mode of combining with it the voluntary aid of the people, and the ancient police establishments already existing throughout the country?

There is no village without its watch. We have before stated the number of villages at 234,000! Here is an imperial army of watchmen: allowing but one watchman to each village it would give, for one thousand thanahs, to every thanah 234 men! The magistrate of the zillah of Rajahshaye stated, that the landholders of that zillah reported that 9,852 pykes, or chokeedars, that is watchmen, were employed in 10,571 villages.

It would be no great hardship, either to the individuals composing these watch, or to the community who pay them (receiving other trifling services from them), were they made to perform annually, each one month's service *under the orders of the thanahdar*, who would thus always have an efficient force of twenty men under him, in addition to his regulars. Thus not only would the efficiency of the thanahs be greatly increased, but, I conclude, the whole system would be much improved.

Many collateral advantages would result from this measure.

sure. The means would be afforded to the thanahdar, through his personal intercourse with the village watchmen when on duty with him, of ascertaining the character of individuals resident in their villages. This would not be one of the least advantages. He would discover also the characters of those very individuals themselves, who have, not unfrequently, been supposed to abet, as well as to check crime, if not even to be principals in its commission; and none probably possess better information of this sort to give than those very men. A small additional allowance should be made them, by the village to which they belong, for the month they are on *regular* duty.

At present there is no bond of union between the regular police establishment and the irregular police of the villages. I conclude it impossible for government to maintain the latter on the same footing with the former; indeed, to maintain them at all: and I see no practicable mode more likely to promote a similarity of feeling, and unity of exertion among them, than being thus employed together on the same service.

This immense acquisition to the disposable force of a thanah would, in many parts of the country, enable government to reduce the present very heavy regular establishment; and every where it would give the thanahdar the power of sending out patroles on the highways and into villages. These patroles ought to be ordered to proceed as far as the nearest thanah in the direction in which they are sent: by doing so, besides the actual protection they would give to solitary travellers, other material objects would be gained; an assurance that the patroles did not loiter by the way and return, having neglected their duty; a constant direct communication kept up between all the

the thanahs; and general and mutual intimation given of all occurrences that take place in the neighbourhood.

The services regularly obtained of this local police, even of twenty men per thanah, might perhaps enable government to dispense with 10,000 of the 25,000 peons they have now in regular pay, at an expense of 4,80,000 rupees per annum, without any real innovation or the imposition of any additional burden on the people.

We are now to inquire what description of persons ought we to prefer for the command of these police posts? That they ought to be persons of respectability as well as of capacity, is obvious enough: but it is suggested that every fifth thanahdar, at least, should be selected particularly for his qualifications and respectability, to whom (for it would be impossible to pay all high) a considerable addition of pay might be given. We would expect to derive advantage from the exertions of such a man, even without investing him with any great authority, if any at all, over the neighbouring thanahs, were that objectionable. The necessary ascendancy of mind over matter would ensure this; and, besides, the superior allowances would furnish an object of ambition, and consequently a motive for exertion and good conduct, to those who held the inferior situations.

Besides the above obvious grounds of preference, it occurs to me that, as a general rule for the selection of thanahdars, men ought to have the preference who reside in the vicinity of the post they are to command; and on the same principle, should the preference be given in the choice even of the peons. I am aware of the usual objection of local and personal prejudices: but I conceive that personal

personal knowledge of the country around and of the people, is of infinitely greater importance in a police officer. If good men, these have an additional interest in the peace of their neighbourhood; if bad men, they are unfit for the situation any where. But confidence must be placed in men in such situations; and I do not think that men of fair character would be more apt to abuse such confidence, and to forfeit their character among their friends and countrymen, than they would before strangers, among whom they should hold a similar appointment.

But if, from necessity, strangers be sent in charge of thannahs, they ought to be made to traverse the country in all directions, until they become intimately acquainted with every part of it, and every part of every village within many miles of their post. Many supplementary orders and regulations touching this subject will occur to every intelligent and zealous magistrate; but an intimate knowledge of the people and of the country around are primary and essential qualifications, indispensable to every good officer of police; who moreover ought to take care that the spot selected for his post is such as to be itself secure, with the smallest possible number of men to defend it.

It has been suggested to employ intelligent Europeans, *military* officers, in the police department on frontier stations. There can be no objection to this, provided the individuals selected are in a superior, or at least equal degree, qualified for the duty. Indeed, until the whole system of government of India, in every department, whether revenue, judicial, police, or political, has by the talents of eminenly qualified individuals been fully and completely organized and brought into perfect regularity, it seems wonderful self-denial on the part of government, that

that they hesitate for one moment to avail themselves of talent, in whatever line of their service it may be found.

The village watch, above noticed (called chokeedars, pasbans, passees, ghoraeyut, &c. &c.), are now to be more particularly considered. They are maintained by the village community; and their duty is to guard the village, and every thing belonging to it, even to the corn-fields. They are paid in the way easiest to those who pay them, namely, by a few beegahs of land taken from the jumma of the village, and the amount of rent allotted on the whole of the other inhabitants; that is, by *sirshikun*, formerly explained; a tenure by which lands set apart as a remuneration for the services of a person useful to the community are held; or the watchman receives a small quantity of grain from each ryot, or he is paid partly in both ways. He has other occasional perquisites at births, marriages, festivals, &c.

It has been stated of these men, that they are employed often by the zumeendars in the collection of their rents, and on other duties, out of their line; and, moreover, that they are otherwise inefficient: and it has been consequently proposed to take them into the regular pay of government; a fund being set apart for that purpose by the resumption from the zumeendars of the "*chakeran*" lands in the permanently settled districts, and by setting apart so much as "*deh khurcha*," or village expenses, in those provinces not permanently settled. This might be done certainly, because in the permanent settlement there is a reservation of power to the Governor-General in Council to resume these lands: but when the enormous establishment of 234,000 men, allowing but one for each village, and the enormous sum of one million and a half sterling,

sterling, their pay, at four rupees a month each, are considered, the scheme must be abandoned.

But supposing the whole *chakeran* lands in the Lower Provinces to be resumed. They may be about twenty lacs of begahs (see investigation of 1777), and, making allowance for districts not investigated, might be worth thirty lacs of rupees, or about £375,000 sterling. It is forgot, however, by those who make this proposal, that the *police* establishments are entitled to little, if any, of the proceeds of *chakeran* lands: these are set apart to defray various charges of collection of the revenue. But to take the village watch into the pay of government would moreover entirely change the nature of that establishment, without increasing its efficiency; for the moment they became stipendiary, the situations would be filled up with strangers, who would want local and personal knowledge, both of which now make up, in a great measure, for other very great defects in that system.

It is indispensable, however, that government see that these men do really receive a competent subsistence: for this they are entitled to, and the community are consequently obliged to pay this. About three rupees twelve anas per mensem may be the hire of a village pasban. This should be secured to him in money, or in grain already reaped, and not in land, which is now often the mode of payment, because of its cultivation interfering with his duty. An accurate register of the individuals should be kept by the magistrate and by the thanahdars; which, indeed, will be necessary to enable him to bring them regularly on the roster for monthly duty.

To combine the services of the village-watch with those of

of the regular police, then, seems to be the desideratum. I have already suggested employing a portion of the former, by turns, on regular duty under the thanahdars. So, occasionally, the thanahdars might be directed to send some intelligent individuals of their regular peons, to mix with the village-watch in the villages, to pick up what *news* they could, and to see, besides, that the village police was really employed in the regular line of its duty.

The village-watch, I conclude, must be made to report to the head man of the village, be he the zumeendar or mundul, or by whatever name he may be called, the occurrences of the night; and to acquaint him instantly when any extraordinary occurrence takes places, or when he has intimation of any meditation of crime. But the duty of the watchman ought not to be allowed to terminate here, because that would be getting rid of responsibility too easily, and in a mode by far too clandestine not to be very liable to abuse. When any unusual occurrence happens, he must not be allowed to have done his duty fully, until he has made the nearest officer of regular police acquainted with the circumstance.

The responsibility of the head of the village must also be continued; and ought to be enforced, not only to the extent of giving the very earliest possible intimation of crime, but to the extent of apprehending the criminals, if obviously within his power, and of reporting to the police officers the names of any persons of bad repute who may reside within, or be seen within the limits of his village. The same with respect to the head men of wards in towns; for it is only by information of this kind that any thing like preventive police can exist.

It

It might perhaps be desirable, also, to select a respectable and intelligent head man for every five or ten villages, to whom a control over the village watch of those villages might be given, so far as to see that they did their duty, and to forward *monthly* (weekly if necessary) reports, himself, direct to the magistrate, altogether independent of the regular police. This would form a check over the minor heads of villages, as well as over the thanahdars and regular police; and it is thought, did those persons receive the countenance and confidence of the magistrate, together with a small *annual* salary of from fifty to one hundred and fifty rupees (I make it annual that it may seem the larger), they might be made available, with great advantage, in affording information, and in checking abuses of every description. The salary would be a general source of emulation among the whole class of village chiefs, who might be expected to shew themselves active, in hopes of succeeding to the situation.

Every zumeendar, and every person under direct engagements to government for land or other property, ought to be bound, by a special clause of his engagement, not only to discover breaches and breakers of the peace, but to afford their personal aid, and that of their dependants, in apprehending offenders, whenever the commission of an offence is made known to them, either by the village or regular police.

The Board of Commissioners for the Ceded and Conquered Provinces state the number of zumeendars, in the provinces under their management alone, who have entered into direct engagements with government, at 45,900. The immediate dependants of these may be three times that number at the least. We have here, then, near

200,000 men, that might unquestionably be made available, to a great extent, for the purposes of police.

The physical power, I conceive, then, to be even now completely at the command of government. It requires only to be systematically applied. Nor is there a country in the world, perhaps, where the government, and the European officers of government, have so great a moral influence over the people. The power of forming them as their own will may direct is, therefore, in that proportion; and although, at first sight, it may appear difficult, I can see no real obstacle in the way of establishing a very efficient system of police throughout our Indian possessions.

The detective branch would now come to be treated of. But as it will be readily admitted, that if a preventive police, such as I have suggested, be efficiently organized, there will be little difficulty in the management of the detective branch of the establishment, it is unnecessary for me to say much on this part of the subject.

It must be obvious, however, that a direct and constant communication, and by the most rapid means of conveyance, between the police posts, is indispensable to the detection of crime; whilst with this it is thought that, in most cases, the culprits might be seized before they got to their resting places.

Suppose, for example, a crime is committed in a given place, that the fact is known to the police on the spot almost immediately, as is generally the case when the crime is of magnitude. Suppose it were possible to communicate the intelligence instantly to the circumjacent posts, the chances of apprehending the perpetrators would be very much

much increased, because the first step taken by those, now on their guard, would be (standing on the alert) to see whether all the suspected persons within their jurisdiction were at home that night, are then at home, and of those who were not suspected who are absent.

This immediate intelligence might be communicated, by night as well as by day, by signals; as by rattles in towns, drums in populous countries, and lights, &c.: and when the signal "to be on the alert and to see who are abroad" is made, were it promptly obeyed, it would be extremely difficult for criminals to escape detection. The rattle used by the watchmen in large towns is a species of this useful telegraphic mode of communicating intimation of an offence being committed; and the large *nukkara* is yet used in India.

But in India, where crime is very generally committed by professional criminals, and where the profession of thief or robber is regularly established, like that of the artizan, under their sirdars, choudrees, or heads, the most effectual mode of apprehending offenders is by means of their associates; some of which, of every gang, are to be found, convicts, in every gaol in the country near the residence of the gang.

Where gangs of robbers thus exist, the leaders of the gang are, of course, the principal objects of capture; and the way their convicted associates should be employed for this purpose is this: the magistrate should endeavour to find out among the convicts the shrewdest fellow he can pick out belonging to the gang. He has been in gaol, and in irons on the roads, perhaps for years. His restrained gait, hardened skin of his ankles, &c. have sufficiently

marked him, to render it difficult, if not impossible, to abscond without detection. He is, perhaps, as is the case with many, perfectly satisfied with his lot; or he may have but a short period of his imprisonment to endure; so that there is little or no doubt of his fidelity in executing his undertaking for a moderate recompense.

He goes to his village, or the rendezvous of his quondam of friends, and is welcomed by them as "as a good man," whose period of service is expired (for they call themselves "Company ka nokur," Company's servants), and ready, with every advantage of experience, to recommence his former career. He spends a day or two among them till he is fully informed of their intended plans: he then leaves them, on the pretext of fetching his clothes and such things as he may have, or pretend to have, left at his late place of captivity, and promises to meet them on the night, and at the place appointed for their next excursion. He keeps his word, indeed; but conducts along with him an armed force to lay hold of them: or less resolute, but equally depraved, he gives the necessary information to the magistrate, who adopts measures accordingly for securing the culprits.

The plan adopted in war throughout India, of employing persons to obtain intelligence of an enemy, may be resorted to by police magistrates with equal advantage. Those persons go in disguise, live for days perhaps in the enemy's camp, as mendicants, or suttlers, or artizans, till they have obtained the wished-for information. They are apt, however, to deceive; not so much from design, as from a wish to exaggerate their services; or they were too timid to trust themselves within the enemy's limits. By employing persons unknown to one another, taking down

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in writing their information, cross-questioning without evincing suspicion of them, asking irrelative questions so as to throw them off their guard and to break the thread of their fictitious story, questioning them at intervals, and comparing what each says with his own as well as with the intelligence received from others, observing all along, notwithstanding suspicion of falsehood, perfect equability of temper towards them, and even the face of credulity itself, the experienced officer, whether military or police, will be able to form an opinion sufficiently strong to enable him to act, and will seldom act wrong.

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As connected with this branch of the subject, I will avail myself of this opportunity to notice the obstruction to which the local governments of India are exposed by the law as it now stands (and by the powers which it appears by a recent decision of his Majesty's court of Calcutta that court possesses), in carrying into effect measures of police, which may nevertheless be of vital importance to the interest, if not even to the stability of the government. The disability to which even the Governor-General in Council is subjected by the legislature, in being incompetent to make any regulation to affect the inhabitants of Calcutta (that is, those residing within the jurisdiction of the King's court), even of a political nature, without the concurrence of that court, is obviously a defect in the constitution of the local government of India. In a remote province, to plant half a million of people, of all nations and descriptions, in the capital thereof, under the very eye of its government, and yet to deprive that government of the power, even in political matters, of control over the actions of such a body of men, holding the government at the same time responsible for the peace

and security of the country, appears to be a solecism in legislation to which no parallel can be found.

Yet such is the state even of the supreme government of India with respect to the inhabitants of Calcutta. The English nation confide to the Governor-General the government of eighty millions of the native Indian subjects of Britain, and yet they will not suffer him to rule the native inhabitants of their petty factory of Fort William without the concurrence of the King's court of Calcutta. It is wonderful that the great men who framed the British part of the constitution for India should not have perceived so great an inconsistency.

The King's court is no doubt useful; but I cannot but think it very much out of its element in the remote region of India, when it is made to interfere in the slightest degree with the government in political matters. It is totally incompetent to judge of the extent of any one case of political delinquency that can be brought before it; not from any inability in the individuals as judges of the law, but there is a want of public information in India; and the King's judges coming to India late in life, having no intercourse generally with the people, are consequently ignorant of their habits, feelings, and prejudices; and without an intimate knowledge of the sentiments, feelings, and habits of the people, no accurate judgment can be formed of what may or may not be politically injurious to the state.

But the government is in possession of information of all kinds. One half of its members, at least, have a perfect acquaintance with the people: and with these incalculable

culable advantages, it is difficult to imagine that they might not be intrusted with the same power over the residents of Calcutta which is vested in them over all the other subjects of their government, in every matter whatsoever; subject always to the strictest responsibility, in case of the abuse of that power.

The legislature, it would seem, foresaw, in part at least, the inconvenience, if not danger, to which the governments of India would probably be exposed, by the incapacitating fetters which they put upon the Governor-General in Council through the medium of the supreme court; and the Governor-General is consequently vested with the power of transmitting to England, in the most summary manner, any European subject of Britain whose conduct may be deemed in any way hostile to the government: the Governor-General so acting, however, being, on his return to England, liable to an action at the instance of the individual, should he have been aggrieved.

But with an absence of foresight altogether amazing, it has been entirely overlooked, that other classes and descriptions of people might arise, if they did not then exist, fully as able and as willing to evince hostility to the government as Europeans; and no provision whatever is contained in the act for such a contingency. The Governor-General may, by his warrant, remove any European subject of Britain from India in an hour; but an illegitimate son of that European by a native mother, an *Anglo-Indian*, or a native, wholly indigenous, so long as they remain within the Honourable Company's factory of Fort-William and town of Calcutta, may set "his Lord-"ship in Council" at defiance, being amenable only to

his Majesty's court. They may sit down under the nose of government, frame, promulgate, and disseminate the rankest sedition, whilst the government must remain as patient spectators of the destruction of their own power and the ruin of the interests of their country, till the delinquents are brought to answer for their conduct, before the supreme court by due process of law: there to be tried before an English judge and by an English jury (consisting, moreover, of the lower classes of tradesmen and mechanics residing in Calcutta), and by the English law.

But to measure sedition by the same standard in India as in England, is to confound all the distinctions of time, place, and circumstance; evincing a want of discrimination nothing short of that which should perceive no difference in the degree of guilt or folly between taking a lighted taper into a magazine of grain or gunpowder.

If the public incendiary be dangerous to the government of England, whose stability, from the intrinsically permanent materials of its constitution, has no equal, how much more formidable must such a description of public enemies be to the government of India? Is it expedient, then, that the latter government should not be suffered to defend itself, but be forced to be content with the same defence that but barely protects the otherwise well-guarded government of England? The inexpediency of all this may be enlarged upon; but nothing, I think, can place it in a more obvious light than the bare statement, that as the law now stands, the power of the government of India, in matters even of the highest political importance, is liable to be impeded, or intercepted entirely, by the interference of a court or the fiat of a judge, wholly irresponsible

sponsible for, and equally incapable of accurately appreciating the consequences.

Circumstances have occurred since the foregoing part of this work was concluded, which furnish a most forcible elucidation of what has been above stated. I mean the cases of *Buckingham* and *Arnott*, both editors of a newspaper in Calcutta. Mr. Arnott was an obscure individual; but Mr. Buckingham was a man of considerable notoriety and some talent, who having travelled in Egypt and part of Arabia, came to India, and ultimately to Bengal, an adventurer. By the assistance of his friends he established a newspaper, which he called the "Calcutta Journal," professing to be a "Journal of Science and Literature," in addition to its character as a vehicle for the current news of the day. But the news of a day in Calcutta are not sufficiently multifarious or important to be interesting; and oriental literature and science are easily journalized, and seldom worth the printer's pains when printed. The sagacity of Mr. Buckingham soon discovered that the appetite of the Indian public, as he called the readers of his paper, required more *piquant* fare, and he told his friends that he must "pepper and salt" his paper more than he had done. He accordingly commenced by libelling individuals, public bodies, and functionaries, in the highest situations, and ultimately the government itself; setting himself up in opposition to its orders, as the champion of the freedom of the press and of free discussion; professing to be "amenable only to the laws of "his country, administered by a British judge and a jury "of free-born Englishmen!"

Mr. Buckingham now created himself a "controller of "the government;" for the Marquess of Hastings, Governor-

vernor-General, had told the free press people of Madras, in answer to their address, "that *it was salutary for su-* "*preme authority to look to the control of public scrutiny :*" a sentiment which Mr. Buckingham said deserved to be written in letters of gold; and he accordingly took care that it should not be forgot. At length the control became rather too frequent to be pleasant even to the Marquess of Hastings; and Mr. Buckingham was threatened with the utmost vengeance of government, time after time, and occasion after occasion; escaping however with impunity, by means of ready apology and promises of amendment.

Meanwhile several newspapers in the native languages appeared, acting in unison with the Calcutta Journal, if not in combination with it, in the "great cause" of "controlling" government; so that when Lord Hastings resigned the government of Bengal early in 1823, the Calcutta Journal had been the means of exciting much dissention among society, and had made considerable progress in sapping the foundation of our power in India.

The succeeding government deemed it necessary to put an end to this; and Mr. Buckingham, for an early transgression was, by the government of Mr. Adam, ordered to be sent to England, allowing him a period of two months to arrange his affairs. He accordingly made his arrangements, and announced them to the supporters of his paper and the public, in a manifesto entitled "Transportation without Trial," telling them that he himself had been so unfortunate as to incur the displeasure of the temporary government, and, being a European, was of course at their disposal to be sent out of the country: but that he had substituted in his room an editor of equal abilities, equally zealous with himself "in promoting the great

great cause," for which he was about to suffer, and, he thanked God, over whom the Governor-General had not the power of transmission. That being a native of India, and resident in Calcutta, Mr. Sandys (the new editor) was beyond the power of government, and an English jury, and only amenable to his Majesty's court and an English jury. His own banishment seemed, therefore, to be matter of exultation to this patriot; for he told his readers that his paper would *now* be conducted even with greater freedom of discussion than ever.

Mr. Buckingham quitted India; and certainly the paper, as to freedom of discussion, did not fall short of his anticipation. Government felt it incumbent upon them, therefore, to adopt some measure for the prevention of the patriotic views of these gentlemen; and the scheme resolved upon was to issue a regulation requiring the licensing of all newspapers and printing presses; the licenses to be revocable in the event of their publishing any thing to contravene a code of regulations drawn up for regulating the press.

It so happened that the learned judge of the supreme court at the time (government having taken the wise precaution of previously consulting him), did not object to the regulation. He, however, allowed counsel to be heard against it; but finally suffered it to be registered in his court; without which, by the act of parliament, no regulation passed by the Governor-General in Council is of any avail or force in law, so as to affect those residing within the sanctuary of the supreme court of Calcutta.

The Calcutta Journal was admitted to the benefit of a license, as well as all the other newspapers; continuing, however,

however, the same strain, yet steering somewhat by the rules laid down in this regulation; and Arnott, abovementioned, an Englishman by birth, was given to Mr. Sandys as an assistant-editor (but who was probably the principal), and the paper was continued; diverging, however, occasionally from the line prescribed.

At length a paragraph appeared which government (now under Lord Amherst) deemed so offensive that it could be no longer endured. But, instead of withdrawing the license from the paper, which probably a considerate regard for the property of the individuals embarked in it occasioned, the government determined to send Mr. Arnott out of the country: he (Mr. Arnott), moreover, being found not to have been at all licensed to sojourn in India. Accordingly, his Lordship, having first called upon Arnott to find security for quitting India by a day specified, which was declined, issued his warrant for the arrest of Arnott, in order to put him on board the first Company's ship sailing for England. Mr. Arnott was consequently arrested; but as there was no ship actually about to sail, he was placed under the town-major, who assigned him quarters in Fort-William.

But Mr. Arnott was not to be "transported without trial" so easily as Mr. Buckingham had been. He applied to the King's court to have his habeas corpus, which was granted; and Mr. Arnott was brought up, heard by his counsel, and, in defiance of the government, *discharged*, after a long speech delivered by the presiding judge, in which he declared his court to be really supreme, as it was called, and that the Governor-General, though he was permitted by the act of parliament to send home individuals, and to arrest them for that purpose, had no power to imprison

prison them; for that the words of the act were, "to arrest," and not to "imprison;" that to imprison and to arrest were not the same thing; and that the statute, being penal, must be strictly interpreted, and so forth.

It is foreign to my purpose to enter into the question of the legality of this decision. The fact of its having been passed, and of an individual, declared to be dangerous to the government of India, and arrested by a warrant from the Governor-General, being set at liberty in spite of the supreme government, and so given a farther opportunity of disseminating his seditious and inflammatory libels for months, perhaps, until a ship (a Company's ship, too, by the act) should arrive from England and be ready to return, on which to send him, is altogether so monstrous a state of imbecility to leave a remote government in, that it sets all comment at defiance.

But over the native population of Calcutta it is not quite so easy to arm the supreme government with summary power, retaining to the King's court superior jurisdiction. That class of our subjects, however, more especially the Anglo-Indians, have grown up, both in number and in wealth, and consequent importance in society, far beyond what could have been anticipated by the legislature when the act was passed arming government with power over Europeans; and we have seen that they are no less capable of disturbing the peace of society and the tranquillity of government, indeed far more so, than the European, from their mixing more with, and their more intimate acquaintance with the people in general. Not that they are, in themselves, naturally turbulent, or disaffected to government; they are, however, little able to discriminate, and therefore easily misled.

But

But it must be manifest, not only that there is great inconsistency in an act of legislation, which excludes ninety-nine, and applies only to *one;* the object of the legislature being equally applicable to the native population excepted as to the Europeans included; and it is no less manifestly inconsistent and absurd to permit any tribunal in India effectually to resist the power and to nullify the legislative authority of the supreme government, especially in political matters, whether in the form of a court of justice, or in any other shape whatsoever.

The regulation for licensing the press was so far effectual; and as a temporary measure may be approved. But it is imperfect, being applicable to the press alone; leaving the evil-disposed every other means of committing the offence intended to be suppressed. It is partial in its operation, and consequently wanting in that dignity of character which a general legislative measure would possess. It is directed, moreover, so immediately against the press, that besides subjecting government to the misconstrued imputation of timidity with respect to the freedom of discussion, which they neither feel nor fear, it must be extremely unpopular even in India; but especially in England, where it will be attacked by its enemies, without being defended by its friends: for, on the subject of the liberty of the press, notwithstanding the lamentable licentiousness of it, I am grieved to say there is a degree of political cowardice predominant in England, which suppresses the real sentiments of certainly a very great body of the ablest men in the nation, who doubtless do not see that thereby they evince a great dereliction of their duty towards the inferior orders of the people, who look up to them as an example, but take their silence, or their indifferent opposition, only as a confirmation of the

the doctrine which political demagogues more zealously maintain.

The question then is, what is a better, if not the best, mode of procedure, so as to give due efficiency to the local government? That mode would probably be the best, or at least it would meet with most general support, which, whilst it vested government in cases of emergency with ample power, it should at the same time infringe as little as possible on the present system. It therefore occurs to me, that the analogy of the law, as it now stands, with reference to Europeans, presents us with a suitable remedy for all the evils inseparable from the present restrictions imposed upon government. Let the law, as it now stands, be made applicable to the *whole population of Calcutta* indiscriminately, native as well as European, and the remedy is attained. Let but the legislature vest the Governor-General with the power of transmitting the native offender beyond the limits of the Company's factory of Fort-William and town of Calcutta, under the same circumstances; and, if you please, subject to the same responsibility as in the case of Europeans he is empowered to transmit them to England, and the paramount authority of government will be complete: for once beyond the limits of Calcutta and the jurisdiction of the King's court, they become at once subject to such regulations as the Governor-General in Council may from time to time enact.

So long, indeed, as this power is withheld from the supreme government of India, the British legislature are guilty of the strange absurdity of placing supreme responsibility on one functionary, but establishing another to counteract him who is wholly irresponsible.

Nor,

Nor, let it be observed, is it merely *executively* that the India government is subjected to this control. Were the check restricted to the *executive* capacity of the government, it is possible that it might be even salutary. But the law, as it now stands, imposes upon the government an absolute disqualification from legislating for its subjects, without the concurrence, not of the paramount authorities in England, but of a *court of law* established within its own capital.

Now it must be confessed, that the very idea of this provincial court being vested with the power of dictating to the government what regulations it shall not frame for the better government of the country, is not a little repugnant to every notion entertained of the proper province of a court of justice, as it must ever be hostile to that dignity which the government of India, of all others, stands so much in need of being supported in.

It is, therefore, not to be doubted, that an early opportunity will be embraced of obviating so great a defect in the system of our India government. The remedy proposed seems simple, and cannot be severe in its effects; for it can scarcely be called a hardship to an individual to be removed from the capital, who cannot be content to reside in it without endeavouring to overturn the government of his country.

# APPENDIX.

## COLONEL SIR THOMAS MUNRO'S SURVEY.

THE accompanying statement contains an abstract of every thing that seems necessary in an agricultural survey. It shews the population, the number of cattle and sheep, and the extent and value of all land, cultivated and waste; and though unavoidably somewhat long, it is so plain that it may be easily understood from the slightest inspection; and I shall, therefore, have occasion to make only a few remarks upon the principal heads.

The following instructions were issued by Colonel Munro to the Surveyors, &c.

### *Instructions to Surveyors.*

1. All your measurements, of every description of land, wet and dry, are to be made with a chain of thirty-three feet.

2. Your accounts are to be kept in acres, goontas, and anas. One square chain is one goonta, and forty such goontas are one acre.

3. When you arrive in a village, you will, previously to beginning the measurement, take a muchulka from the potail and curnum, according to the form which has been delivered to you.—N. B. This form states that the curnum's account of cirkar and

enaum land, house and shop-tax, and every article of revenue, is true; and that, if it is found to be false in any point, he will forfeit his office.

4. The curnum and potail of the village must attend you during the measurement, and you must give timely notice to the ryots, in order that they may be present at the measurement of their own fields.

5. In measuring a village you will begin at one side and proceed regularly on, making the field first measured No. 1, the next No. 2, &c. These numbers will serve to distinguish fields, when there are several of the same name in one village. After measuring the dry, you will measure the wet land, and number the fields in the same manner, beginning again at No. 1, 2, &c.; and the same rule must be observed with respect to baghayet or garden land.

6. The name of every field must be entered in your accounts. Where fields, whether cultivated, uncultivated, or waste, have a name, you will insert that name: where they have none, you will, in concert with the potail and curnum, give them one.

7. In the account of the measurement of every field, whether wet or dry, you will always specify the names and numbers of the fields by which it is bounded.

8. In dividing fields of red land, you will mark the division by a bank of earth or stones; but in black land you will always mark the division by setting up boundary-stones, because the polli, or bank of earth, would injure the black by overrunning it with long-rooted grass.

9. You will pay the hire of the coolies employed in marking boundaries either by stones or banks of earth.

10. If

10. If a field, not being larger than may be cultivated by one plough, is ploughed in part only and the rest waste, you will not divide it, but measure it as one field.

11. If a field is too large to be cultivated by one plough, you will divide it into two or three fields, as may be necessary. As the extent of land cultivatable by one plough depends upon the nature of the soil, you will be guided by the custom of the village, and the opinion of the potail, curnum, and principal ryots, in regulating the size of fields.

As the subdivision of a large cultivated field is ordered to be made solely upon the supposition that if thrown up by the present occupant it may be left waste, from their being few ryots in the village who have the means of cultivating it; yet if, from the state of agriculture in the village, there is no danger of its being left uncultivated, it will not be necessary to divide it, even though it should be too large for one plough.

12. In the measurement of dry land, you will class black and red land separately.

13. If a quarter only of a field is cultivated, enter the whole field as waste; if half only is cultivated, enter half as cultivated and half as waste; and if three-quarters are cultivated and one-quarter waste, enter the whole as cultivated.

14. In measuring uncultivated land, you will divide it according to the old marks or bounds: should you meet with waste (anade) having no such marks, you will direct them to be made. You will class uncultivated lands into fallow of one, two, three, four, and five years; waste from five to ten, ten to fifteen, and fifteen to twenty years; and as anade, or waste, which has either never been cultivated, or not been cultivated within twenty years.

It is only when waste is divided into fields, or found in small pieces, that it is to be measured by separate fields. When lying in large undistinguished tracts, it is to be measured in the gross; but whether found in small fields or in extensive commons, it is to be named and numbered.

If, after measuring twenty cultivated fields, numbered 1, 2, 3, to 20, a piece of waste follows, it will be numbered 21, and the cultivated field which comes after, 22; and so on, as often as waste intervenes; but as the largest piece of waste is usually surveyed after all the rest of the village is finished, it will, of course, be the last number. Suppose that this number is 50, then, if at any future period it should, from the extension of cultivation, become necessary to divide it into fields, these fields will be numbered in succession No. 51, 52, &c. But this cannot be done in the case of the waste No. 21, because it is already followed by No. 22: when, therefore, No. 21 comes to be divided into fields, these new fields must be numbered No. 1 in 21, No. 2 in 21, &c.

15. When a field contains a few tamarind, kikar, or other productive trees, you will make no deduction for the land under their shade, because the ryot derives a profit from them; but where there is a beher tree, or several other unproductive trees together, forming a shade, you will measure the land occupied by it, and deduct it from the field.

16. In measuring "purrempoke," or land that cannot be cultivated, you will specify the extent of forts, of pettahs, of open villages, of the court-yards of houses, with the number and kinds of trees in such yards, of the banks of tanks, rivers, nullahs, ravines, hillocks, roads, kullar or barren land, wells, salt mounds, and of topes, stating the numbers and species of trees. You will also specify the purrempoke in the fields of ryots and deduct it from their land.

17. In tarbunds, or palmirah topes, you will insert the number of

of trees, and class them into male and female, young, productive, and old or past bearing. You will also measure separately the divisions or parts of the tope occupied by different ryots.

18. You are not to measure hills or beds of rivers.

19. You will consider as garden, or baghayet, all lands, in whatever manner they may be watered, that do not yield rice, but produce raggy, juwarc, tobacco, red pepper, &c., and you will enter as garden so much only as can be watered.

20. In measuring wet land, you will specify whether it is watered by large tanks, by great nullahs such as those of the Toombuddea and Pennah, by kumple or draw-wells, or by kushems or nullahs, proceeding from springs.

21. You will enter as wet land all gardens having a constant supply of water, and containing cocoa-nut and other fruit-trees. You will specify the quantity of waste land between the rows of trees of land cultivated, where the trees are thinly scattered; and of cultivated land, where there are no trees. You will note the number of plants of young trees, if productive, and of old or unproductive trees, and specify whether they are cocoa-nut, soopari, tamarind, jamoon, lime, or orange, &c. You will also enter as wet land plantations of betel and sugar-cane, and likewise land producing tobacco and red pepper, &c. provided there is water enough for rice.

22. In wells and river kumples, where the land having formerly produced rice is now, from some cause or other, cultivated with dry grain, you will enter as wet land all that land which is marked out as ateh kutt or rice fields, and which can be watered; but if, from the scarcity of water, such land is in particular years only cultivated as wet, you will measure it as dry.

 23. When

23. When fields of garden or wet land are too large, they must be subdivided in the same manner as those of dry.

24. You will measure the beds of tanks, and class the lands included in them according to the nature of the soil.

25. You are to enter as cultivated land the cultivation of the last Fusly only, that is to say, of the year previous to that in which the survey takes place; for if lands cultivated in former years, but waste last year, or cultivated in the last, but not in the present year, are entered in the survey as cultivation, the account will not exhibit a true statement of the cultivation of any one year.

27. When boundaries are disputed, if the lands in dispute are cultivated, and have been annexed to one village since the year Kelah, or the establishment of the Ahkam Namah, enter them in that village: if the lands are anade, or old waste, enter them in the village which agrees to walk along the boundary.—(*Sic in orig.*)

28. To prevent the survey from being retarded by indolence, you must measure daily, whether cirkar or enaum land, as follows:—

Of dry land.

| | | |
|---|---|---|
| If cultivated ..... | 5,000 | chains |
| If uncultivated, but divided into fields .. | 6,500 | do. |
| If undivided waste or common . .... | 25,000 | do. |

Of wet land.

| | | |
|---|---|---|
| If cultivated ..... | 1,500 | do. |
| If uncultivated ..... | 2,500 | do. |

This will give you at the rate of six pagodas, or about twenty rupees monthly.

31. As

31. As the chain is frequently broken, and some of its links lost, you will compare it, from time to time, with the standard which you have received for that purpose.

32. If, on trial by the examiner, your measurement is found to be false, you will be discharged if it has proceeded from negligence, and punished if from design.

33. You will inquire into unauthorized new enaums and concealed lands. If you discover any not entered in the accounts of the curnum, you will receive, on proof, one-half the amount (*qy ?* of rent); and the persons through whose information you make the discovery, one quarter of your half.

34. You will be allowed two chain-bearers, and one-quarter of a cantaray fanam for each, daily. You will pay them, and also the coolies employed in making the boundary marks, daily, in presence of the potail and curnum, and take their receipts.

35. You will receive half a pagoda monthly for oil and stationary.

36. You will let the curnums enter the account of the measurement, and you will compare your abstract with theirs, daily.

37. You will deliver both your rough and fair accounts of measurement to the examiner.

*Note.*—The word "field" is here used, as it appears, to mean as much land as can be cultivated by one plough, where the boundaries are not definite.

*Instructions to Examiners of the Survey.*

1. As you are appointed to the superintendence of a party of ten surveyors, you will regulate their survey as follows:—

2. When a village has eight or ten large mujerahs, you will send two surveyors to each; but if the mujerahs are small, only one.

3. When there is a large mouzah without any mujerah, you will mark out by flags the portions to be surveyed by each surveyor, and let them compare their accounts of boundaries with each other, so as to prevent any land from being omitted in their respective limits.

4. When a mouzah is small, and you think that the survey will be accelerated by employing only a part of the surveyors in it and sending the rest to another mouzah, you will do so.

5. If the mujerahs of a mouzah have old boundaries you will adopt them: if they have no visible boundaries, you will set up stones in order to distinguish them.

6. You will take care that no land is omitted between the respective limits of your own surveyors, or between their limits and those of other parties of surveyors.

7. You will take the rough accounts (the kham chitah, or field-book, *qy?*) from the surveyors, and make by them all your comparisons of measurement.

8. In your examinations of measurement, you will attend particularly to the fields of potails, curnums, and khoodbash inhabitants.

9. You will examine by re-measurement daily as follows:— dry, 500 chains, or wet, 150 ditto; and transmit your examination report in the following form:—

Marguz,

Marguz, a tree-field, belonging to R. R., cirkar land to the north of G. G's field, measured by A. B., 4 acres 18½ chains

*Viz.* East to West, ..... 15½
North to South, .... 11½
——— |178=4 18½

But by azmayest, or trial, ..... 5 acres, 1 chain.

*Viz.* East to West, ..... 16¾
North to South, .....12
——— 201=5 1

10. You will transmit your trials with the rough accounts to the cutcherry, and give the fair ones to the accountants (awurdah now is.)

11. In examining the measurement, if the excess of the land on trial is above twelve and a half per cent. in dry, or ten per cent. in wet, you will add the difference to the field. If the deficiency is more than ten per cent. in dry, or five per cent. in wet, you will deduct it.

12. If in any village you find the measurement of the whole, or the greater part of the fields incorrect, and that a new survey is required, you will state the circumstance, and obtain leave before you begin.

13. If any ryot complains that the measurement of his field is not fair, you will measure it again.

14. You will enquire into new unauthorized enaums, extra collections on land, and articles of the village, taxes suppressed in the accounts. Of all such discoveries you will receive one-half, as a reward, and one-quarter of your half will be paid to the person from whom you may have received your information.

15. As the chains are frequently broken, you will compare them occasionally with the standard measure.

16. You will get two chain-bearers from the tollies or tallaries of the village. You will pay them one-quarter of a cantaray fanam each, daily, in the presence of the potail and curnum, and take

take their receipt, and you will send a statement of the expense with your monthly account.

17. You will divide all the villages that fall to your share according to the number of surveyors, write the different shares on an equal number of papers, and let the surveyors draw lots, and measure the villages which their respective lots contain.

18. Your party is to measure only such villages as may be allotted to it. If, in the hopes of getting more pay from black land, your surveyors measure the lands allotted to another party, they will receive no pay for them, and be fined.

19. After finishing the measurement of the villages allotted to your party in any district, if there is any party which has not begun its measurement in that district, you will measure its villages; but if there is no party which has not commenced, you will proceed to the next district.

20. You are not to measure in four or five days the number of acres prescribed to you for the month, but to measure daily; except on those days when you are on your way to another district. The measurement may be more in some days and less in others; but the prescribed quantity for the month must be completed.

21. You are not to try the measurement of a part of the surveyors in one month, and that of the rest in another; but you are in each month to try the measurement of all the surveyors.

22. You are not to remain behind the surveyors; because, unless you are with them, you cannot compare with them the false measurement which you may discover. If you are not always in the same district with them, you will be dismissed.

23. With your monthly abstracts you will send a list of the surveyors and peons, present and absent. You will give your rough accounts of measurement examined to the aumildar, who will

will forward them to the collector's cutcherry, and you will take the aumildar's receipts for the accounts.

*Instructions to Assessors or Terrim Muttaseddies.*

1. You are to class the land surveyed by ten surveyors according to their rate or terrim. In settling the terrim, you are to assemble the potail, curnum, and ryots of the village, and also the heads of the neighbouring villages, and do it with their advice.

2. You are to class the lands of the whole mouzah into first, second, third, &c., according to their rates. If the best land is in the cusbah, you will enter it in the first rate. If the first land of any of the mujerahs is only equal to the second of the cusbah, you will enter it on the second rate. If, on the contrary, the first land of the cusbah is equal only to the second of the mujerah, you will enter it in the second rate; for the rates are to be for the whole village, generally, and not for each mujerah separately.

3. In fixing the rates, the ryot who occupies the land must be present. You are to consider the condition of the land, and not of the ryot, for the one is permanent but the other is not; and you are to be careful not to enter the first rate as second, or the second as first, &c.

4. You are to mention the colour of the land, in order that, in fixing the rent, the class to which it belongs may be the better known. The colours are as follow:—

Regur.

1 Black, mixed with stones.
1 Black ..... chunan stones.
1 Black ..... white earth.
1 Black ..... sand
1 Black ..... pebbles (gargatt.)
1 Black mould.

Red.

1 Red, mixed with stones.
1 Red ..... sand.
1 Red earth.

3

5 You will inform the ryots that the whole land of each class will be assessed at the same rate, and caution them to class the fields according to the real quality.

6. In classing the lands you will proceed as follows:—

Dry, at half a cantaray fanam difference for each rate.

| Rate. | Acres. | Rate per Acre. |
|---|---|---|
| 1 | 100 | 1 0 0 |
| 2 | 50 | 0 9 8 |
| 3 | 40 | 0 9 0 |
| 4 | | 0 8 8 |
| 5 | | 0 8 0 |
| 6 | | 0 7 8 |
| 7 | | 0 7 0 |
| 8 | | 0 6 8 |
| 9 | | 0 6 0 |
| 10 | | 0 5 8 |

And so on to the twentieth rate.

Bagayet, at five canteray fanams between each rate.

| Rate. | Acres. | Per Acre, Can. Pag. |
|---|---|---|
| 1 | 10 | 10 0 0 |
| 2 | 15 | 9 5 0 |
| 3 | | 9 0 0 |
| 4 | 40 | 8 5 0 |
| 5 | 50 | 8 0 0 |
| 6 | | 7 5 0 |

And so on to the twentieth rate.

Wet,

Wet, at five canteray fanams difference between each class.

| Rate. | Acres. | Per Acre, Can. Pag. |
|---|---|---|
| 1 | 10 | 6 0 0 |
| 2 | | 5 0 0 |
| 3 | | 5 0 0 |
| 4 | | 4 5 0 |
| 5 | 40 | 4 0 0 |
| 6 | 50 | 3 5 0 |
| 7 | | 3 0 0 |
| 8 | 20 | 2 5 0 |

And so on to the twentieth rate.

The above is given as an example for your information. You are not, however, to enter the money rates, but only to that the lands are correctly classed. The c numerous as the different kinds of landare you are not to make more than six of ga ten classes of dry.

7. In regulating the proportions of th tween each class, you will be guided by the and make it in some villages for dry, one-half and in other villages, where the rent is low, taray fanam.

For garden, 5 and $2\frac{1}{2}$ canteray
For wet, .. 5 and $2\frac{1}{2}$ ditto.

If in a village you find that the difference of land should be one-half of a cantaray same difference between every other c ner, if the difference between any tw fanam, you will continue that diffe classes; and in garden and wet, if classes is two and one-half, or five c one of these rates the difference b but you must not have both ra village.

N. B. The rent of dry land in some of the western districts was found to be so low, that the rate of decrease (oottar) could not be restricted to one-fourth of a cantaray fanam without great inconvenience: it was therefore extended to one-eighth of a cantaray fanam, or two anas, and the following additional articles were inserted in the instructions: –

8. Though you were formerly directed to restrict the rate of decrease (oottar) in dry land to one-fourth of a cantaray fanam, yet as the accounts must be regulated by the land, and not the land be made to suit the accounts, and as the usual rent is in some places only from one-fourth to one cantaray fanam per [illegible] if there are seven or eight classes rising one-fourth of a [illegible]anam each, it will make the rent too high: you will, [illegible] are only three or four classes, keep the oottar [illegible]m; but if there are more, you will make [illegible] anas of a cantaray fanam, according to

[illegible]ostract of the village, you will state at the [illegible] of dry, wet, and garden, the oottar, or rate of [illegible]he different classes—if dry, one-eighth, one- [illegible] of a cantaray fanam; if garden or wet, two [illegible] cantaray fanams.

[illegible]nd, you will consider both the nature of [illegible] of labour: for instance, if one field is [illegible]her of the same quality at a distance [illegible]ust be rated lower, because it requires [illegible]lso to plough it (but then it is exempt [illegible] proximity to the village, as cattle, [illegible]nd people passing through it and [illegible] make allowance for the additional [illegible]cordingly, so that it may be culti- [illegible]e land of the same kind near the [illegible]len and wet land, make allowance for

for the deficiency of water; and, where there are nullahs and wells, for the extra labour, and reduce the class.

11. You are to class the land not merely by its intrinsic quality, but also by its actual state of cultivation. Thus, if two adjoining fields of the same quality with respect to soil, are held, the one by a poor and the other by a substantial ryot, you will not enter them in the same class, but you will place the field of the poor ryot in such lower one as its unimproved state may render necessary.

12. If in one field, whether dry, wet, or garden, there are two or three different kinds of soil, you will not class the kinds separately, but take the average of the whole and make one class.

13. In classing wet and garden, observe the following detail: —Divide the lands of tanks and nullahs into one-crop and two-crop land. In well-land, consider whether the well has water for one or two crops, and make the class higher or lower accordingly.

14. In classing betel and cocoa-nut, &c. gardens, you will enter the land in the same class as land of the same kind on which there are no fruit-trees, without making it either higher or lower on account of the trees.

15. In garden, you will enter as garden only what is now cultivated; and you are not to add to it any of the neighbouring dry land, on the supposition that there is water enough to convert it hereafter into garden.

16. In garden, which is now waste (anade), you will examine whether, when last cultivated, the crop was a dry or a wet one. If dry, you will class the land as dry; and if wet, as garden.

17. In

17. In classing dry waste (anade) you will proceed as follows:—If it is divided into fields by old boundaries and has been so measured, you will class each field separately: if there are no old boundaries or land-marks, you will class it by the divisions into which the surveyors may have formed it.

18. In classing the lands, you will take the rough account of the survey, and class according to the order of the numbers in that account; after which you will separate the cirkar and enaum, and the cirkar cultivated and uncultivated and waste land, and class the whole according to their respective rates. You will not add up the fields ryotwar, for it is not necessary to shew what each ryot occupies; but in enaum lands you will add up the fields both in their classes, and under the name of the person to whom they belong.

19. You are to class the lands, dry, garden, and wet, as they are distinguished by the surveyors. You are not to alter their classification, but you may note where you think it is wrong.

20. You are to class monthly three thousand cantaray pagodas, of land cultivated by the rent of the preceding year, for which you will receive ten star pagodas monthly. If you class a smaller quantity, your pay will be reduced in the same proportion, *viz.*

| | | |
|---|---|---|
| For cantaray pagodas | 2,750, | pay star pagodas 9 |
| Do. ..... .. | 2,500 | ..... 8 |
| Do. ..... | 2,260 | ..... 7 |
| Do. ..... . | 2,000 | ..... 6 |

If you class a smaller quantity than two thousand, you will be dismissed; but you will receive no increase above ten pagodas pay, whatever quantity you may class. If, however, in the course of the year, you class more in one month and less in another, the difference will be allowed, provided it does not on the whole exceed ten pagodas monthly.

21. You

21. You are to examine if fields have been concealed or articles in the village taxes suppressed, but you are not to enquire into differences of rent or extra collections.

22. You will not enter the land forming the beds of tanks, and barren or useless, purrempoke; but you will enquire how it is cultivated when the tank is dry, and class it accordingly,

23. You are to compare your accounts with the curnum daily, and let him take a copy of them on the spot. You may carry him and the potail to the neighbouring villages, to give their opinion on classing the lands of them, but not to write the account of any but of their own villages. If you make out your accounts without letting the curnum take a copy, your pay will be stopt every month in which this is done.

24. In making out your abstract of the land in classes (kessemwar goshwarah), you are not to enter as cultivated the cultivation of two or three years, but only that of the preceding year. If more is entered you will be dismissed.

25. As the surveyors, in order to get more pay, make out their accounts hastily and give false additions, you will make your gomastahs compare them, and send a list of all errors monthly to the treasury, showing the dates of measurement, and the differences of the number of acres.

26. The land classed by you will be examined by the head assessor (sirterrim), and if any material error is discovered, you will be dismissed.

27. You will make out the accounts of each village according to the forms, and when the district is completed give the whole to the aumildar. You are not to keep the accounts after the district is finished, nor to carry the curnums to another district.

28. You are not to wait for the (sirterrim) head assessor, but as soon as you finish one village proceed to another.

29. You are not to dismiss or employ gomastahs or peons without reporting and obtaining authority.

*Instructions to Sirterrimdars or Head-Assessors.*

1. As you are appointed to superintend and correct the assessment of five (terrimdars) assessors, you will divide your share of each district into five divisions, and give one to each terrimdar; and you will give him, at the same time, the survey accounts, which will be delivered to you by the aumildar.

2. You will examine the classification of the lands, and you will fix the rates of assessment in conjunction with the potails, curnums, and principal ryots; and if you wish for the assistance of any intelligent persons formerly employed in the revenue, the aumildar will send them to you on your application.

3. In making the assessment, you must examine all circumstances that may assist in enabling you to form a right judgment. You must consider the ahkam namah, or assessment of Tippoo Sultan, the present extent of cultivation, the condition of the ryots, and the nature of the soil. You will then fix the rate of assessment of each class of land in dry, garden, and wet. You will explain it to the ryots and obtain their consent to it, and you will take care that it is not so high as to impede cultivation hereafter. You will also examine well the kamil rent of each village, the detail of the ahkam namah and of the rent of the last twenty years, and enter them in your statements.

4. If you find that any of the terrimdars have classed the lands wrong, whether from ignorance or corrupt motives, you will report, in order that they may be dismissed.

5. Where

5. Where you find that the terrimdars have entered two or three kinds of land in the same class, you will transfer each kind to its proper class.

6. As the classing the fallow and waste lands at too low a rate might induce the ryots to occupy them and throw up their cultivated lands, to the injury of the revenue, you will therefore keep in view, that waste lands are to be so classed as not to discourage their cultivation, and at the same time as not to give them any advantage over the old cultivated lands.

7. As your assessment is regulated by the quality of the land and its actual state of cultivation, and as the Brahmins and other Tyargar, or privileged casts, and the cullgoottah shatrium and guddad landholders, have always held, and must still be permitted to hold their lands at a reduced rent, and as this remission must be deducted from your assessment and thereby reduce its amount, you must be careful, in comparing your assessment with that of former periods, to deduct the remission previously.

8. You will ascertain whatever has been allowed by the custom of the village as cullgoottah (low rent to different castes) shatrium, enaum, and low-rented villages to Brahmins and guddad (quit-rent for levelling rugged land), and show the amount of each separately in your abstract.

9. You are not to detain the terrimdars until you arrive yourself to examine their assessment, but let them, as soon as they have finished one village, proceed to another.

10. If a part of your terrimdars have finished their divisions, while another part is still behind in a different district, they will also finish the divisions which have not been begun before they proceed to a new district.

11. You will send the pay abstract of terrimdars and peons

monthly to the aumildar, who will get the amount from the treasury, and you will issue it and send a receipt.

12. When the assessment of a district is finished, you will deliver all the accounts to the aumildar and take his receipt.

13. You will class and assess monthly 15,000 cantaray pagodas of land cultivated by the rent of the preceding year, and in case of any deficiency, your pay of fifteen pagodas will be reduced in the same manner as that of the terrimdars.

FINIS.

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