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BY THE SAME AUTHOR.

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PREFACE.

This little book contains nothing more than an attempt to assist Indian law-students in preparing themselves for their examinations; especially by separating for them the existing law from the mass of dead provisions contained in the Regulations and Acts which they are expected to study. It is the substance of a series of lectures which I was permitted to deliver to the B. L. class of the Presidency College in the beginning of this year; to which I have added a reprint of a portion of Harington's Analysis relating to the Permanent Settlement; in this and other respects making free use of the labours of others.

I hope that the student will here find brought together the more important portions of the following legislative enactments:

Regulations I, VIII, X, XIV, XIX, and XLIV of 1793.
Regulation II of 1819,
Regulation XI of 1825.
Act XL of 1858.
Act XI of 1859.
Act IV of 1870 (B. C.).

I have heard a very high authority deprecate any attempt to lecture upon the land-law of India for the reason that it is hopeless to make it intelligible. I am by no means sure that I can successfully combat
this assertion: still, what we direct others to learn, we have no right to abstain from endeavouring, to the best of our ability, ourselves to teach; and I have, therefore, attempted to make some outlying portions of that law at any rate a degree less unintelligible to students.

I cannot, however, refrain from pointing out that great as are the inherent difficulties of the subject, even to a legislator, something might be done by a judicious attention to the form in which the law is expressed. One may fairly complain of the very inaccurate language of some modern statutes, such as Act XL of 1858 of the Council of India, and Act IV of 1870 of the Council of Bengal. These enactments are, to my mind, far less easy of comprehension and application than the Regulations of 1793 which they replace.

Indeed, it seems to me not inopportune in a work intended for the use of persons whose chief duty in life will be to take a part in the administration of law, to consider for a moment the form in which the Legislature at the present time is in the habit of expressing its commands. Now, in the old Regulations there is very little attempt at strict legal phraseology, and avowedly they leave much to the discretion of persons whose duties they describe. They, nevertheless, state in clear and simple language the general intentions of the Legislature. On the other hand, our modern Acts propound the law with the minutest details, each Act contains a little glossary of its own; terms are defined, definitions are explained, and explana-
tions illustrated.* But whilst I admire the energy, industry, and ability with which the work has been carried on, I cannot help doubting whether it has been sufficiently remembered, that an over-strained attempt at precision almost always defeats itself, on account of the inherent deficiencies of language. And there are special reasons why in India the limits of attainable precision are very soon reached. Even the most experienced lawyers, dealing with those institutions of India which have been most carefully studied, can only express their ideas by a long periphrasis, or by using English terms with a caution that they do not express accurately the notions which it is sought to convey. Nor is it in one language alone that precision is to be attained. Let the language of the Legislature be ever so precise, we still have to consider whether it will remain so, through the multiplicity of translations which it has to undergo before it reaches the understanding of those to whom it is addressed.

* The first introduction of illustrations into Acts of the Legislature was, I believe, in the Libel Act for the Island of Malta, drawn up by Mr. Austin and Sir George Lewis, though I have heard that the idea was suggested by Mr. Macaulay; and they were certainly introduced into the draft of the Penal Code published in the year 1838. I have seen a printed draft of the Maltese Libel Act of about the same date, with a Preface explaining the views of its eminent authors as to the use and purpose of illustrations. I do not think they quite coincide with those of the Indian Law Commissioners, who, both here and in England, appear to have resorted to the use of illustrations in order to limit, as far as possible, judicial discretion; which is, evidently, looked upon as an unmitigated evil, capable, by due diligence, of being indefinitely reduced. See the First Report of the Indian Law Commissioners, 1864. This last mentioned idea always recurs when the attention of the Legislature is turned to the construction of Codes.
But while I doubt the success of the present attempt at extreme precision, as well as the policy of eliminating all discretion in the application of law, I can as little agree with those who, feeling hampered by these minute details, maintain that a Judge has discretion to temper all rules of law with the broad principles of equity. I find that persons who hold this opinion commonly refer to Rome and England as an example. And it no doubt sounds well to talk of equity and good conscience in opposition to hard and inflexible rules. But such a notion, specious as it may appear, and correct as it may be within certain limits, does not mean that a Judge, any more than any one else, is to infringe upon the law; and, as applied to rules of law promulgated by the Legislature, never formed part of any known legal system. It has been frequently pointed out by jurists that, just in proportion as legislation becomes active, equity, the peculiar function of which is to supply the defects of existing law, declines. Equity, as has been said, has "its place and time" to exercise such a function, but its place is generally considered as almost filled up, and its time as almost gone by, in countries where, as in India, hard rules of law are produced by the Legislature at the rate of several hundred pages a year. Nothing would lead to greater confusion than to treat the law thus created either as a Roman prætor treated the jus Quirimum, or as English chancellors of former days treated the English common law; the former by bending it to a superior law of nature, the latter by conforming it to a superior
morality. Notwithstanding, therefore, what has been said, I will still venture to warn all students of law, at the outset of their career, against the seductive notion that rules of law, promulgated by authority, are to be habitually modified by their own notions of what is right and just. How much discretion shall be left to those whose duty it is to administer the law, is for the Legislature to decide. Much is still left to them. But when the Legislature has once laid down a rule, they are bound, like every one else, first, to endeavour to understand the rule, and then to apply it. Equity, on the other hand, must be reserved for those departments of law which legislation has not yet reached. And though the extent of these is still considerable, they have, of late, been very much curtailed.

Calcutta;
June 9th, 1873.
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Taken from Wilson's Glossary of Indian Terms.
LECTURE I.

RESUMPTION OF LANDS HELD RENT-FREE.

1. The East India Company, as is well known, succeeded to the Dewanny, and thus to the virtual sovereignty of Bengal, Behar, and Orissa, on the 12th of August, 1765. For a short time, however, the company continued to manage the collection of the revenue through the native officers; and it was not until the 28th of August, 1771, that, by the deposition of Mohammed Reza Khan from his office of naib dewan, the company "stood forth as dewan," and finally determined to take upon itself the entire care and management of the revenue.

2. The result of the British administration of the revenue was the permanent settlement. And the rules for carrying out that settlement, though they did not receive the assent of the Directors, and did not, therefore, become law until later, were framed in the years 1789 and 1790.¹

3. One of the questions which it was necessary to consider as soon as the Government set about making a permanent settlement of the country, was, how to deal with claims to hold lands exempt from the payment of revenue, or, as they are commonly called, to hold them lakheraj. Since the year 1771, when the Government had first assumed the management of the revenue, directions on this subject had been frequently issued. These rules were revised, and a

¹ See the account of the formation of the permanent settlement at the end of this volume.
code of rules respecting lakheraj lands was issued on the 1st of December, 1790, which code, with some slight modifications, is embodied in Regulation XIX of 1793.

4. This regulation makes constant reference to three distinct epochs, upon which, in some measure, its provisions depend. The first of these is the accession of the company to the dewanny, which, as I have already said, took place on the 12th of August, 1765. The second is the assumption by the company of the management of the revenue, which was finally completed on the 28th of August, 1771. This corresponds with the 14th Bhadoon, 1178, Bengalee, and the 1st Bhadoon, 1178, Fuslee, that is to say, with the fifth month of the year 1178, Bengalee, and the last month of the year 1178, Fuslee. But for the purposes of this regulation all provisions which depend upon this epoch are made with reference to the commencement of the Bengalee year 1178 and of the Fuslee year 1179, according as the one or the other of these two eras are in use in the several districts to which the regulation relates. The third epoch is the 1st December 1790, when the code of rules was drawn up, which date corresponds with the 18th of Aughun, 1197, Bengalee, and the 10th Aughun, 1198, Fuslee. And in connexion with these, I may mention the date of the permanent settlement, which has been fixed as the 22nd March, 1793, the date when the regulation was passed, making the decennial settlement, in accordance with Lord Cornwallis's suggestion, a permanent one.¹

5. Recognizing, as they were in justice bound to do, the acts of their predecessors, the British Government did not, of course, attempt to disturb existing grants of exemption from payment of revenue, if they had been properly made

and duly sanctioned prior to its own accession to the dewanny. And further, having regard to the difficulty of ascertaining what grants were really so made and authorised, and the hardship that might ensue from the disturbance of long enjoyment, it was declared, by s. 2 of Regulation XIX of 1793, that all grants made previous to the 12th of August, 1765, by whatever authority they might be made, and whether by writing or without a writing, should be deemed valid; provided the grantee had actually and bond fide obtained possession of the land so granted previous to the date above-mentioned, and that the land had not been already again made subject to the revenue by the officers or the orders of Government. But all grants of exemption made subsequently to the 12th of August, 1765, and prior to the 1st of December, 1790, were declared invalid (s. 3, cl. 1), with a slight reservation in favour of certain small grants made, either by the provincial councils, or for objects of religion or charity. And, by implication, all grants of which possession had not been taken could not afford any protection; as neither could grants which were not in perpetuity and which had expired.

6. It is explained in the regulation (s. 4) that these provisions were not intended to affect the proprietary rights of grantees holding under grants made previously to that date, but only to declare the liability of lands held under grants of exemption to assessment. So that any person claiming to hold under such a grant might substantiate his claim to hold the lands, though under the above provisions he could not resist payment of the revenue.

7. Instead, however, of simply claiming for its own benefit the revenue of the lands thus brought under assessment, the Government thought fit to make the following complicated rules upon this subject. It is declared, in the first
place, (s. 6) that the revenue assessable on lands less than 100 beegahs, which (having previously been held under an invalid claim of exemption) should be held liable to assessment, should belong, not to Government, but to the person responsible for the discharge of the revenue of the estate or dependent talook in which the land might be situated. The revenue assessable on lands which exceeded 100 beegahs, which (having been previously held under an invalid claim of exemption) should be adjudged liable to assessment, is declared by s. 7 to belong to the Government.

8. Then follow (s. 8) two sets of rules for assessing the revenue upon these lands according as the grant adjudged to be invalid was made before or after the assumption by the company of the management of the revenue. If the invalid grant were made before that date, the revenue payable is to be equal to one-half the annual produce of the land; if after, the land is to be subject to the ordinary rules of assessment. There are other provisions of a minute and detailed character which I do not consider it necessary to notice.

9. These provisions relate to grants already made, that is, to grants made prior to the 1st December, 1790, when the rules embodied in the regulation were drawn up. It will be seen that even an invalid grant of exemption, though not a complete protection, was nevertheless a very important document. If it was dated prior to the final assumption by the company of the management of the revenue, the lands were to be assessed at a reduced rate; and if the land comprised under the grant were less than 100 beegahs in extent, the Government had no claim to the rent or revenue assessed upon it, which belonged entirely to the proprietor of the estate within which the plot lay.
10. But so great are the difficulties in the way of disturbing an existing state of things, that we find that these provisions produced very little effect. Indeed it has been asserted\(^1\) that nothing whatever was done under them for twenty-five years, when Regulation II of 1819 was passed with the intention of substituting a better method of procedure. We are told, upon the same authority, that so far as the Government was concerned, this attempt also failed, and at length in the year 1828 a number of courts presided over by officers called "Special Commissioners" were expressly created with a new set of rules for the purpose of investigating claims to hold lands exempt from the payment of revenue. Even these tribunals were not altogether successful, and they were abolished by order of Government on the 4th of March, 1846. I shall not, therefore, pursue further the consideration of the rights of Government over lands held under an invalid claim of lakheraj, but shall confine myself to the consideration of the analogous rights of proprietors of revenue-paying estates.

11. The right of proprietors to assess for their own benefit lands of less extent than 100 beegahs held under invalid claims of exemption was not the only benefit conferred upon private individuals by the regulation of 1793. By s. 10 it was declared that "all grants for holding land exempt from payment of revenue\(^2\) made thereafter by any authority other than that of the Governor General in Council shall be null and void; and no length of possession shall be considered to give validity to such grants, either in regard to the property in the soil or the rents of it.

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2 What is here called "revenue" is what is commonly called "rent," and is so denominated in the latter part of the section.
And every person who now possesses or may succeed to the proprietary right in any estate or dependent talook, or who now holds or may hereafter hold any estate or dependent talook in farm of Government, or of the proprietor or any other person, and every officer of Government appointed to make the collections from any estate or talook held *khas,* is authorized and required to collect the rents from such lands at the rate of the pergunnah, and to dispossess the grantee of the proprietary right in the land, and to re-annex it to the estate or talook in which it may be situated, without making previous application to a court of judicature, or sending previous or subsequent notice of the dispossession or annexation to any officers of Government; nor shall any such proprietor, farmer, or dependent talookdar be liable to an increase of assessment on account of such grants which he may resume and annul during the term of the engagement that he might be under for the payment of the revenue of such estate or talook, when the grant may be so resumed or annulled."

12. This provision, it will be observed, puts the power of annulling all future grants into the proprietors' own hands. It is not so, however, with regard to grants which were then already in existence. In respect of these the proprietor is directed by s. 11 to institute a suit for the recovery of the rent in the court of dewanny adawlut.

13. When the Government, as already explained, were attempting to improve their own position in reference to the resumption of invalid grants of exemption by Regulation II of 1819, they at the same time laid down additional rules with respect to proprietors seeking to recover for their own benefit the rent of lands held free of assessment. It is declared

1 That is, as we should say, "in hand;" see Wilson's Glossary, s. v.
by this regulation (s. 30) that claims to assess may be preferred directly to the collector; and if preferred by suit in the civil court they are to be referred to the collector. In either case the collector is to have the extraordinary power of compelling the defendant to produce the documents under which he claims to hold the lands rent-free, and to state how he makes his claim. The collector is then to state his opinion on the claim, which, if the claim was originally preferred in the civil courts, is to be transmitted to that court with the documents, and the civil court is to decide the case after calling for such further evidence as may appear necessary. If the claim was originally preferred to the collector, an appeal to the civil court is given.

14. There cannot perhaps be a stronger instance of the nullifying effect of the habits of the people upon legislation than is afforded by these provisions of the law. It will be seen that the legislature has here gone out of its usual course to heap up every possible facility for the ejectment of lakherajdars. The zemindar or other proprietor may take the matter into his own hands and summarily expel them, or if he goes into a court of law the usual presumptions are all reversed in his favour: no delay on his part, no waiver of his rights can affect him; and the law not only enables him to assert his rights, but requires him to do so.

15. The cause of the failure of these provisions is in part explained in a very interesting judgment of the late Baboo Shumbhoonath Pundit, which will be found in the Weekly Reporter, vol. ii, p. 23. That learned and experienced judge there states that these rent-free grants were very rarely given in consideration of money, but from pious motives for religious or charitable purposes; and (he adds) that formerly "even purchasers by private sales or at auction for revenue, Hindoos as well as .Mahomedans,
generally respected such grants, until about thirty years ago some Bengalees having become zemindars by private purchase or by public sales turned a new leaf, and braving the opinion of their countrymen began to exercise resumption rights, and so tempted some others to follow their example.”

And further on the learned judge (who it must be remembered was speaking in the year 1865) continues thus:—

“Suits for resumption by landlords were very rare formerly, and even now all zemindars do not exercise their rights. The resumption suits are comparatively confined to the districts of Hooghly, Burdwan, and the 24-Pergunnahs. The respect generally shown before, and the disrespect shown by some persons since the new idea has prevailed, relates to and affects not only the grants subsequent to 1790, but also invalid grants existing before that year.”

16. It would also be natural to suppose that landlords, when they had made up their minds to exercise their rights, would then, at any rate, have exercised the summary powers of ejectment given by s. 10 of Regulation XIX of 1793, but this has not been so. It is stated by the Privy Council in their judgment in the case of Nobokristo Mookerjee v. Koylas Chunder Bhuttacharjee, delivered on the 18th of July 1871,¹ that “in process of time landowners, seeking to enforce their rights under the tenth section, seem to have found it expedient to do so by means of legal proceedings rather than in the summary manner authorised by the latter clause of that enactment.”

17. But although proprietors failed, or did not venture to assert all the advantages which the legislature had conferred upon them, they managed for a time to gain others to which under the law they were not entitled. The provi-

¹ Bengal Law Reports, vol. viii, page 556.
sions above stated preserve carefully a distinction between grants made before and grants made after the 1st of December, 1790. But notwithstanding this distinction, we are told in the Privy Council judgment last referred to, that "a loose practice seems to have sprung up under which landowners, claiming the right to assess lands held and enjoyed rent-free, brought their suits generally under Regulation II of 1819, without specifying whether they were seeking to enforce the right given to them by the seventh and ninth sections of Regulation XIX of 1793, or that given them by the tenth section."

And we are further told that "the result was that the stringent provisions of Regulation II of 1819 were indiscriminately applied; and that in all cases the burden was cast upon the defendant of proving by the production of ancient documents that the tenure existed before the 1st of December, 1790. If he established this he would probably succeed, whether his lakheraj tenure was voidable or not, the suit, unless the plaintiff happened to be a purchaser at a Government sale, being barred by limitation."

18. This decision, however, finally decided that s. 30 of Regulation II of 1819 had no such general operation. The Privy Council held that it was limited to suits for the resumption of rent-free tenures existing prior to the 1st of December, 1790, and that a suit to enforce a claim arising under the 10th section of Regulation XIX of 1790, if brought under s. 30 of Regulation II of 1819, in order to get the benefit of the procedure there described, was improperly brought. The same point had been previously discussed in a case reported in the Weekly Reporter, vol. iii, p. 91, which was argued before seven judges, a majority of whom put the same construction on the regulation of 1819 as was afterwards affirmed by the Privy Council.
19. This point is, therefore, settled in favour of the lakherajdar. Another point also settled in his favour is thus stated in the same judgment, namely, "that whatever doubts may at one time have existed, it became unquestionable, after the decision in the case of the Maharajah of Burdwan,¹ that the right of Government to resume (under the procedure of Regulation II of 1819) a voidable lakheraj tenure comprising more than 100 beegahs was subject to the sixty years' limitation; and that by parity of reasoning the right of the zemindar to resume a voidable lakheraj tenure comprising less than 100 beegahs was subject to the twelve years' limitation." The prior decision of the Privy Council here referred to was based upon Regulation II of 1805, which was the general law of limitation then in force, and it was held that this regulation was applicable, inasmuch as the collector's court dealing with a case of resumption of lakheraj tenure under Regulation II of 1819 must be considered as a court of civil justice to which the law of limitation as laid down in the regulation of 1805 is applicable.

20. On the other hand, in a case heard before a bench of seven judges, and which is reported in Weekly Reporter, vol. ii, p. 205, it was held that the words of s. 10 of Regulation XIX of 1793—"no length of possession shall be hereafter considered to give validity to any such grant either with regard to the property in the soil or the rents of it"—excluded limitation when a suit was brought to get rid of a grant subsequent to the 1st of December, 1790; and this ruling is said to be in accordance with a series of decisions of the late Sudder Court. But the Privy Council, in a case decided a few months later, held otherwise. It

¹ Moore's Ind. App., vol. iv, p. 466.
was decided in the case of Mussamut Chundrabullee Debia v. Luckhee Debia Chowdhraim,¹ that Regulation II of 1805, s. 3, cl. 3, applies to such a suit. That clause provides that "nothing in the preceding clause, or in any part of the existing regulations, shall be held to authorise the cognizance of any suit whatever in any court of justice, if the cause of action shall have arisen sixty years before the institution of the suit, nor shall any plea on the part of the plaintiff for the non-prosecution of his claim of right during a period of sixty years after the origin of his alleged cause of action, nor any original defect of title on the part of the possessor of the property claimed, after the lapse of such period, be deemed a sufficient ground for taking judicial cognizance of any suit so preferred." It was held that these words were sufficiently comprehensive to embrace every existing regulation and every suit whatever. It follows, therefore, that a proprietor seeking to resume or to assess lands held rent-free can never escape altogether the rules of limitation.

21. So much of s. 10 of Regulation XIX of 1793 as authorises and requires proprietors to collect the rents of lands held free under grants subsequent to the 1st of December, 1790, and to dispossess the grantees, is repealed by s. 28 of Act X of 1859, and any proprietor who may be desirous to assess such land or to dispossess such a grantee is required to make application to the collector, who is to deal with the application as a suit under the act; and every such suit is required to be instituted within twelve years of the time when the right to assess or to dispossess first accrued. It was, however, held, after a good

deal of discussion, that this section did not give the collector exclusive jurisdiction to decide claims under s. 10 of Regulation XIX of 1793, but that such suits might be brought in the civil court as before. This was held by four judges against three in the case in the second volume of the Weekly Reporter already referred to.

22. Act X of 1859 has been repealed by Act VIII of 1869 of the Bengal Council, and all doubts about jurisdiction ought now to be set at rest for the simple reason that the only court having jurisdiction is the ordinary civil court. And although the special limitation provided by s. 28 of Act X of 1859 has been swept away, there would seem to be ample protection under clause 14 of s. 1 of Act XIV of 1859, and Act IX of 1871, sched. 2, cl. 130. The first of these provisions is, that for suits by the proprietors of any land or by any person claiming under him for the resumption or assessment of any lakheraj or rent-free land, the period of limitation shall be twelve years from the time when the title of the person claiming the right to resume and assess such lands, or of some other person under whom he claims, first accrued: provided that no such suit shall be maintained, if it is shown that the land has been held lakheraj from the period of the permanent settlement.¹

23. The language here used to describe the period of time when the twelve years is to begin to run is not very clear. It is probably meant that, if the estate has been transmitted by purchase, gift, will, inheritance or the like, then that the period of twelve years is to be measured from the date when the estate was acquired by the original owner.² It may be, however, that if the estate were sold for

¹ Supra, s. 4.
² See a case reported in Madras Reports, vol. iii, page 68.
arrears of Government revenue, the purchaser would be considered to take by an original title, and that the period of twelve years would then be measured from the date of the purchase. The holder of the rent-free tenure would then have to fall back on the proviso, or, if his grant were subsequent to the date of the permanent settlement, on the Regulation of 1805, s. 3, cl. 3, and the decision of the Privy Council in the case of Chundra Bullee Debia v. Luckee Debia Chowdhrain above referred to. The language of the new act is a little different, but possibly no change of the law was intended.

24. In the Full Bench case reported in the Weekly Reporter, vol. ii, page 91, to which reference has already been made, the High Court had also held that, if the plaintiff alleged the grant of the rent-free tenure to have been made since the 1st of December, 1790, he must shew that either at, or at some time since, that date, the land had paid rent, and the Privy Council held that no just exception could be taken to this ruling. "The High Court (they say) has not laid down that he must do this in any particular way. He may do it by proving payment of rent at some time since 1790, or by documentary or other proof that the land in question formed part of the māl assets of the decennial settlement of the estate."

25. I cannot conclude these remarks without a passing observation on the general result of this chapter in the history of Indian legislation. As regards the Government itself, though the rules for resumption are equitable in principle and have been leniently applied, they are affected by the fatal vice of being too complicated; and have therefore failed. As regards private persons the analogous rules can hardly be called equitable. They invite men to set aside their
own solemn and deliberate engagements. We have seen, however, how little willing the landholders were, at first, to accept this advantage, feeling, no doubt, that they could not do so without dishonour. And though purchasers and others more remotely connected with the original grantors of the exemption might reasonably feel differently as to the moral obligation to respect their grants, still the natural sense of justice of the administrators of the law has caused a strong leaning against the landlord seeking to resume, and in favor of the grantee relying on his grant. The result has been a sense of wrong on the part of the lakherajdars, not altogether unfounded; endless litigation; and attempts by the legislature to patch up the law and to preserve the old principle whilst mitigating its effects. It can scarcely be possible that the collection of the revenue in Lower Bengal can now require any such protection as this, and if it does not, there would seem to be overwhelming reasons of policy and economy for sweeping away altogether the principle of resumption and the laws which depend upon it.
LECTURE II.

The Revenue Sale Law of the permanently settled Districts of the Lower Provinces of Bengal.

26. The collection of the land revenue has formed one of the most important, and at the same time one of the most peculiar, features of Indian Government both under the Mahommedans and the British administrators. We founded our system on that of the Mahommedans who preceded us, but we soon widely departed from it, partly from our imperfect, and in some respects erroneous, conception of the ideas of ownership in land on which the Mahommedan system was founded, and partly from our very different notions of what was politic and just.

27. There was in the dealings of the Mahommedan rulers towards the zemindars a peculiar mixture of severity and consideration. Under that Government, we are told, "the recovery of arrears from defaulters was sometimes attempted by seizure and confiscation of personal property; or by personal coercion. The zemindar might experience the mortification of having the administration of his zemindary taken out of his hands and entrusted to a seizawul. He might be imprisoned, chastised with stripes, and made to suffer torture, with the view of forcing from him the discovery of concealed property. He was liable to expulsion from the zemindary. He might be compelled to choose either to become a Mussulman or to suffer death. But under
whatever degree of adversity the zemindars might fall; or whatever might be the extremity of injustice or cruelty practised on them, they had still the consolation of preserving their rank and being considered as zemindars. They themselves might come under the displeasure of the Government, and experience its severities; but their families would still maintain the consideration due to their station in society; with the chance of recovering in more favourable times the possession of their zemindaries. The policy of these [the native] governments was adverse to the dispossession of a zemindar, who, by means of his family connexions and caste, might return to disturb the possession of his successor. Hence it appears that even in cases where a zemindar from rebellion or other misconduct was deemed deserving of death, the succession of a relation or of an infant son or widow of the late zemindar under tutelage was generally deemed preferable to the introduction of a stranger to the possession of the zemindary. 1

28. Whether this policy deserved the praises bestowed upon it by the anonymous Persian author from whose work this account of it is taken may be doubted. It is true that it preserved to the family of a Hindoo proprietor the possession of their estates; but frequently only at a sacrifice of life, of honour, and even of religion. At any rate it is not the policy we thought fit to pursue on assuming the Government. We substituted for the Mahommedan methods of enforcing payment of the revenue the ordinary process for compelling a debtor to pay his debt; namely, imprisonment of the defaulter's person, and the attachment and sale of his property; but with many restrictions to prevent this process from being abused. These provisions are contained

1 See Harington's Analysis, vol. ii, p. 351.
in Regulation XV of 1793. Subsequently the punishment of defaulting proprietors by imprisonment was abolished by Regulation III of 1794, and a power of immediate sale was substituted.

29. It was found, however, that the frequent sales which took place under this regulation were "productive of material ill consequences, as well towards the land proprietors and under-tenants, as in their effect on the public interest in the fixed assessment of the land revenue."\(^1\) New rules were accordingly made by Regulations VII of 1799 and I of 1800, which remained in force unaltered for a considerable period, and were applicable to the permanently settled districts of Bengal, Behar and Orissa, as well as to the Province of Benares and the Upper Provinces. Under these rules, if there should be an arrear of revenue, the collector might, if he deemed it expedient, attach the estate from which the revenue was due, but not during the first three months of the year, whilst the proprietors were adjusting their mofussil settlements; he might also appoint an ameen to collect the rents payable to the defaulting landholder; confining his demands, until the existing leases were cancelled, to what the landholder would have been entitled to receive if the attachment had not taken place; but anticipation of payments by ryots and other under-tenants was forbidden: other estates belonging to the defaulter might also be attached; and in some cases his personal property also. But the primary claim of Government for revenue is always considered to be upon the land itself on which the revenue is assessed: it being declared by s. 29 of Regulation VII of 1799, to be the "indefeasible right of Government to hold the whole of the lands answerable in the first instance to the public revenue

\(^1\) Harington's Analysis, vol. ii, p. 357.
assessed thereon, as immemorially known and acknowledged, and frequently declared in the regulations and otherwise.”

30. A discretionary power of ordering the estate of a defaulting proprietor to be sold in order to satisfy the arrears due upon it was vested by these regulations, first, in the Governor General in Council, and afterwards in the Board of Revenue,¹ without whose special sanction no sale could take place.

31. It is clear that the power of sale was at that time only intended to be used in the very last resort: and even where a sale was necessary, these regulations do not contemplate a sale of the whole estate in all cases, but only of such part as would satisfy the arrear and could conveniently be separated; the collector being commanded by Regulation V of 1796, s. 2, to be careful to select for sale such lands as may appear likely to sell for the amount to be recovered by the sale and no more. And the Board of Revenue is specially directed to see this duty carefully performed.¹

32. In the districts covered by the permanent settlement, these rules have been since considerably modified: and they are now much more stringent against the defaulting proprietor. By s. 2 of Regulation XI of 1822, it is declared to be no longer necessary to issue process of attachment before bringing an estate to sale, and collectors of revenue are authorized to sell estates in arrear, but still only with the sanction of the Board of Revenue. Section 2 of Regulation V of 1796 is repealed, but sales of portions of estates are still contemplated and provided for. Under this regulation the necessity for making a demand of the revenue in arrear is

¹ Regulation VII of 1799, s. 30.
also abolished, and the sale may take place at any period of the year.

33. A further sale law was passed in 1841 (Act XII of 1841) which was replaced by Act I of 1845, and this again by Act XI of 1859. These three acts drop all mention of the sale of portions of estates, and they leave the collector very little choice but to proceed to an immediate sale of the entire estate, if the revenue is in arrear. In fact, in the permanently settled districts of Bengal, a sale of the whole estate for any default in the payment of revenue has now for some time come to be considered as inevitable,¹ the only exception being that in Sylhet the collector may, under the special authority of the Board of Revenue, proceed in the first instance by the distress and sale of the personal property of defaulters instead of by sale of their estates.² The reason of this exception is that the smallness of estates in Sylhet would render sales of them for arrears of revenue inconveniently frequent.

34. These extraordinary powers, which the Government has assumed for the purpose of protecting its land revenue, have always been supplemented by another set of provisions without which it was thought these powers would still be ineffectual. As already stated, in case of attachment, the existing engagements of the proprietor with his under-tenants remained undisturbed,³ but from the first it was contemplated that a sale might be necessary; and unless some restriction were placed upon the power of the proprietor to create tenures subordinate to his own and otherwise

¹ Young’s Revenue Handbook, p. 94; Chapman’s Rules of Revenue Department, chap. 19, s. 8.
² Act XI of 1859, s. 4.
³ Supra, sec. 29.
to encumber the estate, it was feared that there might be nothing left for the Government to sell, or at most only a small quit-rent of wholly insufficient value to meet the revenue; and thus the primary security of Government, which is upon the land itself, would have wholly dwindled away. The provisions made to obviate this result are very numerous; and as they are also very important and not always very easy of application, I shall state them somewhat in detail.

35. By Regulation XLIV of 1793, s. 5, it is provided that whenever the whole or a portion of the lands of any zemindar, independent talookdar, or other actual proprietor of land shall be disposed of at public sale for the discharge of arrears of the public assessment, all engagements which such proprietor shall have contracted with dependent talookdars whose talooks may be situated in the lands sold, as also all leases to under-farmers and pottahs to ryots, for the cultivation of the whole or any part of such lands (with the exception of the engagements, pottahs and leases specified in ss. 7 and 8), shall stand cancelled from the day of sale, and the purchaser or purchasers of lands shall be at liberty to collect from such dependent talookdars, and from the ryots or cultivators of the lands let in farm, and the lands not farmed, whatever the former proprietor would have been entitled to demand, according to the established usages and rates of the pergumnah or district in which such lands may be situated, had the engagements so cancelled never existed. But the three last sections of the regulation provide that this shall not apply to absolute alienations of the estate, and shall not interfere with the arrangements of the permanent settlement; nor with leases in perpetuity to Europeans of land for dwelling-houses, gardens or manufactories.

36. Regulation I of 1801, s. 9, also provides that, if the sale take place after the second month of the year, when the
proprietor might have granted leases for the current year, to farmers, ryots, or other tenants, or might otherwise have concluded a settlement with his under-renters for the current year, then the operation of s. 5 of Regulation XLIV of 1793 should be suspended till the close of the year in which the sale took place; during which the purchaser should not demand more than the late proprietor could legally have demanded.

37. There appears to be some misrecital in s. 5 of Regulation V of 1812 which is the next provision on this subject, but it is obvious that the intention of this section was to supplement the provisions of s. 5 of Regulation XLIV of 1793 by determining more clearly what rates of rent the purchaser would be entitled to receive. It is however important to observe, in reference to a question which I shall discuss presently, that, whereas the words of s. 5 of Regulation XLIV of 1793 are that all engagements shall (with certain exception) "stand cancelled," s. 9 of Regulation V of 1812 only declares that by the former and present regulations persons purchasing land at the public sales "are competent to annul such engagements." Moreover, by that and the following section, ryots cannot be compelled by the purchaser to pay enhanced rates except by express engagement, or after notice in the manner stated.

38. Regulation XI of 1822 contains another complete set of provisions relating to this subject, but these have been expressly repealed by s. 1 of Act XII of 1841, and (as we shall see hereafter) they only affect sales effected whilst they were in force. Shortly stated, they are as follows:—By s. 30 all tenures created by the defaulter or his predecessors, as well as all agreements with ryots, are liable to be avoided and annulled by the purchaser; saving always leases of ground for the erection of dwelling-houses or for gardens, tanks or the like. By s. 31 the Governor General in
Council may at the time of the sale reserve the under-tenures; and by s. 32 it is forbidden to a purchaser to annul the engagements of any persons having an hereditary transferable property in the land, or to eject ryots having a right of occupancy, or to demand higher rents from them than the former proprietor could have demanded, but for his own engagements.

39. The next set of provisions for avoiding under-tenures and encumbrances are contained in Act XII of 1841, but these are also expressly repealed by Act I of 1845, s. 1, and, therefore, only apply to sales which took place in the intervening four years. The provisions of Act I of 1845 are, however, in this respect, simply a re-enactment of those of Act XII of 1841, both providing that the purchaser of an estate sold for arrears of revenue due on account of the same shall acquire the estate free from all encumbrances which may have been imposed upon it after the settlement, and shall be entitled, after notice given under s. 10 of Regulation V of 1812, to enhance at discretion the rents of all under-tenures, and to eject under-tenants, with certain specified exceptions. The tenures which are preserved under these exceptions comprise those specified in the former regulations, and to these are added farms granted in good faith at fair rents for terms not exceeding twenty years, of which notice has been given to the collector, and to which the collector has not objected.

40. The provisions of Act I of 1845 were expressly repealed by Act XI of 1859, s. 1; and by s. 37 of this act it is provided that “the purchaser of an entire estate in the permanently settled districts of Bengal, Behar, and Orissa, sold under this act for the recovery of arrears due on account of the same, shall acquire the estate free from all encumbrances which may have been imposed upon it after
the time of settlement; and shall be entitled to avoid and annul all under-tenures and forthwith to eject all under-tenants, with the following exceptions: first, istemraree or mokuraree tenures which have been held at a fixed rent from the time of the permanent settlement; secondly, tenures existing at the time of settlement which have not been held at a fixed rent; provided always that the rents of such tenures shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures; thirdly, talookdaree and other similar tenures created since the time of settlement and held immediately of the proprietors of estates and farms for terms of years so held, when such tenures and farms have been duly registered under the provisions of this act; fourthly, leases of lands wherever dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk. And such a purchaser as aforesaid shall be entitled to proceed in the manner prescribed by any law for the time being in force for the enhancement of the rent of any land coming within the fourth class of exceptions above made, if he can prove the same to have been held at what was originally an unfair rent, and if the same shall not have been held at a fixed rent, equal to the rent of good arable land for a term exceeding twelve years; but not otherwise. Provided always, that nothing in this section contained shall be construed to entitle any such purchaser as aforesaid to eject any ryot having a right of occupancy at a fixed rent, or at a rent assessable according to fixed rules under the laws in force, or to enhance the rent of any such ryot otherwise than in the manner prescribed by such laws, or otherwise than the former proprietor, irrespectively
of all engagements made since the time of settlement, may have been entitled to do.” Then follows a series of elaborate provisions for the registration of tenures so as to obtain the benefit of the third class of the above exceptions.

41. It has been necessary to go through this somewhat tedious account of the legislation on this subject, because the existing titles to property depend, not exclusively on the existing laws, but on the laws which were in force when a sale for arrears of revenue actually took place. Hence we are constantly called upon to consider the effect of regulations and acts which have been long since repealed. I will now proceed to consider the operation of these provisions.

42. When a sale for arrears of revenue takes place under these provisions, it affects the interests of four parties, all having distinct, and to some extent conflicting, rights. These parties are (1) the government, (2) the purchaser, (3) the defaulting proprietor, (4) the claimants on the estate under the proprietor. And the complication of the law on this subject has arisen in a great measure from the attempts made by these several parties to work the law (if I may use the expression) to their own advantage.

43. The interests of the Government and the purchaser on a sale for arrears of revenue are pretty nearly identical. Both are interested that there should be a valid sale; and the purchaser is interested in getting rid of all claims upon the estate which the defaulting proprietor has created; the power to do which the Government has, for its own purposes, conferred upon the purchaser. On the other hand, the claimants on the estate under the proprietor are generally interested in getting rid of a sale for arrears of revenue which threatens their interests. The defaulting proprietor is sometimes indifferent to the sale; sometimes greatly injured by it and most desirous to get rid of it; but some-
times greatly benefited by it, and most anxious to support it; and he may even sell to the highest bidder his influence in bringing about or retarding a sale.

44. When a dispute as to the validity of a purchase at a sale for arrears of revenue arises, the first question is, whether there was an arrear of revenue? Because if there was no arrear of revenue there is at once an end of the purchase. Unless there is an arrear of revenue the revenue authorities have no jurisdiction to proceed against the property; and none of the provisions which the law has made for the protection of a purchaser against claims by the defaulter or others, or which take away the jurisdiction of the civil courts, have any application. This most important point was decided by a Full Bench in the case of Byjnath Sahoo v. Lalla Seetul Pershad, where the court adopted the view of the law taken by Mr. Justice Mitter who had made the reference, and who had held the sale, where there were no arrears of revenue, to be "ab initio, null and void."

45. If there has been a sale for arrears of revenue, then there is a considerable difficulty in setting it aside. There is an appeal to the commissioner under s. 25 of Act XI of 1859, which must be made within ten days, and the commissioner may annul the sale, if it appear not to have been conducted according to the provisions of the act; and (s. 26) he may also, on the ground of hardship or injustice, represent the case to the Board of Revenue, who may again represent it to the Local Government, who may annul the sale. But the power of the civil court, which is the tribunal to which an injured person would naturally look for redress, is narrowly circumscribed. By the provisions of s. 33, "no sale for arrears of revenue or other

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1 Weekly Reporter, vol. x, p. 66.
demands realizable made after the passing of this act shall be annulled by a court of justice except upon the ground of its having been made contrary to the provisions of this act, and then only on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of: and no such sale shall be annulled upon such ground unless such ground shall have been declared and specified in an appeal made to the commissioner under s. 25 of this act; and no suit to annul a sale made under this act shall be received by any court of justice, unless it shall be instituted within one year from the date of the sale becoming final and conclusive as provided in s. 27 of this act: and no person shall be entitled to contest the legality of a sale after having received any portion of the purchase-money.” However, from the somewhat reckless proceedings of some revenue officers, not a few sales are, notwithstanding these stringent provisions, set aside by the civil courts.

46. But by far the most important and difficult questions which arise upon a sale for arrears of revenue at the present day, in the districts permanently settled, are those which relate to the above provisions for the avoidance of the rights of persons claiming under the defaulting proprietor, when a valid sale has taken place. So long as the Government proceeded to recover their arrears by way of attachment only, these questions less frequently occurred; the sale for arrears of revenue and the consequent avoidance of under-tenures only occurring as the last resort. But now that every defaulting estate is sold at once, under-tenants and other claimants on the estate under the proprietor stand in much greater peril.

47. The matter is further embarrassed by the temptation to the proprietor to bring about a sale. Looking to the fact
that the value of land in the permanently settled districts has increased very rapidly, whilst the revenue payable to Government has remained the same, and that a forced sale by auction is rarely an advantageous method of disposing of property, it may seem, at first sight, impossible that a sale for arrears of revenue can be anything but a serious disaster for the proprietor. But so far from this, it may happen by reason of the provisions now under consideration to be one of the most fortunate things that can happen to him. Inasmuch as the sale for arrears of revenue gives a title to the purchaser clear of all or nearly all the incumbrances, the price obtained very often considerably exceeds the value of the zemindar's interest. Nevertheless, after payment of the triffe of revenue for which the sale may have taken place, the surplus sale proceeds belong to the zemindar, subject (practically at least) only to payment of the mortgage debts; and even this right the mortgagee finds it sometimes difficult to enforce. I do not think there is any case on record in which the evicted tenants have recovered anything. Consequently it is by no means rare for sales to take place, where there is no other default than that wilfully created by the zemindar.

48. The importance of ascertaining clearly the position of claimants on the estate, especially of tenants, after a sale for arrears of revenue, will justify a short digression at this place to consider the effect of a sale designedly brought about by the proprietor.

49. It is not to be supposed that when the legislature declared the proprietors of land competent to grant leases for any period even to perpetuity, and at any rent which they might deem conducive to their interests,¹ it was intended to render such leases subject to the caprice or

¹ Regulation V of 1812, s. 2, and Regulation XVIII of 1812, s. 2.
the convenience of the lessor. Probably, were the matter fully investigated, it would be considered that the same principle would apply here as has been declared in England, namely, that the landlord is bound to protect his tenant from all paramount claims (see Graham v. Allsopp, 18 Law Journal, Exchequer, 85), and though this duty has been scarcely, as yet, sufficiently appreciated either by those upon whom it is imposed or by those for whose benefit it exists, it is likely to be brought more prominently into notice in consequence of an important decision of the Privy Council in a case reported in Weekly Reporter, Privy Council, vol. v., p. 83, where the facts are stated as follows:—

50. "The plaintiff as the eldest son was the head of a Hindoo family of distinction. A litigation had arisen between him and other members of the family, to provide funds for which he had become a borrower from the Debs. Their advances were secured by mortgages taken at different times, one of which is stated to have been a Bengalee mortgage; the nature of the other does not appear. The mortgagor and the mortgagees were Hindoos. The mortgagees obtained, on the 25th of May 1847, a decree of foreclosure in the Supreme Court against the mortgagor. This decree was irregularly obtained, and was subsequently set aside. Whilst this decree for foreclosure was in force, namely on the 10th of June 1847, the Debs sold the zemindary to J. C. Abbott. He, after his purchase, in execution of the decree of foreclosure, which he had also purchased, disposessed the plaintiff. It does not appear that the mortgagees had been in possession. The contrary may be inferred. The possession, then, was first acquired, whilst the foreclosure decree was in force, by J. C. Abbott as owner, and not in privity with the mortgage title."
51. "The effect of a foreclosure decree in the Supreme Court in a mortgage suit between Hindoos, is equivalent to a decree establishing proprietary right in the Company’s Courts in similar suits on the like instruments.

52. "On the 2nd of February 1848, the plaintiff filed his bill of complaint on the equity side of the Supreme Court to set aside this foreclosure decree and to redeem the zemindary. The bill was originally filed against the Debs only, but on its appearing by their answer that they had sold to Abbott, he was made a party to the suit. After he was made a party to the suit, he entered into an agreement bearing date the 15th April 1848, with Alexander McArthur. This agreement, after reciting that Abbott is well seized of, or otherwise entitled to the zemindary, that the same was in arrear for revenue and was advertized for sale of arrears of revenue, proceeds to stipulate as between these two persons, that McArthur shall purchase the zemindary for the sum of three lacs in case the estate does not sell for more at the revenue sale; that he will pay to Government, if he be declared the purchaser, the sum for which the estate may be sold; and that he will, within a certain time after he shall have been declared the purchaser, and shall have obtained the usual and due certificate of title, pay to Mr. Abbott the difference between three lacs and the sum for which the estate shall have been sold. At this time the suit of the plaintiff in the Supreme Court for setting aside the foreclosure decree and for redemption was pending. The Supreme Court by its decree, dated the 16th of November 1852, set aside the decree of foreclosure, and thereby made the zemindary in the possession of Abbott under his title from the Debs, subject to the right of redemption by the plaintiff."
53. "This judgment then, in effect, placed the possession of Abbott upon the footing of that of a mortgagee in possession, and from that time his above-declared title and his possession were in privity with the mortgage title and no longer constituted an adverse possession. By the reversal of an irregular foreclosure decree, the mortgagor was restored to his original and legal relation to the mortgage title."

54. Pending the suit in the Supreme Court to set aside the foreclosure decree, McArthur transferred his interest to the Nawab Nazim, and being examined before the Master in that suit, McArthur disclosed the existence of the agreement between himself and Abbott of the 15th April 1848, and also that there was an agreement between them that Abbott should suffer the revenue to fall into arrear in order that the estate might be sold for arrears of revenue; and further that he, Abbott, should not bid for the estate. McArthur explained that his reasons for wishing Abbott not to bid was to prevent its going above the three lacs.

55. The sale took place on the 1st of June 1848, when McArthur became the purchaser and obtained the certificate. He subsequently sold the property to the Nawab Nazim, and the suit which was appealed to the Privy Council was a suit by the plaintiff, the mortgagor, against the Nawab Nazim for redemption and possession.

56. The Zillah Court dismissed the suit on the ground of limitation and other preliminary grounds without going into the merits of the case. The High Court reversed this decision and remanded the case for trial.

57. The case then went to the Privy Council on appeal against the order of remand, and, as pointed out by the Privy Council, the case could only be considered at that stage upon the assumption of the truth of the allegations con-
tained in the plaint, and the case is accordingly dealt with on that assumption. After disposing of the preliminary points the judgment proceeds as follows:—"We come then to what has appeared to be the real question in the case (the question to which we have above referred), whether the plaintiff can, in point of law, insist, notwithstanding the auction sale for arrears of revenue, that, as against him, that sale ought to be viewed as a private sale. The title to redeem in this suit as against the parties subsequent to Abbott is vested on that ground, and the case which the plaintiff alleges by his plaint and by the documentary proof appended to it is one of fraud between Abbott and McArthur, to deprive him of his title to redeem the zemindary by means of a secret purchase of it between them for three lacs of rupees, including a fraudulent device of a sale by auction for arrears of revenue, such arrears to be designedly incurred. By that agreement Abbott would become directly interested that the estate should sell for a low price since the proceeds would be subject to the mortgagor's claim, and the lower the price obtained at the auction sale the larger the share would be which Abbott would take of the three lacs. Parties to a secret fraud intend it to be a secret, and the price realized at the auction sale would alone be known * * * * * * 58. "If these facts cannot be displaced, the agreement was undoubtedly a gross fraud on the mortgagor by both the actors in it, namely Abbott and McArthur. But it was argued that, even if this case were true, the remedy under Act I of 1845 was for damages only. This argument was in conformity to the opinion of the zillah judge. But it is to be observed that this argument assumes the very question under discussion, which is, whether the Act extends to the present case. Mr. Justice Bayley thought that the
act was not designed to protect a fraudulent purchaser. He put his decision on the ground that a man is not allowed by law to take advantage of his own wrong; and he treated the case of such a purchaser as beyond the protection intended to be given by the Act to purchasers under an auction sale.

59. "No authority founded on the decisions of the late Company's Courts was referred to by the judges of the High Court, and none such has been quoted on the argument of this appeal. The case is however not altogether new in India. The question was considered in the decision of the Supreme Court in the cause so often referred to, to which this suit is alleged to be supplemental. Mr. Justice Colvile in that judgment, whilst he declares a Government sale for arrears of revenue to give a title against all the world with certain exceptions, engraves on that general rule this exception that a fraudulent purchase at such an auction sale by a mortgagee will not defeat the equity of redemption. The subject is treated in Mr. Arthur Macpherson's book on Mortgages at page 91, who there quotes a prior decision, Kelsall v. Freeman, of the Supreme Court, to the same effect. The author, now a judge of the High Court at Calcutta, expresses a similar opinion, and as his book is one well known and frequently consulted in India, the decision under review cannot be regarded as unsettling a previous settled state of the law, and as raising for the first time an exception to the general protection which this legislative title affords to purchasers." They then refer to certain well known cases in which it has been held that fraud vitiates every thing, even the act of the highest judicial authority, and then they say "the doctrine that a man cannot take advantage of his own wrong, as used and applied by Mr. Justice Bayley to this title to redeem, is a correct applica-
tion of that doctrine, if the facts support him. Assuming, as we must, the agreement to be proved, was this sale, as between Abbott and McArthur, really meant to be a sale under the revenue laws for arrears of revenue, or was it a device, part of the machinery, as it were, to effect a fraud? Under a private conveyance, in the state of the title and of these parties, the estate, if conveyed by Abbott to McArthur, would have been redeemable by the plaintiff. If the sale were intended to have been a real sale under the revenue laws, what would have been Abbott's interest? His estate would have been extinguished, and all that he would have been entitled to would have been a mortgagee's interest in the surplus of the money realized by the sale over the arrears. Would a real vendor seek to reduce that surplus? The price was a fixed sum of three lacs; the parties contemplated a sale under that sum by the auction proceeding; and it may be well to repeat that it was Abbott's interest to cause, as far as he could cause it, that the auction price should be low, since, though the auction sale was public, his agreement was not known to the mortgagor. What then, if the sale were to be real, could be the consideration which McArthur was to receive for the excess of the three lacs over the auction price? The estate would have passed to him for the lesser sum. This suffices to show that, as between them, the sale was meant to be under the terms of the agreement in the case that has happened, which was a case contemplated by Abbott at least. These parties, therefore, are estopped or precluded by their acts from setting up, as against a third person, the mortgagor, the object of their fraud and a stranger to the agreement, the illegality of the agreement itself."

60. It will be seen that it was in this case held to be a fraud for the proprietor of an estate to bring about a sale
for arrears of revenue in order to get rid of a claim, then pending in litigation, to a right of redemption. When this agreement was made, and even when it was executed, the proprietor and the claimant were, as the Privy Council point out, not in privity: which means (I believe) that no special obligations towards each other had been undertaken by, or had devolved upon, them. The mortgage had been foreclosed; and, whilst it still so remained, Abbott had become the proprietor of the estate. So also the arrears of revenue had accrued and the auction sale had taken place during the same period. But because the claim to redemption had been made and was being prosecuted, when the arrangement for getting rid of it was entered into, the transaction was held to be a fraud, of which neither Abbott the proprietor, nor McArthur the purchaser, who was a party to it, could take advantage.

61. Of course the ordinary case of a defaulting proprietor entering into an arrangement to get rid of his own tenants would be as strong, if not stronger, than that of a mortgagee seeking to get rid of the mortgagor’s right to redeem. By the law of England at any rate (and there seems no reason why the same equitable principle should not apply here), a lessor is bound, without any express engagement for that purpose, to secure his lessee in the quiet enjoyment of his tenure. The lessee has, by mere force, of the relation between himself and his lessor, “a right to have his estate secured to him, and he has a right to have the quiet enjoyment of it secured to him:” and as has been already stated\(^2\) one duty of the lessor is to protect his lessee against all paramount claims. Whether or no the law of India goes as far as the law of England is perhaps not yet

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\(^1\) Smith's Landlord and Tenant, p. 206, ed. 1855.

\(^2\) Suprd, S. 49.
certain: though it is remarkable that in the new Contract Law there is an illustration to s. 69 which says, that if the lessee, in order to prevent a sale, pays the Government revenue, the zemindar must repay the lessee; and this liability has always been held in England to be a consequence of the obligation of the lessor to protect his lessee against eviction.\(^1\) It is pretty clear, therefore, that the decision in the above case of Nuzzur Ally Khan \(v\). Ajoodyaram Khan, would apply to lessees as well as mortgagors having a claim on the estate. So it would also, no doubt, apply to mortgagees out of possession, should a contrivance of this kind to oust them be attempted by the mortgagor.

62. Supposing that there is no fraud, and that the purchaser may exercise, without impediment, the rights which the legislature has conferred upon him, then it will become important to consider the state of the law at the date of the sale; the rights of the purchaser, as will have appeared from the abstract of the law above given, having varied considerably at different periods.

63. The two most important cases on this subject are that of Ranee Surnomoyee \(v\). Maharajah Suttees Chunder Roy,\(^2\) and Rajah Suttosurrun Ghosal \(v\). Mohesh Chunder Mitter;\(^3\) and as the two cases are closely connected, I will give an abstract of both decisions, and then make a few observations on their effect.

64. The case of Ranee Surnomoyee \(v\). Maharajah Suttees Chunder Roy, as explained in the judgment, was as follows:

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\(^1\) See Graham \(v\). Allsopp, 3 Exchequer Reports, p. 183; Jones \(v\). Morris, \(id\.), p. 742; Smith's Law of Landlord and Tenant, p. 130, ed. 1855.


\(^3\) Moore's Ind. App., vol. xii, p. 163; Weekly Reporter, Privy Council, vol. xi, p. 10.
The suit was brought by the Maharajah, the zemindar, to enhance the rent of the Ranee, who claimed to hold an hereditary talookdary tenure at a fixed rent, which the zemindar had no power to enhance. It was established, on the part of the Ranee, that her husband's father had held on such a tenure, but whilst he was in possession the Government revenue payable by the zemindary fell into arrear, and the property was, therefore, put up to public auction, when one Muddoosoodun Sandyal became the purchaser. Muddoo-soodun sold to one Harris, from whom the estate passed to his widow, who sold to the late Maharajah, from whom the present Maharajah, the plaintiff in this suit, inherited it.

65. Upon this state of facts the Maharajah contended that, as he claimed under Muddoosoodun, he had acquired all the rights which Muddoosoodun had; and that Muddoo-soodun, who purchased at a Government sale for arrears of revenue, was entitled by the regulations then in force to cancel the lease under which the Ranee's ancestor was holding, and to impose new terms as to the rent: and this right the Maharajah contended had passed to himself. The case assumes that the Ranee and her husband and his ancestors had been all along in undisturbed possession of the tenure.

66. Such being the case before it, the Privy Council say that three things were necessary to the Maharajah's success. First, that Muddoosoodun should have had in him, at the time when he sold to Harris, the rights above stated; secondly, that these rights should have passed to Harris; and thirdly, that these rights either could not be, or had not been, in fact, waived by the Maharajah's father, or by any one of the prior owners.

67. The Privy Council then proceed to deal with these three questions as follows:—"The reliance (they say) of the respondent (the Maharajah) is on some one of the regulations
which have been made at different times in regard to purchases at Government auction sales in the case of zemindaries from which the Government income has been duly paid. These regulations have been couched in different language, but all with the same policy in view, as regards the present question. It has been assumed, as the foundation of them, that the default of the zemindar may have been occasioned by improvident grants of talooks and other subordinate tenures at inadequate rents; that this was in breach of the condition on which the fund was originally created by the sovereign power; and the purchaser, therefore, has been set free from the obligation of these grants, with certain specified exceptions, and with certain limitations of his power as to new tenancies to be created. These laws, however, cannot but occasionally operate very hardly on the grantees of subordinate interests, and they have, therefore, been materially modified by an act of 1859, not in force when this decree was made, and not, therefore, directly applicable to it; but such regulations must, on general principles, receive a strict construction.

68. "There seems to have been doubt in the minds of the respondent's advisers on which of these regulations his case could safely be rested, and it would appear from the proceedings in the court below that it was intended to rest it on Act I of 1845, which certainly would not have supported it, because the sale relied on was not effected under that act, and its provisions are limited to sales so effected. Upon the argument before their Lordships the counsel for the respondent relied on the fifth section of Regulation XLIV of 1793, which is the earliest of the regulations on this subject, and they contended that, although subsequent regulations upon the subject have been passed in different language and repealed, this fifth section of Regulation XLIV
of 1793 has never been repealed, but was in force at the time when the sale in question was made and this action was commenced.

69. "Whether upon the true construction of all the regulations taken together, this particular section ought to be taken to have been repealed or not, their Lordships do not think it necessary to determine. They assume in favour of the respondent that it stands unrepealed and in full force, and will deal with the case upon that footing.

70. "The language of this section is no doubt favourable to the respondent's case. It provides that when a zemindary is sold at a public sale for discharge of arrears due from the proprietors to the Government, all engagements which such proprietors shall have contracted with dependent talookdars whose talooks may be situated in the lands sold, as also all leases to under-farmers and pottahs to ryots (with the exception of the engagements, pottahs and leases specified in ss. 7 and 8,) shall stand cancelled from the day of sale, and the purchaser or purchasers of the lands shall be at liberty to collect from such dependent talookdars, and from the ryots or cultivators of the lands let in farm, and the lands not farmed, whatever the former proprietor would have been entitled to demand according to the established usages and rates of the pergunnah or district in which such lands may be situated had the engagements so cancelled never existed. But the seventh section of this same regulation provides, that this is not to authorize the assessment of any increase upon the lands of such dependent talookdars as were exempted from increase at the Decennial Settlement of 1793.

71. "Their Lordships do not, upon any evidence in the case, on which they think it safe to rely, see their way to the belief that the appellant brings her case within the seventh section, but they cite it because it may have a
bearing on the construction of the language of the fifth section. The respondent contends that by the operation of the words 'stand cancelled from the day of sale,' the existing interests of the talookdar, *ipso facto*, ceased to exist, without any act done by the purchaser; that it was incapable of confirmation or being set up by him or his successors; and that where, from the acquiescence of the purchaser or those claiming under him, the possession had remained in the talookdar and those claiming under him undisturbed, and the original rent had been received, no matter for how long a period, or through whatever number of mesne conveyances, it still remained a bare possession at the will of the zemindar for the time being, and the rent always liable to enhancement.

72. "In this hard and literal construction of the words cited above, their Lordships do not concur. They think, that their meaning is properly to be collected from the policy and intent of the regulation, from the language used in other parts of the same section, and from the seventh section, which creates an exception out of the provisions of that section. English lawyers are familiar with this principle of construction applied as early as the time of Lord Coke (see 1st Inst., 45) to the disabling Statute of 1st Eliz., c. xix, s. 5, and in several modern reported cases between landlord and tenant, on clauses of forfeiture in leases. Words which make a Bishop's grant "utterly void and of none effect to all intents, constructions, and purposes," have been held not to prevent the grant from being good and binding on the grantor, and in some cases confirmable by the successor, and so a proviso in a lease, that it should be void altogether in case the tenant should neglect to do a certain act, has been held only to make it voidable at the option of the landlord. Their Lordships do not cite these as authorities governing this case, but mention them only as illustrating a general
principle of construction which, for its justice, reasonableness, and convenience, must be considered of universal application. In the present case the object of the Government was that the jumma should be duly paid, and that the means of paying it should not be withdrawn by the improvident grants of the zemindars who had made default; but cases of default might often arise where no improvident grant had been made, where the talookdars and the ryots held at proper rents, and the default was owing to extravagance, mismanagement, or other causes,—in such cases the Government cannot be supposed to have intended a wanton and unjust disturbance of vested interests. It is true that the section makes no distinction in terms between the two classes of cases, and it would be unsafe in construction to make any such; but the consideration furnishes reason for such limitation, both as to time and extent of operation, as the words will admit, indeed seem to require, in order to give effect to the whole sentence. Now, looking at what follows in the same clause, it is obvious that no such absolute cancellation was intended, for the power expressly and affirmatively given to the purchaser supposes the talookdars and the ryots to remain in all respects as before, except that they become liable to a certain limited increase of rent, according to the established usages and rates of the pergummah or district; words in themselves showing, that the section was directed to cases in which grants had been made with reservations of rent below those usages and rates. It is to be observed also that in terms this power is given only to the purchaser himself, which would ordinarily suffice to remedy the mischief in contemplation. The language of the exception too in section seven shows, that what was aimed at by section five was, not the destruction of tenure, but the increase of rent under certain specified and equitable limitations.
73. "The conclusion at which their Lordships have arrived as to the construction of the section is this—that a power was given by it to the purchaser at a Government sale for arrears to avoid the subsisting engagements as to rent, and to increase the rent to that amount at which, according to the established usages and rates of the pergunnah or district, it would have stood had the cancelled engagement so avoided never existed. This gives it a just and reasonable operation, and virtually it would have had none, when the existing rent was already according to the usages and rate of the pergunnah.

74. "This conclusion is of great importance in the determination of the remaining questions. The sale to Muddoo-soodun Sandyal, according to the respondent's own case, took place some time before 1823, and he found those under whom the appellant claims holding the land at an old rent of Rs. 64-1-6; he did not attempt to disturb the occupation, or increase this rent, but received it during all the time he remained owner. He sold by private contract to Mr. Harris, from whom it passed to his widow, Mrs. Harris, and from her again by private contract to the respondent's father, Maharajah Sreesh Chunder Roy, as has been already stated. During all this time (and for a considerable period before, so far as appears indeed from the very creation of the tenure—more than sixty years ago,) the same rent has always been paid; and there is no evidence that, when first imposed—nay, even when the purchase was made, it was not a perfectly adequate rent for the property. Great changes in the value of property have now arisen, and the respondent demands by his plaint an annual rent of Rs. 1,410, or nearly twenty-three times the amount of the original rent, according, as he states it, to the actual rate current in the village.
75. "If the section in question did not authorize the purchaser to disturb the possession, and left him an option to confirm the existing rate of rent, there seems to be the strongest evidence that he exercised that option in favour of the talookdar; and even if the same rights passed from him unimpaired to Mr. Harris, and in succession to those who claim under him, the evidence is equally strong—nay, as regards Mrs. Harris personally, it is stronger. It is, therefore, unnecessary to decide whether the section is to be construed as giving a power only to the purchaser, or to him and his heirs, or a power attached to the zemindary, which passed to subsequent purchasers. Their Lordships, moreover, observe that the power given is to collect what the former proprietor would have been entitled to demand, if the cancelled engagement had never been made; words which seem to point to something to be done on the change of ownership, not to something to be done after any indefinite lapse of time; and as before remarked, in terms the power is given only to the purchaser himself, as to whom reasons might apply which would not extend to subsequent purchasers from him. Their Lordships, however, pronounce no opinion on this question, it not being necessary to decide it. They say no more than that a construction which would render the title to property unnecessarily uncertain, ought not, in their judgment, to be given to a power of this description.

76. "On examining the regulations their Lordships are satisfied that the respondent's case can rest only on the powers given by the section in question; and they are of opinion that those powers, assuming them to be in force, will not support the present action. They are glad to find that it is not their duty to support a claim which appears to them to be unjust, during the long period for which this
property has been held at a small unvarying rent, it has been bought and sold, and changes and improvements have been made, no doubt at a considerable expense, and, upon the faith of the rent to the zemindar continuing unchanged; he has purchased while that state of things existed, and it must be presumed for a price calculated accordingly; and it is manifestly unjust that he should be allowed to disturb it."

77. The second of the two cases above referred to, and which is reported in Moore's Indian Appeals, vol. xii, p. 263, raises similar questions. The ancestors of the appellant, Rajah Suttosurrun Ghosal, were in that case also in possession of an hereditary putnee tenure at a fixed rent, when the sale of the zemindary for arrears of revenue took place. This was upwards of thirty years before the present suit, and the possession had ever since remained undisturbed; but the respondent, Mohesh Chunder Mitter, who represented the purchaser of the zemindary at the sale for arrears, now claimed a right to enhance the rent, which, as pointed out, implied the right to set the putnee aside. The notice required by s. 9 of Regulation V of 1812 had been delivered.

78. It was argued for the appellant, the Rajah Suttosurrun Ghosal, that Mohesh Chunder Mitter was not entitled to enhance the rent. The sales, it was contended, took place under Regulation XI of 1822, and the rights of the purchaser, through whom the respondent claimed, were defined by the 30th and the three following sections of the regulation. But these enactments were, it was said, repealed by s. 1 of Act XII of 1841, and all the provisions of that act were again repealed by Act I of 1845; and neither of these two last mentioned acts contained any saving of rights acquired under the acts which it repealed; and though each gives to purchasers at sales for arrears of
revenue powers equal to or even larger than those given by the repealed acts, those powers are expressly limited to purchasers at future sales; the respondents, therefore (it was urged), could not invoke Regulation XI of 1822, because that regulation had been absolutely repealed; and they could not call in aid subsequent acts, because they confer no rights on purchasers at sales which took place before they were passed.

79. To this argument the Privy Council give their assent. "This point (they say) though it has been overlooked in many cases in India, is not now adjudged here for the first time. It was fully considered and determined by this committee in the case of Ranee Surnomoyee v. Maharajah Sutteeschunder Roy," and further on, they state that they are "clearly of opinion, both upon principle and upon the authority of the decision in Ranee Surnomoyee v. Maharajah Sutteeschunder Roy, that the respondents cannot now for the first time exercise powers which, if they existed, existed only by virtue of the repealed sections of Regulation XI of 1822.

80. It will be observed that reference is here made to the case of Ranee Surnomoyee, as if the two cases stood upon the same footing. That however according to the report in Moore is not quite the case. The decision in Ranee Surnomoyee's case, according to the report in Moore, which is no doubt substantially correct, turns upon the construction of s. 5 of Regulation XLIV of 1793. Great doubt is expressed whether that provision of the law is still in force; but assuming it to be so, it is held that by the operation of the words "stand cancelled from the day of sale" the tenures do not upon the sale cease to exist without any act done by the purchaser: on the contrary, that the section gives the purchaser no power to evict the
tenants at all, but only to enhance the rent to the amount at which according to the usual rates of the district it would have stood, had the cancelled engagement never existed. And it is further held that, if the existing rent is already according to the usage and rate of the pergunnah, then that the section has no operation whatever.

81. It is worthwhile to observe (though it was not noticed by the Privy Council) that the construction here put upon s. 5 of Regulation XLIV of 1793 is considerably strengthened by the mode in which the law is recited in s. 5 of Regulation V of 1812. The law existing at the date of the last mentioned provision is expressly declared to be that the purchaser is "competent to annul" the engagement, which almost amounts to a legislative declaration that there is no ipso facto cancellation under the Regulation of 1793 on the occasion of the sale.

82. The main point of the second decision was this:— that when Regulation XI of 1822 was repealed, all the powers which purchasers under that regulation held to cancel tenures existing at the date of the purchase came to an end. So that, unless a purchaser under that regulation had exercised the powers conferred upon him prior to the 1st of January 1842 (the date when the regulation was repealed) he could never exercise them at all; whence it follows that a tenant who had remained in possession undisturbed up till that date was so far secure. It was also held that as none of the subsequent Acts refer to any sales other than those which take place under them, the tenant was, by the repeal of Regulation XI of 1822, completely restored to the position of a tenant whose lessor had sold by an ordinary private purchase, unless the purchaser could assert any rights under s. 5 of Regulation XLIV of 1793.
83. The same principle would, no doubt, be applied to sales which took place under Act XII of 1841, which was repealed from the 28th of February 1845; and, therefore, tenures and encumbrances which were not cancelled prior to that date cannot now be cancelled under that act or any of the subsequent acts. Act I of 1845 is not quite so fully cancelled as the previous acts. There is a saving clause in Act XI of 1859, declaring that Act I of 1845 is not repealed "in regard to sales made or advertised, to arrears and other demands realizable, and to suits commenced and acts done under authority thereof." It may be a question, therefore, whether the rights acquired by purchasers under Act I of 1845 to avoid tenures and encumbrances were destroyed by the repeal of that act.

84. Two important questions which were put forward were left undetermined by these decisions; namely, whether s. 5 of Regulation XLIV of 1793 is still in force, and whether powers of cancellation can be exercised by any other person than the original purchaser. As regards the first question, however, such vehement doubts are expressed by the Privy Council, that that court may be said to have pretty clearly intimated its opinion. As regards the second question, possibly it was the intention of s. 1, cl. 12, and s. 7 of Act XIV of 1859 (Sched. 2, No. 119, Act IX of 1871) to limit the exercise of the powers of cancellation to a fixed period of twelve years, and if so, it may perhaps be considered that all persons upon whom the estate has devolved may, within that period, exercise those powers, supposing that there has been no ratification.

84a. I may here observe that the zemindar in Lower Bengal possesses powers, on a default of his tenants in payment of rent, similar to those which the Government can exercise on a default of the zemindars themselves in
payment of revenue. The zemindar may, without any stipulation to that effect, sell the tenure of the defaulting tenant, and may avoid all the engagements to which the (Act VIII of 1865, B. C., s. 16) defaulting proprietor has made the tenure subject. This is a power which zemindars would probably work with nearly as much severity as the Government; and the whole matter being often in the hands of a needy man, there will be great temptation to him to take part in and attempt to derive benefit from the frauds which, as I have pointed out, may be attempted even at a Government sale. The principles above discussed, by which the innocent persons with whom the engagements were made may be to some extent protected, become, therefore, of double importance.
Lecture III.

Shekust-pywust, or Alluvion and Diluvion.

85. The topic of law which I am now about to discuss assumes an importance in India greater perhaps than in any other country of the world. It is (to use a familiar and convenient phrase) the law of shekust-pywust, and it comprehends those rules which govern the ownership of lands which adjoin, and have been affected by rivers and the sea.

86. It will be desirable to trace slightly the history of the law upon this subject. Prior to the regulation of 1825, which I shall have to discuss at length presently, the law appears to have been in some obscurity. The Mahommadedan law, if not silent upon it, is altogether inadequate. It is there treated under the general head of mvwot or waste, and it only provides for the case of large tracts of land which, having formerly been covered with water, have become dry and fit for cultivation. Such lands are declared subject to the ordinary rules relating to the proprietorship of waste lands which have been re-claimed. This is, at any rate, the statement of the Mahommadedan law officer laid before the Court of Sudder Dewanny Adawlut in 1814, but not recorded until the 23rd of April 1825.

87. The Hindoo law officers by a report of the same date, but the record of which was similarly delayed, state that "the proprietary right in alluvial lands of the Ganges
and such like rivers, the same being connected with one of the banks, vests in the proprietor of such bank. In alluvial lands unconnected with one of the banks, the right is that of those who are entitled to the julkur. In land left by the secession of the sea, the same being connected with the shore, the right vests in the owner of that shore. In land appearing above the sea not being connected with the shore, the right of the sovereign exists.” The authors of this opinion refer in support of it to Vrihaspati, but they do not give the text, and it is probably based, in part at any rate, upon the current of decisions in modern courts of justice.

88. Mr. J. H. Harington, a Judge of the Sudder Court, at whose instance these opinions were obtained, says, in a minute written in the year 1825, that this exposition of the law by the Hindoo law officers “corresponds in substance with what he has understood to be the law and usage of the country, except that the stated principle respecting islands thrown up by the sea when not connected with the shore is equally applicable to churs or islands formed in the Ganges, Megna and other large rivers, where the channel between them and the shore may not be fordable on either side.”

89. In a note to a case decided on May 8th, 1809, and which appears in the Select Reports, it is said that “in the common case of alluvion or increment by the recess of a river or the sea, the Indian law and usage correspond with those of England and with the civil law.” It does not appear by whom this note was written, but very likely by Mr. J. H. Harington also.¹

90. The statement of the law of India as it was then generally understood by this high authority is undoubtedly correct. The statement as to the identity of the Indian

¹ See the advertisement to the edition of 1827.
law, the English law, and the civil law (by which, no doubt, is meant the Roman law) is partially, but only partially, correct. But as the Roman law is invariably referred to in all great discussions upon this branch of law, I will, as I proceed, shortly state its principal provisions; when it will be seen that there is a general, though not a complete, correspondence between these provisions and those of the Indian law. Moreover, the Roman law is the undisputed original source of nearly all the rules which prevail in Europe upon this subject. Most countries have taken them from the Roman law directly and avowedly. In England they were introduced by Bracton, but, owing to the prejudice which then existed against the civil law, without any acknowledgment of the source from which they were derived.

91. The cardinal rule of the Roman law is that laid down in the Institutes of Justinian (Book ii, tit. 1, s. 20) which is in these words:—"that which is added to your land by alluvion becomes yours by a rule of law universally acknowledged. Now alluvion is an imperceptible increase; and that is considered to be added by alluvion which is added so gradually that no one can perceive how much is added at any one moment of time."

92. The statement made by the authors of the Institutes as to the universality of this rule still holds good. It is at this day the law of France,\(^1\) of Italy,\(^2\) of Germany,\(^3\) of America\(^4\) and of England.\(^5\)

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1 Code Civil, s. 556.
2 Codice Civile, s. 453.
3 Bluhme, Encyclopädie, Book ii, s. 184.
93. There has, however, been some difference in Europe as to the application of the rule; some countries applying it to the sea as well as to rivers; others only to the latter. In England it applies to both. The question was raised in the case of the Hull and Selby Railway Company, and though not then expressly decided, it has ever since been considered that land gained from the sea by gradual accession belongs to the subject.

94. The rule is also adopted in India, and in its more extensive application. It is the first of those laid down in Regulation XI of 1825 which embodies the Indian law on this subject, and which provides that "if land be gained by gradual accession whether from the recess of the river or of the sea, it shall be considered an increment to the tenure of the person to whose land or estate it is thus annexed."

95. The same section of the regulation embodies a number of provisions, which are rather awkwardly thrust in, relating to the revenue and to the rights inter se of several persons having different interests in the same piece of land. These it is no part of my present purpose to consider.

96. The rule is qualified in the next clause of the regulation by a declaration that "it shall not be considered applicable to cases in which a river by a sudden change of its course may break through and intersect an estate, without any gradual encroachment." It is also said that the rule does not apply to cases in which a river "may by the violence of its stream separate a considerable piece of land from one estate and join it to another estate, without destroying the identity and preventing the recognition of the land so removed; in such cases the land upon being clearly recognized shall remain the property of its original owner."

97. Probably all the cases contemplated in these two exceptions would be excluded by the terms of the rule itself
which requires that the accession shall be gradual. I have, however, always felt some difficulty in realizing exactly the class of cases to which the second exception applies. It is similar to that which is contained in the Institutes of Justinian, Book ii, tit. 1, s. 21, where it is said, "if the violence of a river should have detached a portion of your land and united it to that of your neighbour, it undoubtedly remains yours." The terms of the French Code approach the language of the Indian regulation more nearly still. "If a river, navigable or not, by sudden violence, separates a considerable piece of land, which can be recognised from a riparian estate, and conveys it to an estate lower down, or to the opposite bank, the owner of the portion separated can assert its ownership." Such a phenomenon as a river carrying off a piece of land from one spot and depositing it in another in a form in which it can be recognised, must be a phenomenon of very rare occurrence. I imagine that this provision must have been originally introduced to protect persons against the loss of trees, or other valuable, and not easily destructible, produce.

98. The Roman law also provides\(^1\) that "when an island is formed in the sea (which rarely happens), it belongs to the first occupant. When formed in a river (which frequently happens), if it is in the middle of the river, it belongs in shares to those who possess the lands on the bank on each side in proportion to their frontage. But if it is nearer to one side than the other, it belongs to those only who possess land on the bank of the river on that side." The provisions of the Indian regulation are somewhat different. It is provided (cl. 3) that "when a chur or island may be thrown up in a large and naviga-

\(^1\) Code Civil, s. 559.

\(^2\) Inst., Book ii, tit. 2, s. 22.
ble river (the bed of which is not the property of an individual) or in the sea, and the channel of the river or sea between such island and the shore may not be fordable, it shall, according to the established usage, be at the disposal of the government. But if the channel between such island and the shore be fordable at any season of the year, it shall be considered an accession to the tenure or tenures of the person whose estate or estates may be most contiguous to it." On the other hand, it is provided that "in small and shallow rivers the beds of which with the julkur [or]¹ right of fishery may have been heretofore recognised as the property of individuals, any sand bank or chur that may be thrown up shall, as hitherto, belong to the proprietor of the bed of the river."

99. In the Roman law, and in all the modern codes which have copied directly from the Roman law, there is inserted a further provision, which has been since adopted as part of the law of India, but the omission of which in the regulation has caused a vast amount of misunderstanding and trouble. By the Roman law² it is expressly laid down that "the case is quite different if a man's land be completely submerged; for the submersion does not prevent the estate remaining the very same estate as it was before: and, therefore, if the water recede, the estate clearly remains the property of him to whom it also belonged before." In other words, whilst gradual accretion may give property, submersion does not take it away. The contrary of this was formerly held in many Indian cases, in which it was considered that, when the land was completely submerged, the ownership of it was thereby lost.

¹ The word "or" is evidently omitted by mistake in the regulation. It is in Mr. Harington's draft.
² Inst., Book ii, tit. 1, s. 24.
100. The apparent injustice of depriving a man of his property, because it happened to have been flooded, seems from the first to have been a good deal felt, and an attempt was made to remedy it by creating in the former owner a new ownership upon the re-appearance of the land, founded on what was called "re-formation on the old site." But there was no authority either in the regulation or on general principles for this ingenious suggestion. If the old site had ceased to belong to the former owner, then, as it gradually reappeared, he could lay no claim to it, except in the same way as any other person might claim it, namely, as an accretion to some other estate of which he was the owner.

101. The real truth, namely, that (as stated by the Roman law) the submersion does not itself destroy the ownership of the estate, was perceived in the case of Romanath Thakoor v. Chunder Narain Chowdhry,¹ but it was, unfortunately, again lost sight of, and the old error about "re-formation on the old site" revived in Khettermoney Dossee v. Ranee Mummoliny Dabee.² The matter is, however, now completely set at rest by the decision of the Privy Council in the case of Lopez v. Muddun Takoor,³ decided in July 1870, and which is as follows:—

102. "The plaintiff was the proprietor of a very considerable estate, a mouzah, on the banks of the Ganges. By the year 1840, by reason of the continued encroachment of that river, it was wholly submerged, and it was, to adopt an expression used in this class of cases in India, "diluviated;" that is, the surface soil, the culturable soil, was wholly washed away. After the lapse of some years, and after one temporary recession and re-encroachment which

¹ Marshall's Reports, p. 136.
³ Weekly Reporter, vol. xiv, p. 11, P. C.
has occurred in the interval, the water has ultimately retired, and the land, having been for some time in a state described as admitting of only temporary cultivation by hand sowing, has become hard and firm soil, capable of being cultivated in the usual manner. The plaintiff says, this was my property. The Ganges, which swallowed it, has again yielded it up, and I claim my property, which, having been buried and lost to sight, has again re-appeared.

103. "The rule of the English law (says the Privy Council), applicable to this case, is thus expressed in a work of great authority: ¹ 'If a subject hath land adjoining the sea, and the violence of the sea swallow it up, but so yet that there be reasonable marks to continue the notice of it, or though the marks be defaced, yet if by situation and extent of quantity and boundary on the firm land, the same can be known, or it be by art or industry regained, the subject doth not lose his property. If the marks remain or continue, or the extent can reasonably be certain, the case is clear.' And in another place, p. 17, he writes thus: 'But if it be freely left again by the reflux and recess of the sea, the owner may have his land as before, for he cannot lose his property of the soil, although it for a time becomes part of the sea, and within the admiral's jurisdiction while it so continues.'

104. "This principle is a principle not merely of English law, not a principle peculiar to any system of municipal law, but it is a principle founded in universal law and justice; that is to say, that whoever has land, wherever it is, whatever may be the accident to which it has been exposed, whether it be a vineyard which is covered by lava or ashes from a volcano, or a field covered by the sea or

¹ Hale, De Jure Maris, p. 15.
by a river, the ground, the site, the property, remains in the original owner."

105. After further reference to the English law, and observing that rules somewhat similar have been made part of the positive written law of India, the Privy Council proceed to say that "it is on the operation of such positive written law that the defendants' case is based. This law is to be found in Regulation 41 of 1825, a regulation for carrying out the rules to be observed on the determining of claims to lands gained by alluvion, or by the dereliction of a river or the sea. There is a recital in that regulation as to disputes which had arisen with regard to such claims, and the necessity of having some definite rule laid down with regard to several matters, only one of which is material or relevant to the present case; and that is the case provided for by the 4th section of the regulation. By that section it is provided that, when land may be gained by gradual accession, whether from the recess of a river or of the sea, it shall be considered an increment to the tenure of the person to whose land or estate it is thus annexed, whether the land be held immediately from the Government or from any intermediate landowner. And the defendants' contention is, that the plaintiff's land having been wholly submerged, so as to make their (the defendants') land the river boundary, the subsequent recession of the river has caused a gradual accession to their land, and an increment by annexation to their estate, notwithstanding that the land has been re-formed on the ascertainable and ascertained site of the plaintiff's mouzah.

106. "It is to be observed, however, that that clause refers simply to cases of gain of acquisition by means of gradual accession. There are no words which imply the confiscation or destruction of any private person's property
108. Whatever. If a regulation is to be construed as taking away anybody's property, that intention to take away ought to be expressed in very plain words, or be made out by very plain and necessary implication. The plaintiff here says—I had the property. It was my property before it was covered by the Ganges. It remained my property after it was submerged by the Ganges. There was nothing in that state of things that took it from me and gave it to the Government. When it emerged there was nothing that took it from me and gave it to any other person. And in answer to such a claim it would certainly seem that something more than mere reference to the acquisition of land by increment, by alluvion, or by what other term may be used, would be required in order to enable the owner of one property to take property which had been legally vested in another.

107. "In truth, when the whole words are looked at, not merely of that clause, but of the whole regulation, it is quite obvious that what the then legislative authority was dealing with was the gain which an individual proprietor might make in this way from that which was part of the public territory, the public domain not usable in the ordinary sense, that is to say, the sea belonging to the state, a public river belonging to the state; this was a gift to an individual whose estate lay upon the river or lay upon the sea, a gift to him of that which, by accretion, became valuable and usable out of that which was, in a state of nature, neither valuable nor usable.

108. "And on the very words of the section itself, if the ownership of the submerged site remained as it was (and there seems nothing to take it away), it is difficult to see why a deposit of alluvion directly upon it is not at least as much an accretion and annexation vertically to the site as
it would be an accretion and annexation longitudinally to the river frontage of the adjoining property.

108a. "If we had then to consider the question for the first time, we should have come to the conclusion that the 4th section did not govern the case, and that the question would have to be determined by the general principles of equity, to which all cases not in terms provided for are referred by the 11th section. Those principles would not give the plaintiff's property to the defendant. But the question is not raised for the first time. The very point came for consideration in India before a Court comprising Sir Barnes Peacock, Mr. Justice Bayley, and Mr. Justice Kemp; and after full consideration, it was decided that lands washed away and afterwards re-formed on an old site, which could be clearly recognized, are not lands gained within the meaning of s. 4, Regulation XI of 1825, viz., they do not become the property of the adjoining owner, but remain the property of the original owner.

109. "And the same point arose in a case in this Court of Mussumat Imam Bandi and Wajid Ali Khan, appellants, and Thurgovind Ghose, respondent, reported in 4 Moore's Indian Appeals. It is there said,—The whole of the district adjoining the land in dispute, as well as that land itself, is flat, and very liable to be covered or washed away by the waters of the Ganges, which river frequently changes its channel. The land in dispute was inundated about the year 1787; it remained covered with water till about 1801, and then became partly dry, until in the year 1814 it was again inundated. After this period it once again re-appeared above the surface of the water, and by the year 1820 it became very valuable land. That is a state of things very singularly like what has occurred in this case. In that case it was held as follows:—The question then is, to whom did this land
belong before the inundation? Whoever was the owner then remained the owner while it was covered with water and after it became dry. This authority appears to their Lordships conclusive in the present case.

110. "In a subsequent case, however, Khettermoney Dossee v. Ranee Munmohiny Dabee,¹ above referred to, it was held by a court comprising Justices Trevor, Loch, Bayley, and Morgan, that all gradual accessions from the recess of a river or the sea are an increment to the estate to which they are annexed without regard to the site of the increment, and a distinction was taken between the two cases; and it seems to have been considered that the former case did not apply to any case where the property was to be considered as wholly lost and absorbed, and no part of the surface remained capable of identification; where there was a complete diluviation of the usable land, and nothing but a useless site left at the bottom of the river. Their Lordships, however, are unable to assent to any such distinction between surface and site. The site is the property, and the law knows no difference between a site covered by water and a site covered by crops, provided the ownership of the site be ascertained.

111. "Their Lordships, however, desire it to be understood that they do not hold that property absorbed by a sea or a river is, under all circumstances, and after any lapse of time, to be recovered by the old owner. It may well be that it may have been so completely abandoned as to merge again, like any other derelict land, into the public domain, as part of the sea or river of the state, and so liable to the written law as to accretion and annexation.

112. "But in this case not only did the parties themselves take the proper, prudent, and honest means of preventing

¹ Weekly Reporter, vol. iii, p. 51.
the necessity of any dispute arising by interchanging the tanabundee which has been put in evidence, but the plaintiff, as between him and the state, did also take the most effectual means in his power (having the description and measurement of the submerged mouzah recorded, and continuing to pay rent for it) to prevent the possibility of any question of dereliction or abandonment being raised against him. Their Lordships are, therefore, of opinion that the property now being capable of identification by means of that tanabundee and otherwise, the property having been the property of the plaintiff when it was submerged, never having been abandoned or derelict, having now emerged from the Ganges, is still his property; and they will therefore recommend to Her Majesty to reverse the decision of the court from which the appeal has come, to affirm the decision of the Principal Sudder Ameen, and that the costs of the litigation both below and here should be given to the appellant, the plaintiff."

113. No special mode of proving that the ownership has been continuous is here laid down; nor is it necessary that any marks should have been specially placed by the owner by which the identity can be ascertained. The court must be satisfied of the fact of continued ownership and of identity, but no rules are laid down as to the sort of evidence required.¹ So it will not prevent continuance of ownership that the land which has been submerged has become part of the bed of a navigable or tidal river.² Though I suppose that in such a case the public would, during the

¹ Sham Chand Bysack v. Kissen Pershad Surmay, Privy Council, 26th March 1872.
submersion of the land, have a right of navigation over the waters which covered it.\footnote{In England it has been held that if the sea, or an arm of the sea, by imperceptible progress, encroach upon the land of a subject, the land thereby covered with water belongs to the Crown. \textit{(In re the Hull and Selby Railway Co., \textit{ubi supra})}. It is apparently considered that no authority is needed for this position, and that it follows as a direct consequence of the law of accretion. Whether or no the decision can be supported, this reasoning can hardly be deemed satisfactory.}

114. Another point, about which there has been a good deal of conflict, has also recently been considered and decided by a Full Bench. The question was this:—The third clause says that an island thrown up in the river or the sea belongs to the adjoining proprietor or to the crown, according as the channel between it and the adjacent land is fordable or not fordable. But it may happen that a channel which is not fordable when the island first appears becomes fordable afterwards. To what point of time are we to look, when it has to be decided to whom the island belongs? The Full Bench held that the right was to be determined by the state of the channel at the time when the island was first thrown up or formed.

115. The law of England draws a distinction between land formed by what is called the “projection of extraneous matter” and land which having been in times past covered by the sea has been subsequently left dry; giving the accession in the first case to the owner, and in the second case to the crown.\footnote{The \textit{King} \textit{v.} Lord Yarborough, Barnewall and Cresswell’s Reports, vol. iii, p. 105.} I have very great doubt whether this physical distinction is as clear and intelligible as it is there stated to be. But whether it be so or not, we need not trouble ourselves with it. It is true that the regulation speaks of an island or chur “thrown up,” but it has never
been supposed that these words describe any special mode of formation, and throughout the judgment of the Full Bench to which I have just referred the distinction between throwing up and any other kind of formation is completely ignored. This is also in accordance with the Roman law, where a term is used (insula quae nata est), which clearly contemplates no such distinction.

116. There arise upon the above rules of law three further questions, which may possibly be hereafter narrowed by general rules laid down as applicable to them, but which, so far as this is not done, will remain to be determined as questions of fact. These questions are—(1) has the accession been gradual? (2) is the channel fordable? (3) has a chur or island been thrown up or formed?

117. As regards what is gradual accession, which in the regulation is opposed to sudden change, there has not been as yet, and there is not likely to be hereafter, much difficulty. Sudden and violent changes rarely occur; and are moreover generally caused or accompanied by some unusual natural phenomenon, such as a great flood, a cyclone, or an earthquake, which would mark their occurrence. It is also to be observed that the language of the Indian law is in this respect simpler than that of many other countries. All that the regulation requires is that the accession should be gradual. The English law speaks of accession which is "slow, gradual, and imperceptible;" the French and Italian law of that which is gained "gradually and imperceptibly;" the Roman law of an accession "which is so gradual that no one can perceive how much is added at any one moment of time." All these phrases have probably the same meaning, but that meaning is obscured by the use of unnecessary words. The German law, like the law of India, uses only the word "gradual," which seems to me to express all that is required.
118. With regard to what is fordable we must probably consider the habits and customs of the country, and what sort of channel people in the ordinary way consider as fordable. No doubt the people of this country take to the water very easily, but I doubt, if even here a channel would be considered fordable, if the water came higher than the breast of a man of fair average height, which would give a depth of four and a half or five feet. It must be remembered that the reason why an island is given to the adjacent proprietor and not to the Government, when the channel is fordable, is because it is considered as annexed to the main land. The practicability, therefore, of fording the channel, at one season of the year at any rate, must be the rule and not the exception.

119. As to when a chur or island can be said to have been formed, it has been considered that land adjoining a public navigable river cannot be considered as an accession to the adjoining estate which is regularly submerged in the wet season, and is visible only in the dry;¹ and similarly that in a tidal river any portion of the bed which is washed by the ordinary flow of the tide remains public property, and cannot, merely because it is visible at low water, be treated as a chur or island within the regulation.²

120. All the provisions in this regulation are subject to this, that whenever any clear definite and immemorial usage has been established for determining the right of the riparian proprietors, it shall prevail. The only usage of the kind however which there has been, as far as I recollect, any attempt to establish, is that referred to in the regulation as an example, namely, that the main channel of a river which

divides two estates shall be the constant boundary between them, whatever changes in the course of the river may take place. And it is of course incumbent upon the party who seeks to take the case out of the regulation clearly to establish by evidence the existence of the custom.¹

Lecture IV.

The Charge of the Person and Property of Minors
by the Court of Wards.

121. The Board of Revenue was originally constituted a court of wards by the Governor-General in Council on the 20th of August 1790, and regulations for the guidance of the Board in this capacity and of the officers under them were issued on the 15th of July 1791.¹

122. The primary object of these rules was evidently not the protection of the ward, but of the revenue. The action of the Government was principally determined by fiscal considerations arising out of the provisions made for the permanent settlement. It was necessary that that settlement² should be made with the actual proprietors of the soil, but females, minors, lunatics, contumacious persons, and notorious profligates were excluded, where such persons were sole proprietors of the estate to be settled. For these estates it was declared that managers under the court of wards should be appointed.

123. This being the object of these rules, they did not provide any protection to persons, however incapable they might be, unless they happened to be what are described as "proprietors of entire estates paying revenue to Government." It would seem from the second of the rules of

¹ Colebrooke's Digest, vol. iii, p. 298.
² See Regulation VIII of 1793, s. 2
1791, that it was contemplated, at one time, to extend them to joint-proprietors and proprietors of estates not paying revenue immediately to Government. But when these rules were afterwards embodied in Regulation X of 1793, all trace of this intention had disappeared.

124. It seems, however, to have been considered that if, in accordance with this regulation, the owner of an entire estate paying revenue directly to Government were brought under the court of wards, then the whole of his estate, both real and personal, of every description, was subject to the court's control; and that the court was also charged with the care of the ward himself. So far therefore as concerns the limited class of persons to whom it applies, the regulation does provide with tolerable efficiency for the performance of all the ordinary duties of a guardian, both as to person and estate.

125. The general scheme of Regulation X of 1793 was that a manager was appointed for the estate, and a guardian for the person of the ward. These functions might be vested in the same person, but they were wholly distinct. Both manager and guardian had to give security, and though they were under the general control of the court of wards, yet they had a large discretion, and were made the parties principally responsible for the good management of the property, for the care and maintenance of the ward, and, in the case of a minor, for his education. The collector as an officer subordinate to the Board of Revenue had certain duties to perform, chiefly of a ministerial character; and all these persons, collector, manager and guardian, were made strictly responsible to the court of wards for their conduct.

1 See Regulation X of 1793, ss. 7 and 15; Rules of the Revenue Department, 1866, chap. 25, s. 1, rule 2.
126. After a large portion of the duties of the Board of Revenue was allowed to be transferred to commissioners by Regulation I of 1829, it was directed that these commissioners should exercise all the powers vested in the Board for that purpose,¹ and from this time the administration of the law upon this subject seems to have fallen into some confusion. We very frequently find the collector spoken of as acting “in his capacity of court of wards;” and the collector also appears to have exercised himself many of the functions which are conferred by the regulation upon the manager or guardian. But for this concentration of power into the hands of the collector there does not appear to have been any authority in law.

127. In this state of things Act IV of 1870 of the Bengal Council was passed; and one cannot but feel surprised at the want of perspicuity and precision in the language of this statute, especially when we compare it with the regulation which it replaced. It is particularly obscure in the matter to which I have just alluded. It neither confirms the existing irregular practice, nor substitutes anything intelligible in its place. I shall, however, attempt to trace, as far as possible, who are the persons to execute the functions of the court of wards itself, and of guardianship and management under its control.

128. In order to avoid a complication which would, I fear, become hopeless, I will not make any attempt to ascertain the application of the act when the estate of the disqualified proprietor is situated in different districts of the same division or in different divisions. I will confine myself to the simple case of a disqualified proprietor whose property is all comprised in one district.

¹ Order of August 10th, 1842, rule 19.
129. The commissioner of the division within which the district is situate is in that case (s. 8) declared to be the court of wards; but by s. 11 the collector of the district is "to exercise the duties of the court with respect to the ward, and to his moveable and immoveable property." Now in ordinary language the person who exercises or performs the duties of a court is, when spoken of in his forensic capacity, called "the court," and thus it might be thought that the collector became the court of wards in such a case in substitution for the commissioner. But it is clear from the act that this is not so, because by s. 17 the collector is to deliver an inventory to the "court," and by s. 18 the proceedings of the collector are subject to the revision of the "court," and there is also given an appeal to the "court" against the orders of the collector.

130. It does not help to simplify the matter to find it declared by s. 1 that throughout the act the word "court" shall signify the court of wards. For the commissioner is the court of wards under s. 8, and if the observations I have just now made are well-founded, it would seem that notwithstanding the provisions of s. 11 he remains so. From this it would follow that everything which is by the act directed to be done by the "court" must be done by the commissioner. I am by no means sure, however, that this distinction has ever been observed in practice, and there is consequently the greatest difficulty in keeping the distinction between the court of wards proper, the collector exercising the duties, functions, and performing the duties of the court, and the collector as a district officer subordinate to the court. I am inclined to believe that practically nearly everything is done by the collector or by his direction, the sanction of the commissioner being occasionally obtained; but this is rather getting rid of the difficulty than solving it.
131. I will now consider what classes of persons are considered as disqualified. The persons who under the regulation of 1793 were declared to be disqualified were, such females as were not deemed by the Governor-General in Council competent to the management of their own estates, minors, idiots, lunatics, such persons as were rendered incapable of managing their estates by natural defect or infirmities of whatever nature, and such persons as were deemed disqualified on account of contumacy or notorious profligacy of character. But this last ground of disqualification was abolished by s. 2 of Regulation VII of 1796.

132. The grounds of disqualification under the present act are slightly different. The persons enumerated as disqualified are—females not deemed by the court competent to the management of their own estates, minors, and persons of unsound mind, or persons otherwise incapable of managing their affairs by reason of some disqualifying natural or acquired defect. Generally the only case in which the court of wards interferes are where the proprietor is a minor or a lunatic.

133. Under the present law, as under the regulation, the court of wards cannot interfere unless the disqualified person is proprietor of an entire estate paying revenue to Government. But now, as before, when the disqualified proprietor once becomes a ward of court, all his property whatsoever is administered by the court.

134. There is no special proceeding laid down by the act for declaring a person to be a ward of court, but the mode of ascertaining the disqualification is prescribed by ss. 19 to 29. When this has been done then by s. 30 "the court shall make an order declaring such estate to be subject to the jurisdiction of the court, and directing charge of such proprietor and of his property to be taken, and the
collector of every district within which there may be any property of the ward shall, as soon as conveniently may be, take possession of such property, and the court shall be held to be in charge of such property from the time when possession shall have been so taken.” And comparing this with s. 5 it would seem that the disqualified proprietor becomes a ward of court from the moment when the order referred to in this section is made.

135. It will be observed that s. 30 says, that an order is to be made directing that charge of the proprietor and his property is to be taken, but it does not say to whom this order is to be directed; and it is another of the difficulties connected with this act to ascertain who is in charge of the person and property of the ward. In attempting to ascertain this, I shall, as before, adhere to the case of a ward whose property is all situate in one division, and in one district of a division. If we look at ss. 18, 30, 36, 37, 50, 51, 53 and 61, it will be found, I think, that the “court” is spoken of as being in charge of the ward four times and the collector six times; that the “court” is spoken of as being in charge of his estate in two places and the collector in three. I was at first inclined to think that this might be explained by treating the collector and the “court” as one and the same person in reference to the provisions of s. 11. But this is impossible, for s. 31 directs the collector in charge of the ward to report to the court in charge of the ward the condition of the ward and the particulars of his property; and by s. 18 there is an appeal from the collector to the “court in charge of the estate.”

136. The matter is further complicated as regards the estate by the declaration contained in s. 45 that when a manager is appointed he is to have the “exclusive charge” of the ward’s property with certain small exceptions. But
this does not exclude the collector, for by ss. 48 and 51 the manager of the estate is to deliver monthly and yearly accounts to the collector in charge of the estate. The guardian is entitled to the custody of the ward, but I do not think he is spoken of anywhere as in charge of the ward.

137. The result seems to be that, so long as the wardship lasts, the estate of the ward and the ward himself are in charge of the commissioner as court of wards for the purpose of those functions of the court which are not transferred to the collector by s. 11; that the estate of the ward and the ward himself are in charge of the collector exercising the functions of the court of wards so far as those functions are transferred to the collector by s. 11; except so far as these functions are again transferred to the manager and the guardian respectively. But whether any special duty is to be performed by the commissioner, or the collector, or the manager, or the guardian is, in very many cases, not directly ascertainable from the terms of the act, but can only be gathered as a matter of inference from the general scope and object of its provisions.

138. It is assumed in the act that a manager of the estate and a guardian of the person of the minor will generally be appointed; and though the same person may hold both these offices, they are expressly declared by the act to be wholly distinct. Generally it may be said that under the act, as under the regulation, the duties of the manager have reference to the estate, and those of the guardian to the person of the ward. The manager is to receive the income of the property and to apply it to the payment of the allowance fixed for the support of the ward, to the charges of management, and to the payment of the Govern-

1 S. 36.
ment revenue.¹ The surplus is not at the disposal of the manager, but is to be applied by the collector, or the court, to the liquidation of debts, to the improvement of the estate, and to the purchase of landed property, as may be thought fit.² The same person may be manager of several estates, and there is no restriction upon the choice of manager.

139. It is expressly forbidden,³ on the other hand, to appoint as guardian any person who would be interested in outliving the ward. But this will not exclude a mother, or, in the case of a minor, a testamentary guardian who, unless himself disqualified, must be appointed guardian by the court. Also a female guardian must be appointed to a female ward; a Hindoo female to a Hindoo female ward; and a Mahommedan female to a Mahommedan female ward; and in both cases a relation if possible.

140. Under the regulation of 1793 it was necessary, in order that the testamentary guardian should have the preference, that his appointment should be in writing. This is not required by the present act, but if the person making the appointment were subject to the Succession Act, the appointment might be considered as a will, and would therefore have to be executed in the manner prescribed by ss. 50 and 51. It is very doubtful whether, under the act, a male testamentary guardian could enforce his claim to the guardianship of a female, though it is difficult to see any valid reason why he should be excluded.

141. Under the regulation⁴ the guardian was declared to have the care of the person and maintenance, and (if a minor) of the education of the ward; and the manager was directed to pay the allowance for the ward's mainte-

¹ S. 46. ² S. 49. ³ S. 55. ⁴ Ss. 7 and 20.
nance to the guardian, who was also to have charge of the ward's dwelling-house and of the moveables set apart for the ward's use. The position of the guardian under the act is not so easy to ascertain. The guardian is to have the superintendence and care of the person and maintenance of the ward,¹ and he has also a right to the custody of the person of every ward who is not an adult female.² But there is no direction that the allowance fixed for the support of the ward should be paid to the guardian, nor is the guardian put in charge of the dwelling-house and moveable property reserved for the ward's use.³ On the other hand, the general superintendence and control of the education of a minor is expressly⁴ vested in the "court;" and, as before pointed out, the ward is generally in charge both of commissioner and collector during the whole period of wardship. It is, therefore, difficult to say how, under these provisions, the duties of the commissioner, collector, and guardian are apportioned, but probably in most cases the collector would pay the allowance for the ward's maintenance to the guardian, and would also give him possession of the ward's dwelling-house and of the moveables reserved to the ward's use; and having done this the collector would probably expect the manager to see that the ward was properly cared for.

142. The duties of the manager towards his ward were declared in the Regulation X of 1793, s. 16, and because these words are not repeated in the body of the act some doubt might arise as to whether any change was contemplated in this respect. But in fact this section of the

¹ S. 34.  ² S. 61.  ³ S. 45.  ⁴ S. 64.
regulation only expressed a universal principle of law, that the manager is bound to manage the estate committed to him "diligently and faithfully for the benefit of the proprietor, and in every respect to act to the best of his judgment for the proprietor's interest, in like manner as if the estate were his own." And though in the body of the act this duty is not expressly declared, it is contained in the form of agreement given in the schedule, which every manager is obliged to execute. He thereby agrees that he will "manage the estate diligently and faithfully for the said proprietor, and will use every means in his power to improve the same for the proprietor's benefit, and will act in every respect for the proprietor's interest in like manner as if the estate were his own."

143. In suits by or against a ward of court¹ he or she must be so described, and in case there be a manager of the ward's estate, such manager must be named as next friend or guardian; but the court of wards may substitute any other person; and if there be no manager the collector in charge of the ward is to be named as next friend or guardian.

144. Notwithstanding this clear direction it is frequently the practice to describe the parties thus:—The court of wards on behalf of A v. B; or A v. The court of wards on behalf of B. But such a method of suing is at variance with the express provisions of the act and with all the principles relating to suits brought by or against minors and other disqualified persons. The disqualified person must be himself the party to the suit, but he must sue by his next friend, or defend by his guardian, as the case may be; and this is what the act requires. The proper description in a

¹ S. 69.
suit brought by a disqualified person who was a ward of the court of wards would be as follows:

“A B, a ward of the court of wards, inhabitant of, &c., by C D, inhabitant of, &c., the manager of the estate of the said ward, sues E F, &c.”

And if the ward were sued, the proper description would be—

“A B, inhabitant of, &c., sues C D, inhabitant, &c., a ward of the Court of Wards, of whom E F, inhabitant, &c., the manager of the estate of the said ward is guardian.”
LECTURE V.

THE CHARGE OF THE PERSON AND PROPERTY OF MINORS UNDER ACT XL OF 1858.

145. From the date of the permanent settlement the sovereign power of this country has distinctly and expressly recognised the capacity of Hindoos and Mahommedans to make a will, and by that will to appoint the persons who should have the care of the person and property of their minor heirs, and by Regulation V of 1799, s. 2, it was declared that in ordinary cases the executor or executors appointed by the will should "take charge of the estate of the deceased and proceed to the execution of their trust according to the will of the deceased and the laws and usages of the country without any application to the judge of dewanny adawlut, or any other officer of Government for his sanction;" and the courts of justice were prohibited from interfering in such cases except upon a regular complaint. So also in case of intestacy, if the heir were a minor and not under the superintendence of the court of wards, his guardian or nearest of kin, who by special appointment, or by the law and usage of the country might be authorised to act for him, was not required to apply to courts of justice for permission to take possession of the estate of the deceased, so far as the same could be done without violence.

146. Unless, therefore, a minor were the proprietor of an entire estate paying revenue to Government and therefore subject to the court of wards, the courts of justice
could only interfere upon a regular complaint. But there was never any doubt, or could be any doubt that, upon complaint made, the civil court would hold the guardian of a minor responsible for misconduct, and would compel him to give an account of his management. Indeed, in such a matter the court would not consider, whether the person who had so acted was the rightful guardian; if he had taken upon himself the management of the minor's estate, he would be held responsible.

147. The matter is now regulated by Act XL of 1858, s. 2, which declares that "except in the case of proprietors of estates paying revenue to Government who have been or shall be taken under the protection of the court of wards, the care of the persons of all minors (not being European British subjects) and the charge of their property shall be subject to the jurisdiction of the civil court."

148. It might perhaps have been inferred from these expressions that the legislature intended to reverse the rule laid down by the regulations above referred to, and to require that every person assuming to act on behalf of a minor should first obtain the sanction of the civil court. In practice, however, this has very often not been done. Parties very frequently take upon themselves the risk and responsibility of acting without asking for the certificate of administration which, under s. 3, the court is authorised to grant, and which it would never refuse, if a proper case were made out. Nor is an uncertificated guardian in the same position as a certificated one. It is expressly declared by s. 3 that no person shall be entitled to initiate or defend any suit connected with the estate of which he claims the charge until he shall have obtained such certificate; unless, for any sufficient reason, the court shall think fit to grant leave to bring or defend the suit to an uncertificated relative.
So also the very large powers under s. 18 are only granted to a person who has obtained a certificate.

149. By s. 7 "if it shall appear that any person claiming a right to have charge of the property of a minor is entitled to such right by virtue of a deed or will, and is willing to undertake the trust, the court shall grant a certificate to such person." It is not, however, very clearly explained who could claim the certificate under this provision. Under Regulation V of 1799, s. 2, the executors appointed by a will are to take charge of the estate disposed of by the will; and possibly it may be hence inferred that under the present act a person nominated by deed or will could only claim to take charge of the property which passes under the deed or will. But then no provision is made for the recognition of an appointment by deed or will, where the minor succeeds to other property than that to which the deed or will relates, or does not take under the will; and if this were to happen, either the certificate to the nominee of the testator would have to be limited, or the nominee would lose his prior claim. And this is of importance, because in many districts of Bengal, and indeed in the larger part of India, a son has a vested interest in the family property in the lifetime of his father, and takes, therefore, in his own right and not by virtue of any deed or will which may be made in his favour.

150. Should the claim of the testamentary guardian be restricted to the property which passes by the will, it would probably make no difference whether the person making the appointment was a relation or a stranger. As the minor takes under the bounty of another, it might be considered that he must take under such conditions as that person chooses to impose. And it is absolutely necessary to find some restriction to the general words of the first clause of section 7.
151. Probably, however, the court would in all cases respect an appointment made by a father, and would give him the certificate in preference to any other person whether the son took anything from the father's bounty or not; presuming, unless the contrary were very clearly shown, that the person so appointed was a fit person to be entrusted with the charge of the minor's estate. This is in analogy with the English law which (12 Charles II, c. 24) allows the father by deed or will to dispose of the custody and tuition of his minor children, including the management of their estate. But the English law does not confer the power of making this appointment upon any other relation, not even upon the mother.

152. Should there be no person appointed by deed or will to take charge of the property, or should the person so appointed refuse to act, then the court may select any near relation of the minor, and grant him a certificate.

153. Should it not be possible to make a grant under s. 7 than the course to be taken will depend on the nature of the estate which belongs to the minor. If the estate consist of moveable property or houses and gardens only, and does not include any land used for agricultural purposes, the certificate must be granted to an officer called the public curator if there be one, and if there be no such officer, then to any fit person whom the court may appoint. If, on the other hand, the estate of the minor include any land or interest in land not being houses and gardens or the like, then the matter is handed over to the collector, who appoints a manager, and the estate is dealt with very much in the same way as estates are dealt with under the court of wards.

154. The act contains provisions for the appointment of a guardian of the person of the minor as well as for the
management of his estate; but there is a little confusion arising from the mode in which these provisions are expressed. The result, I take it, is this:—that if a guardian of the person of the minor has been appointed by the father, the person so appointed has a right to the guardianship. But if the father has made no appointment, then the court may appoint a relation or any other person whom it thinks fit to be the guardian of the person of the minor; except in the case where the matter passes into the hands of the collector under s. 12, in which case it becomes the collector's duty to appoint the guardian of the person as well as the manager of the property.

155. The powers and duties of the person to whom a certificate has been granted are very shortly stated in s. 18, which declares that "every person to whom a certificate shall have been granted under the provisions of this act may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a minor, and may collect and pay all just claims, debts, and liabilities due to or by the estate of the minor. But no such person shall have power to sell or mortgage any immoveable property, or to grant a lease thereof for any period exceeding five years, without an order of the civil court previously obtained."

156. For some reason, which I have not been able to discover, this very important section appears to have received much less consideration than it deserves. Taking in its literal meaning (and I am not aware of any restriction that can be placed upon it) it comes to this:—that a person who has obtained a certificate has an absolute discretion in dealing with the estate, except in the three cases specified, namely, a mortgage, an alienation, and a lease for more than five years of the immoveable property. Except in these three cases the
acts of the certificate-holder would seem to be unimpeachable, except in the way that the acts of any person holding a general and undefined power of representation may be impeached. There is, however, this important feature in the case which it is essential to remember. He who deals with the representative of another must know that it is the duty of the representative to act in all things to the best of his ability for the benefit of his principal; and if the circumstances be such that a reasonable man ought to suspect that the representative was not so acting, he is bound to abstain dealing further with the representative until the suspicion is removed. No one is at liberty to deal with a representative whose conduct he doubts. The party dealing with the representative is not the judge of what is or is not for the benefit of principal; but he must cease to act as soon as he has reason to believe that the representative is acting improperly. This is a general principle of the law of representation, and applies as much to the certificate-holder representing a minor as to any other representative.

157. On the other hand all power of disposing of landed property either by alienation, mortgage, or lease, excepting as to leases for not more than five years, is taken away from the certificate-holder absolutely. For this purpose, unless he has obtained the sanction of the court, he is as powerless as a stranger.

158. The provisions of this section only relate to a certificate-holder. A person who had assumed charge of an estate without having obtained a certificate could not claim the same absolute discretion with regard to the moveable property and the income of the landed property which is thereby conferred; and the validity of his acts would have to be determined by the general principles which govern the relations of a minor to the manager of his estate.
159. These relations were considered in a case decided by the Privy Council—the case of Hunooman Pershad Pandy v. Mussamut Babooee Munraj Koonweree,\(^1\) which I shall have to consider hereafter. They are certainly larger in some respects, especially as regards alienation of property for payment of debts, than are usually possessed by persons in that situation. But when the validity of the acts of a manager of a minor’s estate come to be again considered with reference to the principles laid down by the Privy Council, it will be a very serious question whether a manager ought not, now that Act XL of 1858 gives him a ready means of doing so, to obtain the sanction of the court to any alienation, or mortgage, or lease for more than five years of the landed property of the minor; in other words, whether a manager by abstaining to ask for a certificate can exercise powers which a certificate-holder is expressly prohibited from exercising except under control.

160. Nothing is said in the act about the duties of the guardian of the person of the minor, except that\(^2\) he is bound to provide for the minor’s education in a suitable manner.

161. Quite independently however of the special provisions of the act, the civil courts would have undoubted jurisdiction to see that the duties of the manager of the estate, whether holding a certificate or not, and of the guardian of the person were properly performed; and as far as I am aware the duties of a manager are nowhere more clearly and correctly summed up than in Regulation X of 1793, s. 16, that is to say, to manage the estate committed to his charge diligently and faithfully for the benefit of the proprietor; and in every respect to act to the best of his judgment for

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\(^1\) Moore’s Ind. App., vol. vi, p. 393.
\(^2\) S. 25.
the proprietor's interest, in like manner as if the estate were his own. And the duties of the guardian are expressed in the same regulation\(^1\) to be to take care of the person, maintenance, and education of the minor.

162. There has never been any doubt moreover that a suit can be maintained against the manager of the estate, whether certificated or not, by a relative or next friend of the minor, on the ground that the estate is being improperly administered, and requiring the manager to bring in his accounts and generally to submit to an inquiry into his conduct. And by s. 21 power is given to the civil court for any sufficient cause to recall any certificate granted under the act, and to remove any guardian appointed by the court.

It was at one time doubted whether this applied to a person claiming a right to the certificate under a deed or will, but that doubt has been removed by a decision of the Full Bench in the case of Narinee Bibe v. Khojah Surwan Hossein and others.\(^2\) It is there said, "primâ facie, a person who has been appointed the manager of a minor's estate, either by will or deed, is the proper person to be the manager, and primâ facie there is no sufficient cause why he should not be the person to whom the certificate is to be granted. The law has, therefore, made it compulsory on the court to grant him the certificate; but it by no means follows that when a certificate has been granted to him, and he has acquired the management, it may not be discovered that he is not a proper person to have the management." Then after adverting to the fact that a person to whom a certificate is granted under s. 7 is so far in a different position from a person to whom a certificate is granted under s. 10, that the former is not like the latter (see s. 16) bound to deliver in yearly accounts, it is held

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\(^1\) S. 20.

that under s. 21 any certificate may be recalled. The court says, "it is only for sufficient cause that a certificate granted may be recalled, but there seems to be no good reason for holding that a certificate granted under s. 7 of the act either to a manager appointed by will or to a near relation cannot be recalled for sufficient cause in the same manner as any other certificate, merely because such manager is not bound to render periodical accounts."

163. In the same case it is decided that it is not necessary that the minor or his friend should, in every case in which it is desired to remove a manager for misconduct, resort to a regular suit: the civil court having power, if a sufficient case is made out, to recall the certificate by a summary proceeding.

164. If a person has taken charge of the property of a minor without obtaining a certificate, the court cannot deal with him under s. 21. But the court can nevertheless effectually use the control which under s. 2 it possesses in every case over the property of minors who are not wards of court. In most cases the best mode of proceeding against an uncertificated manager for misconduct would be to file a suit against him setting out the charges and asking for his removal and for an account. This suit would be brought in the name of the infant by any relative or friend of the minor, who would on a proper case being shown be allowed to bring such a suit. Then, if any summary interference were required to prevent waste or damage to the property, an application might be made for an injunction and for the appointment of a receiver under s. 92 of the code of civil procedure.

165. The application for a certificate is very often made the occasion of a contest in which the interests of the minor are not unfrequently sacrificed. If the succession of
the minor is disputed, an attempt is made to oppose the grant of any certificate at all; but, as has been frequently pointed out, to allow an opposition on this ground to prevail would defeat the very object of the act, which is to protect the interests of the minor. The question of succession will be determined when the certificate has been granted, and the minor properly represented. So also when the certificate is claimed under a will, and the will is disputed, a great deal of time and money is often expended in the inquiry as to the validity of the will. This, in the interest of the minor, ought always to be avoided. If there is a real dispute as to the validity of the will, the best course to pursue is to grant the certificate at once, if the applicant under the will is a suitable person; if he is not, then to grant it to any other suitable person who can be found; leaving the validity of the will to be determined in the regular way by a suit brought for that purpose.
LECTURE VI.

OF THE PROTECTION WHICH IS AFFORDED UPON EQUITABLE CONSIDERATIONS TO PURCHASERS AND MORTGAGEES WHEN THEIR TITLE IS IMPEACHED.

166. It very often happens that a person who has bought property, or who has advanced money on the security of property, or who has taken a lease of it for a term of years, finds his title attacked on the ground that the person from whom he derives it was not the owner, and had no power or authority so to dispose of the property; and there are certain cases under which the purchaser, mortgagee, or lessee, though he fails to establish that his vendor, mortgageor, or lessor had any such power or authority, may protect himself against an attack which would otherwise be successful by showing that, under the circumstances, he ought to be protected.

167. In order to avoid long and complicated expressions I shall speak throughout the following observations of a purchaser only; by a permissible extension of the meaning of that term comprising under it all persons who take for value given an interest in property. I shall also confine myself for the present to the consideration of purchases of immoveable property.

168. The doctrine of law which I am about to consider, though it may be supported upon considerations of justice which are generally applicable, is nevertheless undoubtedly
one of those which has been suggested to the courts in India by the practice of those courts which are specially called upon to administer equity in England. The doctrine is, however, in England closely connected with the conflicting administration of the law in courts of common law and courts of chancery. It may happen in England, that a purchaser who is attacked in a court of common law is wholly unable to take advantage of this doctrine; whereas if accident happened to drive the claimant into a court of chancery, the purchaser would then have the full benefit of it. There is nothing in this country corresponding to this conflict of courts, and therefore the doctrine under consideration, as administered here, is independent of any such conflict.

169. It would not be desirable to discuss at length, in this place, the English rules on the subject; for to understand these it is always necessary to keep in mind the conflict to which I have just referred, as well as the exact import of numerous technical expressions of English law. Moreover, the English law on this matter is not our guide; it is only our starting point; and it will be sufficient if I state the English rule in general terms, and disembarrassed as far as possible of its accidental peculiarities.

170. For this purpose I will make use of a very clear exposition of it by Lord Westbury in the case of Phillips v. Phillips.¹ As there pointed out a court of chancery in England adopts the usual maxim, that, as between two rival claimants in other respects equal, he who is first in point of time is strongest in point of right; but a court of chancery will not interfere to deprive an honest purchaser for valuable consideration without notice of any advantage

which he has in a court of law; nor as against a purchaser who has a legal title will it set aside a deed for fraud, nor correct it for mistake, nor grant other similar equitable relief.

171. But the rule as thus expressed cannot be adopted here; in fact it could have no meaning here where the conflict between courts of law and courts of chancery on which it is based does not exist. Although, therefore, we may sometimes use as illustrations particular cases which have been determined in England, we must express the law in terms of our own; and I will proceed to ascertain as well as I can with the assistance of the decided cases what that law is.

172. In the first place a court here would equally with a court in England apply the maxim, that he who is first in point of time is first in point of right; and would only modify that maxim under special circumstances which show that its application would be inequitable. Thus if a zemin-dar sells a putnee right to one after having mortgaged the same land to another, the mortgagee's title as being first in point of time must, as a general rule, prevail over that of the putneedar, however innocently the putneedar may have taken and paid for his right.

173. Indeed this is only a branch of the more general principle stated by the Privy Council in the case of Varden Seth Law v. Luckput Rojjee Lallah¹ that the owner of property cannot, in general, give to another a title higher or more free from encumbrance than his own.

174. So if a person is the owner of property, but has only a restricted power of alienating the property, he can in general give to no one a title except upon an alienation

¹ Moore's Ind. App., vol. ix, p. 303.
which is within the restriction. Thus a Hindoo widow when she succeeds to her husband's property is owner of it, but she can only alienate it effectually for certain specified purposes; and if she alienate it for any other purpose, the alienation is void except as against herself.

175. So if a person is not the owner of property or is only part owner, but has a power of alienating the property for special purposes not only to the extent of his own interest, but absolutely, so as to bind the owners, still he can only make a title upon an alienation for the purposes specified. Thus the manager of a joint family can alienate the property not only of himself, but also of his co-sharers, for certain purposes; but if he alienate it for any other than these purposes, the alienation is void.

176. The doctrine under consideration comes in therefore as the modification of an ordinary and general rule. What we have to do is to ascertain the special protection which under certain circumstances is afforded to a purchaser whose title is defective.

177. There is of course the general requisite that the transaction which it is sought to protect must have been entered into in good faith. Unless the purchaser who seeks the special protection of the court has acted with good faith, he will obtain no redress. What is good faith no one would attempt to define. This requisite in fact expresses the general power which courts of justice hold in reserve whenever they are asked to interfere on equitable grounds not to do so unless they think it under all the circumstances proper.

178. There is next the requisite that the transaction should have been entered into on what is called "a valuable consideration;" which expresses, I take it, no more than that the transaction shall be a real matter of business and
not a gift. A man who had got possession of property by a gift would not be entitled to any protection if his title was bad. But if a fair bargain had been struck, the court would probably not enter into an inquiry as to whether the price paid was adequate. This, however, does not at all prevent inadequacy of price becoming sometimes a very important element of inquiry. When property is offered for sale at a very inadequate price, it is not unnatural to suppose that the title is defective, and a prudent man would generally try to ascertain what the defect was; and the consideration what course a prudent man would pursue is, as we shall see immediately, very often a matter of great importance.

179. As regards these two requisites, good faith and valuable consideration, the law of this country is like the law of England; but the other requisite of the English law, that the purchaser shall be "without notice" has not, at any rate exactly in the English sense, been adopted in India, though, as we shall see hereafter, we have something analogous thereto. As, however, the phrase "without notice" is not unfrequently in use in this country, it is necessary to explain shortly what the English law is on that subject.

180. The English rule of law fully expressed is that the transaction must have been entered into by the purchaser without notice at the time of any defect in the title of the person from whom title is derived. Now notice properly means no more than knowledge, and this ought to be a very simple inquiry into a matter of fact; but very great confusion has been introduced into the law of England by attempting to lay down rules as to what constitutes evidence of notice instead of leaving the tribunals to judge for themselves. They have at length got so far as to create an anomalous thing called "constructive notice;" and just as "constructive
fraud" is not fraud at all, so "constructive notice" is not notice at all, but something that stands in the place of notice. It is not knowledge of the defect in the title, but gross or culpable negligence in not obtaining that knowledge. And there are innumerable attempts in the English law books to define what constitutes constructive notice. The consequence of this calling of things by their wrong names, and this attempt to define things which by their very nature are incapable of definition, has been that the law of England has got into a condition which is universally deplored, but which it is found very difficult to remedy.¹

181. Fortunately in India we have hitherto escaped this confusion. But the full explanation of how we have done so must be postponed until we have considered the leading cases upon the subject, which may be divided conveniently for the purpose of consideration into three classes:—(1) sales by persons who are not the owners and are known not to be the owners, but who are believed to have a power to dispose of the property; (2) sales by persons who are not the owners but are believed to be the owners; (3) sales by persons who are the owners, but whose ownership is liable to be defeated.

182. The first case which I will consider is that of Hunooman Pershad Panday v. Mussamat Babooee Munraj Koonweree,² and which belongs to the first class. In that case Rajah Sheobuksh Sing had died, and his widow, Ranee Degumber Koonweree, had taken possession of his property; had caused it to be registered in the name of herself and her infant son Lal Inderdoun Sing as joint proprietors; and had transacted the business of the family. The property, however, was indisputably that of her infant son alone. The property was considerably encumbered when it came into the

¹ See Sugd. Vend. and Purch., ch. 24, s. 1, paras. 3, 65, 67, 14th ed.
² Moore's Ind. App., vol. vi, p. 333.
hands of the Ranee, and upon the accounts being taken a balance of Rs. 3,200 was agreed to be debited to the Ranee in favour of the plaintiff Hunooman. Subsequently, Rs. 3,000 were advanced to the Ranee by Hunooman for the payment of Government revenue, Rs. 600 for a purpose not stated, and Rs. 4,000 to pay off other mortgages effected by the Ranee. The accounts were afterwards again made up, and the whole debt due to the plaintiff was found to be Rs. 15,000; whereupon certain villages were made over to Hunooman as usufructuary mortgagee to enable him to satisfy his debt.

183. After Lal Inderdoun Sing came of age, he sued to recover possession of these villages, alleging (as was not disputed) that the property was his, and that his mother had no power to dispose of it. The mortgagee, however, contended that the Ranee was at any rate the guardian of her infant son, and that she had power to dispose of the property, if it was for the benefit of her infant son that she should do so; and that having advanced the money bond fide he ought to be protected. To this it was objected that the Ranee, though claiming to act on behalf of her infant son, was not his properly constituted guardian, and that she had claimed a joint proprietorship with her son in order to keep out of the court of wards; and that, therefore, the mortgage in question could not be treated as an act done by her as guardian on behalf of her infant son. The Privy Council did not assent to the view of the facts on which this objection is founded, but they nevertheless deal with the objection, and their observations are so closely pertinent to the subject now under consideration that I think it desirable to quote them. They say "it is to be observed that under the Hindoo law the right of a bond fide incumbrancer who has taken from a de facto manager a charge on the lands created honestly for the purpose of saving the estate is
Protection to honest Purchasers.

not—provided the circumstances would support the charge had it emanated from a de facto and de jure manager—affected by the want of union of the de facto and the de jure title. Therefore, had the Ranee intruded into the estate wrongfully, and even practised a deception upon the court of wards, or the collector exercising the powers of the court of wards, by putting forth a case of joint proprietorship in order to defeat the claim of the court of wards to the wardship (which is the case that Mr. Wigram supposed), it would not follow that those acts, however wrong, would defeat the claim of the incumbrancer. The objection then to the Ranee's assumption of proprietorship, in order to get the management into her hands, does not really go to the root of the matter, nor necessarily invalidate the charge; consequently, even had the view which the Sudder Dewanny Adawlut took of the character of the Ranee's act, as not having been done by her as guardian, been correct, their decision against the charge without further inquiry would not have been well founded. It would not have been accordant with the principles of the Hindoo law as declared in Colebrooke's Digest, vol. i, p. 302, and in the case of Gopee Churn Burral v. Mussamut Khwarry Lukkee Debia¹ and as illustrated by the case cited for the appellant in the argument, against the authority of which no opposing decision was cited."

184. The meaning of this (as I take it) is, that if a purchaser or mortgagee deal with a person who assumes to act as manager or guardian, he may still in some cases protect himself, notwithstanding that the pretended manager or guardian had wrongly and even fraudulently assumed that office. But in such a case the claim would have to be very closely scrutinised.

¹ Reported in the Sudder Dewanny Adawlut Reports, vol. iii, p. 93.
185. The conclusion, however, come to was that as the law then stood the Ranee was the properly constituted guardian of her infant son, and that the bond had been executed by her as such; and then the question arose, which more particularly bears upon the subject now under consideration—that is to say, whether the mortgage of her son's property by the Ranee was good and effectual as against him. It is to be borne in mind that the Privy Council did not decide this point; they referred it back to this country for decision: but they say that "they think it desirable, in order to prevent a future miscarriage, to state the general principles which should be applied to the final decision of the case," and they proceed to lay down the law as follows:

186. "The power (they say) of the manager for an infant heir to charge an estate not his own is, under the Hindoo law, a limited and qualified power. It can only be exercised rightly in a case of need, or for the benefit of the estate. But where, in the particular instance, the charge is one that a prudent owner would make, in order to benefit the estate, the bonâ fide lender is not affected by the precedent mismanagement of the estate. The actual pressure on the estate, the danger to be averted, or the benefit to be conferred upon it in the particular instance, is the thing to be regarded. But of course if that danger arises or has arisen from any misconduct to which the lender is or has been a party, he cannot take advantage of his own wrong to support a charge in his own favour against the heir grounded on a necessity which his wrong has helped to cause. Therefore the lender in this case, unless he is shown to have acted malâ fide, will not be affected, though it be shown that, with better management, the estate might have been kept free from debt. Their Lordships think that the lender is bound to inquire into the necessities for the loan, and to
satisfy himself as well as he can with reference to the parties with whom he is dealing, that the manager is acting in the particular instance for the benefit of the estate. But they think that if he does so inquire, and acts honestly, the real existence of an alleged sufficient and reasonably credited necessity is not a condition precedent to the validity of the charge, and they do not think that under such circumstances he is bound to see to the application of the money. It is obvious that money to be secured on any estate is likely to be obtained on easier terms than a loan which rests on mere personal security, and that, therefore, the mere creation of a charge securing a proper debt cannot be viewed as improper management; the purposes for which a loan is wanted are often future, as respects the actual application, and a lender can rarely have, unless he actually enters on the management, the means of controlling and rightly directing the actual application. Their Lordships do not think that a bona fide creditor should suffer when he has acted honestly and with due caution, but is himself deceived."

187. The Privy Council also deal with an argument used in the same case on the part of the defendant Hunooman in support of his mortgage which, as they say, 'if correct, would indeed reduce the matter for consideration to a very short point; for according to that argument, if the factum of a deed of charge by a manager for an infant be established, and the fact of the advance be proved, the presumption of law is prima facie to support the charge, and the onus of disproving it rests on the heir. For this position, the Privy Council go on to say, "a decision or rather a dictum of the Sudder Dewanny Adawlut at Agra in the case of Oomed Roy v. Heear Loll¹ was quoted and relied upon. But

the *dictum* there, though general, must be read in connexion with the facts of the case. It might be a very correct course to adopt with reference to suits of that particular character, which was one where the sons of a living father were, with his suspected collusion, attempting in a suit against a creditor to get rid of the charge on an ancestral estate created by the father, on the ground of the alleged misconduct of the father in extravagant waste of the estate. Now it is to be observed that a lender of money may reasonably be expected to prove the circumstances connected with his own particular loan, but cannot reasonably be expected to know or to come prepared with proof of the antecedent economy and good conduct of the owner of an ancestral estate; whilst the antecedents of their father's career would be more likely to be in the knowledge of the sons, members of the same family, than a stranger; consequently this *dictum* may perhaps be supported on the general principle that the allegation and proof of facts, presumably in his better knowledge, is to be looked for from the party who possesses that better knowledge; as well as on the obvious ground in such suits of the danger of collusion between father and sons in fraud of the creditor of the former. But this case is of a description wholly different, and the *dictum* does not profess to be a general one, nor is it so to be regarded. Their Lordships think that the question—on whom does the *onus* of proof lie in such suits as the present—is one not capable of a general and inflexible answer. The presumption proper to be made will vary with the circumstances, and must be regulated and dependent on them. Thus when the mortgagee himself with whom the transaction took place is setting up a charge in his favour made by one whose title to alienate he necessarily knew to be limited and qualified, he may be reasonably expected to allege and prove facts presumably
better known to him than to the infant heir, namely, those facts which embody the representations made to him of the alleged needs of the estate, and the motives influencing his immediate loan.

188. "It is to be observed that the representation by the manager accompanying the loan as part of the res gestae, and as the contemporaneous declarations of an agent, though not actually selected by the principal, have been held to be evidence against the heir, and as their Lordships are informed that such primâ facie proof has been generally required in the Supreme Court of Calcutta between the lender and the heir, where the lender is enforcing his security against the heir, they think it reasonable and right that he should be so required. A case in the time of Sir Edward Hyde East, reported in his decisions in the 2nd volume of Morley's Digest, seems the foundation of this practice. See also the case of Brown v. Ramconoy Dutt.¹

189. "It is obvious, however, that it might be unreasonable to require such proof from one not an original party, after a lapse of time and enjoyment, and apparent acquiescence; consequently, if, as is the case here as to part of the charge, it be created by a substitution of a new security for an older one, where the consideration for the older one was an old precedent debt of an ancestor not previously questioned, a presumption of the kind contended for by the appellant (Hunooman) would be reasonable."

190. From the passages above quoted it will be seen that in this important decision the Privy Council, whilst indicating the general principles to be applied to such cases, have on every side repudiated anything like a hard and fast rule of presumption or inference. Every transaction of this kind

¹ Sudder Dewanny Adawlut Reports, vol. ii, p. 79.
is not to be treated as presumably void until it is established by the purchaser that an actual necessity existed; but, on the other hand, it is not safe to rely in every case on the mere assertion of such a necessity by the manager or guardian; but the purchaser must take such reasonable precautions to satisfy himself that the necessity exists as a prudent man would take. So again, the validity of the transaction will not be determined by the sole consideration whether the appointment of the person acting as manager or guardian was technically complete; but by considering the merits of the transaction itself. And again, though the general management of the estate is an important consideration in these cases, it is not simply a question whether under better or more careful management the necessity might have been avoided, but whether the necessity presses upon and causes danger to the estate.

191. It may be useful to compare the rules here laid down with reference to the manager of the property of an infant heir under the Hindoo law with the somewhat analogous rules of the English law as to persons who, without being owners, have special and limited power to dispose of property for the purpose of defraying the debts of the former owner. A Hindoo manager of an infant's estate is in a very similar position to that of a person who under a will in England is empowered to sell landed property to defray the testator's debts in case the personal assets should prove insufficient. According to the English law a purchaser in such a case has to take upon himself the whole risk of the existence of the necessity to resort to a sale of the landed property. No prudent inquiry or reasonable precaution will protect him. But whilst marking the greater strictness of this rule of English law, it is well at the same time to mark the result. The result is that such a power is
found practically useless, no one choosing to purchase at such risk; and it is the opinion of the most eminent lawyers that the testator ought always expressly to relieve the purchaser from this responsibility.1

192. However, it must not be forgotten that the decision in the case of Hunooman Pershad Pandy was given prior to the passing of Act XL of 1858. By that act it is provided that no person to whom a certificate of administration of the estate of a minor shall have been granted "shall have power to sell or mortgage any immoveable property or to grant a lease thereof for any period exceeding five years without an order of the civil court previously obtained." And since this act the alienations of a de facto as distinguished from a de jure guardian may possibly not be held valid, because it might perhaps be scarcely now held that a purchaser or mortgagee acted prudently, who did not require that the sanction of the court should be obtained to the transaction, as provided for by this section.

193. The case above quoted was that of a manager or guardian for an infant heir. But the same doctrine has been applied to the transactions of a manager on behalf of a joint family,2 and of a childless Hindoo widow in possession of her husband's estate.3

194. A class of cases which have not been so fully discussed, but which not unfrequently occur, are those in which property subject to a lien or charge has been disposed of to a purchaser for valuable consideration without notice of such prior claim. This was the case of Varden Seth Sam v. Luckaputty Royjee Lallah,4 but it was not necessary to go

1 See Sugd. Vend. and Purch., p. 662; and Butler's note to Co. Litt. 290 b. xiv, 4.
4 Moore's Ind. App., vol. ix, p. 303.
very fully into the matter, inasmuch as it was considered that an innocent purchase had not been proved. But the court, nevertheless, laid down two important principles; one that which has been already adverted to, that "one who owns property subject to a charge can, in general, convey no title higher or more free than his own;" and the other that "the law in India has not enabled a purchaser of land to look only to the apparent title on the collector's books, or the presumed title of the owner in possession."

195. The last paragraph requires a little explanation. The court of first instance had, in the case under consideration, held that the purchaser had omitted to observe the common precaution of asking to see the title-deeds; and that, if he had done so, he would have discovered that they were not in the possession of the vendor, but that they were deposited as security for a claim against him. The judges of the Sudder Court of Madras thought that when the purchasers found the vendor in possession, and his name on the registry, he was justified in making no further inquiry. The Privy Council, precisely in accordance with the principles laid down in the case of Hunooman Pershad Pandy v. Mussamut Babooee Munraj Koonweree, refuse to acknowledge this rigid rule of presumption which (as is observed) has not been sanctioned by the positive law in India. Nor is the non-possession of title-deeds by the claimant a conclusive circumstance, any more than the other circumstances mentioned above. As has been said by the High Court of Madras in a subsequent case,¹ where a mortgagee with the title-deeds contested the charge of a prior mortgagee without them, "it is a circumstance which certainly calls for explanation on his (i.e., the prior

¹ Madras High Court Reports, vol. iv, p. 373.
mortgagee's) part, but it may be explained; and if he can satisfy the court that the absence of the title-deeds was reasonably accounted for to him at the time when he obtained his mortgage, or that he was subsequently induced to part with them upon such grounds and under such circumstances as to exonerate him from any serious imputation of negligence, he ought not to lose his priority, because the mortgagor may afterwards have dishonestly handed over the title-deeds to a second mortgagee."

196. So, on the other hand, it would be altogether erroneous to suppose that possession and registration in the collector's books are not facts of the highest importance for a purchaser to consider, when he is about to enter on a purchase. The error of the Madras Sudder Court, in the case of Varden Seth Sam, was in treating these facts as precluding the necessity of all further inquiry, notwithstanding the absence of the title-deeds from the vendor's possession.

197. I will now consider a class of cases which may possibly stand on a footing slightly different from those which I have hitherto considered, but which may conveniently be discussed here, because they are at present dealt with in the courts of this country upon considerations substantially similar.

197a. It is, as is well known, a very common custom in India for the owner of property to make a nominal transfer of it to another person, and to transact all the business relating to that property in the name of this person. Such transactions have obtained the name of benamtee transactions; the person into whose name the property is nominally transferred being called the benameedar. There are other forms of benamtee transactions. Sometimes a person who purchases property takes a conveyance in the name
of another person, who is then the benameedar. But I will take the first case, as an example.

198. The exact position of the two parties to a benamee transfer has not been ascertained. If A, the owner of property, cause it to be transferred to B, with an understanding between them that B is benameedar only, the tendency of English ideas would be to treat B as owner of the property in trust for A, and it would be impossible to deny that some features of the relation between A and B present some analogy to the relation of trustee and cestui que trust in England. Nevertheless, to speak of B as the owner of the legal estate, and of A as the owner of the equitable estate, is manifestly incorrect; the distinction pointed at by English lawyers in the phrase "legal and equitable estate" having no existence here. Moreover, it has been held that a benameedar is not a trustee for the person who transfers the property, at any rate within the meaning of s. 2 of Act XIV of 1859. And out of the Supreme Court, and the range of ideas of exclusively English origin, it seems to have been generally considered that in such cases the real owner is still the transferor, and not the benameedar. Thus it has been held that in such a case the transferor, and not the benameedar, is the proper person to bring suits in respect of the property, and that if the bameedar sues, it can only be, because both the real owner and the defendant do not object to it. So the right of a person who had lent money on a bond in the name of another, to sue in his own name was declared by the Sudder Court in 1850; and the same court held shortly afterwards, in a case where the plaintiff sued in his own name to recover possession of

2 Weekly Reporter, vol. iii, p. 159.
Sudder Dewanny Adawlut Reports for 1850, p. 222.
property, which he had purchased in the name of another, and the benameedar, being a party defendant to the suit, acknowledged the plaintiff's right to the property, that the other defendant could not object to the plaintiff's right to sue.\footnote{Sudder Dewanny Adawlut Reports for 1850, p. 605.} There are, it is true, some observations of Mr. Justice Loch,\footnote{In a case reported in Bengal Law Reports, vol. i, App. Civ., p. 100.} which seem to point in a contrary direction; but none of the above decisions appear to have been brought to the attention of the court, and there was really no necessity to consider the general question; the benameedar and the real owner having both joined as plaintiffs in the suit, and the only objection being that the real owner had not verified the plaint.

199. The point may not, however, be finally settled, and the ultimate decision upon this point may possibly affect in some degree the rights of a person claiming under a purchase or mortgage from the benameedar. In the meantime, without reference to any exact ascertainment of the benameedar's position, the courts of this country show a manifest tendency to afford a liberal protection to persons honestly taking a title from him. No very definite principles can be deduced from the cases on this subject; but I think it may be said with certainty that, where property stands in the name of A (for instance), and A has signed the rent receipts, and is registered as owner in the collector's books, and there is nothing shown to have been brought to the notice of the purchaser or mortgagee which would put an ordinarily prudent man upon further inquiry as to A's title, the purchaser or mortgagee from A is safe. And though, on the other hand, as far as I am aware, it has not yet been declared that a purchaser ought to satisfy himself as to whose name is on the register, or who gives the
receipts for rent, it would certainly seem only reasonable that he should do so, in a country where benamee transactions are so common. At any rate it seems to be understood that a purchaser should take some precautions to ascertain whether he is dealing with the real owner. Thus in one case it is pointed out in favor of a purchaser, that the defect in the title of his vendor (the benameeedar) was a latent one which the purchaser "could not by any reasonable inquiry have discovered;" ¹ and in another case it is said that "plaintiff being an innocent holder for value exercising ordinary diligence, and who accepted the lien without notice, is entitled to maintain it."² This would bring a purchaser or mortgagee, claiming through the act of a benameeedar, to very much the same position as if he were claiming through the act of a guardian, a Hindoo widow, or the manager of a joint family.

200. From these cases we may gather that in India a purchaser or mortgagee from a Hindoo widow, from the guardian of a minor, from the manager of a joint family, or from a benameeedar, if he has acted bona fide, has paid valuable consideration, and has made such inquiry as a prudent man would make, will be protected against any claim to impeach the transaction on the ground that these persons had not the powers of alienation which they assumed to exercise. These are cases of persons who have the osten-
sible power of dealing with property, and though that power is in fact limited, its exact limits depend on circumstances which it would be exceedingly difficult for an intending purchaser or mortgagee to discover. If, therefore, he had to take the risk of their not being exceeded, he would either abstain from the transaction altogether, or only enter into it

¹ Weekly Reporter, vol. iii, p. 11.
² Id., vol. ii, p. 36.
on the condition that there was a large reduction in the valuation of the property. This consideration has induced the courts to give to purchasers the protection above stated, and in the simple state of the law which the courts here administer on this subject, not depending, as in England, on any accidental conflict of courts, and disemembarrassed of all the English complications on the subject of notice, by requiring in all cases due care and diligence, the doctrine is no doubt highly convenient and advantageous, even to the owners of property themselves, who would otherwise be frequently embarrassed in obtaining money for their most pressing necessities.

201. To what other cases than those above mentioned the doctrine would be applied in India, cannot be foretold with certainty. It is not likely that the law on this subject has been fully developed, but still we must always recollect that every case of this kind supposes a defective title, and that to protect a person against such a defect is, in fact, to make a special exception to the ordinary rules of ownership; a thing not lightly to be done, and never except upon necessity, or upon the strongest grounds of convenience.

202. There is one other class of cases in which probably the courts here would follow the courts in England in protecting a purchaser or mortgagee, whose title according to ordinary rules would be defective. The class of cases to which I refer is best explained by an example. If B in purchasing an estate from A, who is the absolute owner, be guilty of a fraud, as, for instance, if he by a trick induce A to part with the property at less than its value, the transaction will be set aside, and the property will be restored to A. And if B sell the property to C, then, according to strict rules, C's title also is defective, for generally a man can give no better title to another than he has himself. But this is one of the cases
in which in England A would be obliged to go to the court of chancery in order to get back the property from C, because no other court can set aside a conveyance, and the conveyance would be good until set aside. But a court of chancery would not set it aside if C had purchased for valuable consideration without notice. In India, every court which can entertain suits for the ownership of property can set aside a conveyance; but the prayer to set aside the conveyance is in itself an application for the special interference of the court, which probably a court here would refuse as against a purchaser in good faith for valuable consideration, who had no knowledge of the fraud which had been committed.
APPENDIX.

Assessment of Bengal, Behar, and Orissa (exclusive of Cuttack).


203. The original rules for the decennial settlement of the land revenue of these provinces were passed on the following dates; for Behar on the 18th September 1789; for Orissa on the 25th November 1789; and for Bengal on the 10th of February 1790. Having undergone considerable alterations, and also received many additions, during the progress of the arrangement, an amended code of rules, for the settlement of the three provinces, was enacted and printed, with translations in the Bengal and Persian languages, on the 23rd November 1791; and this code, with further modifications, adapted to the judicial system established in 1793, was re-enacted in Regulation VIII of that year.

204. The most discriminating feature in this settlement, which by a proclamation, dated the 22nd March 1793, was declared fixed for ever, as far as it had been made with the zemindars, independent talookdars, and other proprietors of land, is its perpetuity. From the period of the Company’s accession to the financial administration of Bengal, Behar,

1 This code is printed at length in the third volume of Sir T. E. Colebrooke’s Digest of the Regulations, page 308.
and Orissa, by the dewany grant of 1765, one settlement only, that of 1772, was concluded for a term of five years; and this was made chiefly with farmers, to the exclusion of the hereditary landholders. With this exception, the settlements for the revenue, māl and sāyer, were, in general, adjusted from year to year; in some instances with the landholders; in others with the farmers; or when the former declined to engage for the revenue demanded from them, and no adequate proposals were tendered by the latter, the rents payable by the under-tenants were collected immediately from them, under what has been usually denominated a khas management, by the officers of Government. This mode of collection was also had recourse to, when it was judged requisite to ascertain the actual resources of the lands; and, as in the case of the five years' settlement, they were sometimes let in farm to the highest bidder for the same purpose; an allowance, usually one-tenth of the amount engaged for by the farmer when let in farm, being commonly, though not uniformly, given to the dispossessed zemindar, or other landholder, in such cases.

205. The evils attending a system so injurious to the landholders and their tenants, so calculated to produce rigour and exaction towards the cultivators of the soil, so discouraging to all improvements of agriculture, and consequently so inimical to the general prosperity of the country, were too obvious to escape notice. In fact they were frequently pointed out by the local Government to the Court of Directors; and were fully acknowledged by that Court; though circumstances, and the principles on which the Company's administration was then conducted, did not admit of an immediate remedy.

206. In the years 1775 and 1776, the policy of a settlement, to be made with the landholders for their respec-
tive lives, or to be fixed at a moderate standard for ever, was particularly and ably discussed by the members of the Government; and the plan of Mr. Hastings and Mr. Barwell, for a life settlement, with that of Mr. Francis, (concurred in by Sir T. Clavering and Colonel Monson,) which have been since made public, were submitted, with full illustrations, to the Court of Directors, for their deliberate consideration and decision. The Court, however, in their answer of 24th December 1776, whilst they testified their approbation of the care and attention of the Members of Council in transmitting such clear and accurate statement and plans as had given them great information, added, that "having considered the different circumstances of letting the land on leases for lives, or in perpetuity, we do not, for many weighty reasons, think it at present advisable to adopt either of these modes." 1

207. At length, soon after the institution of the Board of Control, under the Act 24 Geo. III, chap. XXV, "for the better regulation and management of the affairs of the East India Company, and of the British possessions in India," and on the appointment of Marquis Cornwallis with extended powers, to be Governor-General of India, the Court of Directors, who were required by the 39th section of the above-mentioned statute 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

1 See letter referred to in Appendix No. 11 to sixth report of the Select Committee of the House of Commons, appointed in February 1781. The Appendix also contains the plan of Messrs. Hastings and Barwell, No. 12; and that of Mr. Francis, No. 14. These plans, and other papers connected with them, have also been separately published by Mr. Francis, under the title of "Original Minutes of the Governor-General and Council of Fort William on the Settlement and Collection of the Revenues of Bengal."
the rajahs, zemindars, polygars, talookdars, and other native landholders, should be in future rendered and paid to the United Company," issued the necessary instructions for this purpose, in their revenue general letter, dated the 12th April 1786.

208. With a view to carry into effect the intention of the legislature, who further directed an inquiry into, and eventual redress of, the grievances alleged to have been sustained by many of the native landholders within the British territories in India, stated to have been "unjustly deprived of, or compelled to abandon and relinquish, their respective lands, jurisdictions, rights, and privileges," the Court of Directors issued orders for a full investigation of the truth and extent of such grievances; and also for ascertaining, as correctly as the nature of the subject would admit, "what were the real jurisdictions, rights and privileges of zemindars, talookdars, and jagheerdars, under the constitution and customs of the Mahommedan or Hindoo Government; and what were the tributes, rents, and services which they were bound to render or perform to the Sovereign power; and in like manner those from the talookdars to their immediate liege lord, the zemindar; and by what rule, or standard, they were or ought severally to be regulated." The court at the same time were of opinion that the spirit of the act would be best observed by fixing a permanent revenue on a review of the assessment and actual collections of former years; and by forming a settlement, in every practicable instance, with the landholders; establishing at the same time such rules as might be requisite for maintaining the rights of all descriptions of persons under the established usages of the country, and the clause in the Act of Parliament above referred to, which the Governor-General in Council was desired to consider with
minute and scrupulous attention; taking especial care that all the measures adopted in the administration of the revenues be consonant to the sense and spirit thereof."

209. Presuming, therefore, that the assets of the lands must be sufficiently known, without any new scrutinies, under the various attempts made to ascertain them since the year 1765, and wishing to fix a moderate assessment upon the estates of the several landholders, such as the latter might pay without having a plea for harassing their tenants, the Court of Directors gave instructions for the formation of a settlement to be regulated by these principles, on a revision of the jumma and collections of past years; and to be concluded for a period of ten years. In fixing this specific period, the court expressed their apprehension that "the frequency of change had created such distress in the minds of the people as to render the idea of some definite term more pleasing to them than a dubious perpetuity;" but they, at the same time, directed that the whole arrangement, when completed, should be reported to them, with every necessary document, and illustration, to enable them "to form a conclusive and satisfactory opinion, so as to preclude the necessity of further reference, or future change."

210. On receipt of these instructions, the most particular local inquiries were set on foot to obtain all possible information of the former and present state of the several districts; the condition of the landholders and tenants of every description; their rights under the Moghul Government before its decline; the laws and usages which had since prevailed in settling the rents payable by the ryots, dependent talookdars, and other under-tenants, to the zemindars, independent talookdars, and other superior landholders; what new impositions and exactions had been
introduced under the Company's administration; what rules were required for securing the inferior occupants and immediate cultivators of the soil against oppression and extortion; and, generally, what measures should be adopted to remedy existing defects and abuses in the adjustment and collection of the land rents; as well as in the gunge, haut, bazaar, and other duties levied under the general denomination of sayer.

211. Detailed accounts of the assessment and actual collections in past years were also procured; with every other document which appeared material for determining a standard revenue for future years, such as the orders of the Court of Directors prescribed, and the landholders might be able to pay without distressing their tenants; and the voluminous reports of the collectors, Board of Revenue, and other public officers, upon the inquiries made by them, were abridged and brought forward in a collective view, by a member of the Government eminently distinguished for his talents, knowledge, and experience; whose minute on the settlement of Bengal, recorded the 18th June 1789, was subsequently noticed by the Court of Directors as a "comprehensive and masterly dissertation, which not only exhibited and methodized the most material parts of the reports from the collectors of the Bengal province, but afforded new and important communications from himself; supplying, in various respects, what they wanted; delineating with great clearness the past financial system and history of Bengal; examining with candour those points in it which have been subjects of controversy; investigating with patient judgment the best system for that country; the difficulties which may attend it; the means of obviating them; and in fine, proposing from the whole a set of regulations for carrying into execution the orders of the Court respecting the decennial settlement, so as to secure justice both to the
Government and to the subject; and to prevent, in future, those abuses, which either exist, or may be apprehended, in the detail of the collections."

212. On consideration of this document, with the papers which accompanied it, and a further minute from the same member of Government on the settlement of Behar, recorded 18th September 1789, the Governor-General in Council passed the rules, afterwards incorporated, with amendments as already noticed, in Regulation VIII, 1793: the provisions of which, as far as they relate to the third part of this analysis, I shall now proceed to state in detail.

213. The primary rule directs that "new settlement of the land revenue shall be concluded for a period of ten years, to commence with the Fussily, Vilayuty, and Bengal year 1197, for Behar, Orissa, and Bengal respectively."

1 The Court of Directors added, in their revenue general letter of 19th September 1792: "The great body of information which this performance contains respecting the practice of the Moghul Government and our own, the past and present state of the country, the usages and corruptions in the administration of the revenue, the rights and characters of the superior and inferior occupants of the land,—such collection, and the luminous order in which it is arranged, the vast application it evinces, and the good sense which pervades it, are all entitled to our respect and praise; and will remain a monument of Mr. Shore's services to the Company." Since this note was written I have been happy to learn that the minute referred to has been printed in the appendix to the fifth report of the Select Committee of the House of Commons, dated 28th July 1812.

2 The Fussily or harvest, and the Vilayuty or country, year 1197 began in September 1789; the Bengal year 1197, in April 1790. These eras appear to have been introduced in the reign of Akbur, who ascended the throne of Delhi on the 2nd Rubee-oo-sane, in the year of the Hejira 963, or 14th February, A.D. 1556. A solar year, for financial and other civil transactions, was then engrafted upon the current lunar year of the Hejira, or subsequently adjusted to the first year of Akbar's reign. But the Fussily year 963 having expired in September 1555, the commencement of it must be reckoned back to September 1555; whereas the Bengal year
And by the succeeding rule it is "at the same time notified to the proprietors of land, with whom the settlement may be concluded, that the assessment fixed by the decennial settlement will be continued after the expiration of the ten years, and remain unalterable for ever; provided such continuance shall meet with the approbation of the Honourable Court of Directors, but not otherwise."

* * * * * * *

214. [When this approbation had been obtained, a proclamation in the following terms was issued on the 22nd March 1793, and subsequently enacted into the primary regulation of the Code, bearing date the 1st of May 1793.]

215. Article 1.—"In the original regulations for the decennial settlement of the public revenue of Bengal, Behar, and Orissa, passed for these provinces respectively, on the 18th September 1789, the 25th November 1789, and the 10th February 1790, it was notified to the proprietors of land, with or on behalf of whom a settlement might be concluded, that the jumma assessed upon their lands under 173 did not commence till April 1556, and extended to April 1557. The difference between the Fussily and Christian eras is 592 years, from the commencement of the Fussily year on the 1st Assin, in September, to the end of December; and 593 years, from January to the Fussily year's termination on the 30th Bhadoon, corresponding with a variable date in September. Thus 1st Assin 1197+592 = 5th September 1789, when the Fussily year 1197 began; and 30th Bhadoon 1197+593 = 23rd September 1790, when it ended. The Vilayuty or Umly year, current in Orissa, differs from the Fussily in a few days only, by adopting the Bengal method of reckoning the months. The Christian exceeds the Bengal era 593 years from the 11th April to the end of December; and 594 from January to the 10th April. Thus 1st Bysakh, the commencement of the Bengal year 1197+593 = 11th April 1790; and its termination, 31st Chyt, 1197+594 = 10th April 1791: This note furnishes an easy rule for ascertaining the corresponding years of the Fussily, Vilayuty, Bengal, and Christian eras respectively.
those regulations would be continued after the expiration of the ten years, and remain unalterable for ever; provided such continuance should meet with the approbation of the Honourable Court of Directors for the affairs of the East India Company, and not otherwise.

216. Article 2.—"The Marquis Cornwallis, Knight of the most Noble Order of the Garter, Governor-General in Council, now notifies to all zemindars, independent talookdars and other actual proprietors of land, paying revenue to Government, in the provinces of Bengal, Behar, and Orissa, that he has been empowered by the Hon'ble Court of Directors for the affairs of the East India Company, to declare the jumma which has been or may be assessed upon their lands under the regulations above mentioned fixed for ever.

217. Article 3.—"The Governor-General in Council accordingly declares to the zemindars, independent talookdars, and other actual proprietors of land, with or on behalf of whom a settlement has been concluded under the regulations above mentioned, that, at the expiration of the term of the settlement, no alteration will be made in the assessment which they have respectively engaged to pay; but that they and their heirs and lawful successors will be allowed to hold their estates at such assessment for ever.

218. Article 4.—"The lands of some zemindars, talookdars, and other actual proprietors of land, having been held khas, or let in farm, in consequence of their refusing to pay the assessment required of them under the regulations above mentioned, the Governor-General in Council now notifies to the zemindars, talookdars, and other actual proprietors of land, whose lands are held khas, that they shall be restored to the management of their lands, upon their agreeing to the payment of the assessment which has been or may be required of them in conformity to the regulations above
mentioned; and that no alteration shall afterwards be made in that assessment, but that they and their heirs and lawful successors shall be permitted to hold their respective estates at such assessment for ever, and he declares to the zemindars, talookdars, and other actual proprietors of land, whose lands have been let in farm, that they shall not regain possession of their lands before the expiration of the period for which they have been farmed (unless the farmers shall voluntarily consent to make over to them the remaining term of their lease, and the Governor-General in Council shall approve of the transfer); but that at the expiration of that period, upon their agreeing to the payment of the assessment which may be required of them, they shall be reinstated; and that no alteration shall afterwards be made in that assessment; but that they and their heirs and lawful successors shall be allowed to hold their respective estates at such assessment for ever.

219. Article 5.—"In the event of the proprietary right in lands that are or may become the property of Government being transferred to individuals, such individuals, and their heirs, and lawful successors, shall be permitted to hold the lands at the assessment at which they may be transferred for ever."

220. Article 6.—"It is well known to the zemindars, talookdars, and other actual proprietors of land, as well as to the inhabitants of Bengal, Behar, and Orissa, in general, that, from the earliest times until the present period, the public assessment upon the lands has never been fixed; but that, according to established usage and custom, the rulers of these provinces have from time to time demanded an increase of assessment from the proprietors of land; and that, for the purpose of obtaining this increase, not only frequent investigations have been made to ascertain the actual
produce of their estates, but that it has been the practice to deprive them of the management of their lands; and either to let them in farm, or to appoint officers on the part of Government to collect the assessment immediately from the ryots. The Hon'ble Court of Directors considering these usages and measures to be detrimental to the prosperity of the country, have, with a view to promote the future ease and happiness of the people, authorized the foregoing declarations; and the zemindars, talookdars, and other actual proprietors of land, with or on behalf of whom a settlement has been or may be concluded, are to consider these orders fixing the amount of the assessment as irrevocable, and not liable to alteration by any persons whom the Court of Directors may hereafter appoint to the administration of their affairs in this country. The Governor-General in Council trusts that the proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever, will exert themselves in the cultivation of their lands under the certainty that they will enjoy exclusively the fruits of their own good management and industry; and that no demand will ever be made upon them, or their heirs or successors, by the present or any future government, for an augmentation of the public assessment in consequence of the improvement of their respective estates. To discharge the revenues at the stipulated periods without delay or evasion, and to conduct themselves with good faith and moderation towards their dependent talookdars and ryots, are duties at all times indispensably required from the proprietors of land, and a strict observance of those duties is now more than ever incumbent upon them, in return for the benefits which they will themselves derive from the orders now issued. The Governor-General in Council therefore expects that the proprietors
of land will not only act in this manner themselves towards their dependent talookdars and ryots, but also enjoin the strictest adherence to the same principles in the persons whom they may appoint to collect the rents from them. He further expects that, without deviating from this line of conduct, they will regularly discharge the revenue in all seasons; and he accordingly notifies to them that in future no claims or applications for suspensions on account of drought, inundation, or other calamity of season will be attended to, but that, in the event of any zemindar, independent talookdar, or other actual proprietor of land, with or on behalf of whom a settlement has been or may be concluded, or his or her heirs or successors, failing in the punctual discharge of the public revenue, which has been or may be assessed upon their lands under the above-mentioned regulations, a sale of the whole of the lands of the defaulter, or such portion of them as may be sufficient to make good the arrear, will positively and invariably take place.

221. Article 7.—"To prevent any misconstruction of the foregoing articles, the Governor-General in Council thinks it necessary to make the following declarations to the zemindars, independent talookdars, and other actual proprietors of land:

222. "First.—It being the duty of the ruling power to protect all classes of people, and more particularly those who from situation are most helpless, the Governor-General in Council will, whenever he may deem it proper, enact such regulations as he may think necessary for the protection and welfare of the dependent talookdars, ryots, and other cultivators of the soil; and no zemindar, independent talookdar, or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment, which they have respectively agreed to pay."
223. "Second.—The Governor-General in Council having, on the 28th July 1790, directed the sayer collections to be abolished, a full compensation was granted to the proprietors of land for the loss of revenue sustained by them in consequence of this abolition, and he now declares that if he should hereafter think it proper to re-establish the sayer collections, or any other internal duties, and to appoint officers on the part of Government to collect them, no proprietor of land will be admitted to any participation thereof, or be entitled to make any claims for remissions of assessment on that account.

224. "Third.—The Governor-General in Council will impose such assessment as he may deem equitable on all lands at present alienated, and paying no public revenue, which have been or may prove to be held under illegal or invalid titles. The assessment so imposed will belong to Government, and no proprietor of land will be entitled to any part of it.

225. "Fourth.—The jumma of those zemindars, independent talookdars, and other actual proprietors of land, which is declared fixed in the foregoing articles, is to be considered entirely unconnected with, and exclusive of, any allowances which have been made to them in the adjustment of their jumma for keeping up thannahs or police establishments, and also of the produce of any lands which they may have been permitted to appropriate for the same purpose; and the Governor-General in Council reserves to himself the option of resuming the whole or part of such allowances, or produce of such lands, according as he may think proper, in consequence of his having exonerated the proprietors of land from the charge of keeping the peace, and appointed officers on the part of Government to superintend the police of the country. The Governor-General in Council, however,
Appendix.

declares, that the allowances, or produce of land, which may be resumed, will be appropriated to no other purpose but that of defraying the expense of the police; and that instructions will be sent to the collectors not to add such allowances, or the produce of such lands, to the jumma of the proprietors of land, but to collect the amount from them separately.

226. "Fifth.—Nothing contained in this proclamation shall be construed to render the lands of the several descriptions of disqualified proprietors, specified in the first article of the regulations regarding disqualified landholders, passed on the 15th July 1791, liable to sale for any arrears which have accrued or may accrue on the fixed jumma that has been or may be assessed upon their lands, under the above-mentioned regulations for the decennial settlement; provided that such arrears have accrued or may accrue during the time that they have been or may be dispossessed of the management of their lands under the said regulations of the 15th July 1791. It is to be understood, however, that whenever all or any of the descriptions of disqualified landholders, specified in the first article of the last mentioned regulations, shall be permitted to assume or retain the management of their lands, in consequence of the ground of their disqualification no longer existing, or of the Governor-General in Council dispensing with, altering, or abolishing those regulations, the lands of such proprietors will be held responsible for the payment of the fixed jumma that has been or may be assessed thereon, from the time that the management may devolve upon them, in the same manner as the lands of all actual proprietors of land who are declared qualified for the management of their estates, and also of all actual proprietors who are unqualified for such management by natural or other disabilities, but do
not come within the descriptions of disqualified landholders specified in the first article of the regulations of the 15th July 1791, are and will be held answerable for any arrears that are or may become due from them on the fixed jumma, which they or any person on their behalf have engaged or may engage to pay, under the above-mentioned regulations for the decennial settlement.

227. Article 8.—“That no doubt may be entertained whether proprietors of land are entitled, under the existing regulations, to dispose of their estates without the previous sanction of Government, the Governor-General in Council notifies to the zemindars, independent talookdars, and other actual proprietors of land, that they are privileged to transfer to whomsoever they may think proper, by sale, gift, or otherwise, their proprietary rights in the whole or any portion of their respective estates, without applying to Government for its sanction to the transfer; and that all such transfers will be held valid, provided that they be conformable to the Mohammedan or Hindoo laws, (according as the religious persuasions of the parties to each transaction may render the validity of it determinable by the former or the latter code), and that they be not repugnant to any regulations now in force which have been passed by the British administrations or to any regulations that they may hereafter enact.

228. Article 9.—“From the limitation of the public demand upon the lands, the net income, and consequently the value (independent of increase of rent obtainable by improvements) of any landed property, for the assessment on which a distinct engagement has been or may be entered into between Government and the proprietor, or that may be separately assessed, although included in one engagement with other estates belonging to the same proprietor, and
which may be offered for public or private sale entire, will always be ascertainable by a comparison of the amount of the fixed jumma assessed upon it (which agreeably to the foregoing declarations is to remain unalterable for ever to whomsoever the property may be transferred) with the whole of its produce, allowing for the charges of management. But it is also essential that a notification should be made of the principles upon which the fixed assessment, charged upon any such estate, will be apportioned on the several divisions of it, in the event of the whole of it being transferred by public or private sale, or otherwise, in two or more lots; or of its being joint property and a division of it being made amongst the proprietors; otherwise, from the want of a declared rule for estimating the proportion of the fixed jumma with which the several shares would be chargeable in such cases, the real value of each share would be uncertain, and consequently the benefits expected to result from fixing the public assessment upon the lands would be but partially obtained. The Governor-General in Council has, accordingly, prescribed the following rules for apportioning the fixed assessment in the several cases above-mentioned; but as Government might sustain a considerable loss of revenue by disproportionate allotments of the assessment, were the apportioning of it in any of the cases above specified to be left to the proprietors, he requires that all such transfers or divisions, as may be made by the private act of the parties themselves, be notified to the collector of the revenue of the zillah in which the lands may be situtated; or such other officer as Government may in future prescribe in order that the fixed jumma assessed upon the whole estate may be apportioned on the several shares in the manner hereafter directed; and that the names of the proprietors of each share, and the jumma charged thereon, may
be entered upon the public registers: and that separate engagements for the payment of the jumma assessed upon each share may be executed by the proprietors; who will thenceforth be considered as actual proprietors of land. And the Governor-General in Council declares, that if the parties to such transfers or divisions shall omit to notify them to the collector of the revenue of the zillah, or such other officer as may be hereafter prescribed, for the purposes before-mentioned, the whole of such estate will be held responsible to Government for the discharge of the fixed jumma assessed upon it, in the same manner as if no such transfer or division had ever taken place. The Governor-General in Council thinks it necessary further to notify, in elucidation of the declarations contained in this article (which are conformable to the principles of the existing regulations), that if any zemindar, independent talookdar, or other actual proprietor of land shall dispose of a portion of his or her lands as a dependent talook, the jumma which may be stipulated to be paid by the dependent talookdar will not be entered upon the records of Government; nor will the transfer exempt such lands from being answerable, in common with the remainder of the estate, for the payment of the public revenue assessed upon the whole of it, in the event of the proprietor, or his or her heirs or successors falling in arrear from any cause whatever; nor will it be in any case allowed to affect the rights or claims of Government any more than if it had never taken place.

229. "First.—In the event of the whole of the lands of a zemindar, independent talookdar, or other actual proprietor of land, with or on behalf of whom a settlement has been or may be concluded under the regulations above-mentioned, being exposed to public sale by the order of the Governor-General in Council for the discharge of arrears of assessment,
or in consequence of the decision of a Court of Justice, in two or more lots, the assessment upon each lot shall be fixed at an amount which shall bear the same proportion to its actual produce as the fixed assessment upon the whole of the lands may bear to the whole of their actual produce. This produce shall be ascertained in the mode that is or may be prescribed by the existing regulations, or such other regulations as the Governor-General in Council may hereafter adopt; and the purchaser or purchasers of such lands, and his, or her, or their heirs and lawful successors shall hold them at the jumma at which they may be so purchased for ever.

230. "Second.—When a portion of the lands of a zemindar, independent talookdar, or other actual proprietor of land, with or on behalf of whom a settlement has been or may be concluded, under the regulations before-mentioned, shall be exposed to public sale by order of the Governor-General in Council for the liquidation of arrears of assessment, or pursuant to the decision of a Court of Justice, the assessment upon such lands, if disposed of in one lot, shall be fixed at an amount which shall bear the same proportion to their actual produce as the fixed assessment upon the whole of the lands of such proprietor, including those disposed of, may bear to the whole of their actual produce. If the lands sold shall be disposed of in two or more lots, the assessment upon each lot shall be fixed at an amount which shall bear the same proportion to its actual produce as the fixed assessment upon the whole of the lands of such proprietor, including those sold, may bear to the whole of their actual produce. The actual produce of the whole of the lands of such proprietor, whether the portion of them which may be sold be disposed of in one, or in two, or in more lots, shall be ascertained in the mode that is or may be prescribed
by the existing regulations, or such other regulations as the Governor-General in Council may hereafter enact, and the purchaser or purchasers of such lands, and his, or her, or their heirs or successors will be allowed to hold them at the jumma, which will consequently be payable by the former proprietor of the whole estate on account of the portion of it that may be left in his or her possession, will continue unalterable for ever.

231. "Third.—When a zemindar, independent talookdar, or other actual proprietor of land, with or on behalf of whom a settlement has been or may be concluded, shall transfer the whole of his or her estate in two or more distinct portions to two or more persons, or a portion thereof to one person, or to two or more persons in joint property, by private sale, gift, or otherwise, the assessment upon each distinct portion of such estate so transferred shall be fixed at an amount which shall bear the same proportion to its actual produce as the assessment upon the whole of the estate of the transferring proprietor, of which the whole or a portion may be so transferred, may bear to the whole of its actual produce. This produce shall be ascertained in the mode that is or may be prescribed in the existing regulations, or such other regulations as Government may hereafter adopt; and the person or persons to whom such lands may be transferred, and his, or her, or their heirs and lawful successors shall hold them, at the jumma at which they may be so transferred, for ever: and where only a portion of such estates shall be transferred, the remainder of the public jumma which will consequently be payable by the former proprietor of the whole estate, on account of the lands that may remain in his or her possession, shall be continued unalterable for ever.

232. "Fourth.—Whenever a division shall be made of lands, the settlement of which has been or may be concluded
with or on behalf of the proprietor or proprietors, and that are or may become the joint property of two or more persons, the assessment upon each share shall be fixed at an amount which shall bear the same proportion to its actual produce as the fixed jumma assessed upon the whole of the estate divided may bear to the whole of its actual produce. This produce shall be ascertained in the mode that is or may be prescribed by the existing regulations, or such other regulations as the Governor-General in Council may hereafter adopt; and the sharers and their heirs and lawful successors shall hold their respective shares at the jumma which may be so assessed upon them for ever.

233. Article 10.—"The following rules are prescribed respecting the adjustment of the assessment on the lands of zemindars, independent talookdars, and other actual proprietors of land, whose lands are or may be held khas, or let in farm, in the event of their being disposed of by public sale, or transferred by any private act of the proprietor, or of their being joint property, and a division of them taking place amongst the proprietors.

234. "First.—If the whole or a portion of the lands of a zemindar, independent talookdar, or other actual proprietor of land, who may not have agreed to the payment of the assessment proposed to him or her under the regulations above-mentioned, and whose lands are or may be held khas, or let in farm, shall be exposed to public sale, in one or in two or in more lots, they shall be disposed of under the following conditions. The purchaser or purchasers shall receive during the unexpired part of the term of the lease of the farmer whatever such proprietor shall have been entitled to receive in virtue of his or her proprietary rights, on account of the lands so purchased; and such purchaser or purchasers shall engage to pay, at the expiration of the lease of
the farmer, such assessment on account of the lands as Government may deem equitable. The sum to be received by the purchaser or purchasers, during the unexpired term of the lease of the farmer, and the jumma to be paid by such purchaser or purchasers after the expiration of the lease, shall be specified at the time of the sale; and such purchaser or purchasers, and his, or her, or their heirs and lawful successors shall be allowed to hold the lands at the assessment at which they may be so purchased for ever.

235. "Second.—If a zemindar, independent talookdar, or other actual proprietor of land whose lands are or may be held khas, or let in farm, shall transfer by private sale, gift, or otherwise, the whole or a portion of his or her lands in one, or in two, or more lots, the person or persons to whom the lands may be so transferred shall be entitled to receive from Government (if the lands are held khas), or from the farmer (if the lands are let in farm), the maliconnah to which the former proprietor was entitled on account of the lands so transferred. Persons to whom such lands may be so transferred will stand in the same predicament as the zemindars, independent talookdars, and other actual proprietors of land mentioned in the fourth article, whose lands are held khas, or have been let in farm, in consequence of their refusing to pay the assessment required of them, under the before-mentioned regulations for the decennial settlement; and the declarations contained in that article are to be held applicable to them.

236. "Third.—In the event of a division being made of lands that are, or may become the joint property of two or more persons, and which are or may be held khas or let in farm, the proprietors of the several shares will stand in the same predicament with regard to their respective shares, as the zemindars, independent talookdars, and other actual
proprietors of land specified in the fourth articles, whose lands have been let in farm or are held khas, in consequence of their having refused to pay the assessment required of them, under the before-mentioned regulations for the decennial settlement; and the declarations contained in that article are to be considered applicable to them."

237. The following notification of the views of Government in declaring a property in the soil to be vested in the landholders, and fixing the public assessment upon their estates in perpetuity, was also given in the preamble to Regulation II, 1793.

238. "In the British territories in Bengal, the greater part of the materials required for the numerous and valuable manufactures, and most of the other principal articles of export, are the produce of the lands. It follows that the commerce, and consequently the wealth of the country, must increase in proportion to the extension of its agriculture. But it is not for commercial purposes alone that the encouragement of agriculture is essential to the welfare of these provinces.

239. "The Hindoos, who form the body of the people, are compelled by the dictates of religion to depend solely upon the produce of the lands for subsistence; and the generality of such of the lower orders of natives, as are not of that persuasion, are from habit or necessity in a similar predicament. The extensive failure or destruction of the crops that occasionally arises from drought or inundation, is in consequence invariably followed by famine, the ravages of which are felt chiefly by the cultivators of the soil and manufacturers, from whose labours the country derives both its subsistence and wealth. Experience having evinced that adequate supplies of grain are not obtainable from abroad in seasons of scarcity, the country must necessarily
continue subject to these calamities, until the proprietors and cultivators of the lands shall have the means of increasing the number of the reservoirs, embankments, and other artificial works, by which, to a great degree, the untimely cessation of the periodical rains may be provided against, and the lands protected from inundation; and, as a necessary consequence, the stock of grain in the country at large shall always be sufficient to supply those occasional, but less extensive, deficiencies in the annual produce, which may be expected to occur notwithstanding the adoption of the above precautions to obviate them.

240. "To effect these improvements in agriculture, which must necessarily be followed by the increase of every article of produce, has accordingly been one of the primary objects to which the attention of the British administration has been directed in its arrangements for the internal government of these provinces. As being the two fundamental measures essential to the attainment of it, the property in the soil has been declared to be vested in the landholders, and the revenue payable to Government from each estate has been fixed for ever.

241. "These measures have at once rendered it the interest of the proprietors to improve their estates, and given them the means of raising the funds necessary for that purpose. The property in the soil was never before formally declared to be vested in the landholders, nor were they allowed to transfer such rights as they did possess, or raise money upon the credit of their tenures, without the previous sanction of Government.

242. "With respect to the public demand upon each estate, it was liable to annual or frequent variation at the discretion of Government. The amount of it was fixed upon an estimate, formed by the public officers, of the
aggregate of the rents payable by the ryots or tenants for each beegah of land in cultivation; of which, after deducting the expenses of collection, ten-elevenths were usually considered as the right of the public, and the remainder the share of the landholder.¹ Refusal to pay the sum required of him was followed by his removal from the management of his lands; and the public dues were either let in farm or collected by an officer of Government; and the above-mentioned share of the landholder, or such sum as special custom or the orders of Government might have fixed, was paid to him by the farmer, or from the public treasury. When the extension of cultivation was productive only of a heavier assessment, and even the possession of the property was uncertain, the hereditary landholder had little inducement to improve his estate; and monied men had no encouragement to embark their capital in the purchase or improvement of land; whilst not only the profit, but the security for the capital itself, was so precarious. The same causes therefore which prevented the improvement of land, depreciated its value."

243. The result of the inquiries ordered by the Court of Directors to ascertain the jurisdictions, rights, and privileges of zemindars, talookdars, and jagheerds will be stated in the next part of this analysis. It is enough to mention in this place that the court declared the "important part of

¹ The Government received ten-elevenths, or 100 out of 110, of the net rents of land, when the landholders' malikanah was calculated at 10 per cent. on the sudder jumma, or revenue payable to Government. But in general, when the lands were not let in farm under a stipulation that the farmer should pay the malikanah at the above rate to the landholder, in adjusting the assessment of a malguzary estate at the division of the computed rent produce, after deducting charges of management between Government and the zemindar or other sudder landholder, was nine-tenths or 90 parts in 100, to the former; and one-tenth, or ten per cent., to the latter. See note to vol. i, page 103.
these inquiries, which related to the persons with whom the settlement should be made, to have been conducted highly to their satisfaction; because it had been carefully directed to the object of complying in every instance with their precedent orders, which, on the ground of past experience and actual practice, as well as from a desire to give the most favorable consideration to the supposed claims of the zemindars, enjoined a preference to that order of persons, unless in cases of peculiar disqualification."

244. The exceptions to the general rule, for making the decennial settlement with the actual proprietors of the soil, included the following descriptions of persons:¹—1, females, who might not be judged competent to the management of their own estates; 2, minors; 3, idiots, lunatics, or others rendered incapable of managing their lands by natural defects or infirmities of whatever nature; 4, persons who might be deemed disqualified on account of their contumacy, or notorious profligacy of character. Provided, with regard to the whole of these descriptions of disqualified landholders, that they were not partners in zemindaries, independent talooks, or other estates, held by them with others of a different description; in which case they were allowed, themselves, if competent, or if not through their guardians, to engage for the settlement, with their partners, and to elect a joint manager.

245. The lands² of disqualified proprietors, not held in partnership with others, and consequently excluded for a time from the general settlement, were placed under the superintendence of a Court of Wards, to be managed for the benefit of the proprietors, as more particularly noticed in stating the functions of that court.

¹ Reg. VIII, 1793, s. 20.  
² S. 22.
246. The original rule of disqualification was, however, modified by Regulation VII, 1796, as far as it respected the fourth description of persons above enumerated. That such persons might not be deprived of the management of their estates, without a fair investigation and the fullest evidence, it was provided by the fourth clause of s. 5, Regulation X, 1793, that if a proprietor of land should be deemed disqualified on account of contumacy, or notorious profligacy of character, an inquiry into the circumstances of the case should be made in the presence of the party or his vakeel, by the judge of the zillah or provincial court (as might be directed by the Court of Sudder Dewanny Adawlut); that the party, or his vakeel, should be allowed to bring any evidence he might have to adduce; and finally that the whole proceedings should be submitted for the consideration and decision of the Sudder Dewanny Adawlut; which court was to determine whether the stated ground of disqualification were well founded or otherwise. The public judicial inquiry, thus ordered, was obviously intended for the security and benefit of the parties to be affected thereby.

247. But experience proved it liable to ill-consequences which overbalanced the advantages proposed by it; and that by an exposure of private conduct and character in a public court of justice, it was extremely offensive to those who were the objects of it. It might also, in some instances, particularly to Hindoo proprietors of land, produce serious injury. For these reasons, "and further in consideration of the general and indefinite terms in which the grounds of disqualification were unavoidably stated; as well as in expectation that the objects intended by the exclusion of landholders from the management of their estates on these grounds would be sufficiently attained by the due administration of the laws, and by the sense of interest which under
a fixed assessment should impel every landholder to the utmost improvement of his estate," the Governor-General in Council resolved to do away with the restrictions which had been established, at the time of forming the decennial settlement, with respect to proprietors of land deemed to be disqualified for managing their estates on account of contumacy or notorious profligacy of character; reserving only the power of determining whether the new rule, for admitting such landholders to engage for the settlement of their estates, should be applied retrospectively or not, according to the circumstances of each particular case; and the arrangements which had been made for the management of the estate, of which an early report was required from the Board of Revenue.

248. A further exception,¹ but for a short period only, to the general conclusion of the decennial settlement with the landholders, applied to proprietors in balance to Government, and not paying the arrears due from them; in which instances it was directed that "no settlement is to be concluded with the defaulting proprietors; but their lands are to be let in farm, or held khas, for a period of three years, at the discretion of the collector."

249. An exclusion² of longer duration was necessarily provided for, in the cases wherein mocurrery or permanent leases, for an unlimited period, had been granted by competent authority, to persons not the actual proprietors of the lands. It was ordered that such leases, "if granted or confirmed by the Supreme Government, or obtained previous to the Company's accession to the Dewanny, should be continued in force during the lives of the lessees" (subject to an abatement for the authorized sayer duties resumed

¹ Reg. VIII, 1793, s. 22. ² Ss. 16, 17, 18.
or abolished); but that, on their death, the settlement
should be made with the actual proprietors of the soil.
This rule, and a further rule, for continuing in force moccu-
rrery grants to proprietors of the lands included in them,
which had been made or confirmed by the Supreme Govern-
ment, were, however, left to the final decision of the Court
of Directors. But grants of this description, made since the
Company's Dewanny accession, to persons not proprietors
of the land, and never sanctioned by the Supreme Govern-
ment, were set aside as illegal; and the settlement was to
be concluded with the actual proprietors of the soil; though,
in these instances, if the moccurreydfars had been in posses-
sion for a term exceeding twelve years, they were, on a
principle of humane consideration, to receive during their
lives (subject to the pleasure of the Court of Directors) the
difference between the jumma at which the lands were
farmed to them, and that which might be now engaged for
by the proprietors; added to the neat produce of the author-
ized sayer resumed or abolished.

250. Another rule, to provide for cases of mortgage,
that, "if the mortgagee has obtained possession of the land,
the settlement has to be made with them," can scarcely be
deemed an exception to the general principle of a settlement
with the landholders, as the proprietor was at the same time
declared entitled to succeed to the engagement of the mort-
gagee, on recovering possession of his estate, either by the
discharge of his obligations, or by the decision of a court
of justice.

251. With the exceptions stated, the rule for the decen-
nial settlement directed it to be "concluded with the actual
proprietors of the soil, of whatever denomination, whether

1 Reg. VIII, 1793, s. 23.  
2 S. 4.
zemindars, talookdars, or chowdries." And it being necessary to determine what talookdars were to be considered actual proprietors of the lands composing their talooks, they were declared to be of four descriptions.¹

252. 1.—Talookdars who purchased their lands by private or at public sale, or obtained them by gift from the zemindar or other actual proprietor of land to whom they now pay the revenue assessed upon their talooks, or from his ancestors, subject to the payment of the established dues of Government; and who received deeds of sale, or gift, of such land, from the zemindar, or sunnuds from the khalsa, making over to them his proprietary rights therein.

2.—Talookdars, whose talooks were formed before the zemindar, or other actual proprietor of land, to whom they now pay their revenue, or his ancestors succeeded to the zemindary.

3.—Talookdars, the lands comprised in whose talooks were never the property of the zemindar, or other actual proprietor of the soil, to whom they now pay their revenue, or his ancestors.

4.—Talookdars, who have succeeded to talooks of the nature of those described in the preceding clauses, by right of purchase, gift, or inheritance, from the former proprietors of such talooks.

253. The separation of the talookdars thus described, from the authority and future control of the zemindars through whom many of them had hitherto paid their revenue, was dictated alike by justice and policy. Their proprietary rights in the land composing their talooks, being considered equal to the right of property which the zemindars had themselves possessed, it appeared equitable that they should participate in all the benefits of a fixed assessment; and unjust to leave them exposed to exaction, or molestation, from the zemindars.

¹ Reg. VIII, 1793, s. 5.
254. In pursuance of this principle, it was further provided\(^1\) that zemindars, or other proprietors of land, from whose zemindaries or estates talooks might be separated, should not be appointed tehseeldars (native collectors) to receive the revenue of such talooks; but that the office of tehseeldar, when necessary on account of the number of petty landholders, at a distance from the collector's place of residence, should, in every instance, be given to some other person of character and responsibility; and that the whole expense be defrayed by Government. The improvement of the separated talooks, and consequent promotion of the general improvement of the country, might also be expected from their distinct and permanent assessment. And subdivisions of the extensive zemindaries which had grown in many instances to an immoderate size, under a despotic government that arbitrarily, or from motives of interest or convenience, annexed the tenures of inconsiderable landholders to the jurisdiction of the more powerful, were obviously desirable, as far as the claims of justice would permit, under a system of regular and hereditary possession.

255. The determination of the Governor-General in Council to disjoin entirely from the zemindaries to which they had been annexed such of the existing talooks as came within the descriptions above stated, was therefore pronounced by the Court of Directors to be a "wise and important measure, the offspring of the same comprehensive views which had directed the rest of their conduct in this great concern."

256. At the same time a just regard was due to the acknowledged rights of the zemindars, in cases where a specific stipulation had taken place between the zemindar and talookdar, that the latter should pay his revenue through

\(^1\) Reg. VIII, 1793, s. 15.
the former; or where the title-deeds for the talook did not transfer a property in the soil; or where the tenure was conditionally granted under the denomination of jungle-boory (lit. wood-cutting) for bringing forest land into a state of cultivation on terms of future advantage to the grantor; who frequently, in such instances, assisted the grantee with advances of money, besides an exemption from rent for a certain period.

257. To secure the rights of the zemindars, in all cases of these descriptions, it was provided: 1. That talookdars, "who now pay the revenue assessed upon their lands through a zemindar, or other actual proprietor of land, and whose title-deeds contain a clause stipulating that their revenue is to be paid through him, shall continue to pay their revenue through such zemindar, or other actual proprietor of land, as heretofore." 2. That "talookdars, whose talooks are held under writings or sunmuds from zemindars or other actual proprietors of lands, which do not express transfer the property in the soil, but only entitle the talookdar to possession so long as he continues to discharge the rent or perform the conditions stipulated therein, are considered as lease-holders only, not actual proprietors of the soil; and consequently are not entitled to be rendered independent of the zemindar, or other actual proprietor of land, from whom they derive their tenures, provided they now pay the rent assessed upon their talooks to him." 3. That "talookdars also, whose tenure is denominated jungle-boory, and is of the following description, are not considered entitled to separation from the proprietors of whom they hold. The pottahs granted to these talookdars, in consideration of the grantee clearing away the jungle, and bringing the land into a productive state, give it to him and his heirs in per-

1 Reg. VIII, 1793, s. 6.  
2 S. 7.  
3 S. 8.
petuity, with the right of disposing of it either by sale or gift; exempting him from payment of revenue for a certain term, and at the expiration of it, subjecting him to a specific assul-jumma, with all increases, abwabs, and mhatoots imposed upon the pergunnah generally; but this for such part of the land only as the grantee brings into a state of cultivation; and the grantee is further subject to the payment of a certain specified portion of all complimentary presents and fees, which he may receive from his under-tenants, exclusive of the fixed revenue.' The pottah specifies the boundaries of the land granted, but not the quantity of it, until it is brought into cultivation."

258. A species of tenure, called malguzary ayma, or land granted for the support of individuals, subject to a small fixed revenue, being of a nature analogous to the talookdary, it was further provided that, "such malguzary ayma tenures as are held under grants of the Mahommedan Government, previous to the Company's accession to the dewanny, or which have been since granted by proprietors of estates for a consideration received by them, are to be separated from the proprietors to whom their revenue is now paid, as coming within the spirit of the rules for the separation of talookdars, who are proprietors of the lands composing their talooks. But malguzary ayma tenures which may appear to have been bona fide granted for the purpose of bringing waste lands into cultivation shall continue included in the estates to which they are now annexed, as coming within the rules respecting jungle-boory talooks."

259. In carrying into effect the rules prescribed for the separation of talookdars, possessing a right of property in the lands composing their talooks, the collectors were directed to proceed as follows: "Every talookdar being

1 Reg. VIII, 1793, s. 9.  
2 Ss. 10, 11, 12.
considered as the rightful possessor of his talook, until a better title is established against him by due course of law, the point to be ascertained by the collectors is, not whether the holders of the several talooks under their authority are the lawful possessors of the talooks held by them, but whether the nature of their tenure is such as to entitle them to separation under the prescribed rules; to ascertain which, they are to call upon the talookdars to produce their title-deeds; and, after having examined them, are to separate from the jurisdiction of the zemindars, or other actual proprietors of estates, those who may appear to them to be actual proprietors of the lands composing their talooks, as described; continuing the remainder under the zemindars, or other actual proprietors, as heretofore. If a talookdar should have no title-deeds to produce, the collector is to make a summary inquiry into his right to separation, and after attending to such proof and documents as may be produced by the talookdar in support of his title to separation, and by the zemindar, or other actual proprietor, in objection thereto, is to decide, according to the best of his judgment, whether such talookdar be entitled to separation or not, and conclude the settlement accordingly." Both talookdars and zemindars, or other actual proprietors, were at the same time allowed, if dissatisfied with the collector's summary inquiry and decision, to institute a regular suit, for trying the contested right of property, in the zillah dewanny adawlut; and the ultimate right of the talookdar to become independent of the zemindar, or other landholder, to whose estate his talook had hitherto been annexed, was thus left to depend upon the final determination of the civil courts.

260. Under the operation of these rules numerous talookdars were liberated from the vexatious control of
zemindars and their agents, and assessed with a fixed revenue, payable immediately into the collector's treasury, or to a local tehsedlar, as most convenient for them; both at the time of forming the decennial settlement and subsequent thereto.\(^1\) But it being necessary for the security of purchasers at the public sales, that some period should be fixed to prevent their being at all times liable to deprivation of a part of their purchases, it was required by s. 14, Regulation I, 1801, that "all talookdars who, as proprietors of the lands composing their talooks, may consider themselves entitled under s. 5, Regulation VIII, 1793, or any other part of that regulation, to be separated from the zemindaries to which their talooks are attached, shall prefer a written application to the collector of the zillah, in which their talooks may be situated, for the separation thereof, within one year from the date of this regulation, under penalty of forfeiting all title to separation under Regulation VIII, 1793, if they shall omit to apply as directed within the prescribed period; at the expiration of which the operation of the section above-mentioned shall be considered extinct with regard to all talooks for which no claim to separation may have been then preferred; and such talooks shall thereafter be considered as dependent talooks not entitled to be separated from the zemindaries to which they may be attached; though in other respects the rights of the talookdars are not meant to be in any degree affected by this regulation."

\(^1\) Above three thousand were separated by the author of this analysis, from the zeminary of Rajshahye alone. A summary inquiry was made in every instance, as directed, in the presence of the zemindar's vakeel; and one appeal only is known to have been afterwards made to the civil court. But the zemindar having previously engaged for the revenue of his zemindary, including the talooks, he was allowed an abatement equal to the full amount assessed upon the latter, as provisionally stipulated with him.
261. It was further declared, by the section above-mentioned of Regulation I, 1801, that the rules regarding separable talooks contained in Regulation I, 1793, were never meant to be applied to any new talooks, constituted since the period of the decennial settlement; and it was added, "by s. 9, Regulation I, 1793, the zemindars and all other proprietors of land have been declared at liberty to transfer by sale, gift, or otherwise, their proprietary rights in the whole or any portion of their respective estates; but by s. 10 of the same regulation, it is required that all such transfers be notified to the collector of the zillah; that the fixed jumma assessed upon the whole estate may be apportioned on the several shares in the manner therein prescribed; that the names of the proprietors of each share, and the jumma assessed thereon, may be entered upon the public registers; and that separate engagements, for the payment of the jumma assessed upon each share, may be executed by the proprietors, who are thenceforward to be considered separate proprietors of distinct estates; but until such notification and separation shall have been made, the whole of the estate is declared responsible to Government for the discharge of the fixed jumma assessed upon it, in the same manner as if no transfer had taken place. This declaration is also repeated in s. 28, Regulation XXV, 1793, which contains the specific rules established by Government for the division of estates paying revenue, and the allotment of the jumma upon the several portions thereof. If therefore any zemindar shall have disposed of his proprietary rights in any portion of his zemindary, subsequently to the promulgation of the regulation above-mentioned, whether under the denomination of an independent talook, or otherwise, and the talookdar, or other person to whom the portion of an estate may have been so transferred,
shall have omitted to obtain a separate allotment of the public assessment thereon, in the mode prescribed by the regulations, such transfer, as far as respects the rights of Government, must be considered altogether invalid; and if the land, so privately transferred, but not separately assessed, should have been since, or shall be hereafter, included in any public sale for arrears of revenue, the illicit and imperfect private transfer must be deemed to have been altogether done away. In such cases the lands transferred, until publicly registered and separately assessed, form part of an undivided estate; and as such are liable to be sold for any arrear of revenue which may be due from any part of the estate. Provided, however, that nothing in this section be considered applicable to dependent talooks, or other tenures dependent on the estate to which they are attached, and from which, by their title-deeds or otherwise, they are not entitled to be separated as a distinct estate."

262. 1If, after due enquiries, and reference to the mofussil records, the proprietors of any spot of land could not be ascertained, or if they were absent, an advertisement was directed to be issued, requiring the unknown proprietors in the former case, or the absentees in the latter, to attend within six months; at the expiration of which period, if they were not forthcoming, a settlement was ordered to be made for ten years with a farmer, allowing a preference to the zemindar nearest in situation, on his agreeing to the jumma and terms proposed by the collector. 2Where the property in lands was disputed, the settlement was to be made with the person in possession, under an express declaration that

1 Reg. VIII, 1793, s. 29.  
2 Ss. 30, 31, 32.
the estate, with the assessment upon it, was transferable to any other person to whom it might be adjudged.

263. The same principle was adopted with respect to boundary disputes, which were left to be adjusted in the civil court; and the settlement, in the meantime, was to be made with the disputing parties, for the lands in their possession respectively. But if a case should occur in which none of the claimants had been previously in possession, they were allowed (on engaging for the revenue) to appoint a common manager, until their claims should be determined in the zillah dewanny adawlut; or if they should not agree in the appointment of a manager, the lands were to be held khas; and the surplus produce, after paying the revenue, was ordered to be kept in deposit till the right of property should be adjudged.

264. The foregoing comprise all the rules for the decennial settlement of Bengal, Behar and Orissa, which had no immediate reference to the persons with whom the settlement was to be concluded. Special rules, adapted to the local circumstances of each province, were established for fixing the assessment; but previously to stating them it will be proper to notice the general rules applicable to the three provinces. Of these the most important was the following:—"The assessment is to be fixed exclusive and independent of all duties, taxes, and other collections known under the general denomination of sayer; the collections made in the gunges, hauts, and bazaars (marts and markets, daily or occasional) situated within the limits of the town of Calcutta excepted; and excepting also the collections confirmed to the proprietors and holders of gunges, bazaars, and hauts, by the resolutions passed by the Governor-General in Council on the 11th June 1790."
265. These resolutions will be more properly stated under the head of Market Duties and Sayer abolished; but an extract from the preamble to Regulation XXVII, 1793, may be introduced in this place, as containing the principles on which the Governor-General in Council judged it expedient, in the first instance, to resume from the landholders the privilege which they had been allowed to exercise, of levying market duties, and other imposts upon commerce, manufactures, and professions, within the limits of their respective estates; and afterwards, on finding that the articles of collection were so numerous, intricate, and open to abuse, as not to admit of reform and regulation, to abolish them altogether, with the following exceptions:

1. The Government and Calcutta customs, which had been hitherto collected by the officers of Government, under distinct regulations. 2. The duties levied on pilgrims at Gya, and other places of pilgrimage, which were also before received by the public officers. 3. The abkarry, or tax on spirituous liquors; the rules for collecting which, on the part of Government, will be stated in the sequel. 4. The market duties levied in the gunges, hauts, and bazaars, situated within the limits of Calcutta, which it was deemed advisable to continue, under difficulties attending any new impositions within the town, as well as from these duties being more within the means of regulation at the metropolis. 5. The collections which, though included under the general denomination of sayer, did not appear objectionable, and were therefore confirmed to the landholders, viz., rent paid for the use of land; or for houses, shops, or other buildings erected thereon; or for orchards, pasture grounds, or fisheries.

266. A compensation was, at the same time, made to the landholders, both those exempted from the payment of revenue, and those who were liable to the public assess-
ment, for their legal and ascertained profits from the sayer abolished, according to the principles stated in the following notification.

267. "The imposition and collection of internal duties have, from time immemorial, been admitted to be the exclusive privilege of Government, not exercisable by any subject without its express sanction; and, consequently, it has ever been a well known law of the country, that no person can establish a gunge, haut, or bazaar, without authority from the governing power. Grants from the sovereign or his representative, delegating this authority, as well as universal tradition, prove that this right was asserted by the Mahomedan Government; and the orders of the Honorable Court of Directors, as well as repeated declarations and promulgations by the British administrations, demonstrate that this right was constantly asserted by the company. It was, however, judged advisable to leave the exercise of this privilege to the landholders; Government contenting themselves with imposing general regulations for the prevention of undue exactions, and occasionally interfering to modify or abolish particular imposts as they occurred, or were discovered. Experience having at length proved that prohibitory orders for preventing oppression were not attended with the desired effect, it was determined, on the 11th June 1790, to take from the landholders the power of imposing and collecting duties altogether; and to exercise this privilege immediately and exclusively on the part of Government.

268. "The consequences of this measure were expected to be the effectual abolition of many vexatious duties on articles of internal manufacture and consumption, as well as on exports and imports; the suppression of many petty monopolies and exclusive privileges, which had been secretly continued to the
great prejudice of the lower orders of the people; and as the natural effects of the reform of these abuses, benefit to trade, and ease to the inhabitants of the country in general. A further consequence expected from the exercise of this privilege was a future opportunity of augmenting the public revenue, in case the exigencies of Government should render it indispensably necessary, without increasing the assessment on the land. But this was a secondary expectation only; the primary objects intended were those first stated, the promotion of commerce, and the general relief of the inhabitants.

269. "In the adoption of the above arrangements the Governor-General in Council had no intention to divest the landholders of any collections they had made, under the denomination of sayer, not in reality a duty, but a consideration for the use of ground, shops, or other buildings belonging to them. As, however, the rent of warehouses (golahs), and shops (dukans), had in general been received by the officers employed to collect the gunge, haut, and bazaar duties, and had frequently been let in farm with them; and as the rent paid for orchards, pasture ground, and fisheries had been for some time included in the sayer, under the denomination of phulkur, bunkur, and julkur, the Governor-General in Council thought it necessary to declare expressly, that it was by no means his intention to include, in the resumption of the sayer then ordered, the monthly or annual rents paid for ground, or buildings erected thereon, of whatever description; or the phulkur, bunkur, and julkur; such rents being properly the private right of the proprietors; and in no respect a tax or duty on commodities, the exclusive right of Government.

270. "The principles on which it was determined that a compensation should be made to the parties affected by the
discontinuance of the privilege of collecting duties, were as follows.

271. "Firstly.—It having never been lawful to exercise this privilege without the sanction of Government, it followed, of course, that all instances of the exercise of it without such sanction were illegal usurpations; and the usurpers, so far from having any just claim to a compensation, might, without injustice, have been made answerable for the amount unlawfully received by them. As, however, the company had limited their retrospection in similar cases to the period of their accession to the dewanny, this principle was adopted only with regard to collections commenced since that period.

272. "Secondly.—Government having also always reserved to itself a power of abolishing all duties deemed oppressive, it followed that all collections made contrary to any prohibitory orders of Government were unauthorized exactions, for which no compensation was due to the parties who had benefited by them.

273. "Thirdly.—The condition of particular persons reduced to distress, by the deprivation of the income they had received from duties, though unauthorized, being a separate consideration, unconnected with the question of right, was reserved for determination as cases might occur.

274. "Fourthly.—The holders of lakheraj land, or land exempted from the payment of public revenue, who had received the sanction of Government to the establishment of gunges, bazaars, and hauts on their lands, or in other words who had been authorized to exercise the privilege of collecting duties thereon, were deemed entitled to a full compensation for the resumption of such privilege, adequate to the annual profit they derived from it.
275. "Fifthly.—The holders of malguzary land, or land assessed for the public revenue, who had been permitted to collect gunge, haut, bazaar, or other duties on their lands, were also considered entitled to a full compensation for the profits they were allowed to enjoy from such collections; and these profits having, by a general regulation, been limited to one-tenth of their neat receipts, an equivalent to this proportion was considered the compensation due to them.

276. "In pursuance of the principles above stated, the Governor-General in Council prescribed such rules, adapted to existing circumstances, as he judged necessary for the immediate guidance of the collectors, and the Board of Revenue, in carrying his intentions into effect, in such mode as might secure the objects intended with the least possible injury to the individuals affected thereby. But on the collection of the sayer being committed to the officers of Government, it was found that the exactions were so numerous, and complicated, and imposed on such impolitic principles, as to preclude the possibility of regulating them in such a manner as to render them productive to the state, and at the same time to prevent their operating as a burden on the internal commerce and industry of the country.

277. "It was in consequence determined, on the 28th July 1790, to abolish the sayer collections (with certain specified exceptions) throughout the three provinces, leaving it to future consideration what internal duties or taxes should be imposed in lieu of them."

278. It seems proper to remark that, at the time of resuming the sayer collections from the landholders, and placing them in the hands of the officers of Government, doubts were entertained of the justice and expediency of this measure, founded partly on the declared proprietary
rights of the landholders, and partly on the labor, time, and expense that might be required to superintend and control the details of these collections, with a due regard to the objects intended by the resumption. But objections of the latter description were not applicable to the policy which dictated the subsequent abolition of the sayer; and with respect to the justice of the measure, it may be observed that, whether the theory or practice of the Mogul government be appealed to, it equally recognizes a power to abolish and prohibit any taxes, duties, or collections of whatever nature, found oppressive to the people, or injurious to the general interests of the country. The emperor Akber is stated by his minister and biographer to have remitted a variety of vexatious taxes, "fifteen of which (including hasil bazaar, or market duties) are enumerated in the Ayeen Akbery:" and Aalumgeer, the last emperor who maintained the full authority of the Mosulman government in Hindoostan, is said to have abolished no less than seventy articles of taxation by edict. A tax on marriages, called haldaree, or marócha, and the sayer chelunta, or transit duties, collected at the zemindary ghauts and chokies, were also discontinued at an early period of the company's administration; and with other forbidden exactions, have been since repeatedly prohibited, under heavy penalties.

1 See paras. 79 to 93 of Mr. Shore's minute, recorded 18th September 1789; and printed in appendix No. 5 to fifth report of Select Committee, 28th July 1812.

2 Translation of Ayeen Akbery, vol. i, p. 359.

3 Mr. Grant's Political Survey of the Northern Circars, Article sair, or imposts.

4 See proceedings of the President and Council of Fort William, on the five years' settlement, 14th May 1772; printed in the fifth report of the Committee of Secrecy, 1773, with the amulnamah to farmers, and instructions to the Dewan of Nuddea, appendix Nos. 1 and 3, to that report. Also
279. In a minute from Marquis Cornwallis (recorded 18th September 1789), he observed:—"As to the question of right, I cannot conceive that any Government in their senses would ever have delegated an authorized right to any of their subjects to impose arbitrary taxes on the internal commerce of the country. It certainly has been an abuse that has crept in, either through the negligence of the Mogul governors, who were careless and ignorant of all matters of trade; or what is more probable, by the connivance of the Mosulman aumil, who tolerated the extortion of the zemindars, that he might again plunder them in his turn. But be that as it may. It has been too long established, or tolerated, to allow a just Government to take it away without indemnifying the proprietors from loss; and I never heard that, in the most free state, if an individual possessed a right that was incompatible with the public welfare, the legislature made no scruple of taking it from him, provided they gave him a fair equivalent."1

280. In a further minute (recorded 3rd February 1790), Lord Cornwallis added the following remarks:—"To those who have adopted the idea that the zemindars have no property in the soil, and that Government is the actual landlord, and that the zemindars are officers of Government removeable at pleasure, the question regarding the right of the zemindars to collect the internal duties on commerce

letter from the Committee of Circuit, to the President and Council, dated 15th August 1772; with plan for the administration of justice, which accompanied it; printed in appendix No. 2 to the sixth report of the Committee of Secrecy, 1773. And regulations for the revenue department, passed 8th June 1787, Art. L. LI, printed in third volume of Sir E. Colebrooke's Digest, p. 260.

1 His Lordship added, as a case in point, the instance of the late Duke of Athol, who parted very unwillingly with the sovereignty of the Isle of Man.
would appear unnecessary. The committing the charge of the land revenues to one officer, and the collection of the internal duties to another, would to them appear only a deviation from the practice of the Mogul government, and not an infringement of the rights of individuals.

281. "But what I have already said will be sufficient to show that these are not the grounds upon which I have recommended the adoption of the measure. I admit the proprietary rights of the zemindars, and that they have hitherto held the collection of the internal duties; but this privilege appears to me so incompatible with the general prosperity of the country, that, however it may be sanctioned by long usage, I conceive there are few who will not think us justifiable in resuming it. It is almost unnecessary to observe how much the prosperity of this country depends upon the removal of all obstructions both to its internal and foreign commerce.

282. "It is from these resources only that it can supply the large proportions of its wealth which are annually drained from it both by the company and by individuals. The rates by which the internal duties are levied, and the amount of them collected in each zemindary, have, as far as I have been able to trace, never been ascertained. Where the lands of the zemindars have been leased out to farmers, these duties have been collected by them.

283. "It is, I believe, generally allowed that no individual in a state can possess an inherent right to levy a duty on goods or merchandise purchased or sold within the limits of his estate; and much less upon goods passing along the public roads which lead through it. This is a privilege which the sovereign power alone is entitled to exercise, and nowhere else can it be lodged with safety. Every unauthor-
ized exaction levied on the goods of a merchant, and every detention of them in their progress through the country, is a great public injury. The importation of foreign commodities, and the exportation of our own, are alike obstructed; for accumulated exactions, by raising the price, diminish the consumption of the commodity; and the merchant is under the necessity either to give up his trade, or to go to other countries in search of the same goods. It cannot be expected that a zemindar will be influenced by these considerations; and much less a temporary farmer, whose only object can be to exact from the cultivators of the soil, as well as from merchants and traders, as much as he can compel them to pay.

284. "The Court of Directors themselves appear to have been of this opinion, from the following paragraph of their letter dated 10th April 1771:—'As we have reason to believe that many bazaars are held in the provinces without the authority of Government, and which must be an infringement of its right, a great detriment to the public collection, and a burden and oppression on the inhabitants, you will take care that no bazaars or gunges be kept up, but such as particularly belong to the Government. But in such bazaars and gunges, the duties are to be rated in such manner as their situations, and the flourishing state of the respective districts will admit.' And in the same letter they observed:—'Persuaded as we are that the internal traffic of Bengal has received further checks from the duties which are levied, and the exactions which are imposed, at petty chokies, we positively direct that no such chokies be suffered to continue, on any pretence whatever, to impede the course of commerce from one part of the province to the other. It is necessary, however, that the nine general chokies, which have been
established for collecting the duties payable to the Circar, should remain, and these only.'

285. "The chokies stationed upon the banks of the rivers to collect duties on boats, on the part of the zemindars, were directed to be abolished, in consequence of the company’s orders; and adequate deductions were granted to the zemindars; but the duties levied at the hauts, gunges, and inland chokies were ordered to be continued in the hands of the zemindars as formerly.

286. "The zemindars were also prohibited from collecting inland rahdarry duties, that is, duties upon goods not bought or sold within their zemindaries, but only passing through them. Notwithstanding this prohibition has been frequently repeated, our proceedings exhibit numerous instances of these rahdarry duties being levied by zemindars and farmers; and from opportunities which are afforded them, by having the collection of the authorized inland duties in their hands, I have every reason to believe that the practice is but too general. I understand that the collector of Nuddea has lately abolished a very considerable number of chokies, at which unauthorized duties were collected on the internal trade, by the officers of the zemindar, in defiance of the repeated orders of Government. If these interruptions to commerce are found to exist in a district almost in the neighbourhood of Calcutta, and under a vigilant collector, it may be supposed that, in the more inland parts of the country, and under collectors less active, the evil prevails to a greater extent.

287. "The inefficacy of the power of Government to restrain zemindars from these oppressive exactions, whilst they are allowed to possess the right of levying taxes of any kind upon commerce, has been long experienced in many shapes. It is only by the total resumption of this
right that such abuses can be prevented; and as the general interests of the community require that a regular system of taxation upon the internal trade of the country should be established, we are justified by the constant practice of our own country, and that of other nations, in demanding from individuals, upon granting them a full compensation for their present value, a surrender of privileges which counteract so beneficial a measure. Further benefits are to be derived from this arrangement, when the amount of the internal duties, the rates by which they are levied, and the articles subject to the payment of them, are ascertained. Some may be increased, and others diminished, or struck off, according as may be judged advisable; and in a course of time, as commerce and wealth increase, such regulations may be made in the duties on the internal trade, and the foreign imports and exports, as will afford a large addition to the income of the public, whenever its necessities may require it, without discouraging trade or manufactures, or imposing any additional rent on the lands.”

288. The Court of Directors concurred in the sentiments of Marquis Cornwallis; and in their revenue general letter of 19th September 1792 expressed their approbation of the resumption, and ultimate abolition of the sayer, in the following terms:—“We see, not without surprize, some of the most intelligent of our servants regarding the imposition of internal taxes, duties, or customs, as a branch of the proprietary rights of zemindars; and observe in this instance the danger of adopting into practice rigid systematical deductions from premises in themselves imperfectly defined. Upon general principles, and especially the principles of a despotic Government, we can conceive nothing more incongruous and extraordinary than the inheritance of such a legislative power in a great number of individual
subjects; and we find that what is thus at variance with probability, is contradicted in fact by immemorial usage; which exhibits the privilege of imposing internal duties as exclusively belonging to the sovereign; and so constantly exercised that no gunge, haut, or bazaar, could be established without the authority of the governing power.

289. "In agreement with this practice, the company did, twenty years ago, interpose, as their administrations have since done in various ways, to regulate or abolish oppressive establishments and taxes of that nature. No right of Government, therefore, seems to us less disgusting than that of separating them from the land tenures of the country, and modifying them at pleasure; making suitable allowances for the rents occurring from such as were established under the sanction of Government.

290. "We approve, therefore, and applaud the assumption of all duties and taxes whatever, with the power of levying them, from the landholder; and having seen, from the details in your proceedings, the enormous extent and complication of the abuses and oppressions committed under such names, with the great difficulty of eradicating evils become inveterate, even under the immediate administration of the officers of Government, we are of opinion that, since it was deemed impracticable to establish instantly a proper discrimination, and to collect only what might reasonably be exacted upon certain articles of internal consumption, since the advantage derived by the state was comparatively small, and the injuries suffered by the trade and the people of the country grievous, you acted wisely, as well as liberally, in proceeding to the entire abolition of these instruments of internal oppression."

290a. The court at the same time added:—"We think, however, in correspondence with the idea you appear to
entertain, that this should be considered as a suspension, rather than an extinction, of the financial principle of internal duty; that when the whole business of the decennial settlement is in a due train of execution, and the time, in other respects, suitable, Government may review this object, with the design of ascertaining to what extent, in what form, and under what rules, it may safely be again made an article of revenue, without the danger of such abuses, against the state, and against its subjects, as have hitherto subsisted in it. We think likewise that this contingency of its resumption should be understood by the people, that they may the more easily acquiesce in subsequent measures to that end."

291. The last suggestion was duly attended to, in the second clause of the seventh article of the proclamation issued on the 22nd March 1793, which has been already stated at length; and the sequel will show what taxes and duties have been established since the abolition of the sayer under specific rules for the collection of them.¹

¹ By an official report, which I prepared as secretary to the Board of Revenue in 1791, the annual neat produce of the sayer abolished, in mehals subject to the payment of revenue, throughout the whole of the districts of Bengal, Behar, and Orissa, was somewhat less than ten lacs of rupees. The lakheraj sayer had not then been ascertained; but was computed not to exceed a lac and a half of rupees. The compensations made to the landholders, on depriving them of this part of their established income, as well as the immediate loss to Government from relinquishing a part of its actual revenues, have been since abundantly supplied by the taxes on spirituous liquors and intoxicating drugs; and by other internal duties now collected under prescribed rules in lieu of the sayer abolished. But independently of this result I might confidently repeat the question, which I took the liberty of putting in the report above noticed, "who can doubt the policy of relinquishing, or paying from the annual revenue of these provinces, so small a sum as about eleven lacs of rupees, to divest the landholders of the indefinite power of taxation exercised by them? comprehending in practice, the imposition of duties on almost every article of manu-
292. Another rule, established for the guidance of the revenue officers in fixing the land assessment, at the period of the decennial settlement, was, that "the allowances of the cauzies and canoongoes, heretofore paid by the landholders, as well as any public pensions hitherto paid through the landholders, are to be added to the amount of the jumma, and in future paid by the collectors of the revenue of the several zillahs, on the part of Government, under the rules and restrictions laid down for their guidance with regard to such payments in the resolutions passed by the Governor-General in Council, on the 10th June 1791, and re-enacted with modifications by Regulation XXIV, 1793." The provisions of this regulation will be hereafter specified. Suffice it to mention here that one object of them is to secure the regular payment of public pensions; but there was also an evident reason of policy for transferring to the public treasury, at the time of concluding a permanent settlement with the landholders, allowances and pensions heretofore charged upon the revenue, and payable by the latter; that a temporary expense might not become in effect a perpetual reduction of assessment.¹

293. The jumma was "also to be fixed exclusive and independent of all existing lakheraj lands; whether exempted from the kherâj (or public revenue) with or without due authority." This provision arose from the very nature of lakheraj tenures, which, during their continuance, are not liable to the land assessment; and, therefore, could not be considered a fund for it. As, however, some of the grants for such tenures were for life only; and others might on facture and commerce, as well as on every profession; besides innumerable exactions of a more exceptional nature; and productive, or liable to be productive, of universal oppression and vexation." ¹

¹ Reg. VIII, 1793, s. 35.
examination be found invalid; or the lands claimed as exempt from taxation might be held without any grant; it was necessary, at the time of fixing the tax upon lands then liable to assessment, to declare it exclusive of the assets of lands not included, but which might become subject to assessment at a future period. This was also formally declared in the third clause of the seventh article of the proclamation before cited; with an express intimation that the future assessment which should be imposed on lands held exempt from revenue without a valid title, would belong exclusively to Government.¹

294. It was at the same time expedient that all lands fairly answerable for the fixed assessment, and included in the estimate of assets upon which it was adjusted, should be declared a part of the malgoozary or revenue lands assessed; and in particular that the malikanah lands, which had been held free of assessment by many of the zemindars and other landholders, in the province of Behar, for their subsistence, when deprived of the management of their estates, should be re-annexed to the malgoozary lands, from which they were separated, on a settlement being made with the proprietors for the whole of them, as far as circumstances might admit.²

295. It was, therefore, provided that, “where the zemindars or other actual proprietors of land in Behar have resigned, or have been deprived of the management of their lands, retaining possession of a tithe as malikanah, the latter is to be re-annexed; and the zemindars, or other actual proprietors, are to be required to engage for the whole of the estates, including the malikanah lands; unless such lands be held as malikanah under grants made or

¹ Reg. VIII, 1793, s. 36. ² S. 38.
confirmed by the Governor-General in Council, or supreme authority of the country for the time being; and have been sold, or mortgaged and given in possession to the mortgagee, in which case they are to be exempted from this rule. Grants for malikanah lands, not made or confirmed by the supreme authority of the country, are declared invalid by the regulations passed on the 8th August 1788. If the collectors, however, should be of opinion that any material injury will be done to any individual by the execution of these orders, they are to report the circumstances to the Board of Revenue."

296. 1 On the same principle it was further provided that "the nankar, khomar, neejjoot, and other private lands, appropriated by the zemindars, independent talookdars, and other actual proprietors of land in Bengal and Orissa, to the subsistence of themselves and families, shall be also annexed to the malkoozary lands; and the ten years' jumma fixed upon the whole; under the following modification—that such proprietors as may decline to engage for their lands be allowed the option of retaining possession of their private lands above specified, upon the terms on which they have hitherto possessed them, provided they shall prove to the satisfaction of the Board of Revenue that they held them under a similar tenure, previous to the 12th August 1765, the date of the grant of the dewanny to the company, and have hitherto been permitted to keep possession of them whenever their zemindaries or estates have been held khas or let in farm, but not otherwise. In the event of such proof, and of their availing themselves of the option above given to retain possession of their private lands, a deduction adequate to the neat

1 Reg. VIII, 1793, s. 39.
produce of such lands is to be made from the amount of the allowance fixed for excluded proprietors."

297. The nankar and other private lands referred to in this rule was never considered to be complete lakheraj tenures, legally or actually exempted from the public assessment. They formed part of the estate of the zemindar, or other landholder possessing them, from which he maintained himself and family, partly or entirely, whether he engaged for the public revenue or not, though he was not always left in possession of them, when he declined the settlement, and his estate was let in farm, or held khas.

298. The consolidation of such lands, as part of the malgoozary assets, now generally ordered with respect to the private lands of zemindars, independent talookdars, and other landholders paying their revenue immediately to Government, was, at the same time, required,\(^1\) "to be made in the talooks continued under the proprietors on whom they had hitherto been dependent; not, however, with a view of increasing the rents of the talookdars; but in order to make the whole of the lands composing their talooks answerable for their proportion of the public assessment."\(^2\) It was likewise directed that the whole of the chakeran lands, or lands held by public officers and private servants in lieu of wages, in each province, should "be annexed to the malgoozary lands; and declared responsible for the public revenue assessed on the zemindaries, independent talooks, or other estates, in which they are included; in common with all other malgoozary lands therein." This annexation, however, made for the security of the revenue, does not preclude the continued appropriation of land in lieu of wages, whenever this mode of payment for service

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\(^1\) Reg. VIII, 1793, s. 40. \(^2\) S. 41.
may be preferred and agreed to between the parties interested.¹

299. ² All engagements for the jumma, whether executed by landholders or farmers, were required to be in sicca rupees; but as there was not, at the time of forming the decennial settlement, a sufficiency of this coinage in circulation, it was ordered that a clause should be inserted, "obliging them to pay to Government siccas, or the same species of rupees as they may receive from their under farmers or ryots, at the bazaar rates of batta at which all rupees, not siccas, may be received by them." It is sufficient to remark upon this rule, that the requisition of engagements for sicca rupees was not novel; the revenue being previously engaged for in that coin; though various rupees of different value and denomination were necessarily received into the public treasuries. The evils resulting from this state of the coinage in general circulation, and the measures adopted by Government to remedy them, as well as to supply, without delay, a sufficient number of standard sicca rupees, will be stated at large in the succeeding section.

¹ Pykes, chokeedars, and other village watchmen, maintained by the landholders and farmers, as well as some other descriptions of inferior servants, employed in the management of landed property, are still usually paid, in part, by an allowance of land, held free of rent, or at a small quit-rent, instead of wages. Ghátwálee tenures held at a low rent by the Ghátwáls, or guards of passes, and other appropriations of land for police establishments are also of this nature. But all chakeran lands, appertaining to a zemindary, talook, or other malgoozary estate, being considered to form part of the estate, and included in the assessment of it, they pass, of course, as under-tenures, with every transfer of the estate, and are in general at the disposal of the proprietor of the latter, subject to the fixed assessment upon the estate; unless specially provided for in adjusting the jumma, and appropriated to the expense of a police establishment; in which case they fall within the fourth clause of section 8, Regulation I, 1793, before cited.

² Reg. VIII, 1793, s. 42.
300. In countries where private and public rights have been accurately defined, and established upon just principles; where taxes are considered to be "a portion which each subject contributes of his property to secure the remainder;"¹ and where the land-tax is so moderate as to make it impossible that the proprietor of the land should desire to relinquish the management of his estate, with a view to be exonerated from responsibility for the tax imposed upon it, there can be no occasion for any personal assent or engagement on the part of individuals, to pay their portion of the general assessment, which is levied, when due, from the actual possessor of the land. But in India, where the land-revenue has borne a proportion, so large as nine-tenths, to the computed neat receipts of the zemindar or other superior landholder, and where consequently drought, inundation, or other calamity of season might deprive him of the means of payment from the yearly neat produce of his estate, it has been customary to give the landholders an option of engaging for the assessment of their lands, or to receive a subsistence in land or money, and leave their estates to the management of a public officer, or be let in farm, at the discretion of Government. This usage commenced before the company's administration; and had been since continued to the period of forming the decennial settlement. The following rules were, therefore, prescribed for the guidance of the collectors and information of the landholders, in proposing and accepting or declining the terms of this settlement.

301. 1. "In the event of any proprietor's declining to engage for the settlement of his lands at the jumma

¹ Blackstone, Book i, chap. viii, on the king's revenue. See also what he says on the English land-tax, in the same chapter; and a more particular description of this tax, its origin, and mode of assessment, in Sinclair's History of the Public Revenue, Part iii, chap. iv.
proposed to him, the collector is to communicate the objections offered, with his opinion respecting them, to the Board of Revenue. That Board is to determine the proper assessment, after making such further inquiries as they may think necessary; and the objecting proprietor is to be required to engage for such assessment without further delay; and in the event of his refusal, which is to be given in writing, his lands are to be let in farm, or held khas, as the Board of Revenue may, in each instance, think most expedient.  

302. 2. "Proprietors who may finally decline engaging for the jumma proposed to them, and whose lands may consequently be let in farm, or held khas, are to receive malikanah (an allowance in consideration of their proprietary rights), at the rate of ten per cent. on the sudder jumma of their lands, if let in farm; or at the same rate on the neat collections from their lands, if held khas, viz., on the neat amount realized by Government after defraying the malikanah, as well as all other charges. Out of this allowance, however, a provision is to be made for such persons belonging to the families of the proprietors as may be entitled thereto.  

303. 3. "When the lands are let in farm, the farmer is to engage to pay the ten per cent. malikanah to the proprietor of the lands farmed by him, in addition to the jumma payable by him to Government; and to pay this malikanah monthly, according to the kistbundy fixed for the sudder jumma, with an exception to any case in which it may have been otherwise stipulated with the farmers. The collectors are to enforce payment of the malikanah from the farmers by the same process as is prescribed for enforcing

1 Reg. VIII, 1793, s. 43.  
2 S. 44.
payment of arrears of the public revenue, if they shall at any time neglect to pay the instalment due from them; and Government are to be considered as guarantees for the full payment of the fixed allowance to the several excluded proprietors.¹

304. 4. "In the event of the lands being held khas, on the refusal of the proprietor to engage for the settlement of them, the malikanah, calculated as above specified, is to be paid monthly from the treasuries of the collectors; and it shall be paid entirely in money, instead of half in cash, and half in paper as formerly."

305. It is satisfactory to add, upon these rules for the settlement of the three provinces, that few of the landholders, who were at liberty to engage for the assessment of their estates, declined it on the terms offered to them; and that of those who did, many have since engaged, under the invitation held out to them in the fourth article of the proclamation issued in March, 1793.²

¹ Reg. VIII, 1793, ss. 45, 46. ² S. 47.
**GLOSSARY.**

* * * Taken almost *verbatim* from Wilson's Glossary of Indian Terms.

**Abharry.**—Revenue derived from the duties levied on the manufacture and sale of inebriating liquors.

**Abwab.**—Taxes which were imposed by the Mahomedan Governments in addition to the regular assessments on the land.

**Ameen.**—A native officer of Government employed in the revenue department to take charge of an estate and collect the revenue; a native Civil Judge. An officer employed by a Civil Judge to investigate specially particular points connected with a cause.

**Assul-jumma.**—The original rent or revenue charged upon land without any extra cess; the amount taken as the basis of a revenue settlement.

**Aumil.**—An officer of Government in the financial department; especially a collector of revenue on the part of Government.

**Ayma.**—Land granted by the Mogul Government, either rent-free, or subject to a small quit-rent, to learned and religious persons of the Mahomedan faith, or for religious and charitable uses in relation to Mahomedanism.

**Beegah.**—A measure of land varying in extent in different parts of India. In the North-West and many other provinces, 3,025 square yards or \( \frac{3}{4} \)ths of an acre; but in Bengal, only 1,600 square yards, or a little less than \( \frac{3}{4} \)rd of an acre.

**Benamee.**—Literally, without a name: but used to signify a transaction in which the name of a person is used who is not the real party.

**Benameedar.**—The person whose name is used in a transaction to which he is not a party.
Bunkur.—Spontaneous produce of jungle or forest-land; timber, brushwood, game, wild honey, &c.

Canongoe.—Literally, an expounder of the laws, but applied to village and district revenue officers.

Caunzie.—A Mahomedan Judge; a legal adviser of the Courts in cases of Mahomedan law; a sort of notary in transactions between Mahomedans.

Chakeran.—Allowances of land, or of the revenue derived from it, professedly appropriated to the pay and support of the public officers and servants of a village or zemindary.

Chowdry.—Literally, a holder of four, perhaps, shares or profits; the headman of a village.

Chowly.—Station of police or of customs.

Chur.—A sand-bank or island in the current of a river.

Dewan.—A royal court; a council of state; a tribunal of revenue or justice; a minister or chief officer of state. Under the Mahomedan Government, it was especially applied to the head financial minister, whether of the state or of a province.

Dewanny.—The office, jurisdiction, emoluments, &c., of a dewan.

Dewanny Adawlut.—The Court of Civil and Revenue Jurisdiction.

Gunge.—A village or town which is an emporium for grain or other necessaries of life.

Hasil bazar.—Market dues.

Haut.—A periodical market.

Jagheer.—A tenure common under the Mahomedan Government, by which the public revenues of a given tract of land were made over to a servant of the state, together with the powers requisite to enable him to collect and appropriate such revenue and administer the general government of the district. For an account of the different kinds of jagheers, see Wilson's Glossary, s. v. Jagir.

Jagheerdar.—The holder of a jagheer.

Julkur.—Profits or rents derived from water, with the right of fishing, and of cultivating the lands when dry.
Glossary.

Jumma.—Amount, aggregate, total; but applied especially to the debit or receipt side of an account, and to the rental of an estate; also the total amount of rent or revenue payable by an under-tenant or a zemindar.

Jungleboory.—A tenure under which forest or waste lands were granted to the clearer free of rent or revenue for a certain time, at the expiration of which, such parts as were in cultivation were liable to rent.

Khalsa.—The revenue department of Government.

Khas.—A term used to denote that the revenue, rent, or produce of land is received or collected immediately by the person entitled, and not by or through any other persons.

Kistbundy.—A settlement of instalments for the payment of revenue, or any other due or debt.

Lac.—One hundred thousand.

Lakheraj.—Rent or revenue free.

Lakherajdar.—The holder of lakheraj land.

Mal.—Property of any description; as a revenue term, the revenue derived from land.

Malguzarry.—Revenue assessment; or the person or land subject to that assessment.

Malikanna.—An allowance assigned to a zemindar, or to a proprietary cultivator, who, from some cause, as failure in paying his revenue, or declining to accede to the rate at which his lands are assessed, is set aside from the management of his estate; it generally amounts to about 10 per cent. of the collections.

Mhatoot.—An occasional cess or tax for a special purpose.

Mocurrery.—A tenure held at a fixed and permanent rate of rent or revenue.

Mocurrerydar.—A person holding a mocurrery tenure.

Mofussil.—The provinces as distinguished from the capital.

Mouzah.—A parcel or parcels of lands having a separate name in the revenue records and of known limits.

Naib-dewan.—The deputy dewan.

Nankar.—The portion of land or revenue assigned to the zemindar for his subsistence during his management.
Glossary.

Pergunnah.—A district of a zillah comprising many villages.
Phulkur.—Produce or profit of the fruit trees growing upon an estate.
Polygar.—A petty chieftain in the south of India.
Pottah.—A document fixing the amount of revenue or rent, and the conditions on which the lands are held.
Putnee.—A tenure of lands under the zemindar, hereditary, transferable, and perpetual.
Rupee.—The standard coin of India, containing 165 grains troy of silver, and worth about two shillings.
Ryot.—A subject; a cultivator or peasant.
Sayer.—The surplus sources of revenue in addition to that arising from the produce of land, as customs, transit duties, licenses, fees, house tax, market tax, &c.
Sicca Rupee.—A coin not now current, but used by natives in keeping their accounts; 15 Calcutta Sicca Rupees are equivalent to 16 standard or Company's Rupees.
Sudder Jumma.—The sum total of revenue payable to Government.
Sunnud.—A grant, diploma, or patent.
Talook.—An estate, heritable, transferable, and permanent; sometimes paying rent to a zemindar, and sometimes paying revenue directly to Government.
Tehsildar.—A native collector of revenues.
Thannah.—A military post; a police-station.
Vakeel.—A person invested with authority to act for another, an ambassador, a representative, an agent, an attorney. In India an authorized public pleader in a Court of Justice.
Zemindar.—A holder of land paying revenue direct to Government.
Zillah.—A district comprizing several pergunnahs.
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