From the Senate of the Calcutta University.
THE LAND-LAW OF BENGAL.
THE

LAND-LAW OF BENGAL.

BY

SÁRADÁ CHARAN MITRA, M. A., B. L.

Calcutta:

THACKER, SPINK & CO.,

PUBLISHERS TO THE UNIVERSITY OF CALCUTTA.

1898.
## CONTENTS

<table>
<thead>
<tr>
<th>Table of Cases Cited</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>LECTURE I. Introduction</td>
<td>1</td>
</tr>
<tr>
<td>LECTURE II. Khás Maháls</td>
<td>32</td>
</tr>
<tr>
<td>LECTURE III. Revenue-Free Lands</td>
<td>58</td>
</tr>
<tr>
<td>LECTURE IV. Permanently Settled Estates</td>
<td>87</td>
</tr>
<tr>
<td>LECTURE V. Permanent Tenures (Taluqs)</td>
<td>132</td>
</tr>
<tr>
<td>LECTURE VI. Permanent Tenures and Under-tenures</td>
<td>169</td>
</tr>
</tbody>
</table>

848406
## CONTENTS

<table>
<thead>
<tr>
<th>LECTURE VII.</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-permanent Tenures</td>
<td>206</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LECTURE VIII.</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Service Tenures</td>
<td>244</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LECTURE IX.</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Rāiyats</td>
<td>275</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LECTURE X.</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Rāiyats (Occupancy and Non-occupancy)</td>
<td>297</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LECTURE XI.</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Rāiyats (Rate of Rent)</td>
<td>349</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LECTURE XII.</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-agricultural Lands</td>
<td>383</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LECTURE XIII.</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Orissa and the Scheduled Districts</td>
<td>407</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>INDEX</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>INDEX</td>
<td>425</td>
</tr>
</tbody>
</table>
## TABLE OF CASES CITED.

### A.

<table>
<thead>
<tr>
<th>Case</th>
<th>Year</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abdool Bari v. Ramdas Coomood</td>
<td>1878</td>
<td>366</td>
</tr>
<tr>
<td>Abdool Hakim v. Doorga Proshad Banerjee</td>
<td>1879</td>
<td>366</td>
</tr>
<tr>
<td>Abdool Hossein v. Lall Chand Mohan Dass</td>
<td>1883</td>
<td>366</td>
</tr>
<tr>
<td>Abdul Majid v. Krishna Lal Nag</td>
<td>1893</td>
<td>366</td>
</tr>
<tr>
<td>Abhayessev Debi v. Shiddheswar Debi</td>
<td>1889</td>
<td>366</td>
</tr>
<tr>
<td>Abhoy Churn Paik v. Kally Pershad Chatterjee</td>
<td>1886</td>
<td>366</td>
</tr>
<tr>
<td>Achut Ram Chandra Pai v. Hari Kant</td>
<td>1886</td>
<td>366</td>
</tr>
<tr>
<td>Administrator-General of Bengal v. Premlal Mullick</td>
<td>1895</td>
<td>366</td>
</tr>
<tr>
<td>Afsurooddin v. Shuroshibala Bula Dabee, Musiat</td>
<td>1863</td>
<td>366</td>
</tr>
<tr>
<td>Ahsanulla Khan Bahadour v. Hari Charan Mozumdar</td>
<td>1892</td>
<td>366</td>
</tr>
<tr>
<td>Alimuddin Khan v. Hira Lall Sen</td>
<td>1895</td>
<td>366</td>
</tr>
<tr>
<td>Alhusen v. Brooking</td>
<td>1884</td>
<td>366</td>
</tr>
<tr>
<td>Alam Manjee v. Ashad Ali</td>
<td>1871</td>
<td>366</td>
</tr>
<tr>
<td>Ambika Debi v. Pranhari Das</td>
<td>1869</td>
<td>366</td>
</tr>
<tr>
<td>Ambika Pershad v. Chowdhry Keshri Sahai</td>
<td>1897</td>
<td>366</td>
</tr>
</tbody>
</table>
TABLE OF CASES CITED.

Andrews v. Hailes, 2 E. & B. 349
Anund Coomar Mookerjee v. Bissonath Bonerjee, (1872) 17 W. R. 416
Anund Lal Singh Deo v. Gurrood Narayan Deo Bahadur, Maharaja Dheraj, 5 M. L. A. 82
Anundoll Chowdy v. James Hills, (1865) 4 W. R., Act X. 33
Appa Rau v. Subhanna, (1886) 1 L. R. 13 Mad. 60
Arruth Misser v. Juggurnath Indra Swamee, (1872) 18 W. R. 439
Asanoolah, Khaja v. Kalee Mohun Mookerjee, (1872) 18 W. R. 469
Audh Beharee Singh, v. Dost Mahomed, (1874) 22 W. R. 355
Azimuddin Patwari v. The Secretary of State for India, (1893) I. L. R. 21 Cal. 360

B

Baba v. Vishvanath Joshi, (1883) 1 L. R. 8 Bom. 228
Baboo Gopal Lall Thakoor v. Teluck Chunder Rai, (1865) 10 M. L. A. 183
Baboo Huro Nath Roy v. Ameer Biswas, (1864) 1 W. R. 230
Bacharam Mundul v. Peary Mohun Banerjee, (1883) I. L. R. 9 Cal. 813, sc, 12 C. L. R. 475
Bakranath Mandal v. Binodram Sen, (1868) 1 B. L. R., F. B., 25, sc, 10 W. R., F. B., 33
Bally Dobey v. Ganei Deo, (1882) I. L. R. 9 Cal 388
Bal, C. L. R. 466
Baney Madhub Ghose v. Thakoor Dass Mundul, (1866) 6 W. R., Act X, 71
Bansi Das alias Raghu Nath Das v. Jagdip Narain Chowdhy, (1896) I. L. R. 24 Cal. 152
Barbara Ameena John Elias, Mrs. v. Moonshee Mahomed Peezeer, (1867) W. R. 217
Barnard v. Godscall, Cro. Jac. 309
Barry, Mr. G. R., v. Mouliq Abdool Ali, (1864) W. R., Act X, 64
Basin v. Bidwells, (1881) L. R. 18 Ch. D. 235;
Beebee Punchum Koomaree v. Maharaja Guru Narain Deo, (1837) 6 S. D. A. 140
Beer Chunder Joobraj v. Ram Gouty Dutt, (1867) 8 W. R. 209
Beer Chunder Joobraj v. Umakant Sein Bahadoor, (1864) W. R. 232
Beharee Lall Roy v. Kalee Doss Chunder, (1867) 8 W. R. 451
Beni Madhub Chuckerbutty v. Bhuan Mohun Biswas, (1890) I. L. R. 17 Cal. 293
Bhageruith Moodee v. Rajah Jabur Jumma Khan, (1872) 18 W. R. 91
Bhagruith Dass v. Mahasooop Roy, (1866) 6 W. R., Act X, 34
Bhairamnath Khettri v. Kishori Mohan Shaw, (1869) 3 B. L. R.
App 1
Bharati Chunder Sein v. Oseemoolddeen, (1866) 6 W. R., Act X, 56
Bhurath Chunder Roy v. Bechip Beharee Chuckerbutty, (1868) 9 W. R. 495
<table>
<thead>
<tr>
<th>Case</th>
<th>Author(s)</th>
<th>Year</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bhiram Ali Shaik Shikdar v. Gopi Kanth Shaha</td>
<td>(1897)</td>
<td>1 I. L. R. 24</td>
<td>355</td>
</tr>
<tr>
<td>Bhaolee Singh v. Mussamat Neemoo Behoo</td>
<td>(1869)</td>
<td>12 W. R. 498</td>
<td>239</td>
</tr>
<tr>
<td>Bholanath Bandypadhiya v. Umacunh Bandypadhiya</td>
<td>(1886)</td>
<td>1 I. L. R. 14 Cal. 440</td>
<td>181, 318</td>
</tr>
<tr>
<td>Bhookee Singh v. Mussamat Nehmoo Bhoohoo</td>
<td>(1869)</td>
<td>12 W. R. 46</td>
<td>78</td>
</tr>
<tr>
<td>Bhooobunjoy Acharjee v. Ram Narain Choudhry</td>
<td>(1868)</td>
<td>9 W. R. 449</td>
<td>314</td>
</tr>
<tr>
<td>Bhoyranaught Sandyal v. Mutty Mundle</td>
<td>(1864)</td>
<td>W. R., Act X. 100</td>
<td>176</td>
</tr>
<tr>
<td>405 of 1893 decided on the 28th March 1894</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bhuggobutte Deba v. Doorga Dass Roy</td>
<td>(1858)</td>
<td>S. D. A. 890</td>
<td>153</td>
</tr>
<tr>
<td>Bhuggobutty Churn Bhuttacharjee v. Tameerudddeen Moonshree</td>
<td>(1864)</td>
<td>1 W. R. 224</td>
<td>370</td>
</tr>
<tr>
<td>Bhugwan Bhagat v. Jug Mohun Roy</td>
<td>(1873)</td>
<td>20 W. R. 308</td>
<td>319, 323, 330</td>
</tr>
<tr>
<td>Bhugwan Chunder Dass v. Sudder Ally</td>
<td>(1878)</td>
<td>I. L. R. 4 Cal. 41</td>
<td>147</td>
</tr>
<tr>
<td>Bhuli Sing v. Mussamat Nimu Behu</td>
<td>(1869)</td>
<td>4 B. L. R. 29</td>
<td>127</td>
</tr>
<tr>
<td>Bibeo Suhodra v. Maxwell Smith</td>
<td>(1873)</td>
<td>20 W. R. 139</td>
<td>298, 299</td>
</tr>
<tr>
<td>Bidhumukhi Dabee Chowdhrey v. Keyfutullah</td>
<td>(1885)</td>
<td>I. L. R. I.</td>
<td>263</td>
</tr>
<tr>
<td>Bagh Chalor v. Radha Churn Gangooly</td>
<td>(1873)</td>
<td>20 W. R. 465</td>
<td>85</td>
</tr>
<tr>
<td>Bishumphur Shah v. Durga Churn Bose and Ram Kunnye Shah</td>
<td>(1858)</td>
<td>S. D. A. 369</td>
<td>155</td>
</tr>
<tr>
<td>Bissambar Banerjee v. Koylash Chunder Bose</td>
<td>(1875)</td>
<td>23 W. R. 388</td>
<td>84</td>
</tr>
<tr>
<td>Bissesuri Dabeea v. Baroda Kanta Roy Chowdry</td>
<td>(1884)</td>
<td>I. L. R. 10 Cal. 1076</td>
<td>223</td>
</tr>
<tr>
<td>Bissonath Sircar v. Ranee Shurno Mooyee</td>
<td>(1865)</td>
<td>4 W. R. 6</td>
<td>97</td>
</tr>
<tr>
<td>Bissonath Surma Bhuttacharjee v. M. Moran</td>
<td>(1864)</td>
<td>W. R. 353</td>
<td>111</td>
</tr>
<tr>
<td>Bliss Edward v. Collins James</td>
<td>(1822)</td>
<td>5 B. and A. 876</td>
<td>225</td>
</tr>
<tr>
<td>Bogg v. Midland Railway Co.</td>
<td>(1807)</td>
<td>I. L. R. 4 Eq. 310</td>
<td>227</td>
</tr>
<tr>
<td>Bollye Satee v. Akram Ally</td>
<td>(1879)</td>
<td>I. L. R. 4 Cal. 961</td>
<td>318</td>
</tr>
<tr>
<td>Brajonath Kundu Chowdry v. Lowther</td>
<td>(1872)</td>
<td>9 B. L. R. 121</td>
<td>315</td>
</tr>
<tr>
<td>Bramamayi Bewa, in re</td>
<td>(1870)</td>
<td>9 B.L.R. 109 (note)</td>
<td>315</td>
</tr>
<tr>
<td>Brindabun Chunder Sircar Chowdry v. Bhoopal Chunder Biswas</td>
<td>(1872)</td>
<td>17 W. R. 377</td>
<td>242</td>
</tr>
<tr>
<td>Brindabun Chunder Sircar Chowdry v. Brindabun Chunder Dey Chowdry</td>
<td>(1874)</td>
<td>21 W. R. 324, sc,</td>
<td>13 B. L. R. 409 sc,</td>
</tr>
<tr>
<td>Brindabun Chunder Nundi v. Ram Sunder Mozundar</td>
<td>(1893)</td>
<td>I. L. R. 21 Cal. 375</td>
<td>111</td>
</tr>
<tr>
<td>Brojendro Coomar Bhoomick v. Woopendra Narain Singh</td>
<td>(1882)</td>
<td>I. L. R. 8 Cal. 706</td>
<td>366</td>
</tr>
<tr>
<td>Brojendro Kumar Roy Chowdry v. Bungo Chunder Mundul</td>
<td>(1883)</td>
<td>12 C. L. R. 389</td>
<td>151</td>
</tr>
<tr>
<td>Brojo Mohun Ghose v. Luchman Singh Thakoor</td>
<td>(1864)</td>
<td>W. R. 83</td>
<td>211</td>
</tr>
<tr>
<td>Brojo Soondur Mitter v. Futtick Chunder Roy</td>
<td>(1872)</td>
<td>17 W. R. 407</td>
<td>152, 155</td>
</tr>
</tbody>
</table>
Brojo Soondur Mitter v. Kalee Kishore Chowdhry, (1867) 8 W. R. 496 ... 134, 136
Brooke v. Bulkeley, 2. V. Jun. 498 ... 227
Budun Mollah v. Khettur Nath Chatterjee, (1875) 24 W. R. 441 ... 241
Budurul Huq v. The Court of Wards, (1868) 10 W. R. 302 ... 120
Bhoons Koonwar v. Buhoree Lal, (1872) 14 M. I. A. 196, sc., 10 B. L. R. 159, sc., 18 W. R. 157 ... 121
Bujrungee Lal v. Syud Velaet Hossein Khan, (1866) 5 W. R. 186 ... 115
Bukranath Singh and The Government of India v. Nilmoni Singh, (1875) I. L. R. 5 Cal. 389 ... 65
Buksh Ali v. Ramtunoo Guoe, (1866) 6 W. R. Act X, 64 ... 180
Butien, J. B. v. Lalit Jha, (1869) 3 B. L. R. Ap. 119 ... 216, 217
Bungo Chunder Chuckerbutty v. Ram Kanye Bhawal, (1868) 10 W. R. 256 ... 177
Bunwaree Chand Thakoor v. Mudden Mohun Chuttoraj, (1873) 21 W. R. 41 ... 212
Bunwari Lal Chowdhry v. Bumro Moyi Das, (1887) I. L. R. 14 Cal. 749 ... 205
Bunwari Lal Sahu v. Mahabir Persad Singh, (1873) 12 B. L. R. 297, sc., I. L. R. 1 I. A. 89 ... 108
Bunworee Lal v. Sunzum Lal, (1867) 7 W. R. 280 ... 210
Busseeroodeen, Sheikh v. Shibpersad Chowdry, (1864) W. R. 170 ... 78
Byjunnath Sahoo v. Lalla Sectul Persad, (1868) 10 W. R., F.B., 66, sc., 2 B. L. R. F. B. 1 ... 105, 109
Bykunth Nath Dutt v. Monee Mohun Bose, (1850) S. D. A. 89 ... 151
Bykunt Nath Singh v. Maharajah Dheroj Mahtab Chund Bahadoor, (1872) 17 W. R. 447, sc., 9 B. L. R. 87 ... 146, 147

C.

Campbell v. Kishen Dhun Andhkaree, (1862) Marsh's Rep. 67 ... 375
Cannan, H. H. v. Kylash Chunder Roy Chowdhry, (1876) 25 W. R. 117 ... 287, 311
Catherine Foschola v. Hurro Chunder Bose, (1867) 8 W. R. 284 ... 177
Chamarnee Bibe v. Ayenollah Sirdar, (1868) 9 W. R. 451 ... 177
Chandmoni Das v. Lokenath Chatterjee, (1880) 6 C. L. R. 494 ... 296
Chatraput Singh v. Grindra Chunder Roy, (1889) I. L. R. 6 Cal. 399 ... 223
Chaturi Sing v. Mukund Lall, (1881) I. L. R. 7 Cal. 710 ... 233
Chowdhry Khan v. Gour Jana, (1865) 2 W. R., Act. X, 30 ... 363
Chunder Cooimar Roy v. Kadermonce Dosssee, (1867) 7 W. R. 247 ... 299
Chunder Kant Chuckerbutty v. Bunko Beharee Chunder, (1865) 3 W. R. 177 ... 77, 83
Chunder Kant Roy v. Krishna Sunder Roy, (1884) I. L. R. 10 Cal. 710 ... 208
Chunder Narain Singh v. Kishen Chand Golecha, (1883) I. L. R. 9 Cal. 855 ... 190
Chunder Nath Bhuttacharjee v. Jugput Chunder Bhuttacharjee, (1874) 22 W. R. 337 ... 217
Chunder Nath Misser v. Sirdar Khan, (1872) 18 W. R. 218 ... 235
Chunder Nath Nundi v. Hur Narain Deb, (1881) I. L. R. 7 Cal. 153 ... 117
Chunder Pershad Roy v. Shuvandra Kumari Shaheba, (1886) 1. L. R. 12 Cal. 622 ... 152
Chundra Kaminy Debea v. Ram Ruttum Pattuck, (1885) I. L. R. 12 Cal. 302 ... 111
**TABLE OF CASES CITED.**

<table>
<thead>
<tr>
<th>Case Details</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Church, Mr. C. v. Ram Tonoo Shaha, (1869) II W. R. 547</td>
<td>316</td>
</tr>
<tr>
<td>Chyturnno Chunder Roy v. Kedar Nath Roy, (1870) 14 W. R. 99</td>
<td>333</td>
</tr>
<tr>
<td>Cawtoorth v. Johnson, 55 L. J., Q. B., 220</td>
<td>210</td>
</tr>
<tr>
<td>Collector of the 24-Perghis v. Gungagobind Mundul, (1863) 2 Hay 33...</td>
<td>83</td>
</tr>
<tr>
<td>Collector v. Martindell, 2 N. W. P. Sel. Rep. 188</td>
<td>64</td>
</tr>
<tr>
<td>Cornell, Mr. v. Oodoy Tara Chowdhrain, Musst, (1867) 8 W. R.</td>
<td>372</td>
</tr>
<tr>
<td>Cotesworth v. Spokes, (1861) 30 L. J. C. P. 220</td>
<td>234</td>
</tr>
</tbody>
</table>

**D**

<table>
<thead>
<tr>
<th>Case Details</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dabee Misser v. Mungr Meah, (1878) 2 C. L. R. 208</td>
<td>314</td>
</tr>
<tr>
<td>Dabee Munnee Chowdhram v. Faqueer Chunder Shaha, (1864) W. R. 293</td>
<td>77, 78</td>
</tr>
<tr>
<td>Dalghish, E. v. Guzaffer Hassain, (1866) 1. L. R. 23 Cal. 427</td>
<td>300</td>
</tr>
<tr>
<td>Dam v. Spurrier, (1803) 3 B. &amp; P. 399</td>
<td>227</td>
</tr>
<tr>
<td>David, Mr. M. A. v. Ram Dhun Chatterjee, (1866) 6 W. R., Act. X.</td>
<td>97</td>
</tr>
<tr>
<td>Debi Dutt Sahoo v. Subodra Bbee, (1876) I. L. R. 2 Cal. 283</td>
<td>212</td>
</tr>
<tr>
<td>Debiruddi v. Abdur Rahim, (1888) I. L. R. 17 Cal. 196</td>
<td>231, 233, 341</td>
</tr>
<tr>
<td>Debi Singh v. Shoa Lall Singh, (1869) I. L. R. 16 Cal. 203</td>
<td>117</td>
</tr>
<tr>
<td>De Courcy, Mr. Richard v. Meghnath Jha, (1871) 15 W. R. 157</td>
<td>293</td>
</tr>
<tr>
<td>Deen Dyal Lal v. Thukroo Koonwar, Mussamut, (1866) 6 W. R., Act. X.</td>
<td>295, 365</td>
</tr>
<tr>
<td>Deputy Commissioner of Nowgong v. Nothiram Bhuaya, (1874) W. R. 435</td>
<td>55</td>
</tr>
<tr>
<td>Dewan Abdool Reza v. Jebunissi Bbee, (1871) 16 W. R. 34</td>
<td>117</td>
</tr>
<tr>
<td>Dewan Shumdan Ali v. Mothooranath Dutt, (1870) 14 W. R. 226</td>
<td>85</td>
</tr>
<tr>
<td>Dhora Kairi v. Ram Jewan Kairi, (1890) I. L. R. 20 Cal. 101</td>
<td>231, 233</td>
</tr>
<tr>
<td>Dhoroni Dhan Sen v. Wajdunissi Khatoon, (1888) I. L. R. 16 Cal. 708 (note)</td>
<td>81, 114</td>
</tr>
<tr>
<td>Dhunput Singh v. Boojah Sahoo, (1865) 4 W. R. 53</td>
<td>78</td>
</tr>
<tr>
<td>X, 43</td>
<td>154, 217, 219</td>
</tr>
<tr>
<td>Dhunput Singh v. Mahomed Kazim Isphahain, (1896) I. L. R. 24 Cal. 296</td>
<td>218</td>
</tr>
<tr>
<td>Dhunput Singh v. Saraswati Misrain, (1891) I. L. R. 19 Cal. 267</td>
<td>218</td>
</tr>
<tr>
<td>Dhun Singh Roy v. Chunder Kant Mookerjee, (1865) 4 W. R., Act. X.</td>
<td>154, 217, 219</td>
</tr>
<tr>
<td>Dirgopal Lal v. Bolakee, (1879) I. L. R. 5 Cal. 269</td>
<td>190, 214</td>
</tr>
<tr>
<td>Doed. Muston v. Gladwin, 6 Q. B. 953</td>
<td>235</td>
</tr>
<tr>
<td>Doma Roy v. Melon, James, (1873) 20 W. R. 416</td>
<td>232</td>
</tr>
<tr>
<td>Doolar Chand Sahoo v. Lalla Chabeel Chand, (1879) L. R. 6 I. A. 47, sc., 3 C. L. R. 561</td>
<td>198</td>
</tr>
<tr>
<td>Doorga Churn Chatterjee v. Doya Moyee Dossia, (1873) 20 W. R. 243</td>
<td>178</td>
</tr>
<tr>
<td>Doorga Churn Doss v. Mahomed Abbas Bhooyan, (1870) 14 W. R. 399</td>
<td>371</td>
</tr>
<tr>
<td>Doorga Churn Surma Chowdhry v. Syud Najunooddeen, (1874) 21 W. R. 397</td>
<td>148</td>
</tr>
<tr>
<td>Doorga Kant Lahoorry v. Radha Mohun Gooho, (1867) 7 W. R. 51</td>
<td>116</td>
</tr>
</tbody>
</table>
TABLE OF CASES CITED.

PAGE.

Doorga Kripa Roy v. Mohesh Chunder Roy, (1871) 15 W. R. 242 ... 117
Doorga Kripa Roy v. Sree Janoo Lathak, (1872) 18 W. R. 465 ... 232
sc., L. R. 5 I. A. 149 ... 260
Doorga Singh v. Sheo Pershad Singh, (1889) I. L. R. 16 Cal. 194 ... 112
Doshibi v. Ishwar Das Jagivan Das, (1895) I. L. R. 9 Bom. 561 ... 64
Douzelle, Mrs. Benjamin v. Girisharee Singh, (1874) 23 W. R. 121 217, 220
Dowlut Gazee Chowdhry v. Moonshree Munwar, (1871) 15 W. R. 341 171
Doya Chand Saha v. Annud Chunder Sen Mozumdar, (1887) I. L. R. 14 Cal. 382. ... 187, 225, 300
D. Silva, Mr. J. P. v. Raj Cooman Dutt, (1871) 16 W. R. 153 ... 46
... W. R. 138 ... 174
Duli Chand v. Meher Chand Sahu, (1872) 12 B. L. R. 439, sc., 8 Cal. 181, 235, 237
Duli Chand v. Rajkisore, (1882) I. L. R. 9 Cal. 88 ... 238
Dumree Shaikh v. Bissessur Lall, (1876) 13 W. R. 291 ... 306
Durga Prosad Bundopadhya v. Brindabun Roy, (1892) I. L. R. 19 Cal. 504 ... 160
Durga Prosunno Ghose v. Kali Das Dutt, (1881) 9 C. L. R. 449 ... 306
Durga Sundari, Rani v. Brindabun Chunder Sirkar Chowdhy, (1869) 2 B. L. R. App. 37, sc., 11 W. R. 162 ... 299
Durn Narayan Rtee v. Sreemati Rtee, (1849) S. D. A. 188 ... 280
Dwarka Nath v. Aloe Chunder Seal, (1833) I. L. R. 9 Cal. 641 ... 190
Dwarka Nath Chuckerbutty v. Bhowanee Kishore Chuckerbutty, (1871) 8 W. R. 11 ... 371
Dwarkanath Misree v. Noboo Sirdar, (1879) 14 W. R. 193 ... 317, 318
Dwarka Nath Misser v. Hurish Chunder, (1879) I. L. R. 4 Cal. 925, sc., 4 C. L. R. 130 ... 299, 340

E.

Earl of Lisburne v. David Davies, (1866) I. R. 1 C. P. 259, sc., 35 L. J. C. P. 193. ... 221
Ebuduoloollah, Salik v. Mthoned Ali, Shilk, (1876) 25 W. R. 114 ... 327
Edge v. Boilean, (1885) L. R. 16 Q. B. D. 117 ... 220
Elahie Buksh Chowdhy v. Roopun Telee, (1867) 7 W. R. 234 ... 177, 291
Ellias, Mrs. B. O. v. Tahirram Roy, (1864) 1 W. R. 164 ... 70, 83
Enayetullah, Meah v. Nubo Cooman Sircar, (1873) 20 W. R. 207. ... 46
Enayetullah, Sheik v. Elaheebuksh, Sheik, (1864) W. R., Act X, 42 ... 333, 365
Erfanoomissa v. Pearce Mohun Mookerjee, (1876) 25 W. R. 209, sc., I. L. R. 1 Cal. 378 ... 83, 85
Erskine, Mr. H. S. v. Tilochu Chatterjee, (1555) 9 W. R. 518 ... 97
Erskine, Mr. James v. Dwarkanath Singh and the Government, (1867) 8 W. R. 232 ... 261
Evans v. Davis, (1878) I. R. 10 Ch. D. 747 ... 234

F.

Fakir Chand v. Fouzdar Misser, (1884) I. L. R. 10 Cal. 547 ... 303
Fallon v. Robins, 16 J. Ch. R. 422 ... 227
Panindra Deb Raikat v. Rajeswar Das, (1885) I. L. R. 11 Cal. 463, sc., L. R. 12 I. A. 72 ... 420
# Table of Cases Cited

<table>
<thead>
<tr>
<th>Case</th>
<th>Author</th>
<th>Title</th>
<th>Year</th>
<th>Volume</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Farquharson v. Dwarka Nath Sing and the Government of India</td>
<td>(1871)</td>
<td>8 B. L. R. 504</td>
<td>261</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fatteh Bahadur v. Janki Bibi</td>
<td>(1870)</td>
<td>4 B. L. R. App. 55, sc.</td>
<td>13</td>
<td></td>
<td></td>
</tr>
<tr>
<td>W. R. 74</td>
<td></td>
<td></td>
<td>82</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fazi v. Imliar</td>
<td>(1874)</td>
<td>4 N. W. P. 152</td>
<td>50</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finch v. Underwood</td>
<td>(1876)</td>
<td>L. R. 2 Ch. D. 310</td>
<td>227</td>
<td></td>
<td></td>
</tr>
<tr>
<td>W. R. 404</td>
<td></td>
<td></td>
<td>368</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fitzpatrick, Mr. W. v. Wallace, Mr. George</td>
<td>(1869)</td>
<td>11 W. R. 231</td>
<td>318</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Forbes v. Meer Mahomed Taki</td>
<td>(1870)</td>
<td>13 M. I. A. 438, sc.</td>
<td>14 W. R.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>P. C. 28</td>
<td></td>
<td></td>
<td>268, 272</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Forbes, A. J. v. Ameeronaissa Begum</td>
<td>(1866)</td>
<td>5 W. R. 47, sc.</td>
<td>10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>M. I. A. 340</td>
<td></td>
<td></td>
<td>162</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Forbes, A. J. v. Ram Lall Biswas</td>
<td>(1874)</td>
<td>22 W. R., P. C.</td>
<td>51</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Forbes, A. J. v. Sheikh Mean Jan</td>
<td>(1865)</td>
<td>3 W. R. 69</td>
<td>84</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fotick Chunder Dey Sircar v. Foley, E. G.</td>
<td>(1887)</td>
<td>1 L. R. 15</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cal. 492</td>
<td></td>
<td></td>
<td>303</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Freeman v. Fairlie</td>
<td>(1828)</td>
<td>1 M. I. A. 305</td>
<td>33, 38</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fry v. Lane</td>
<td>(1888)</td>
<td>40 Ch. Div. 312</td>
<td>180</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fukeeroonissa Begum v. Chunder Monee Dossce</td>
<td>(1869)</td>
<td>12 W. R.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>538</td>
<td></td>
<td></td>
<td>216, 217</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## G.

<table>
<thead>
<tr>
<th>Case</th>
<th>Author</th>
<th>Title</th>
<th>Year</th>
<th>Volume</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gangadhar v. Zahuriria</td>
<td>(1886)</td>
<td>1 L. R. 8 All.</td>
<td>446</td>
<td>233</td>
<td></td>
</tr>
<tr>
<td>Ganoda Kanta Roy v. Probhabati Das</td>
<td>(1893)</td>
<td>1 L. R. 20 Cal. 88</td>
<td>129</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gardiner v. Fell</td>
<td>(1819)</td>
<td>1 M. L. A. 299</td>
<td>33, 38</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gauri Sanker Lal, Lala v. Janki Pershad</td>
<td>(1889)</td>
<td>9 L. R. 17 Cal.</td>
<td>105, 109</td>
<td></td>
<td></td>
</tr>
<tr>
<td>809, sc., L. R. 17 I. A. 57</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ghabru Singh v. Otar Sing</td>
<td>(1865)</td>
<td>4 W. R., Act X.</td>
<td>176</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gobind Chand Juttee v. Mun Mohun Jha</td>
<td>(1870)</td>
<td>14 W. R.</td>
<td>43</td>
<td>217</td>
<td></td>
</tr>
<tr>
<td>Gobind Chand Chunder v. Kristo Kanto Dut</td>
<td>(1870)</td>
<td>14 W. R.</td>
<td>273</td>
<td>217</td>
<td></td>
</tr>
<tr>
<td>Gobind Chunder Dut v. Huronath Roy</td>
<td>(1866)</td>
<td>5 W. R., Act X.</td>
<td>178</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gobind Chunder Gangopadhyaya v. Sherajunniisa Bibi</td>
<td>(1882)</td>
<td>13 C. L. R. I.</td>
<td>105, 107, 109</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gobind Chunder Roy Chowdhry v. Ram Chunder Chowdhry</td>
<td>(1873)</td>
<td>19 W. R. 94</td>
<td>126</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gobind Lal Roy v. Biprodas Roy</td>
<td>(1889)</td>
<td>1 L. R. 17 Cal.</td>
<td>107</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gobind Lal Roy v. Ramjanam Misser</td>
<td>(1893)</td>
<td>1 L. R. 21 Cal. 70, sc.</td>
<td>103, 105, 107, 109</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I. R. 20 I. A. 165</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Godadhar Das v. Dhunput Sing</td>
<td>(1881)</td>
<td>1 L. R. 7 Cal.</td>
<td>205</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gogon Manjy v. Kashishwary Deby</td>
<td>(1877)</td>
<td>1 L. R. 3 Cal. 498</td>
<td>376</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Golakdas Gopaladas and Rambaksh Seochand v. Virannel Prem-</td>
<td>1884</td>
<td>1 L. R. 19 Cal. 1035</td>
<td>229, 230</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sukhadas,</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gokuhl Sahu v. Jodu Nundun Roy</td>
<td>(1890)</td>
<td>1 L. R. 17 Cal. 721</td>
<td>78</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Golabolee v. Kootosboollah Sirkar</td>
<td>(1878)</td>
<td>1 L. R. 4 Cal. 527</td>
<td>181</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Golak Nath Roy Chowdhry v. Mathura Nath Roy Chowdhry</td>
<td>(1891)</td>
<td>1 L. R. 20 Cal. 273</td>
<td>183</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Golam Ali v. Baboo Gopal Lal Thakoor</td>
<td>(1868)</td>
<td>9 W. R. 65</td>
<td>393, 394</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Golam Ali Chowdhry v. Kali Krishna Thakoor</td>
<td>(1881)</td>
<td>8 C. L. R. 517</td>
<td>366</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Golam Ali Mundul v. Golap Soondery Dossce</td>
<td>(1882)</td>
<td>1 L. R. 8 Cal. 612</td>
<td>307</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
TABLE OF CASES CITED.

Golam Mohamed v. Asmat Alee Khan Chowdhry, (1868) 10 W. R., F. B., 14 ... ... ... ... 376
Golam Paunia v. Hurish Chunder Ghose, (1872) 17 W. R. 552 ... ... 327
Goluck Rana v. Nubo Soonduree Dossee, (1874) 21 W. R. 344 ... ... 301
Goomonooe Dossee v. Rajah Burrodakant Roy Bahadour, (1872) 18 W. R. 191 ... ... 85
Gooroo Doss Mundul v. Sheikh Durboree, (1866) 5 W. R., Act X, 86 ... ... ... 177
Gooroo Dass Roy v. Collector of Furreedpore, The, (1873) 19 W. R. 170 ... ... ... ... 128
Gooroo Dass Roy v. Issur Chunder Bose, (1874) 22 W. R. 246 ... ... 221, 222
Gopal Chunder Bhose v. Mutthor Mohun Banerjee, (1865) 3 W. R., Act X, 132 ... ... ... 177
Gopal Chunder Roy v. Oodhub Chunder Mullick, (1864) W. R. 156 ... ... 72
Gopal Chunder Sircar v. Adhiraj Aftab Chund Mahatab, (1884) I. L. R. 10 Cal. 743 ... ... 82
Gop Inf. Mundul v. Nobbokishen Mookerjee, (1866) 5 W. R., Act X, 83 ... ... ... 179
Gopal Pal Chowdhry v. Tarinee Pershad Ghose, (1868) 9 W. R. 89 ... ... 307
Gopanond Jha v. Lalla Gobind Pershad, (1869) 12 W. R. 169 ... ... 217, 218
Gopee Mohun Roy v. Sibchunder Sen, (1864) 1 W. R. 68 ... ... 285
Gopeenath, Baboo v. Ramjeeewun Lall, (1859) S. D. A. 913 ... ... 212
Gopendra Chunder Mitter v. Mokaddam Hossein, (1894) I. L. R. 21 Cal. 702 ... ... 155
Gopi Nath Chobey v. Bhugwat Pershad, (1884) I. L. R. 10 Cal. 697 ... ... 126
Gordon Stuart and Co. v. Maharajah Mohatab Chunder Bahadour, (1863) Marsh 490, sc., 2 Hay 505 ... ... 204
Gossain Chutturhooj Dut v. Ishri Mul, (1894) I. L. R. 21 Cal. 844 ... ... ... 105, 109, 115
Gosto Behary Pyne v. Shib Nath Dut, (1892) I. L. R. 20 Cal. 241 ... ... 158
Gour Chunder Goopoo v. Tana Konee, (1866) 6 W. R. 217 ... ... 114
Gour Huree Sing v. Beharee Raoot, (1869) 12 W. R. 277, sc., 3 B. L. R. App. 133 ... ... 319, 323, 330
Gour Kishore Chunder v. Bonomalooe Chowdhry, (1874) 22 W. R. 117 ... ... ... ... 365
Gourree Komul Bhuttacharjee v. Rajkishen Nath, (1866) 5 W. R. 106 ... ... 151
Gourree Nath Roy v. Ramgutty Chunder, (1866) 12 W. R. 102 ... ... 356
Gourree Pershad Doss v. Shurnoo Moyee, Ranee, (1866) 6 W. R., Act X, 41 ... ... ... 136
Gouri Pattra v. Reily, H. R., (1892) I. L. R. 20 Cal. 579 ... ... 367
Government, The v. Bhoo Narain Singh, (1863) 2 W. R. 162 ... ... 126
Govind Chunder Goswami v. Rungunmoney, (1880) I. L. R. 6 Cal. 60 ... ... ... ... 160
Grant, G. v. Bangsi Deo, (1871) 6 B. L. R. 652 ... ... 263
Great Western Railway Co. v. Smith, (1875) 2 Ch. D. 235 ... ... 242
Greech Chunder Bose v. Kally Kristo Holdar, (1866) 6 W. R., Act X, 58 ... ... ... ... 172
Grija Nath Roy v. Mia Ulla Nasoya, I. L. R. 22 Cal. 744, note ... ... 302
Grimwood v. A. Moss, L. R. 7 C. P. 360 ... ... 234
Guajhadur Panree v. Naik Panree, (1882) I. L. R. 8 Cal. 528 ... ... 181
Gujraj Sahai v. Secretary of State for India, (1889) I. L. R. 17 Cal. 414 ... ... ... 98, 105
Gulab Das Jugjivan Das v. The Collector of Surat, (1878) I. L. R. 3 Bom. 186, sc., L. R. 6 I. A. 54 ... ... ... 64
Gunesh Dass v. Gan Dour Koormi, (1882) I. L. R. 9 Cal. 147 ... ... 233
Gunga Gobind Mundul v. The Collector of 23-Pergannahs, Prince Golam Mahomed and others, (1867) 7 W. R., P. C. 21, sc., 11 M. I. A. 345 38
Gunga Hurry Dhobey v. Tripp, Mr. H. D., (1864) 1 W. R. 31 ... ... 76
TABLE OF CASES CITED.

Gunga Narain Doss v. Sharoda Mohun Roy, (1869) 12 W. R. 30 ... 355
Gunga Narain Sircar v. Sreenath Banerjee, (1880) I. L. R. 5 Cal. 985 ... 202
Gunga Ram Chowdhry v. Huree Nath Chowdhy, (1871) 5 W. R. 436 ... ... 78, 84
Gureed Mundul v. Bhobub Mohun Sein, (1865) 12 W. R. (Act X.) 185 ... 34
Gyanada Kantho Roy Bahadur v. Bromomoyi Dassi, (1889) I. L. R. 17 Cal. 62 ... ... 44, 159
Gya Ram Dut v. Gooroo Churn Chatterjee, (1865) 2 W. R. (Act X.) 59 ... ... ... 88

H.

Hamilton v. Earl, 1 Bro. P. C. 341 ... ... ... 211
Hanuman v. Ramjug, H. C. R., N. W. P, (1874) 371 ... ... 289
Haran Chunder Paul v. Mookta Soonduree, (1868) 10 W. R. 113 ... 306
Haree Persad v. Asmut, Marsh Rep. 99 ... ... ... 375
Heera Lall Chowdhry v. Janookee Nath Mookerjee, (1871) 16 W. R. 222 ... ... ... 111
Heera Lall Pal v. Neel Monee Pal, (1873) 20 W. R. 383 ... ... 307
Heeramonee and others v. Gunganarain Roy, (1868) 10 W. R. 384 ... 242
Heeranund Sahoo v. Mussamut Ozeerun, (1866) 6 W. R. 151 ... 126
Hemanta Kumari Debi v. Jagadindra Nath Roy Bahadur, (1894) I. L. R. 22 Cal. 214 ... ... 334
Hem Chunder Chatterjee v. Poorun Chunder Roy, (1865) 3 W. R. 162 ... 177
Hem Chunder Ghose v. Radha Pershad Paleet, (1875) 23 W. R. 440 ... 240, 241
Hem Nath Dut v. Ashgur Sirdar, (1879) I. L. R. 4 Cal. 894 ... ... 137
Hera Lal v. Jerawan, 6 Sel. Rep. 169 ... ... ... 262
Herranund Shoo v. Mussamut Ozeerun, (1868) 9 W. R. 102 ... ... 126
Hills, Mr. James v. Besharuth Meer, (1864) W. R. 10 ... 178, 292
Hills, Mr. James v. Huro Lal Sein, (1865) 3 W. R. 135 ... 178, 292
Hills, Mr. James v. Jendar Mundul, (1864) 1 W. R. 3 ... ... 48
Hira Lal Das v. Mothura Mohun Roy Chowdhy, (1888) I. L. R. 15 Cal. 714 ... ... 333
Horo Kissen Banerjee v. Joy Kissen Mookerjee, (1864) 1 W. R. 299 ... 366
Hossain Bux v. Mutookdharee Lall, (1887) I. L. R. 14 Cal. 312 ... ... 129
Hossein Ally v. Donzelle, (1880) I. L. R. 5 Cal. 906 ... ... 237
Hridoy Nath Shaha v. Mohobutnessa Bibe, (1892) I. L. R. 20 Cal. 285 ... ... 116
Hunooman Doss alias Nonnah Baboo v. Bipro Churn Roy, (1873) 20 W. R. 132 ... ... 147
Hunooman Persaud Panday v. Mussamut Baboeree Munraj Koonweree, (1856) 6 M. I. A. 393 ... ... 211
Hunt v. Cope, Cwop. 243 ... ... 217, 220
Hureeher Mukkerjee v. Biressur Banerjee, (1866) 6 W. R. (Act X.) ... ... 310
Hureeher Mukkerjee v. Jadoonath Ghose, (1867) 7 W. R. 114 ... 299, 306
Huree Lall Dey Chowdhy v. Soorja Kanta Acherj Chowdhy, (1876) 25 W. R. 222 ... ... 159
Hir Gopal Doss, Baboo v. Ram Gopal Sahee, (1870) 13 W. R. 381 ... 105
Hurish Chunder Dam v. Gunga Dhur Bhuddro, (1876) 25 W. R. 181 ... ... ... 319, 330
Hirish Chunder KoondoO v. Mohinee Mohun Mitter, (1868) 9 W. R. 582 ... ... ... 216
Hurmazi Begum v. Hirdoynarain, (1880) I. L. R. 5 Cal. 921 ... ... 126
Huro Doss Raha v. Traheeram Paul, (1866) 6 W. R. (Act X.) 15 ... 42
Huronath Goopto v. Juggernath Roy Chowdhy, (1869) 11 W. R. 87 149
<table>
<thead>
<tr>
<th>Name</th>
<th>Case Status</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Huro Nath Roy v. Ameer Biswas</td>
<td>1 W. R. 230</td>
<td>291</td>
</tr>
<tr>
<td>Huro Soondhree Chowdhrain v. Anund Mohun Ghose Chowdhry</td>
<td>7 W. R. 459</td>
<td>136</td>
</tr>
<tr>
<td>Huro Doyal Roy Chowdhry v. Mahomed Gazi Chowdhry</td>
<td>10 C. L. R. 699</td>
<td>148</td>
</tr>
<tr>
<td>Huro Gobind Raha v. Ramruto Dey</td>
<td>I. L. R. 4 Cal. 67</td>
<td>273</td>
</tr>
<tr>
<td>Hurr Persad Malee v. Koonjo Behary Shaia</td>
<td>Marsh. 99</td>
<td></td>
</tr>
<tr>
<td>Hurromath Roy v. Chitramoney Dossee</td>
<td>3 W. R. (Act X.) 122</td>
<td>178</td>
</tr>
<tr>
<td>Hurromath Roy v. Gobind Chunder Dutt</td>
<td>23 W. R. 352 133, 134</td>
<td>178</td>
</tr>
<tr>
<td>Huro Sunderi Dossee v. Gopee Sunderi Dossee</td>
<td>(1882)</td>
<td></td>
</tr>
<tr>
<td>Hurryhurst v. Abbas</td>
<td>1 R. J. P. J. 23; 2 Sev. 875</td>
<td>72</td>
</tr>
<tr>
<td>Hurryhurst Mookhopadhyya, Nobikisto Mookerjee and Koylash Chunder Bhattacharjee v. Madhub Chunder Baboo</td>
<td>(1871) 20 W. R. 459</td>
<td></td>
</tr>
<tr>
<td>Hurry Chunder v. Motee Lall Nundee</td>
<td>14 W. R. 36</td>
<td>147</td>
</tr>
<tr>
<td>Huruck Singh v. Toolsee Ram Sahoo</td>
<td>11 W. R. 84</td>
<td>176, 17</td>
</tr>
<tr>
<td>Imambandi Begum v. Kamleswari Pershad</td>
<td>I. L. R. 14 Cal. 109</td>
<td>162</td>
</tr>
<tr>
<td>Imambandi Begum v. Kamleswari Pershad</td>
<td>I. L. R. 21 Cal.</td>
<td></td>
</tr>
<tr>
<td>In re-Bramamayi Bewa</td>
<td>9 B. L. R. 109 (note)</td>
<td>315</td>
</tr>
<tr>
<td>In re-Leslie, L. R. 23 Ch. D 552</td>
<td></td>
<td>128</td>
</tr>
<tr>
<td>In re-Manghan, L. R. 14 Q. B. D. 958</td>
<td></td>
<td>210</td>
</tr>
<tr>
<td>In re-Shrish Chunder Mookhopadhyya</td>
<td>I. L. R. 6 Cal. 161</td>
<td>213</td>
</tr>
<tr>
<td>In re-Soorja Kant Acharj Chowdhry</td>
<td>1. L. R. 1 Cal. 383</td>
<td>159</td>
</tr>
<tr>
<td>In re-Thakoor Chunder Paramanick</td>
<td>B. L. R. Sup. Vol. 595</td>
<td>35, 36</td>
</tr>
<tr>
<td>Ishan Chunder Chattopadhyya v. Shama Churn Dutt</td>
<td>(1883) I. L. R. 10 Cal. 41</td>
<td>314</td>
</tr>
<tr>
<td>Ishan Chunder Roy v. Busarruddin</td>
<td>5 C. L. R. 132</td>
<td>372</td>
</tr>
<tr>
<td>Ishan Chunder Roy, In re (1881) I. L. R. 6 Cal. 707</td>
<td></td>
<td>160</td>
</tr>
<tr>
<td>Ishen Chunder Ghose v. Hurish Chunder Banerjee</td>
<td>18 W. R. 19</td>
<td>314</td>
</tr>
<tr>
<td>Issan v. Tareenice, Sev. 84</td>
<td></td>
<td>157</td>
</tr>
<tr>
<td>Isted v. Stoneby, 1 Anderson 82</td>
<td></td>
<td>227</td>
</tr>
<tr>
<td>Jadub Chunder Haldar v. Ettaree Lushkur</td>
<td>(1863) Marsh 408</td>
<td>373</td>
</tr>
<tr>
<td>Jadub Chunder Holdar v. Etturray Lushkur</td>
<td>3 W. R. (Act X.)</td>
<td>360</td>
</tr>
<tr>
<td>Jadub Ram Deb alias Jadub Chunder Deb v. Ramlochin Muduck</td>
<td>(1866) 5 W. R. 56</td>
<td>111</td>
</tr>
<tr>
<td>Jadub Dass v. Sutherland</td>
<td>I. L. R. 4 Cal. 556</td>
<td>202</td>
</tr>
<tr>
<td>Jagadamba Devi v. Proup Ghose</td>
<td>I. L. R. 14 Cal. 537</td>
<td>338</td>
</tr>
<tr>
<td>Jagjivanand Javerdes v. Inad Ali</td>
<td>(1881) I. L. 6 Bom. 211</td>
<td>272</td>
</tr>
<tr>
<td>Jagut Chunder Roy alias Bashi Chunder Roy v. Rup Chand Changoo</td>
<td>(1832 I. L. R. 9 Cal. 48</td>
<td>239, 240</td>
</tr>
<tr>
<td>James Furlong, Mr. v. Khusroo Mundur</td>
<td>(1867) 7 W. R. 531</td>
<td>78</td>
</tr>
<tr>
<td>Table of Cases Cited</td>
<td></td>
<td></td>
</tr>
<tr>
<td>----------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Janokee Bibe v. Luchmun Pershad, (1872) 17 W. R. 137 ... 78</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Janokee Bullub Chuckerbutty v. Robin Chunder Roy Chowdhry, (1865) 2 W. R. (Act X.) 33 ... 78</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Janoo Mundur v. Brijo Singh, (1874) 22 W. R. 548 ... 240, 241</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jatee Ram Surmah v. Mungloo Surmah, (1867) 8 W. R. 60 ... 298</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jaun Ali v. Jan Ali, (1868) 9 W. R. 149 ... 355</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jawadul Huj v. Ram Das Saha, (1896) I. L. R. 24 Cal. 143 ... 313</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jea Lal Singh v. Gungo Pershad, (1884) I. L. R. 10 Cal. 996 ... 192, 194</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jewun Doss Sahoo v. Shah Kuberoooddeen, (1840) 2 M. I. A. 390 ... 65</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jibanti Nath Khan and Hemandri Nath Khan v. Gokool Chunder Chowdry, (1891) I. L. R. 19 Cal. 760 ... 156</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jogendranarain Roy, Rajah v. Hurry Doss Roy, (1864) W. R. 145 ... 73</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jogeshuri Chowdhrai v. Mahomed Ebrahim, (1886) I.L. R. 14 Cal. 33 ... 234</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Johur Ali, Shaikh v. Brindaban Chunder, (1870) 14 W. R. 10 ... 111</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Joora Gazee v. Aboo Khalifa, (1874) 21 W. R. 427 ... 156</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Joykishen Mookherjee v. The Collector of East Burdwan, (1864) W. R. P. C. 26; 10 M. I. A. 16 ... 254</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Joy Kishen Mookherjee v. Doorganarain Nag, (1869) 11 W. R. 348 ... 300</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Joy Kishen Mookherjee v. Jankeetna Mookherjee, (1872) 17 W. R. 470 ... 159</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Joy Kishen Mookherjee v. Raj Kishen Mookherjee, (1866) 5 W. R. 147 ... 299</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Joynymath Roy v. Lall Bahadour Singh, (1881) I. L. R. 8 Cal. 126 ... 126</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Joykrisna Mukhopadhyya v. Sarlannessa, (1888) I. L. R. 15 Cal. 345 ... 152</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Joymonee Debia v. Imam Buksh Talookdar, (1870) 13 W. R. 471 ... 115</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jubraj Roy v. W. Mackenzie, (1879) 5 C. L. R. 231 ... 239, 240</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judoonath Bhuttacharjee v. Nobokrsto Mookherjee, (1865) 3 W. R. S. C. C. Ref. 2. ... 158</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judoonath Ghose v. Schoene Kilburn &amp; Co., (1883) I. L. R. 9 Cal. 671 ... 242</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judoonath Shahana v. Jadub Churn Thakoor, (1869) 9 W. R. 294 ... 203</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judoonath Sircar v. Bomonalee Mitter, (1865) 2 W. R. 296 ... 77</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Juggessur Buttobyal v. Rajah Roodra Narain Roy, (1869) 12 W. R. 299 ... 212</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Juggobundhoo Shaha v. Promthanath Roy, (1879) I. L. R. 4 Cal. 767 ... 318</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Juggut Chunder Dutt v. Mr. Panioty, (1866) 6 W. R. (Act X.) 48; 9 W. R. 379 ... 367</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Juggut Mohinee Dossee v. Dwarkanath Byasack, (1882) I. L. R. 8 Cal. 582 ... 35</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jugmunh Doss v. Poorno Chunder Roy, (1865) 3 W. R. (Act X.) 133 ... 177</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jugul Kissore Lal Sing Deo v. Kartie Chunder Chattopadhyya, (1892) I. L. R. 21 Cal. 116 ... 190, 214</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jugunnath Gossain v. Mr. J. G. N. Pogose, (1865) 4 W. R. 43 ... 73</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jugut Chunder Roy a. Eshan Chunder Banerjee, (1875) 24 W. R. 220 299,301</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jumeer Gazee v. Goneye Mundul, (1869) 12 W. R. 110 ... 306</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jummajoy Mullick v. Dwarkanath Mytee, (1879) I. L. R. 5 Cal. 287 ... 45</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jutto Moar v. Mussamut Basmuttee Kooer, (1871) 15 W. R. 479 ... 289, 310</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**K.**

| Kabeel Shahe v. Radha Kissen Moulick, (1871) 16 W. R. 146 ... 328 |
| Kabil Sardar v. Chunder Nath Nag Chowdry, (1892) I. L. R. 20 Cal. 590 ... 231, 299, 341 |
| Kadir Gazee, v. Mohadeebee Dossia, (1866) 6 W. R. (Act X.) 48 ... 180 |
| Kadumbenee Dabee v. Nobeen Chunder Adukh, (1865) 2 W. R. 157 ... 223, 301 |
| Kadumbinee Dossia v. Kasheenath Biswas, (1870) 13 W. R., 10,338 217, 220 |
| Kalee Churn Dutt v. Shoshee Dossee, (1864) 1 W. R. 248 ... 96, 261 |
Kalee Churn Singh v. Ameerooodden, (1868) 9 W. R. 379
Kalee Dossundee v. Ramguttee Dutt Sein, (1866) 6 W. R.
(Act X) 10
Kalee Kishen Biswas v. Sreemutty Jankee, (1867) 8 W. R. 250
Kalee Kishore Chatterjee v. Ram Churn Shah, (1868) 9 W. R. 344
Kalee Krishna Deb v. Shashonee Dassee, (1875) 25 W. R. 42
Kalee Mohun Chatterjee v. Kalee Kisto Roy, (1869) 21 W. R., 183
Kalee Mohun Sen v. Ram Soonder Sen, (1875) 24 W. R., 243
Kalee Pershad v. Shah Lutafut Hossein, (1869) 12 W. R., 418
Kali Kishen Tagore v. Golam Ali, (1886) I. L. R., 13 Cal. 3 232, 229, 240
Kali Krishna Tagore v. Fuzle Ali Chowdhry, (1883) I. L. R., 9 Cal. 843 234
Kali Nath Chakrabarti v. Kumar Upendra Chandra Chowdry, (1896) 1 C. W. N., 163; I. L. R., 24 Cal. 212 341
Kali Pershad v. Anand Roy, (1887) I. L. R., 15 Cal. 471 270
Kalley Cundee Chowdhy v. Ruttun Gopal Bhaboodree, (1869) 11 W. R. 571
Kally Persaud Sing v. Hoolas Chund, (1873) 10 B. L. R., 448 36
Kanto Prashad Hazari v. Jagat Chandra Dutt, (1895) I. L. R., 23 Cal. 385
Karim Chowkidar v. Sundar Bewa, (1896) I. L. R., 24 Cal. 207 344
Karool Thakoor v. Luchomeput Doogur, (1867) 7 W. R. 15 285, 300, 366
Kasheenath Lushkur v. Bamassoonduree Debia, (1868) 10 W. R. 429 292
Kasheenath Roy Chowdhy v. Mynuddeen Chowdhy, (1864) 1 W. R. 454 335
Kasheen Singh v. Ouraet, Messrs P. and T. Grant, (1866) 5 W. R. (Act X) 81 307
Kashikant Bhuttacharji v. Rohinkant Bhuttacharji, (1880) I. L. R., 6 Cal. 325 334
Kasinath Koowar v. Bankubehari Chowdhy, (1869) 3 B. L. R., 446 162
Kasheen Chundur Raee, Huree Chundur Raee and Radhanauth Race v. Noor Chundra Dibeea Chowdroin and Bhoobun Mayee Dibeea Chowdrai, S. D. A., (1849) 113 113
Kasumunissa Bibe v. Nilratna Bose, (1881) I. L. R., 8 Cal. 79 190
Kattyani Deba v. Soonduree Deba, (1865) 2 W. R. (Act X) 60 177, 291
Kazee Abdool Mannah v. Buroda Kant Banarjee, (1871) 15 W. R., 394 214
Kedarnath Chuckerbutty v. Mrs. Benjamin Donzelle, (1872) W. R. 352 337
Kedar Nath Mookerjee v. Unnoda Debia, (1864) I. L. R., 25 83
Kedar Nath Nag v. Khetturerpaul Sririruto, (1880) I. L. R., 6 Cal. 34 233
Kenaram Mullick v. Ramcoomar Mookerjee, (1865) 2 W. R. (Act X) 17 178, 292
Ketal Gain v. Nadur Mistree, (1866) 6 W. R., 168 308
Keval Kuber v. Talukdari Settlement Officer, (1877) I. L. R., 1 5om. 586 272
Khetul Chunder Ghose v. Poorno Chunder Roy, (1865) 2 W. R., 258 78
Khellut Chunder Ghose v. The Collector of Bhaugulpore, (1864) W. R. 73 50
Khema Soondaree Dossia v. Nund Koomar Goopto, (1865) 4 W. R., 75 111
Khettur Paul Singh v. Luckhee Narmi Mitter, (1871) 15 W. R., 125 153
Kugendronath Mullick v. Kantee Ram Paul, (1870) 14 W. R., 368 372
Kingsmill v. Millard, 11 Exch. 313 ........................... 221, 222
Kinn Ram Das v. Mozaffer Hosain Shaha, (1887) I. L. R., 14 Cal. 509 ........................... 128
Kirt Chunder Roy v. The Government and Mohenny Mohun Thakooor, (1867) 5 W. R., P. C. 41 ........................... 100
Kokil Singh v. Duli Chund, (1879) 5 C. L. R. 243 ........................... 190, 214
Komolakant Doss v. J. G. N. Pogose, (1865) 2 W. R. (Act X) 65 ........................... 366
Kooldeep Narain Singh v. Government of India, (1873) 11 B. L. R., 71; 14 M. I. A. 247 ........................... 269
Kooldeep Narain Singh, Baboo v. Mohadeo Sing, (1866) 6 W. R., 199 ........................... 266, 272
Koylash Chunder Dutt v. Jubur Ali, (1874) 22 W. R. 29 ........................... 162
Koylash Bashini Dossee v. Gocoolmoni Dossee, (1881) I. L. R. 8 Cal., 230; 10 C. L. R. 41 ........................... 70, 77, 79
Kripa Nath Chakee v. Dyal Chand Pal, (1874) 22 W. R. 169 ........................... 299
Krishno Chunder Goopto v. Meer Sufdur Ali, (1874) 22 W. R. 326 ........................... 138
Krishto Mohun Doss Busshe v. Joy Kishen Mookerjee, (1865) 3 W. R. 33 ........................... 78
Kristendra Roy Chowdhry v. Hena Bews, (1882) 10 C. L. R. 399 ........................... 303
Kristo Chunder Ghose v. Raj Kristo Bandyopadhyya, (1884) I. L. R., 12 Cal. 24 ........................... 191
Kristo Chunder Goopto v. Elahee Buksh, (1873) 20 W. R. 459 ........................... 134
Kristo Chunder Sandel Chowdhry v. Shama Soonduree Debia, (1874) 22 W. R. 520 ........................... 126
Kristo Jeebun Bukshee v. Mr. A. B., Mackintosh, (1864) W. R. 53 ........................... 160
Kristo Mohun Pattur v. Huree Sunkur Mookerjee, (1867) 7 W. R., 235 ........................... 365
Kristo Mohinee Dossee v. Kaliprosono Ghose, (1881) I. L. R. 8 Cal., 402 ........................... 128
Kristo Mottee Debia, Ranee v. Ram Nidhee Sircar, (1868) 9 W. R., 331 ........................... 371
Kumla Sahoy v. Ram Ramotin Neogy, (1869) 11 W. R. 201 ........................... 181
Kunda Misser v. Gunesh Singh, (1871) 15 W. R. 193 ........................... 177
Kustoora Koomaree v. Benoderam Sein, (1865) 4 W. R. Misc. 5 ........................... 263

L.

Laidley v. Gour Gobind Sarkar, (1883) I. L. R. 11 Cal. 591 ........................... 287, 311
Lakshmi v. Chendri, (1884) I. L. R. 8 Mad. 72 ........................... 273
Lal Bahadoor Singh v. Solano, (1883) I. L. R. 10 Cal. 45; 12 C. L. R., 559 ........................... 313, 314, 329
Lal Mahomed v. Kallanus, (1885) I. L. R. 11 Cal. 519 ........................... 337
Lal Shaho v. Deo Narain Singh, (1878) I. L. R. 3 Cal. 781; 2 C. L. R. 294 ........................... 298, 301
Lala Moharuck Lal v. The Secretary of State for India, (1885) I. L. R. 11 Cal. 200 ........................... 109, 110
Lalit Mohun Roy v. Binodai Dabee, (1886) I. L. R. 14 Cal. 14 ........................... 303
Lalit Mohun Shaha v. Srinivas Sen, (1886) I. L. R. 13 Cal. 331 ........................... 153, 201
Lalla Bunseedhur v. Koonwur Bindeseree Dutt Singh, (1866) 10 M. I. A. 454 ........................... 212
<table>
<thead>
<tr>
<th>Case Details</th>
<th>Volume</th>
<th>Bibliographic Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lalla Ishur Dutt v. Bhuka Chowdhry, (1872) 17 W. R. 242</td>
<td>313</td>
<td></td>
</tr>
<tr>
<td>Lauder, Mr. v. Benode Lal Ghose, (1866) 6 W. R. (Act X) 37</td>
<td>178</td>
<td>180</td>
</tr>
<tr>
<td>Ledlie, J. W. v. Sreemutty Doorga Moncey Dossee, (1874) 21 W. R. 313</td>
<td>46</td>
<td></td>
</tr>
<tr>
<td>Lilianand Singh v. Munoranjun Sing, (1874) 13 B. L. R., 124 L. R. I. A. Sup. Vol. 181</td>
<td>186</td>
<td>269, 272</td>
</tr>
<tr>
<td>Lloyd v. Jones, 15 M. &amp; W. 580.</td>
<td>222</td>
<td></td>
</tr>
<tr>
<td>Lokhee Narain Roy Chowdhry v. Kalyppudo Bandopadhya and Shampaupppu Bandopadhya, L. R. 2 I. A. 154</td>
<td>111</td>
<td></td>
</tr>
<tr>
<td>Loll Soonder Doss v. Hurry Kishen Doss, (1862) 1 Marsh, 113</td>
<td>213</td>
<td></td>
</tr>
<tr>
<td>Lootfulhuck v. Gopee Chunder Mojomdar, (1880) I. L. R. 5 Cal. 941</td>
<td>202</td>
<td></td>
</tr>
<tr>
<td>Lopez v. Muddun Mohun Thakoor, (1870) 14 W. R. P. C. 11; 5 B. L. R. 521; 13 M. I. A. 469</td>
<td>50</td>
<td></td>
</tr>
<tr>
<td>Luchmeen Narain Shaha v. Koochil Kant Roy, (1866) 6 W. R. 46</td>
<td>175</td>
<td></td>
</tr>
<tr>
<td>Lukhee Kant Doss Chowdhry v. Sumeerooddi Tustar, (1874) 21 W. R. 208</td>
<td>209</td>
<td></td>
</tr>
<tr>
<td>Luleeta Kooer, Must. v. The Collector of Tirhout, (1873) 19 W. R. 283</td>
<td>107</td>
<td></td>
</tr>
</tbody>
</table>

**M.**

<table>
<thead>
<tr>
<th>Case Details</th>
<th>Volume</th>
<th>Bibliographic Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>MacDonald, L. N. v. Lalla Shib Dyal Singh Panrey, (1873) 21 W. R. 17</td>
<td>211</td>
<td></td>
</tr>
<tr>
<td>Madhub Chunder Adit Chowdhry v. Ram Kalee Beeparee, (1871) 16 W. R. 151</td>
<td>238</td>
<td></td>
</tr>
<tr>
<td>Madhub Chunder Chowdhry v. Rajah Promotho Nath Roy Bahadoor, (1873) 20 W. R. 264</td>
<td>162</td>
<td></td>
</tr>
<tr>
<td>Magaram Ojha v. Rajah Nilmonee Singh Dev, (1871) 21 W. R. 326, 13 B. L. R. 198</td>
<td>150</td>
<td></td>
</tr>
<tr>
<td>Maharajah Dheraj Muhtab Chand Bahadoor v. Chittro Cooomaree Bilee, (1871) 16 W. R. 201</td>
<td>295</td>
<td></td>
</tr>
<tr>
<td>Maharaja Dhereraj Raja Muhtab Chand Bahadoor v. The Government of Bengal, (1850) 4 M. I. A. 466</td>
<td>70</td>
<td></td>
</tr>
<tr>
<td>Maharajah Dheraj Muhtab Chund Bahadoor v. Radhna Binode Chowdhry, (1867) 8 W. R. 517</td>
<td>97</td>
<td></td>
</tr>
<tr>
<td>Maharani v. Benee, 4 S. D. A. 79...</td>
<td>415</td>
<td></td>
</tr>
<tr>
<td>Maharanee Shibbsourse Debia v. Mothooranath Acharjo, (1869) M. I. A. 270</td>
<td>212</td>
<td></td>
</tr>
<tr>
<td>Mahomed Abbas Mandul v. Brojo Sundari Debia, (1891) I. L. R. 18 Cal. 360</td>
<td>144</td>
<td></td>
</tr>
<tr>
<td>Mahomed Abdul Hai v. Gujjraj Sahai, (1893) I. L. R. 20 Cal. 826</td>
<td>98, 105</td>
<td></td>
</tr>
<tr>
<td>Mahomed Akil v. Asadunnissa Bebee, (1867) B. L. R. Sup., Vol. 774; 9 W. R. 1</td>
<td>77, 172</td>
<td></td>
</tr>
<tr>
<td>Mahomed Akter v. Mr. G. M. Reily, (1875) 24 W. R. 447</td>
<td>83</td>
<td></td>
</tr>
<tr>
<td>Mahomed Ameer v. Peryag Singh, (1881) I. L. R. 7 Cal. 566 181, 236, 237</td>
<td>83</td>
<td></td>
</tr>
<tr>
<td>Mahomed Askur v. Mahomed Wasuck, (1874) 22 W. R. 413</td>
<td>107</td>
<td></td>
</tr>
<tr>
<td>Mahomed Azhar v. Raj Chunder Roy, (1893) I. L. R. 21 Cal. 354</td>
<td>76</td>
<td></td>
</tr>
<tr>
<td>Mahomed Gazee Chowdhry v. Lauf Beebee, (1868) 10 W. R. 103</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TABLE OF CASES CITED.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mahomed Gazi v. J. G. Leicester, (1871) 7 B. L. R. 52</td>
<td>111</td>
<td></td>
</tr>
<tr>
<td>Mahomed Gazee Chowdhry v. Pearee Mohun Mookerjee, (1871)</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>W. R. 136</td>
<td>111, 162</td>
<td></td>
</tr>
<tr>
<td>Mahomed Gazee Chowdhry v. Noor Mahomed, (1875) 21 W. R. 324</td>
<td>239</td>
<td></td>
</tr>
<tr>
<td>202, 329</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mahomed Rasid Khan Chowdhry v. Jadoo Mirdha, (1873)</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>W. R. 401</td>
<td>239</td>
<td></td>
</tr>
<tr>
<td>Mahmooda Bebee, Mussamut v. Hureedhun Khuleefa, (1866) 5 W. R.</td>
<td>177</td>
<td></td>
</tr>
<tr>
<td>(Act X) 12</td>
<td>81</td>
<td></td>
</tr>
<tr>
<td>22 Cal. 634</td>
<td>150</td>
<td></td>
</tr>
<tr>
<td>306 of 1891, decided on the 10th Aug. 1892</td>
<td>222</td>
<td></td>
</tr>
<tr>
<td>Maseyk, E. v. Bhagabati Barmanya, (1890) I. L. R. 18 Cal. 121</td>
<td>314</td>
<td></td>
</tr>
<tr>
<td>Matungee Churn Mitter v. Moorrary Mohun Ghose, (1875) I. L. R.</td>
<td>115, 117</td>
<td></td>
</tr>
<tr>
<td>I Cal. 175</td>
<td>155</td>
<td></td>
</tr>
<tr>
<td>Mc Intosh, G. B. v. Jharu Molla, (1894) I. L. R. 22 Cal. 454</td>
<td>222</td>
<td></td>
</tr>
<tr>
<td>Mears v. Perrott, 4 C. &amp; P. 230</td>
<td>208</td>
<td></td>
</tr>
<tr>
<td>Meherban Rawoot v. Behari Lal Barik alias Sham Lal Katri, (1896)</td>
<td>155</td>
<td></td>
</tr>
<tr>
<td>I. L. R. 23 Cal. 679</td>
<td>155</td>
<td></td>
</tr>
<tr>
<td>110</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mellor v. Watkins, L. R. 9 Q. B. 400</td>
<td>242</td>
<td></td>
</tr>
<tr>
<td>92; 2 Hay 356</td>
<td>177, 289</td>
<td></td>
</tr>
<tr>
<td>Miterjeet Singh v. Toondun Singh, (1869) 12 W. R. 14; 3 B. L. R.</td>
<td>151</td>
<td></td>
</tr>
<tr>
<td>App. 84</td>
<td>151</td>
<td></td>
</tr>
<tr>
<td>Mobaruck Lal, Lala v. The Secretary of State for India in Council,</td>
<td>151</td>
<td></td>
</tr>
<tr>
<td>(1885) I. L. R. 11 Cal. 200</td>
<td>151</td>
<td></td>
</tr>
<tr>
<td>Modhoo Soodun Koondoo v. Ramdhun Gangoley, (1869) 12 W. R.</td>
<td>151</td>
<td></td>
</tr>
<tr>
<td>383; 3 B. L. R. 431</td>
<td>151</td>
<td></td>
</tr>
<tr>
<td>Mohabeer Pershad Singh v. The Collector of Tirhoot, (1870)</td>
<td>151</td>
<td></td>
</tr>
<tr>
<td>W. R. 423</td>
<td>151</td>
<td></td>
</tr>
<tr>
<td>Mohabeer Pershad Singh v. The Collector of Tirhoot, (1871)</td>
<td>151</td>
<td></td>
</tr>
<tr>
<td>W. R. 137</td>
<td>151</td>
<td></td>
</tr>
<tr>
<td>Mohadevy Kooer v. Haruk Narain, (1882) I. L. R. 9 Cal. 244;</td>
<td>151</td>
<td></td>
</tr>
<tr>
<td>II C. L. R. 540</td>
<td>116</td>
<td></td>
</tr>
<tr>
<td>Moharanee Inderjeet Koonwur v. Chokew Sahoo, (1863) W. R. Sp.</td>
<td>76</td>
<td></td>
</tr>
<tr>
<td>Vol. 81</td>
<td>245</td>
<td></td>
</tr>
<tr>
<td>Mohesh Chunder Dutt v. Gumga Money Dossuee, (1865) 2 Hay, 495</td>
<td>365</td>
<td></td>
</tr>
<tr>
<td>295, 365</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mohesh Chunder Gangopadhyya v. Bisho Nath Doss, (1875)</td>
<td>316, 317</td>
<td></td>
</tr>
<tr>
<td>24 W. R. 402</td>
<td>204</td>
<td></td>
</tr>
<tr>
<td>Maharajah Mahatap Chand Bahadoor v. The Bengal Coal Co.,</td>
<td>107, 108</td>
<td></td>
</tr>
<tr>
<td>(1868) 10 W. R. 391</td>
<td>116</td>
<td></td>
</tr>
<tr>
<td>Maharajah Nilmoney Sing Deo v. Sheo Tewary, (1864) W. R.</td>
<td>116</td>
<td></td>
</tr>
<tr>
<td>324</td>
<td>273</td>
<td></td>
</tr>
<tr>
<td>Mohima Chunder Dey v. Gooroo Doss Sein, (1867) 7 W. R. 285</td>
<td>136</td>
<td></td>
</tr>
<tr>
<td>Mohima Chunder Sein v. Pitambur Shaha, (1868) 9 W. R. 147</td>
<td>307</td>
<td></td>
</tr>
<tr>
<td>Mohima Chunder Shaha v. Hazari Pramanik, (1889) I. L. R. 17</td>
<td>346</td>
<td></td>
</tr>
<tr>
<td>Cal. 45...</td>
<td>346</td>
<td></td>
</tr>
<tr>
<td>Mohun Loll Tagore v. The Collector of Zillah Tirhoot, (1864)</td>
<td>151</td>
<td></td>
</tr>
<tr>
<td>W. R. 356</td>
<td>109</td>
<td></td>
</tr>
<tr>
<td>Mohur Ali Khan Pathan v. Ram Ruttun Sen, (1874) 21 W. R. 400</td>
<td>316</td>
<td></td>
</tr>
<tr>
<td>343, 316</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mokoondy Lall Doobey v. L. G. Crowdy, (1872) 17 W. R. 274</td>
<td>243</td>
<td></td>
</tr>
<tr>
<td>Monindra Nath Mookerji v. Saraswati Dasi, (1890) I. L. R. 18</td>
<td>372</td>
<td></td>
</tr>
<tr>
<td>Cal. 125</td>
<td>372</td>
<td></td>
</tr>
<tr>
<td>98</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Moolook Chand Mundul v. Modhoosoodun Bachusputty, (1871)</td>
<td>191</td>
<td></td>
</tr>
<tr>
<td>W. R. 126</td>
<td>191</td>
<td></td>
</tr>
<tr>
<td>Mookta Keshee Dossia v. Pearee Chowdhrai, (1867) 7 W. R. 158</td>
<td>191</td>
<td></td>
</tr>
</tbody>
</table>
### Table of Cases Cited

<table>
<thead>
<tr>
<th>Case Details</th>
<th>Volume</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Moorooobbee Sahoo v. Latoo Koomar <em>alias</em> Dyebutter Koomar, (1863)</td>
<td>W. R.</td>
<td>70</td>
</tr>
<tr>
<td>Morgan, Messrs W. v. Anund Chunder Mojomdar, (1866) 6 W. R.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Act X) 35</td>
<td></td>
<td>177</td>
</tr>
<tr>
<td>Morland v. Cook, (1868) I. R. 6 Eq. 22, 252 ; 37 L. J. Ch. 825</td>
<td></td>
<td>226</td>
</tr>
<tr>
<td>Morrison v. Chadwick, 7 C. B. 266</td>
<td></td>
<td>218</td>
</tr>
<tr>
<td>Moss v. Barton, (1866) 35 Beav. 197 ; L. R. 1 Eq. 474</td>
<td></td>
<td>227</td>
</tr>
<tr>
<td>Mothoor Mohun Pal Chowdhry v. Ram Lal Bose, (1878) 4 C. L. R. 469</td>
<td></td>
<td>181, 236, 237</td>
</tr>
<tr>
<td>Mothoornath Sirar v. Nil Monee Deo, (1870) 13 W. R. 297</td>
<td></td>
<td>356</td>
</tr>
<tr>
<td>*Mr. D. M. Gilmore v. Sreemunt Boomick, (1864) W. R. 77</td>
<td></td>
<td>222</td>
</tr>
<tr>
<td>Mr. Peter Nicholl v. Tarinee Churn Bose, (1875) 23 W. R. 298</td>
<td></td>
<td>223</td>
</tr>
<tr>
<td>Mr. James Tweedie v. Poorno Chunder Gangolee, (1869) 12 W. R. 138</td>
<td></td>
<td>356</td>
</tr>
<tr>
<td>Muddomutty Gupte v. Bamasondery Dossees, (1874) 14 B. L. R. 21</td>
<td></td>
<td>211</td>
</tr>
<tr>
<td>Muddun Mohun v. Kartick Nath Panday, (1870) 14 W. R. 335</td>
<td></td>
<td>117</td>
</tr>
<tr>
<td>Muddun Mohun Biswas v. William Stalokart, (1872) 17 W. R. 441</td>
<td></td>
<td>316</td>
</tr>
<tr>
<td>Mukhtar Bahadur v. Brojoraj Chowdhry, (1881) 9 C. L. R. 143</td>
<td></td>
<td>327</td>
</tr>
<tr>
<td>Mumtoz Beebe v. Grish Chowdhry, (1874) 22 W. R. 376 181, 237</td>
<td></td>
<td>237</td>
</tr>
<tr>
<td>Mumee Dutt Singh v. Mr. William Campbell, (1869) 11 W. R. 278</td>
<td></td>
<td>216</td>
</tr>
<tr>
<td>Muneekeurnicka Chowdhraim v. Anund Moyee Chowdhraim, (1867)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mungazee Chaprassee v. Sreehmuty Shibo Soonduree, (1874) 21 W. R. 369</td>
<td></td>
<td>147</td>
</tr>
<tr>
<td>Mugno Moyee Debia v. Huro Chunder Rawut, (1866) 6 W. R. (Act X) 27</td>
<td></td>
<td>176</td>
</tr>
<tr>
<td>Mun Mohun Ghose v. Husrut Sirdar, (1865) 2 W. R. 39</td>
<td></td>
<td>176</td>
</tr>
<tr>
<td>Munrunjun Singh v. Rajah Lelanund Singh, (1865) 3 W. R. 84</td>
<td></td>
<td>266</td>
</tr>
<tr>
<td>Munshi Khadim v. Forlong, 3 R. J. P. J. 327</td>
<td></td>
<td>209</td>
</tr>
<tr>
<td>Munsoor Ali v. Mr. R. Harvey, (1869) 11 W. R. 291</td>
<td></td>
<td>365</td>
</tr>
<tr>
<td>Musharaf Ali v. Ifkhar Hussain, (1888) I. L. R. 10 All. 634</td>
<td></td>
<td>233</td>
</tr>
<tr>
<td>Mussamut Balakee Komaree v. Luckheemonee Dassee, S. D. A. (1850) 349</td>
<td></td>
<td>155</td>
</tr>
<tr>
<td>Mussamut Beebee Chummun v. Mussamut Om Koolsoom, (1876) 13 W. R. 465</td>
<td></td>
<td>126</td>
</tr>
<tr>
<td>Mussamut Beebee Khoobun v. Woma Churn Singh, (178) 3 C. L. R. 453</td>
<td></td>
<td>117</td>
</tr>
<tr>
<td>Mussamut Bunnoo v. Moulvie Ameeroodeen, (1874) 22 W. R. 24</td>
<td></td>
<td>84</td>
</tr>
<tr>
<td>Mussamut Hymobutty Dossee v. Sreekishen Nundee, (1870) 14 W. R. 58</td>
<td></td>
<td>217</td>
</tr>
<tr>
<td>Mussamut Ozeerun v. Baboo Heeranund Sahoo, (1867) 7 W. R. 336</td>
<td></td>
<td>126</td>
</tr>
<tr>
<td>Mussamat Tara Soonduree v. Radha Soondur Roy, (1875) 24 W.R. 63</td>
<td></td>
<td>151</td>
</tr>
<tr>
<td>Mutty Lall Sen v. Deshkar Roy, (1867) 9 W. R. 1</td>
<td></td>
<td>82</td>
</tr>
</tbody>
</table>

### N.

Nafar Chandra Pal Chowdhuri v. Ram Lal Pal, (1894) I. L. R. 22 Cal. 712... 302
Nanack Chand v. Teluckdy Koer, (1879) I. L. R. 5 Cal. 265... 190
Narain Roy v. Omnit Misser, (1882) I. L. R. 9 Cal. 304 ; 11 C. L. R. 417... 330, 331
Narain Singh v. Munsur Raoot, (1876) 25 W. R. 155... 327
<table>
<thead>
<tr>
<th>TABLE OF CASES CITED.</th>
</tr>
</thead>
<tbody>
<tr>
<td>PAGE.</td>
</tr>
<tr>
<td>Narayana Sanabhaga v. Narayana Nayak, (1853) I. L. R. 6 Mad. 327</td>
</tr>
<tr>
<td>Narendra Narain Rai v. Bishnu Chundra Das, (1885) I. L. R. 12 Cal. 182</td>
</tr>
<tr>
<td>Neale v. Mackenzie, (1837) 1 Keen 474</td>
</tr>
<tr>
<td>Nemai Charan Dhalal v. Kokil Bag, (1880) I. L. R. 6 Cal. 534</td>
</tr>
<tr>
<td>Newton v. Allin, 1 Q. B. 517</td>
</tr>
<tr>
<td>Neynum, Mussamut v. Mazuffur Wabid, (1866) II W. R. 265</td>
</tr>
<tr>
<td>Nil Krishna Bose v. Ram Doss Sen, (1873) 20 W. R. 341</td>
</tr>
<tr>
<td>Nil Komul Sen v. Danesh Shaikhu, (1871) 15 W. R. 469</td>
</tr>
<tr>
<td>Nil Madhab Sikdar v. Narattam Sikdar, (1890) I. L. R. 17 Cal 826...</td>
</tr>
<tr>
<td>Nil Monee Singh Deo Bahadoor v. Anunt Ram Patnaik, (1871) 15 W. R. 393</td>
</tr>
<tr>
<td>Nil Monee Singh Deo Bahadoor, Rajah v. Chunder Kant Banerjee, (1876) 14 W. R. 251</td>
</tr>
<tr>
<td>Nilmoney Singh Deo, Rajah v. The Government and Beer Sing, (1872) 18 W. R. 521</td>
</tr>
<tr>
<td>Nilmoni Singh Deo v. Bakranath Singh and The Secretary of State for India in Council, (1882) I. L. R. 9 Cal. 187; L. R. 9 J. A. 104</td>
</tr>
<tr>
<td>Nilmony Dassy v. Sonatun Doshayi, (1887) I. L. R. 15 Cal. 17</td>
</tr>
<tr>
<td>Nin Chand Barooh v. Mooraree Mundul, (1867) 8 W. R. 127</td>
</tr>
<tr>
<td>Nobeen Kishen Mookerjee v. Shib Pershad Pattuck, (1867) 8 W. R. 96</td>
</tr>
<tr>
<td>Nobo Croup Sircar v. Srinath Bundopadhyya, (1882) I. L. R. 8 Cal. 877; 11 C. L. R. 57</td>
</tr>
<tr>
<td>Nobokanty Dey v. Rajah Barodakanty Roy Bahadoor, (1864) 1 W. R. 106</td>
</tr>
<tr>
<td>Nobokishen Bose v. Mazamooddeen Ahmed Chowdhyr, (1873) 19 W. R. 338</td>
</tr>
<tr>
<td>Nobokristo Mukherji v. The Secretary of State for India in Council, (1885) I. L. R. 11 Cal. 632</td>
</tr>
<tr>
<td>Nobokristo Mookerjee v. Koylash Chunder Bhuttacharjee, (1871) 26 W. R. 459; 8 B. L. R. 566; 14 M. I. A. 152</td>
</tr>
<tr>
<td>Nobo Lal Khan v. Maharamee Adhuramee Narain Koonwaree, (1866) 5 W. R. 101</td>
</tr>
<tr>
<td>Noor Mahomed Mundir v. Huriprosonno Roy, (1864) W. R. (Act X) 75</td>
</tr>
<tr>
<td>Nownit Lal v. Radha Kristo Bhuttacharjee, (1895) I. L. R. 22 Cal. 738</td>
</tr>
<tr>
<td>Nubo Tarinee Dossee v. Gray, Mr. J. J., (1869) 11 W. R. 7</td>
</tr>
<tr>
<td>Nuddyar Chand Shaha v. Meajan, (1884) I. L. R. 19 Cal. 820</td>
</tr>
<tr>
<td>Nuffer Chunder Paul Chowdhry v. Jonathan Poulson, (1873) 19 W. R. 175</td>
</tr>
</tbody>
</table>
TABLE OF CASES CITED.

PAGE.

Nund Dumpat v. Tara Chund Prithheebaree, (1865) 2 W. R. (Act X) 13 ... 70
Nundun Lal, Babu v. Smith, Mr. J. S., (1867) 7 W. R. 188 ... 371
Nurendro Narain Roy v. Ishan Chunder Sen, (1874) 22 W. R. 22; 13 B. L. R. 274 ... 299, 340
Nyamutoollah v. Gobind Chunder Dutt, (1865) 4 W. R. (Act X) 25 ... 177
Nyamutoollah Ostagur v. Gobind Churn Dutt, (1866) 6 W. R. (Act X) 40 ... 301

O.

Obhoya Charan Bhooia v. Koilash Chunder Dey, (1887) 1. L. R. 14 Cal. 751 ... 217, 220
Obhoy Chunder Sirdar v. Radha Bullubh Sen, (1878) 1 C. L. R. 549 ... 364
Obhoy Churn Mohapattur v. Kanya Rawut, (1878) 1 C. L. R. 394 ... 319
Obhoy Gobind Chowdhry v. Hury Churn Chowdhry, (1882) 1. L. R. 8 Cal 277 ... 202
Oddoyo Chunder Koondoo v. Prosunno Coomar Bhutacharjee, (1865) 2 W. R. 325 ... 212
Okhoy Ram Janah v. Synd Mahomed Hossein, (1864) W. R. 212 ... 72
Omesh Chunder Roy v. Dukhima Soondry Debea, (1863) W. R. Sp. Vol. 95 ... 70, 80
Oodey Singh v. Paluck Singh, (1871) 16 W. R. 271 ... 117
Ooma Nath Roy Chowdhry v. Rouhoonath Mitter, (1862) W. R. Sp. Vol. 10; 1 Hay 75; Marsh 43 ... 155
Oomanund Roy v. Sreekant Chowdhry, (1873) 21 W. R. 108 ... 48

P.

P. and O. S. N. Co., v. Konnoy Lall Dutt, (1864) 2 Hyde 217 ... 216
Palakdhari Rai v. Manners, (1895) 1. L. R. 23 Cal. 179 ... 299, 300
Pandit Sheo Prakash Misser v. Ram Sahoy Sing, (1871) 8 B. L. R. 165 ... 315
Panioty, Mr. E. O. v. Jugcut Chunder Dutt, (1868) 9 W. R. 379 ... 133
Parbutty Bewah v. Woomatara Dabee, (1874) 14 B. L. R. 201 ... 36
Parker v. Taswell, 27 L. J. Ch. 812 ... 210
Parker v. Webb, 3 Salk 5 ... 226
Peeree Komul Debea v. Meer Dad Alee S. D. A. (1857) 1310 ... 156
Peeree Mohun Dutt v. Radha Madhub Mookerjee, (1868) 10 W. R. 427 ... 177
Peeree Mohun Mookerjee v. Brojo Mohun Bose, (1873) 21 W. R. 36 ... 333
Peeree Mohun Mookerjee v. Brojo Mohun Bose, (1874) 22 W. R. 428 ... 333
Peeree Mohun Mookerjee v. Kaylas Chunder Byragee, (1874) 23 W. R. 58 ... 176
Peeree Mohun Mookerjee v. Raj Kristo Mookerjee, (1873) 20 W. R. 385 ... 372
Peezeeroooddeen v. Modhusoodun Paul Chowdhry, (1865) 2 W. R. (F. B.) 15 ... 77
Pelaram Kotal v. Nund Coomar Chutteram, (1866) 6 W. R. (Act X) 45 ... 355
Perig v. Madhu, A. O. D. Nos. 84 and 97 of 1887 decided 25th June 1889 ... 415
Peter Nicholl, Mr. v. Tarinee Churn Bose, (1875) 23 W. R. 298 ... 301
Pitambur Panda v. Damoodur Dass, Baboo, (1875) 24 W. R. 129 ... 148
### TABLE OF CASES CITED.

<table>
<thead>
<tr>
<th>Case Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pitchakutti Chetti v. Kamala Nayakkan, (1863)</td>
<td>215</td>
</tr>
<tr>
<td>Piziruddin v. Madhusudan Pal Chowdhry, (1865)</td>
<td>172</td>
</tr>
<tr>
<td>Pogose, W. G. N. v. Rajoo Dhopee, (1874)</td>
<td>316, 317</td>
</tr>
<tr>
<td>Poolin Beharee Sein v. Neemaye Chand, (1867)</td>
<td>177</td>
</tr>
<tr>
<td>Pran Bundhoo Sirdar v. Surbo Soonduree Debia, (1868)</td>
<td>10 W. R.</td>
</tr>
<tr>
<td>Pran Kissan Bagchee v. Monmohinee Dasses, (1871)</td>
<td>171</td>
</tr>
<tr>
<td>Pran Nath Shaha v. Modhu Khulu, (1886)</td>
<td>231</td>
</tr>
<tr>
<td>Premsookh Raece v. Kishoon Govind Biswas, S. D. A.</td>
<td>153</td>
</tr>
<tr>
<td>Premamud Ghose v. Shoorendra Nath Roy, (1873)</td>
<td>317, 318</td>
</tr>
<tr>
<td>Prem Chand Nuskur v. Mokshoda Debi, (1887)</td>
<td>202</td>
</tr>
<tr>
<td>Prem Sahoo v. Shaikh Nyamut Ali, (1866)</td>
<td>177</td>
</tr>
<tr>
<td>Priag Lall v. Brockman, Mr. J. G., (1870)</td>
<td>355</td>
</tr>
<tr>
<td>Profullah Chunder Bose v. Samiruddin Mondul, (1894)</td>
<td>22</td>
</tr>
<tr>
<td>Cal.</td>
<td>337</td>
</tr>
<tr>
<td>Pureejan Khatoon v. Bykunt Chunder Chuckerbutty, (1867)</td>
<td>366</td>
</tr>
<tr>
<td>Puremanund Sein v. Puddomonee Dossia, (1868)</td>
<td>371</td>
</tr>
<tr>
<td>Puroma Soonduree Dossee v. Prolad Chunder Dass, (1869)</td>
<td>209</td>
</tr>
<tr>
<td>Putheeram Chowdhry v. Kuthe Narain Chowdhry, (1864)</td>
<td>50</td>
</tr>
<tr>
<td>Q.</td>
<td></td>
</tr>
<tr>
<td>Queen Empress v. Ramji Sojaborao, (1885)</td>
<td>55</td>
</tr>
<tr>
<td>Queen Empress v. The Grand Junction Railway Co.</td>
<td>280</td>
</tr>
<tr>
<td>R.</td>
<td></td>
</tr>
<tr>
<td>Radha v. Juggutt, 4 S. D. A.</td>
<td>212</td>
</tr>
<tr>
<td>Radha Gobind Koe v. Rakhal Das Mukherji, (1885)</td>
<td>12 Cal.</td>
</tr>
<tr>
<td>Radha Gobind Roy v. Kyamutoollah, Talookdar, (1874)</td>
<td>239, 240, 292, 312</td>
</tr>
<tr>
<td>Radha Kisto Singh, Rajah v. Radha Munghi, (1863)</td>
<td>179, 291</td>
</tr>
<tr>
<td>Radha Moye Dey Chowdhry v. Aghore Nath Biswas (1876)</td>
<td>70</td>
</tr>
<tr>
<td>Radha Nath Sircar v. Binodee Paul, (1865)</td>
<td>177</td>
</tr>
<tr>
<td>Radha Pershad Misser v. Monohur Das (1880)</td>
<td>213</td>
</tr>
<tr>
<td>Radha Pershad Singh v. Budha Dashad, (1895)</td>
<td>133</td>
</tr>
<tr>
<td>Radheeka Chowdrain v. Rammohun Ghose, (1864)</td>
<td>272, 273</td>
</tr>
<tr>
<td>Page</td>
<td>TABLE OF CASES CITED</td>
</tr>
<tr>
<td>------</td>
<td>----------------------</td>
</tr>
<tr>
<td>176</td>
<td>Radhika Chowdrain v. Bamasundari Dasi, (1869) 4 B. L. R. (P. C.) 8 133. 134</td>
</tr>
<tr>
<td>171</td>
<td>Radhika Prosunno Chunder v. Urjoon Majhee, (1873) 20 W. R. 128 335</td>
</tr>
<tr>
<td>178</td>
<td>Raghub Chunder Banerjee v. Brojo Nath Koonoo Chowdhry, (1870) 14 W. R. 489 147. 160</td>
</tr>
<tr>
<td>240</td>
<td>Rai Komul Dossee v. Laidley, J. W. (1875) l. L. R. 4 Cal. 957 ... 222, 287, 311</td>
</tr>
<tr>
<td>177</td>
<td>Raj Chunder Roy v. Kishen Chunder alias Kinoo Lahoree, (1865) 4 W. R. (Act X) 16 ... 371</td>
</tr>
<tr>
<td>171</td>
<td>Raj Chundra Chuckerbatty v. Kinoo Khan, (1882) l. L. R. 8 Cal. 329 ... 109</td>
</tr>
<tr>
<td>178</td>
<td>Raj Coomar Roy Koonwur v. Assa Beebee, (1865) 3 W. R. (Act X) 170 ... 177</td>
</tr>
<tr>
<td>146</td>
<td>Raj Kishore Mookerjee v. Hureehur Mookerjee, (1868) 10 W. R. 117 202</td>
</tr>
<tr>
<td>153</td>
<td>Raj Kisto Singh v. Gocool Chunder Bose, S. D. A. (1857) 920 ... 153</td>
</tr>
<tr>
<td>204</td>
<td>Rajmohon Mitter v. Gooro Churn Aych, (1866) 6 W. R. (Act X) 106 ... 204</td>
</tr>
<tr>
<td>191</td>
<td>Raj Narain Mltra v. Ananta Lal Mondul, (1892) l. L. R. 19 Cal. 703 ... 146, 148, 152</td>
</tr>
<tr>
<td>156</td>
<td>Raj Narain Roy Chowdary v. Mrs. Olivia Atkins, (1864) 1 W. R. 45 177</td>
</tr>
<tr>
<td>204</td>
<td>Raj Narain Roy v. Woomeesh Chunder Gooptoo, (1867) 8 W. R. 444 ... 204</td>
</tr>
<tr>
<td>145</td>
<td>Raja Lelanund Singh Bahadour v. The Government of Bengal, (1855) 6 M. I. A. 101 ... 427, 249, 264</td>
</tr>
<tr>
<td>152</td>
<td>Raja Lilanund Singh v. Munorunjun Singh, (1874) 13 B. L. R. 124 ... 186, 269, 272</td>
</tr>
<tr>
<td>105</td>
<td>Raja Nilmani Singh v. Madhab Singh, (1868) l. B. L. R., (A. C.) ... 259, 263</td>
</tr>
<tr>
<td>152</td>
<td>Rajah Sahib Prahlad Sen v. Baboo Budhu Sing, (1869) 2 B. L. R. 111 ... 162</td>
</tr>
<tr>
<td>78</td>
<td>Rajah Barodakant Roy v. Sookmoy Mookerjee, (1864) l. W. R. 20 ... 78</td>
</tr>
<tr>
<td>112</td>
<td>Rajah Deedar Hossein v. Ranee Zuhoor-oon Nissa, (1841) 2 M. I. A. 441 ... 112</td>
</tr>
<tr>
<td>266</td>
<td>Rajah Neelanund Singh v. Surwan Singh, (1866) 5 W. R. 292 ... 266</td>
</tr>
<tr>
<td>259</td>
<td>Rajah Nilmonee Singh v. Bukronath Singh, (1866) 10 W. R. 255 ... 259</td>
</tr>
<tr>
<td>274</td>
<td>Rajah Nilmonee Singh Deo v. Kashee Mahtoon, (1876) 25 W. R. 266 ... 274</td>
</tr>
<tr>
<td>135</td>
<td>Rajah Nilmonoy Singh Bahadour v. Ram Chuckerbatty, (1874) 21 W. R. 439 ... 135</td>
</tr>
<tr>
<td>159</td>
<td>Rajah Protap Chunder Singh v. Bisen Chunder Roy, S. D. A. (1859) 1216 ... 159</td>
</tr>
<tr>
<td>274</td>
<td>Rajah Ramnassur Nath Singh v. Golamee Sahoo, (1875) 24 W. R. 309 ... 274</td>
</tr>
<tr>
<td>72</td>
<td>Rajkishen Roy v. Dhone Beebee, (1862) l Hay 421 ... 72</td>
</tr>
<tr>
<td>89</td>
<td>Rajkishen Singh, Rajah, v. Ramjoy Surnia Mozoomdar, (1872) 16 W. R. 8 ... 89</td>
</tr>
<tr>
<td>144</td>
<td>Rajendro Kishore Narain Singh, Maharajah v. Doonga Koonwar, Mussanmut, (1867) 1 W. R. 154 ... 144</td>
</tr>
<tr>
<td>114</td>
<td>Rajendranath Mookhopadhyya v. Bassider Ruhanin Khondkar, (1876) 1. L. R. 2 Cal. 146 ... 114</td>
</tr>
<tr>
<td>139</td>
<td>Rajessuree Debia v. Shibnath Chatterjee, (1865) 4 W. R. (Act X) 42 ... 139</td>
</tr>
<tr>
<td>98</td>
<td>Rakhal Chandra Rai Chowdlurii v. The Secretary of State for India in Council, (1865) 6 l. L. R. 12 Cal. 603 ... 98</td>
</tr>
<tr>
<td>316</td>
<td>Rakhal Das Adhy v. Dinomoyi Debi, (1869) l. L. R. 16 Cal. 652 ... 316</td>
</tr>
<tr>
<td>178</td>
<td>Rakhal Doss Bose v. Shikhh Golam Surwur, (1865) 2 W. R. (Act X) 69 ... 178</td>
</tr>
<tr>
<td>370</td>
<td>Rakhal Doss Mookerjee v. Tunoo Pramanick, (1867) 7 W. R. 239 ... 370</td>
</tr>
<tr>
<td>176</td>
<td>Rakhal Doss Tewace v. Kinooram Holdar, (1867) 7 W. R. 242 ... 176, 177</td>
</tr>
<tr>
<td>225</td>
<td>Ram Baran Ram v. Salig Ram Singh, (1886) l. L. R. 2 All. 866 ... 225</td>
</tr>
<tr>
<td>171</td>
<td>Ram Buksh Chuntanglea v. Hridoy Monee Debia, (1868) 10 W. R. 446 ... 171</td>
</tr>
<tr>
<td>114</td>
<td>Ram Bushan Mahto v. Jebli Mahto, (1882) l. L. R. 8 Cal. 853 ... 114</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>TABLE OF CASES CITED.</th>
</tr>
</thead>
<tbody>
<tr>
<td>PAGE.</td>
</tr>
<tr>
<td>Ram Chand Bera v. Government, The, (1879) 6 C. L. R. 365</td>
</tr>
<tr>
<td>Ramchunder Dutt v. Jugheschunder Dutt, (1873) 12 B. L. R. (P. C.)</td>
</tr>
<tr>
<td>Ram Chunder Roy v. Bholanath Lushkur, (1874) 22 W. R. 200</td>
</tr>
<tr>
<td>Ram Chunder Sany v. Bunseedhur Naik, (1883) 1 L. R. 9 Cal. 741</td>
</tr>
<tr>
<td>Ram Chunder Shaha v. Collector of Mymensingh, (1874) 22 W. R. 48; Sev. 794</td>
</tr>
<tr>
<td>Ram Chunder Singh v. Raja Joher Jumma Khan, (1875) 14 B. L. R. App. 7</td>
</tr>
<tr>
<td>Ram Chunder Singh Ghatwal v. Rajah Mamomed Jowhuruzma Khan, (1874) 23 W. R. 376</td>
</tr>
<tr>
<td>Ram Chung v. Gora Chand Chung, (1875) 24 W. R. 344</td>
</tr>
<tr>
<td>Ram Churn Bundopadhyya v. Sreemutty Deroo Moyee Dossee, (1872)</td>
</tr>
<tr>
<td>Ram Churn Sing v. Dhaturi Sing, (1890) 1 L. R. 18 Cal. 146</td>
</tr>
<tr>
<td>Ram Coomar Dhrana v. Bhoyrub Chunder Mookerjee, (1866) 6 W. R. (Act X) 33</td>
</tr>
<tr>
<td>Ram Dayal Sing v. Latcme Narayan Baboo, (1870) 6 B. L. R. App. 25; 14 W. R. 388</td>
</tr>
<tr>
<td>Ram Debul Lall v. Mitterjeet Singh, (1872) 17 W. R. 420</td>
</tr>
<tr>
<td>Ramdhun Khan v. Haradun Puramanick, (1869) 12 W. R. 404</td>
</tr>
<tr>
<td>Ram Gobind Roy v. Syud Kushhuffidoza, (1871) 15 W. R. 141</td>
</tr>
<tr>
<td>Ramjoy Ghose v. Ram Runjun Chuckerbutty, (1881) 8 C. L. R. 367</td>
</tr>
<tr>
<td>Ram Khelawon Singh v. Mussamut Soondria, (1867) 7 W. R. 152</td>
</tr>
<tr>
<td>Ram Kishore Mundul v. Chand Mundul, (1866) 5 W. R. (Act X) 84</td>
</tr>
<tr>
<td>Ram Kishwur Ghose v. Kishen Mohun Choudree, S. D. A., (1845) 155</td>
</tr>
<tr>
<td>Ram Kristo Dass v. Sheikh Harain, (1882) 1 L. R. 9 Cal. 517</td>
</tr>
<tr>
<td>Ram Lal Patak v. Dina Nath Patak, (1895) 1 L. R. 23 Cal. 200</td>
</tr>
<tr>
<td>Ram Lochun Sircar v. Deenonath Paul, (1865) 2 W. R. 279</td>
</tr>
<tr>
<td>Ram Logan Ojha v. Bhawani Ojha, (1886) 1 L. R. 14 Cal. 9</td>
</tr>
<tr>
<td>Ram Mohun Banerjee v. Radha Nath Punah, S. D. A. (1850) 320</td>
</tr>
<tr>
<td>Ram Mungul Ghose v. Lukhee Narian Shaha, (1864) 1 W. R. 71</td>
</tr>
<tr>
<td>Ram Narain Chuckerbutty v. Poolin Behary Lall Singh, (1878) 2 C. L. R. 5</td>
</tr>
<tr>
<td>Ram Narain Doss v. Tweedie, Mr. James, (1869) 12 W. R. 161</td>
</tr>
<tr>
<td>Ram Narain Lall v. Gumbeer Singh, (1873) 19 W. R. 108</td>
</tr>
<tr>
<td>Ram Narain Singh Deo Bahadoor v. Bistoo Thakoor, (1871) 15 W. R. 299</td>
</tr>
<tr>
<td>Ram Nidhee Manjee v. Parbutty Dassee, (1889) 1 L. R. 5 Cal. 823</td>
</tr>
<tr>
<td>Ram Ranjan Chakerbati v. Ram Narain Singh, (1894) 1 L. R. 22 Cal. 533; L. R. 22 I. A. 60</td>
</tr>
<tr>
<td>Ram Rotton Mundul v. Keto Kally Dassee, (1878) 1 L. R. 4 Cal. 339</td>
</tr>
<tr>
<td>Ram Runginee Dossee v. Gooroo Doss Roy, (1874) 22 W. R. 212</td>
</tr>
<tr>
<td>Ram Rutno Sircar v. Chunder Mookhee Dabee, (1865) 2 W. R. (Act X) 74</td>
</tr>
<tr>
<td>Ram Sabuk Bose v. Non Mohoni Dossee, (1874) 2 L. R. 2 I. A. 71;</td>
</tr>
<tr>
<td>Ram Sarun Sahoo v. Veryag Mahtont, (1876) 25 W. R. 554</td>
</tr>
<tr>
<td>Ram Shanker Rae v. Prem Sook Rae, S. D. A. (1849) 473</td>
</tr>
<tr>
<td>Ranee Doorga Soonduree Dossee v. Biben Omdadoonissa, (1872) 17 W. R. 151</td>
</tr>
<tr>
<td>Ranee Shama Soonduree Debia v. Koer Puresh Narain Roy, (1873) 20 W. R. 182</td>
</tr>
<tr>
<td>Ranee Shooret Soondry Dabee v. Binny, Mr. Charles, and others (1876) 25 W. R. 347</td>
</tr>
<tr>
<td>TABLE OF CASES CITED.</td>
</tr>
<tr>
<td>-----------------------</td>
</tr>
<tr>
<td>Ranee Tillessuree Kooper v. Ranee Asmedh Kooper, (1873) 24 W. R. 101</td>
</tr>
<tr>
<td>Rani Durgi Sundari Dasi v. Bibi Umadatannissa, (1872) 9 B. L. R. 101</td>
</tr>
<tr>
<td>Rani Swarnamoyi v. Shoshi Mukhi Barmani, (1868) 2 B. L. R. (P.C.) 10; I. L. A. 244</td>
</tr>
<tr>
<td>Rash Behari Bundopadhya v. Peary Mohun Mookerjee, (1878) 11 L. R. 4 Cal. 346</td>
</tr>
<tr>
<td>Rash Behari Ghose v. Ram Coomar Ghose, (1874) 22 W. R. 487</td>
</tr>
<tr>
<td>Rashmonee Debea v. Hurronath Roy, (1864) 1 W. R. 280</td>
</tr>
<tr>
<td>Rusham Beebee v. Bissonath Sircar, (1866) 6 W. R. (Act X) 57</td>
</tr>
<tr>
<td>Reazooddeen Mahomed v. McAlpine, Mr. R., (1874) 22 W. R. 540</td>
</tr>
<tr>
<td>Reazoonnissa Beebee v. Motee Sing, (1869) 12 W. R. 135</td>
</tr>
<tr>
<td>Reazoonnisa, Mussumut v. Tookun Jha, (1868) 16 W. R. 246</td>
</tr>
<tr>
<td>Reed, Mr. A. v. Sreekishen Singh, (1871) 15 W. R. 430</td>
</tr>
<tr>
<td>Kidgway v. Wharton, (1854) 3 De Gex, M. &amp; G. 677</td>
</tr>
<tr>
<td>Roe v. Hailey, (1830) 12 East 404</td>
</tr>
<tr>
<td>Roghooobun Tewaree v. Bishen Dutt Dobey, (1865) 2. W. R. (Act X) 92</td>
</tr>
<tr>
<td>Roma Nath Rakheet v. Dhookhee Sham Bhooya, (1869) 11 W. R. 510</td>
</tr>
<tr>
<td>Romesh Chunder Dutt v. Modhoo Soodun Chuckerbutty, (1866) 5 W. R. 252</td>
</tr>
<tr>
<td>Rowshun Bibe v. Chunder Madhub Kur, (1871) 16 W. R. 177</td>
</tr>
<tr>
<td>Rubinussa v. Gooljan Bibeec, (1890) 11 L. R. 17 Cal. 829</td>
</tr>
<tr>
<td>Run Bahadoor Singh, Baboo v. Muloornum Tewaree, (1867) 8 W. R. 149</td>
</tr>
<tr>
<td>Rungolall Deo v. Deputy Commissioner of Beerbhum, (1862) Marsh, 117</td>
</tr>
<tr>
<td>Rung Lall Sahoo v. Sreedhur Doss, (1869) 11 L. R. 293; 3 B. L. R. App. 27</td>
</tr>
<tr>
<td>Rung Lall Singh v. Lalla Roodur Pershad, (1872) 17 W. R. 386</td>
</tr>
<tr>
<td>Rung Loil Sahoo v. Mussut Bhoneshun, (1864) 1 W. R. 109</td>
</tr>
<tr>
<td>Rushun, Mr. H. v. Atkinson, Mr. W. L., (1869) 11 W. R. 485</td>
</tr>
<tr>
<td>Russick Loll Mudduck v. Lokenath Kurmokar, (1880) I. L. R. 5 Cal. 688</td>
</tr>
<tr>
<td>Rutun Monee Dossee v. Jotendro Mohun Tagore, Baboo, (1866) 6 W. R. (Act X) 31</td>
</tr>
<tr>
<td>Rutun Monee Dutt v. Brojo Mohun Dutt, (1874) 22 W. R. 11</td>
</tr>
<tr>
<td>S.</td>
</tr>
<tr>
<td>Sadhu Saran Singh v. Panchdeo Lal, (1866) I. L. R. 14 Cal. 1</td>
</tr>
<tr>
<td>Samiraddi Khalifa v. Haris Chandra Kurmokar, (1869) 3 B. L. R. (A.C.) 49</td>
</tr>
<tr>
<td>Samsar Khan v. Lochin Dass, (1866) I. L. R. 23 Cal. 854</td>
</tr>
<tr>
<td>Santeeram Panjiah v. Bykunt Parya, (1873) 19 W. R. 280</td>
</tr>
<tr>
<td>Sarbananda Basu Mozundar v. Pran Sankar Roy Chowdhuri, (1888) I. L. R. 15 Cal. 527</td>
</tr>
<tr>
<td>Sarodapersad Roy Chowdhry v. Nobinchund Dutt, (1804) Marsh, 417</td>
</tr>
<tr>
<td>Saroda Soonthuree Debee v. Hazee Mahomed Mundul, (1866) 5 W. R. (Act X) 78</td>
</tr>
<tr>
<td>...</td>
</tr>
<tr>
<td>Case</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Sartuk Chunder Dey v. Bhugut Bharat Chunder Singh, S. D. A. (1853)</td>
</tr>
<tr>
<td>Savl, Mr. R. v. Mohesh Chunder Bose, (1864) W. R. (Act X) 29</td>
</tr>
<tr>
<td>Savl, Mr. Thomas v. Obhoy Nath Bose, (1865) 2 W. R. (Act X) 27</td>
</tr>
<tr>
<td>Savl, Thomas v. Punchanun Roy, (1876) 25 W. R. 503</td>
</tr>
<tr>
<td>Savitrivra v. Anandav, (1875) 12 Bom. H. C. 224</td>
</tr>
<tr>
<td>Secretary of State v. Ash tumurthi, (1888) I. L. R. 13 Mad. 89</td>
</tr>
<tr>
<td>Secretary of State v. Anandomoyi Debi, Rani (1881) I. L. R. 8 Cal. 95</td>
</tr>
<tr>
<td>Secretary of State v. Fahamidannissa Begum, (1889) I. L. R. 17 Cal. 590</td>
</tr>
<tr>
<td>Secretary of State v. Guru Proshad Dhur, (1892) I. L. R. 20 Cal. 51</td>
</tr>
<tr>
<td>Secretary of State v. Marjum Hosein Khan, (1895) I. L. R. 11 Cal. 359</td>
</tr>
<tr>
<td>Secretary of State v. Nundun Lall, (1884) I. L. R. 10 Cal. 435</td>
</tr>
<tr>
<td>Secretary of State v. Rasbehary Mookerjee, (1882) I. L. R. 9 Cal. 591</td>
</tr>
<tr>
<td>Seth Chitor Mal v. Shib Lal, (1893) I. L. R. 14 All. 273</td>
</tr>
<tr>
<td>Shadhoor Singh v. Ramanoograh Lall, (1868) 9 W. R. 83</td>
</tr>
<tr>
<td>Shaikh Ahmed Hosein v. Mussamut Bandee, (1871) 15 W. R. 91</td>
</tr>
<tr>
<td>Shaikh Ashraf v. Ram Kishore Ghose, (1875) 23 W. R. 289</td>
</tr>
<tr>
<td>Shaikh Ghogoolee r. Shaik Muzur Hossein, (1875) 24 W. R. 389</td>
</tr>
<tr>
<td>Shaikh Omar v. Aikdool Gufoor, (1868) 9 W. R. 425</td>
</tr>
<tr>
<td>Sham Chand Koondoo v. Brojonath Pal Chowdhry, (1873) 21 W. R. 94 ; 12 B. L. R. 484</td>
</tr>
<tr>
<td>Sham Churn Koondoo v. Dwarka Nath Kubeeraj, (1873) 19 W. R. 100</td>
</tr>
<tr>
<td>Sham Jha v. Doorga Roy, (1867) 7 W. R. 122</td>
</tr>
<tr>
<td>Sham Lal Ghose v. Muddun Gopal Ghose, (1866) 6 W. R. (Act X) 37</td>
</tr>
<tr>
<td>Sham Lal Ghose v. Sekunder Khan, (1865) 3 W. R. 182</td>
</tr>
<tr>
<td>Sham Narain Chowdhry v. The Court ofWARDS, (1875) 23 W. R. 432</td>
</tr>
<tr>
<td>Sharat Chunder Burmon v. Hurgobindo Burmon, (1878) I. L. R. 4 Cal. 510</td>
</tr>
<tr>
<td>Sheeb Chunder Mahneh v. Brojonath Aditya, (1870) 14 W. R. 301</td>
</tr>
<tr>
<td>Sheikh Busseerooddeen v. Shib Persad Chowdhry, (1864) W. R. 170</td>
</tr>
<tr>
<td>Sheikh Ekram v. Bebee Buhooran, (1865) 2 W. R. (Act X) 69</td>
</tr>
<tr>
<td>Saeekh Golam Hyder v. Rajah Poorno Chunder Roy, (1865) 3 W. R. (Act X) 147</td>
</tr>
<tr>
<td>Sheikh Jainooddeen v. Poorno Chunder Roy, (1867) 8 W. R. 129</td>
</tr>
<tr>
<td>Sheikh Mahomed Chaman v. Ramprasad Bhagat, (1872) 8 B. L. R. 328</td>
</tr>
<tr>
<td>Sheikh Rahmatulla v. Sheikh Saritulla Kagochi (1868) I B. L. R. 58</td>
</tr>
<tr>
<td>10 W. R. (F.B.) 51</td>
</tr>
<tr>
<td>Sheikh Moheem v. Ruheemotollah, Shaik, (1863) 2 Hay 433</td>
</tr>
<tr>
<td>Shekaat Hostin v. Sasi Kar, (1892) I. L. R. 19 Cal. 753</td>
</tr>
<tr>
<td>Sheobun Lal v. Ram Purtup Singh, (1865) 3 W. R. (Act X) 20</td>
</tr>
<tr>
<td>Sheo Pershad Sookool v. Shunkur Sahoy, (1871) 16 W. R. 190</td>
</tr>
<tr>
<td>Sheo Sahoy Panday v. Ram Rachia Roy, (1891) I. L. R. 18 Cal. 333</td>
</tr>
<tr>
<td>Sheppard v. Allen, 3 Tanat 78</td>
</tr>
<tr>
<td>Shib Lall Sing v. Moorad Khan, (1868) 9 W. R. 126</td>
</tr>
<tr>
<td>Shokoor Ali v. Umola Ahalya, (1867) 8 W. R. 504</td>
</tr>
<tr>
<td>Shoorender Mohun Roy v. Bhuggobut Churn Gungopadhya, (1872) 18 W. R. 332</td>
</tr>
<tr>
<td>TABLE OF CASES CITED.</td>
</tr>
<tr>
<td>------------------------</td>
</tr>
<tr>
<td>Shoshi Bhoshun Bose v. Girish Chunder Mitter, (1893) I. L. R. 20 Cal. 940</td>
</tr>
<tr>
<td>Showdarmee Dossee v. Haran Chunder Surmeh, (1866) 6 W. R. (Act X) 103</td>
</tr>
<tr>
<td>Showdarmee Dasse v. Shookool Mahomed, (1867) 7 W. R. 94</td>
</tr>
<tr>
<td>Shunkurputtee Thakoorain, Mussamut v. Mirza Saifooliah Khan, (1872) 18 W. R. 507</td>
</tr>
<tr>
<td>Shuroop Chunder Bhoomick v. Rajah Pertab Chunder Singh, (1867) 7 W. R. 218</td>
</tr>
<tr>
<td>Siboo Jelya v. Gopal Chunder Chowdhry, (1873) 19 W. R. 200</td>
</tr>
<tr>
<td>Sikker Chund v. Dulpatty Singh, (1879) I. L. R. 5 Cal. 363</td>
</tr>
<tr>
<td>Sitanath Panda v. Pelaram Tripati, (1894) I. L. R. 21 Cal. 869</td>
</tr>
<tr>
<td>Soman Gope v. Raghubir Ojha, (1896) I. L. R. 24 Cal. 160</td>
</tr>
<tr>
<td>Sona Beebee v. Lall Chand Chowdhry, (1868) 9 W. R. 242</td>
</tr>
<tr>
<td>2 W. R. 91</td>
</tr>
<tr>
<td>Sonaton Ghose v. Moulovie Abdul Turrub, (1865) 2 W. R. (F. B.) 205</td>
</tr>
<tr>
<td>Sonet Kooer v. Himmut Bahadoor, (1876) I. L. R. 1 Cal. 391</td>
</tr>
<tr>
<td>Soodha Mookhee Dassee v. Ram Guttee Kurmokar, (1872) 20 W. R. 419</td>
</tr>
<tr>
<td>Soodishee Lall Chowdhry v. Nuthoo Lall Chowdhry, (1867) 8 W. R. 487</td>
</tr>
<tr>
<td>Soorasonderee Dabaa v. Golam Ali, (1873) 19 W. R. 142</td>
</tr>
<tr>
<td>Soorjomonee Dossee v. Pearce Mohun Mookerjee, (1876) 25 W. R. 331</td>
</tr>
<tr>
<td>Spencer, Mr. H. v. Pehul Chowdhry, (1871) 15 W. R. 471</td>
</tr>
<tr>
<td>Sree Nubudee Chunder Sircar v. Lalla Sheeb Loll, (1863) Marsh 325</td>
</tr>
<tr>
<td>Sreemunt Lall Ghose v. Shama Soonduree Dossee, (1866) 12 W. R. 276</td>
</tr>
<tr>
<td>Sreemunt Ram Dey v. Kookoor Chand, (1871) 15 W. R. 431</td>
</tr>
<tr>
<td>Sreemutty Doorgamonkee Gooptra v. Gobind Chunder Sen, S. D. A. (1862) 260</td>
</tr>
<tr>
<td>Sreemutty Oodoy Monee Debee v. Bisho Nath Dutt, (1867) 7 W. R. 14</td>
</tr>
<tr>
<td>Sreemutty Wooma Soonduree v. Kishoree Mohun Banerjee, (1867) 8 W. R. 238</td>
</tr>
<tr>
<td>Sreemutty Zulfun Beebee v. Radhica Prosombo Chunder, (1878) 1 C. L. R. 388</td>
</tr>
<tr>
<td>Sreeram Bose v. Bissonath Ghose, (1865) 3 W. R. (Act X) 3</td>
</tr>
<tr>
<td>Sreeram Chatterjee v. Lakhun Magilla, (1863) Marsh 379; 2 Hay 427</td>
</tr>
<tr>
<td>Srees Chunder Doss v. Assimonissa, (1867) 7 W. R. 234</td>
</tr>
<tr>
<td>Sreesteedhur Gosal v. Prannath Chowdree, S. D. A. (1858) 170</td>
</tr>
<tr>
<td>Sreesteedhur Dey v. Doorga Narain Nair, (1872) 17 W. R. 462</td>
</tr>
<tr>
<td>Sri Maharajath Krishan Pertap Sahi v. Tripe, Mr. J. R., (1897) 1 C. W. N. cclxxix</td>
</tr>
<tr>
<td>Srimati Jannaba v. Girish Chundra Chuckerbutty, (1871) 7 B. L. R. App. 44</td>
</tr>
<tr>
<td>Srinath Hazra v. Ramdhun Hazra, S. D. A. (1859) 267</td>
</tr>
<tr>
<td>Srinath Mookerjee v. Moharajah Mahatap Chund Bahadoor, S. D. A. (1860) 326</td>
</tr>
<tr>
<td>Srishteedhur Biswas v. Mudan Sirdar, (1883) 11 I. L. R. 9 Cal. 648</td>
</tr>
<tr>
<td>Subbaraya Kamti v. Krishna Kamti, (1882) I. L. R. 6 Mad. 159</td>
</tr>
<tr>
<td>Sudanundo Mytee v. Nowruttun Mytee, (1871) 16 W. R. 289</td>
</tr>
<tr>
<td>Suddye Puriria v. Boistab Puriria, (1871) 15 W. R. 261</td>
</tr>
<tr>
<td>Sumeera Khatoon v. Gopal Lal Tagore, Baboo, (1864) 1 W. R. 58</td>
</tr>
</tbody>
</table>
### TABLE OF CASES CITED.

<table>
<thead>
<tr>
<th>Case</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sunduri Dassee v. Mudhoo Chunder Sircar, (1887) I. L. R. 14 Cal.</td>
<td>83</td>
</tr>
<tr>
<td>Surahutoonissa Khanum v. Gyaneek Buktour, (1869) II W. R. 142</td>
<td>355</td>
</tr>
<tr>
<td>Surbanund Pandey v. Ruchia Pandey, (1865) 4 W. R. 32</td>
<td>370</td>
</tr>
<tr>
<td>Surendra Narain Singh v. Bhai Lal Thakur, (1895) I. L. R. 22 Cal.</td>
<td>208, 209</td>
</tr>
<tr>
<td>Surendronath Pal Chowdhry v. Tineowri Dasi, (1892) I. L. R. 20 Cal.</td>
<td>190</td>
</tr>
<tr>
<td>Suresh Chandra Mukhopadhya v. Akkori Sing, (1893) I. L. R. 20 Cal.</td>
<td>152</td>
</tr>
<tr>
<td>Surnomoyee Dassya v. The Land Mortgage Bank of India, Limited, (1881) I. L. R. 7 Cal. 173</td>
<td>157</td>
</tr>
<tr>
<td>Surnomoyi Debia v. Grish Chunder Moitra, (1891) I. L. R. 18 Cal. 363</td>
<td>147, 150</td>
</tr>
<tr>
<td>Surno Moyee Dossee v. Baboo Khan Mundul, (1868) 9 W. R. 270</td>
<td>177</td>
</tr>
<tr>
<td>Surya Kant Acharya Bahadur v. Hemant Kumari Devi, (1889) I. L. R. 16 Cal. 706</td>
<td>81, 114</td>
</tr>
<tr>
<td>Sutteeschunder Roy Bahadoor, Maharaja v. Modhoosoodun Paul Chowdhry, (1864) W. R. (Act X) 91</td>
<td>241</td>
</tr>
<tr>
<td>Suttyabhamas Dassee v. Krishna Chunder Chatterjee, (1880) I. L. R. 6 Cal. 55</td>
<td>231, 314</td>
</tr>
<tr>
<td>Syed Ahmed Riza v. Aghori, (1868) 2 B. L. R., S. N., xv</td>
<td>347</td>
</tr>
<tr>
<td>Syed Jeshan Hossein v. Bakur, (1865) 3 W. R. (Act X) 3</td>
<td>375</td>
</tr>
<tr>
<td>Syed Sufdar Reza v. Amzad Ali, (1881) I. L. R. 7 Cal. 703</td>
<td>210</td>
</tr>
<tr>
<td>Syud Ameer Hossein v. Sheo Suhor, (1873) 19 W. R. 338</td>
<td>314</td>
</tr>
<tr>
<td>Syud Emam Montazudddeen Mahomed v. Raj Coomar Doss, (1875) 23 W. R. 187</td>
<td>190</td>
</tr>
</tbody>
</table>

### T.

<table>
<thead>
<tr>
<th>Case</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tabboonissa Bibee v. Koomar Sham Kishore Roy, (1887) 15 W. R. 228</td>
<td>212</td>
</tr>
<tr>
<td>Tamaya Bin Annaya v. Timapa Ganpaya, (1883) I. L. R. 7 Bom. 262</td>
<td>183, 231</td>
</tr>
<tr>
<td>Tara Chunder Banerjee v. Ameer Mundul, (1874) 22 W. R. 394</td>
<td>333</td>
</tr>
<tr>
<td>Taramonee Dassee, Mussamut v. Birressur Mozoodar, (1864) 1. W. R. 86</td>
<td>300</td>
</tr>
<tr>
<td>Tara Pershad Roy v. Soorjo Kant Acharjee Chowdhry, (1872) 15 W. R. 152</td>
<td>299</td>
</tr>
<tr>
<td>Tara Soondury Burmoniya v. Shibeshur Chatterjee, (1866) 6 W. R. (Act X) 51</td>
<td>291</td>
</tr>
<tr>
<td>Tareenee Persad Ghose v. Kallee Churn Ghose, (1862) 2 Hay 90; Marsh. 215</td>
<td>83</td>
</tr>
<tr>
<td>Tarinee Kant Lahore Chowdhry v. Kalee Mohun Surmah Chowdhry, (1865) 3 W. R. (Act X) 123</td>
<td>177</td>
</tr>
<tr>
<td>Tarinee Kant Lahore v. Koonj Beharee Awustee, (1869) 12 W. R. 112</td>
<td>134</td>
</tr>
</tbody>
</table>
# TABLE OF CASES CITED.

<table>
<thead>
<tr>
<th>Case Details</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tarini Charan Bose v. Debnarayan Mistri, (1871) 8 B. L. R. App. 69</td>
<td>223</td>
</tr>
<tr>
<td>Tarini Mohun Mozumdar v. Gunga Prosad Chuckerbutty alias Tincowrie Chuckerbutty, (1887) I. L. R. 14 Cal. 649</td>
<td>217, 220</td>
</tr>
<tr>
<td>Taru Patur v. Abinash Chunder Dutt, (1878) I. L. R. 4 Cal. 79</td>
<td>46</td>
</tr>
<tr>
<td>Tarucknath Mookerjee v. Meylee Biswas, (1866) 5 W. R. (Act X) 17</td>
<td>370</td>
</tr>
<tr>
<td>Tekaet Doorga Pershad Singh v. Tekaetnee Doorga Kooree, (1873) 20 W. R. 154</td>
<td>259</td>
</tr>
<tr>
<td>Thakoor Churn Roy v. The Collector of the 24-Pergunnahs, (1870) 13 W. R. 336</td>
<td>105, 109, 110</td>
</tr>
<tr>
<td>Thakoor Jeetnath Saheee Deo v. Lokenath Saheee Deo, (1873) 19 W. R. 239</td>
<td>415</td>
</tr>
<tr>
<td>Thakoarancee Dossee v. Bisheshur Mookerjee, (1865) 3 W. R. (Act X) 29</td>
<td>259</td>
</tr>
<tr>
<td>The Nawab Nazim of Bengal v. Ram Lal Ghose alias Jugumbhdeo Ghose, (1866) 6 W. R. (Act X) 5</td>
<td>46</td>
</tr>
<tr>
<td>The Secretary of State v. Foran Singh, (1878) I. L. R. 5 Cal. 740</td>
<td>259</td>
</tr>
<tr>
<td>Thomas Savi v. Punchanun Roy, (1870) 25 W. R. 593</td>
<td>313</td>
</tr>
<tr>
<td>Thursby v. Plant, (1809) 1 Wns. Saund 250a...</td>
<td>225</td>
</tr>
<tr>
<td>Tikaram Sing v. Mrs. Anne Sandes, (1874) 22 W. R. 335</td>
<td>355</td>
</tr>
<tr>
<td>Tiluck Pattuck v. Mohabeer Pandey, (1878) 15 W. R. 454</td>
<td>307</td>
</tr>
<tr>
<td>Tirbhobun Sing v. Jhono Lall, (1872) 18 W. R. 266</td>
<td>303</td>
</tr>
<tr>
<td>Toullmin v. Steere, (1817) 3 Mer. 210</td>
<td>229</td>
</tr>
<tr>
<td>Tripp, Mr. H. D. v. Kalee Doss Mookerjee, (1864) W. R. (Act X) 122</td>
<td>296</td>
</tr>
<tr>
<td>Tulshi Pershad Singh v. Ram Narain Singh, (1885) I. L. R. 12 Cal. 117; I. R. 12 I. A. 205</td>
<td>164, 185</td>
</tr>
<tr>
<td>Tweedie Mr. J. v. Ram Narain Dass, (1868) 9 W. R. 151</td>
<td>371</td>
</tr>
</tbody>
</table>

## U.

<table>
<thead>
<tr>
<th>Case Details</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uddoy Aditya Deb v. Jadub Lal Aditya Deb, (1879) I. L. R. 5 Cal. 113; I. L. R. 8 Cal. 199</td>
<td>415, 416</td>
</tr>
<tr>
<td>Uma Churn Bag v. Ajadammissa Bibe, (1885) I. L. R. 12 Cal. 430</td>
<td>163</td>
</tr>
<tr>
<td>Uma Churn Dutt v. Uma Tara Delee, (1867) 8 W. R. 181</td>
<td>285, 306</td>
</tr>
<tr>
<td>Umbika Debia v. Pranhuress Doss, (1869) 13 W. R. 475; 4 B. L. R. (F. B.) 77</td>
<td>153, 154</td>
</tr>
<tr>
<td>Underhill v. Horwood, (1864) 10 Ves. 209</td>
<td>214</td>
</tr>
<tr>
<td>Unnoda Churn Dass Biswas v. Mothura Nath Dass Biswas, (1879) I. L. R. 4 Cal. 866</td>
<td>155</td>
</tr>
<tr>
<td>Unnoda Persad Roy v. Erskine, (1873) 12 B. L. R. 370</td>
<td>152</td>
</tr>
<tr>
<td>Unnopoorna Dossia v. Ooma Churn Doss, (1872) 18 W. R. 55</td>
<td>299</td>
</tr>
<tr>
<td>Unnopoorna Dossee v. Radha Mohun Patro, (1873) 19 W. R. 95</td>
<td>308</td>
</tr>
<tr>
<td>Upton v. Townend, 17 C. B. 30</td>
<td>220</td>
</tr>
</tbody>
</table>
TABLE OF CASES CITED.

V.

Venkataramanier v. Ananda Chetty, (1869) 5 Mad. H. C. 120 ... 242
Venkata Somayazulu v. Kannam Dhora, (1882) I. L. R. 5 Mad. 184 ... 213
Vivian v. Mout, (1881) L. R. 16 Ch. D. 730 ... ... 232

W.

Wahed Ali v. Sadiq Ali, (1872) 17 W. R. 417 ... ... 178
Walsh v. Lonsdale, (1882) L. R. 21 Ch. D. 9 ... 209, 210
Ward v. Day, 33 L. J. O. B. 18 ... ... 234
Watson, Messrs. R. & Co. v. Anjuna Dossee, (1868) 10 W. R. 107 ... 176
Watson & Co. v. Choto Joora Mundul (1862) Marsh. 68 ... ... 176
Watson, R. & Co. v. The Collector of Rajshahye, (1869)
12 W. R. (P. C.) 43 ; 3 B. L. R. (P. C.) 41 ; 13 M. L. A. 160 ... 145, 160
Watson, Messrs. R. & Co. v. Nund Lall Sircar, (1874) 21 W. R. 420 ... 298
Watson, Messrs. R. & Co. v. Shurut Soonduree Debia, Ranee, (1867)
7 W. R. 395 ... ... 329
Watson, & Co. v. Sreekristo Bhumick, (1893) I. L. R. 21 Cal. 132 ... 333
Webb v. Dixon, (1867) 9 East. 15 ... ... 227
Webb v. Plummer, (1819) 2 B. & A. 746 ... ... 285
Whitmore v. Humphries, L. R. 7 C. P. 1 ; 48 L. J., C. P., 43 ... 221
Wiglesworth v. Dallison, 1 Doug. 201 ; 1 Smith’s L. C. 528 ... 215
Wise, Josiah Patrick v. Bhooobun Moyee Debia, (1863-65) 10 M. I. A.
165 ... ... ... 135
Wise, Mr. J. P. v. Ram Chunder Bysack, (1867) 7 W. R. 415 ... 371
Witham v. Kershaw, (1816) 16 Q. B. Div. 613 ... ... 182, 201
Woomesh Chunder Chatterjee v. The Collector of the 24-Pergunnahs,
(1867) 8 W. R. 439 ... ... 106, 107, 108, 109
Womesh Chunder Gupto v. Raj Narain Roy (1868) 10 W. R. 15 ... 223
1198 ... ... ... 149, 150
Woodoyaditto Deb, Rajah v. Mukoond Narain Aditto, Baboo, (1874)
22 W. R. 225. ... ... 415, 417
Woodoy Narain Sein v. Tarinee Churn Roy, (1869) 11 W. R. 496 ... 171
Wooma Churn Set v. Huree Pershad Misser, (1868) 10 W. R. 101 ;
1 B. L. R., S. N., 7 ... ... 300, 348
Wooma Kant Sircar v. Gopal Singh, (1865) 2 W. R. (Act X ) 19 ... 311
Wooma Moyee Burmoyen v. Bokoo Behara, (1870) 13 W. R. 333 ... 314
Wooma Nath Roy Choudhury v. Ashumburee Bewa, (1869) 12 W. R.
476 ... ... ... 356
Wooma Nath Tewaree v. Koondun Tewaree, (1873) 19 W. R. 177 222, 313

Y.

Yeshwada Bai v. Ram Chandra Takuram, (1893) I. L. R. 18 Bom. 66 ... 35
<table>
<thead>
<tr>
<th>Name of Case</th>
<th>Date</th>
<th>Volume</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zahrun v. Gowri Sunkar</td>
<td>(1887)</td>
<td>I. L. R.</td>
<td>15 Cal. 198</td>
</tr>
<tr>
<td>Zerkalee Kooer v. Lalla Doorga Pershad</td>
<td>(1871)</td>
<td>16 W. R. 149</td>
<td>...</td>
</tr>
<tr>
<td>Zoolfun Bibe v. Radhica Prosonno Chunder</td>
<td>(1878)</td>
<td>I. L. R. 3 Cal. 560 ; 1 C. L. R. 318</td>
<td>...</td>
</tr>
<tr>
<td>Zuheeroodeen Paikar v. Campbell, Mr. J. D.</td>
<td>(1865)</td>
<td>4 W. R. 57</td>
<td>...</td>
</tr>
</tbody>
</table>
ERRATA.

p. 56, footnote 5, for 1893 read 1793.
76, l. 9. for VIII read IX.
footnotes 3, 4, 5, 6, for VIII read VII.
70, l. 14. for 1765 read 1763.
81, footnote 5, for VIII (B.C.) read VIII.
82, footnotes 1, 3, 4, for IX read VIII.
96, l. 5. for 1873 and XVI of 1874 read 1874 and XII of 1873.
99, footnote 1, for VIII read IX.
115, l. 4. for VIII read VIII (B.C.)
119, l. 3. for VII read VIII.
128, footnote 5, for VIII (B.C.) read VIII.
129, footnotes 1, 2, for VIII (B.C.) read VIII.
216, footnote 4, for 1877 read 1879.
422, lls. 3, 7, for II read VI.
The Land-Law of Bengal.

LECTURE I.

INTRODUCTION.

The Land Tenures of Lower Bengal formed the subject of the Tagore Law Lectures for the year 1874-75. The present course of lectures on the Land Law of Bengal will cover much the same ground, and I have the advantage of having the learned lectures on Land Tenures to help and guide me. But the subject is one of great importance, and high authorities have said that it is incapable of satisfactory treatment. Besides, oriental scholars, both in India and Europe, have, since the year 1875, succeeded in discovering by their indefatigable labours many of the juridical ideas about rights in land that prevailed in ancient India. The texts of our sages and the various commentaries thereon have, almost all of them, been now published and translated into English. The large mass of information collected by the Rent Commission resulted in the enactment of the Bengal Tenancy Act of 1885, which has materially altered the law of Landlord and Tenant in many of the districts in the Lower Provinces of Bengal. Add to all this, the judge-made laws and the expositions of codified and customary laws that we find in the twenty-one volumes of the Indian Law Reports published since the learned lectures on Land Tenures were delivered.

The Tagore Law Lectures on Land Tenures (1874-5).

Researches and changes since 1875.
Following the usual practice, I must begin these lectures by saying a few words about the ancient notion in India as to the origin of property in land—a notion which is not quite archaic, as it is still prevalent amongst the people, wherever Mahomedan or British influence has not been much felt. "A field," says Manu,¹ "is his who clears it of jungle, game is his who has first pierced it." The later Roman jurists held the same opinion as regards the origin of property in land. Modern jurists have, by the adoption of the historical method of investigation, come to the conclusion that this notion about proprietary right in land is without foundation. But the illustration given in the Digest² is curiously the same as that given in Manu. "Wild beasts, birds, fish, and all animals which live either in the sea, the air, or on the earth, so soon as they are taken by any one, immediately become, by the law of nations, the property of the captor, for natural reason gives to the first occupant that which had no previous owner."³

The great Prophet of Arabia said, "Whoever cultivates waste lands does thereby acquire property in them." The Mahomedan jurists differ in their interpretations of this text of the Koran. According to Abu Haneefah, the mere cultivation of waste land is not enough to create a real right in the cultivator: the permission of the chief is necessary for the acquisition of proprietary right. But his disciples Abu Yusoof and Mahammed, both of whom were judges under the celebrated Caliph Harun-al Rashid, maintain that no permission of the chief is necessary to make the cultivator the proprietor. They say that waste lands are "a sort of common goods and become the property of the cultivator in virtue of his being the first possessor, in the same manner as in the case of seizing

¹ "शानि चिदं धनान निषा प्रायत्तिकम्"—Manu Chap. IX, p. 44.
² Digest, Chap. XLI, 11.
game or gathering fire wood.” It may be said that the Mahomedan Jurists who were familiar with the writings of the Roman Juris-consults, the Digest and the Pandects, borrowed this notion of proprietary right in land from the Eastern Empire and accepted the theory without much consideration. The words of the Prophet, however, are significant, as we have no reason to believe that he himself had access to the theoretical doctrines that prevailed in later days in the Eastern Empire.

Blackstone’s theory is well-known and does not require repetition. It is only an amplification of what the ancient lawyers accepted as the origin of the idea of proprietary right.

Sir Henry Maine, in his well-known work on Ancient Law, has discussed at length this theory of the origin of proprietary right, and he comes to the conclusion that though “this theory, in one form or another, is acquiesced in by the great majority of speculative jurists, the application of the principle of occupancy to land dates from the period when the *jus gentium* was becoming the code of nature, and that it is the result of a generalization effected by the Juris-consults of the golden age.”

The great German jurist, Von Savigny, has dwelt at length upon the Roman theories about possession and *prehension* and the rights acquired thereunder, and it is stated that he was of opinion that property arose from “adverse possession ripened by prescription.” But it does not appear that he agreed in the view of the Roman lawyers.

It is unnecessary to enter here into the debatable ground as to the origin of property in land, and, for myself, I would feel extremely diffident in expressing any opinion on a point on which great authorities

---

1 Hamilton’s Hedaya Book XLV. 3.
2 Maine’s Ancient Law, Chap. VIII, pp. 246—247.
have not agreed. It is enough for me to say that the juristical conceptions of the Indian sages, who lived and thought at a time when Rome was in its infancy, were identical with the notions accepted in other countries in later times. This notion about the origin of proprietary right in land was firmly established in India. The great Indian poet Bharavi says:

"To whom do wild animals belong? They are his who first pierces them." It should be remembered that the Indian sages and lawgivers seldom made any distinction between movable and immovable property. Our Aryan fathers, whether the theory of migration from Central Asia is believed or not, had in Aryavarta a vast quantity of land, uncultivated and not unlikely covered with virgin forest. They were fond of agriculture and called themselves tillers (ri to till), in contradistinction to the barbarians inhabiting the forests and hill tracts around, who lived upon the precarious fruits of hunting and the still more precarious natural products of the earth. Premium was necessarily given to agriculture, and he who took possession of land, cleared it and tilled it, was the person entitled to hold it on unmolested.

But notions about proprietary right could hardly find place amongst people in the earlier stages of civilization. They are due to juridical refinement. The great Indian sages did not turn their attention to the theory; they took a practical view of proprietary right. Earth, according to them, was common property just as air or water;—a right to portions of it accrued from occupancy. The right was not to the soil but to the usufruct. They made no distinction in principle between res nullius and res communes. Jaimini's aphorism, which, according to
European authorities, was composed many centuries before Christ, is—"Earth cannot be given away as it is common to all."¹ Savara discussing the question of the right of the king to give away his kingdom in the sacrifice (Yajna) known as Viswajit, and commenting on the aphorism says—"Earth is the common property of all human beings; though there may be occupiers of particular portions of it, none can be the owner of the whole earth."² Sayana also commenting on this aphorism says:—"The soil is the common property of all and they through their own efforts enjoy the fruits thereof. Therefore it follows that though pieces of land belonging to particular individuals may be given away, the earth cannot be given away (even by the king)."³ To Roman Jurists "things capable, by appropriation, of becoming the objects of private property, but originally belonging to none, would be *res nullius*, and what belonged to no one would become the property of the first one that takes possession of it."⁴ The Indian idea would seem to indicate that land was communal property. Sir Henry Maine and jurists of his school are also of opinion that in India land was considered to be communal property. *Res communes*, according to Roman Law, included property belonging

¹ "न भूमि: स्वतः सत्तानुण् प्रवृतिशिष्टलात्” ।
Mimansa Bhashya VI. 7. 2.

² "वेदाणामोक्तारी सनुप्या हैक्षणेः
न्तु कन्यकुष्य प्रवृतिशिष्टलात्” ।
Nayamdála Vistara p. 358.

³ तथा भूमि स्वकर्षक्षां भूभागानांस्
सवेष्यं प्रतिशिष्ट वाधारणेः। खलोस-
साधारणस्य भूसृष्ट्वम सलयिद दानि
महामेदोदि नाल्सा।

⁴ D. XLI. III.; Gaius II. 66; Hunter on Roman Law p. 256.
INTRODUCTION.

exclusively to the public in which no private right could be created, as the seashore or the right of fishing in the sea. On the other hand, occupation might create right in communal property, and by continual occupation even underground rights might be acquired by the occupier.¹

Amongst the non-Aryan races in India, who are thought to be the aboriginal inhabitants, the idea still clings that kings are only entitled to rent;—land whether cultivated or waste belongs to the people. The Mundas of Chotanagpur, who claim as a nation to be the first occupiers of the soil, are so strong in their opinion that they have contested in courts of law the right of the Rajas (the Nag family) to let out on lease the forests which afford timber. The Mundas think that they have exclusive right to the timber which grows in the primeval forests of the hill tracts, and the king or zemindar is only entitled to levy tax.

From the tenor of deeds, of undoubted antiquity, of sales and alienations of estates, to be found in the Mackenzie Collections, and from the traces of individual proprietary right discovered in Canara, Tanjore and other parts of the country, in which the Mussulman Government was never or only partially established, there is every reason to conclude that this right of the subject to the ownership of land was universally recognised by ancient Hindu kings.² Private property in land seems to have been recognised as a sacred right, which even the hand of despotism would rarely violate.

The right, according to Hindu law, of the first person who makes beneficial use of the soil, was recognised by some of the Judges of the Calcutta High Court in

¹ Hunter on Roman Law p. 310; Sandars' Justinian Book II, tit. I.
the well-known case of Thakurani Dasi v. Bisweswar Mukherjie\(^1\) and by the Madras High Court in two cases from Malabar.\(^2\) Sir Charles Turner, the then Chief Justice of Madras said—"According to what may be termed the Hindu common law, a right to the possession of land is acquired by the first person who makes a beneficial use of the soil. The crown is entitled to assess the occupier with revenue, and if a person who has occupied land omits to use it and the claim of the crown to revenue is consequently affected, the sovereign is entitled to take measures for the protection of the revenue. Whether the practice which has obtained in certain districts of requiring a person, who desires to cultivate waste land to apply to the local revenue officer for permission to do so, has abrogated in those districts the Hindu law, or whether it may be justified by the establishment in those districts before British Rule of the analogous doctrine of the Mahomedan law, we consider it unnecessary to determine in this suit, for we have found that the land appertains to the district of Malabar, and we agree with the judge that there is no presumption in that district and in those tracts administered as a part of it that forest lands are the property of the crown."

What, then, was the right which the king or chief had in the land in his kingdom? The Hindu Sages said, and said repeatedly, that the sovereign was not the proprietor of the soil. He was entitled to a share of the usufruct of the lands in the occupation of his subjects, not because he was the owner, but because a share was payable to him as the price for the protection afforded to life, liberty and property. The records of Hindu thought from the earliest times point


\(^2\) Secretary v. Vira I. L. R. 9. Mad. 175; Secretary v. Ashtamurti I. L. R. 13 Mad 93.
to one conclusion. In the tenth Mandal of the Rig Veda occurs the passage—"May Indra ordain that your subjects pay only to you tax (Vali)."

Narada, apparently commenting on this text, defines Vali in his Smriti—"Both the other customary receipts of a King and what is called the sixth of the produce of the soil form the royal revenue, the reward (of a king) for the protection of his subjects."

European scholars have agreed in asserting that the Rig Veda is the earliest record, we have, of human thought, habits, manners and customs, especially of the Eastern Aryans. They say that the sacred hymns were composed at a time when our Aryan fathers were just leaving a nomadic life and were taking to agriculture as the principal means of subsistence. I do not ask you to accept the theory that these hymns were composed about fourteen hundred years before the birth of Christ. To me, as to many of you, these hymns are of divine origin, but accepting as true the conclusions of the European scholars, the text and the gloss of Narada show that even at this earliest stage of civilization, when the king was really the dominus, he had no right to the soil,—he was paid only for the protection he afforded.

The later sages are unanimous in this theory of the king's right. I give you only the references without comment. The texts of Manu are well known.

---

1 "अथ त इः; कैवल्यार्थिभो वलिहृत्जयत्"
VIII. 8. 173.

2 "भयाराजार्थिवाहूः: पद्मामसहितात् "
विख्यते: स तथ विख्यति: प्रेमायपनविनितन् ||
Narada Smriti Ch. XVIII. v. 48. Sacred Books of the East, Vol. XXXIII, p. 221.

3 Manu Ch. VII, v. 130; Chap. X, v. 120; Chap. X, v. 118.
valkya repeats the same idea in verses 335 and 337.\(^1\) Apastamba\(^2\) also enunciates the same doctrine of the king’s right. Vasishtha, speaking of the king’s right, agrees in the opinion of the other sages.\(^3\) The Vishnu Smriti, which is said to be an ancient Dharmasutra, speaking of the king’s duties, says:—“He must take from his subjects as tax a sixth part of every ear of the paddy.”\(^4\)—“A sixth part of flesh, honey, clarified butter, herbs, perfumes, flowers, roots, fruits, liquids and condiments, wood, leaves (of the palmyra tree and others), skins, earthen pots, stone vessels and anything made of split bamboo.”\(^5\)

I ought to have mentioned earlier the name of Baudhayana, as his language would show that his Dharmasutra was of a more ancient date. He says:—“Let the king protect his subjects, receiving a sixth part.”\(^6\)

It is needless to quote any further texts on the subject. It is enough to say that even Parasara, who is said to be the latest of the Sutra writers, agrees in saying:—“He (the king) receives taxes, and therefore

---

\(^1\) वर्तमानाः कुरूलि यतं किवित्त्व किविः प्रजा।।
मथायव विपतेरय यथाकालायसी करान् ॥ 335

\(^2\) Apastamba Chap. II, 10-26-9.

\(^3\) Chap. XIX 26-27.

\(^4\) प्रजामीवेक्षायं संवेंद्रवरिण धारयत: पद्ममण्डमादयात्।
Vishnu Smriti V. 22.

\(^5\) मांसमपवृतीपिधिगतभुपभुषा।लपलरसः
द्रापविजनमुद्भाषाग्रामाण्डवेद्यमाय पद्मभागम्
Vishnu Smriti V. 25.

\(^6\) “पड्मभागभृती राजा रचेत् प्रजा।।
Buhler p. 192.
he should protect his subjects from thieves and others.”¹

I would only add that the authorities are not unanimous as to the king’s share of the grain. The opinion of most of the text writers is that it is the sixth, but you will find when you go through all of them that sometimes an eighth, tenth and even a twelfth is considered as proper. Gautama says:—“Cultivators must pay to the king a tax amounting to one-tenth, one-eighth or one-sixth of the produce.”²

Let us now see what later Indian authorities have said on this important subject. I would once more draw your attention to the Mimansa Aphorism of Jaimini, which I have already quoted, and Savara’s and Sayana’s commentaries thereon. Savara, discussing the question of the king’s right in the passage to which I have already referred you, says:—“He (the king) cannot make a gift of his kingdom as it is not his, as he is entitled only to a share of the produce by reason of his affording protection to his subjects”;³ and Sayana adds, —“A king’s sovereignty lies only in his punishing the wicked and protecting the good.”⁴ I need hardly say that Sayana, known better and far more widely for his commentaries of the Vedas, is said to have lived about the fourteenth century of the Christian era. The word Bhumipati or Bhupati means the protector of the earth. This was such a well-recognised idea that you will find that in many Sanskrit books

¹ अष्टाध्यायपत्र राजा तम्भराशिसयः ।
संवेचने मध्ये राजान्य राजाः सर्वायं न करान्।
Vrihat Parasara.

² Gautama Ch. X. v. 24.

³ सार्वभोमलध्य लोतद्विकं यथा पृथिवियमेव सम्बन्धादीनां राज्येनां
निविदितवहि भागश्री किस्में न मे:।

⁴ दुर्लक्षाष्टिपदिर्दिगनात् राज इश्वरश्च न निदितवः ।
न राजीभुं

मिध्यनं, किंतु सभाः मुखी सक्षमान्यस्मि सम्मानात्मैव प्राप्तिः साधारण धनम्।
the word 'king' is used as synonymous with the expression, "the appropriator of a sixth of the produce."¹ Even so late as the fifteenth century of the Christian era, when the Mahomedan Government was firmly established in Bengal and Mahomedan ideas about the relationship between the king and the subject, as contained in their books on law, were well known and well recognised, Srikrishna Tarkalankar in his commentary on the Dayabhaga of Jimuta Vahana says,—"By conquest and other means a king acquiring a kingdom has no other rights over his subjects than that of collecting taxes."²

But you should remember that the Mahomedan conquest of India was never complete. Either from necessity or idleness, the conquerors did not disturb the existing state of things they found in the country. They did not materially interfere with the fiscal system based on the old Brahminical ideas—a system which had prevailed for thousands of years before they planted the crescent on the Indian soil. Abu Haneefa and Abu Yusooof and their other great Jurists, who thought and wrote under the early Caliphs, made little impression, at all events, no permanent impression, on the Indian fiscal system. The crescent was floating in the air triumphantly marking the conquest by the followers of the Prophet; but they introduced no changes in the conquered country except such as necessarily followed a Government headed by men professing a religion almost diametrically opposed to the Brahminical creed.

The Aryans were essentially agriculturists and cultivators and, as we have seen, they took pride in the art in which they excelled the aboriginal races around them. It was not then a disgrace, a cause of shame,

¹ श्रीकृष्ण भास्कर।

² अनंतर राज्यान्तरिकारिणः सकाशात् अन्यप्रतिना कीौं राज्यान्तरादैं विक्रियाश्रेण: सजातीय सर्वश्रेष्ठोर्काम म्भत्यामेव तथ्य जायते।

Srikrishna on Dayabhaga.
as unfortunately it now seems to be, to hold the plough and "break the stubborn glebe." In those early days there must have been many a Cincinnatus in Aryyavarta. But this state of things could not last long. Either from necessity, or from indolence, or from an abundance of Sudra labourers, subletting soon became common. In Thakurani Dasi v. Bisweswar Mukherjee, Justice Campbell, afterwards Sir George Campbell and Lieuten-ant Governor of Bengal, is reported to have expressed the same opinion. "The primitive state of Society, which gave the first occupier a right to continue in occupation and no more, could not possibly last long. Complications must necessarily arise and did as a matter of fact arise, and Hindu sages had to grapple with the relations which the more developed state of things required them to deal with." Narada and Parasara had copiously to deal with questions on the relationship of landlord and tenant. I propose to deal later on with the rights of cultivators and the share of the produce which they had to give to the owner of the land.

Intermediate tenures also were apparently unknown in earlier days. The text books deal only with the right of the owners of land and cultivators. Intermediate tenures must have come into existence in a more developed stage of society. Even the Mahomedan Government and the British Government, in its earlier days, as will be seen later on, were unwilling to recognise as valid the creation of intermediate tenures.

Cultivation of land was in those early days strongly insisted upon and penalties were prescribed for non-cultivation by raiyats. This was a matter of necessity in those days, when population was small and the extent of uncultivated area very large. Vyasa says —"If a man after taking a field with the object of cultivating it fails to do so, either himself or through the

---

agency of others, he should be made to pay to the owner
a proportionate share of the corn which the field could
have yielded if it were cultivated and, in addition, a fine
to the king." Narada also has laid down that "when a field
is abandoned by its own owner and the same is cultivated by
another without opposition, the cultivator is entitled to
the whole of the produce and the owner would not get
back the land without paying the cost of the clearance
and cultivation." So Yajnavalkya says:— "When a man
does not cultivate, either himself or by means of others,
he should be made to pay to the owner of the field the
amount of grain which the field would have yielded if it
had been duly sown with crops." I cannot leave this part of the subject without noticing the so-called Village Communities. They have been said to be "little commonwealths, independent, self-acting, organized social groups." Sir Henry Maine, in his well-known work on "Village Communities in the East and the West," has given them such an importance in the history of the growth of ideas about legal rights in land, that no essay on Land Law would be complete without something being said on them. The part supposed to have been played by them in the formation and development

1 चेत् ग्रहीताय व: कार्यस्य न कर्यांत्य न च कार्येऽन्

क्यामि तत्परं दायी राजे देशं तत्समम्

Quoted in Vivádaratnákara.

2 "विक्रयमाय्यो चेति चेति चेति: पुनरात्मानस्यः

खेलीपारं तत् खली दल्ला चंभमख्या घातुः

Narada Smriti Chap. XI. 12.

3 "णा लालहत्वाद तेष्वः देषिन न कर्यांत्य न कार्येऽन्

स प्रदाहोऽक्षतपलं चंभमख्ये न कार्येऽन्

of society and ideas as to proprietary right to land is a matter of very great importance, and I would refer you to that admirable book for a fuller study of the nature of Village Communities and their status as political units. Each of these communities or *guilds*, if I may use that word, was governed by a council of Elders who were called *mandals*, *pradhans* or *jeet raiyats*. Each had its accountant or *patwari*, watchmen or *chowkidars*, a family of priests, a family of astrologers, a smith, a barber, a potter and a washerman. In the larger of these communities, families of physicians, minstrels and musicians were also to be found. Thus each community could supply to its members the ordinary demands of life, independent of the rest of the world. The headman, assisted by arbitrators or the council of elders, administered criminal justice on petty offenders and decided questions about civil rights amongst the members of the community. The sentences and decrees of these village tribunals were enforced as mandates of constituted courts of justice, the force of public opinion and the fear of being cast out of the community having been sufficient motives for obedience. They had also duties which municipal commissioners of the present day have. Each community had a public temple dedicated to *Siva, Dharma* or *Kali*, and the meetings of the Council of Elders used to take place in the temple or somewhere near it. But it is a matter of surprise that our *Dharma Sastras*—texts and commentaries—make no reference to these communities. These works, the records of early life and thought, afford us little assistance in tracing the history of the rise and growth of these interesting groups.

In Bengal proper, village communities existed and do still exist in a dismembered condition, but in the Northwestern Provinces they are to be found even now in a complete form. It is difficult, however, to say what the importance of these communities was in relation to rights
The fact that they were political units, that the headman or council of elders was occasionally responsible to the Raja or the King for the *king's share* of the produce of the village, would not make the land the common property of the villagers as a body. There is, as far as I have been able to gather, no reason to believe that there was any communal idea or idea of common or joint ownership of land current among the members of any Village Community. The different families that occupied or cultivated the lands of the village were not the descendants of the same parents and there was no necessary kinship amongst them, as has sometimes been erroneously supposed. These families frequently belonged to different *gotras* and to different castes, and if the members called each other cousins, it was not on account of any relationship by blood or marriage. Nearness of residence and familiarity arising therefrom created a semblance of propinquity; and a stranger, a European, may be led to think from a cursory glance at the outer surface that the members of the community were connected by blood or marriage, generations back. But deeper insight would at once show that there was no reason to believe that there was any other connection amongst the members than the social tie, which must necessarily exist amongst a number of men living close to each other. Of course one community had lands and land-marks distinct from those of another, but each family had rights in the land in its occupation well recognised and distinct from that of another. In the settlement of land revenue in Bengal there was not a single settlement with a village community. The number of permanently settled estates in Bengal and Behar at the end of the official year 1892-93, was 1,34,789. Not one of these was a settlement with a village community as such, not even a settlement with a village headman as representing a village corporation.
Each family was proprietor.

The truth seems to be that whatever the social and political significance of these village communities was, whatever the part they played in the progress of civilization, they had not much to do with legal rights or the conceptions about legal rights, of the owners or occupiers of lands, of individual members or families. Each of these families had its own piece or pieces of land for homestead and cultivation, and the family was the owner thereof. The common grazing ground and the common water course, the village temple and the village gods were communal property in which the families were interested in common, but beyond that there seems to have been no unity of proprietorship. Each family cultivated its own land, as it had done for years, nay for centuries, and under certain circumstances the interest which they had in land was transferable. The family could sublet land or get it cultivated by hired labourers. There were restrictions, no doubt, but those imposed were not of a character that would indicate any detraction from proprietary right. The restrictions were for the convenience of the neighbouring holders of land or other members of the community. They were in the nature of the right of pre-emption.

Each village, however, had, as I have already stated, defined limits or landmarks. Yajnavalkya speaking of boundary disputes says, that they are to be decided by old men, chiefs and others.1 The venerable com-

---

1 याजनावल्क्यो विवाराणो विवस्था गामना: श्वितारादयः।
गौराय: सौमाल्कोणाय वे सूर्य च बनगीचयतः।

In boundary disputes, the following persons are to ascertain the respective limits of fields and villages as indicated by the natural elevations, trees, dams, mole hills, husks, bones and masses of charcoal buried underneath and edifices of worship, viz., old men, peasants, tillers of contiguous fields, Rangers in the woods and the inhabitants of the neighbouring villages.
mentator Vijnaneswara adds that these disputes might refer to provinces, villages, fields and homesteads,\(^1\) indicating thereby that each village had its boundary line and each family its fields. Narada\(^2\) has an entire chapter on boundary disputes; but he deals more largely with disputes amongst the members themselves of the same village. Vrihaspati similarly devotes a chapter of his Sutras to this subject, and he begins by saying—"Hear the laws concerning boundaries of villages, fields, houses and so forth." I would not tire your patience with quotations of well known texts from the *Manava Dharmasastra*. Sir Henry Maine when speaking of Village Communities in the East seems to suppose that these peculiar groups were referred to by Manu, "though," he says, "the English found little to guide them to their great importance in the Brahmanical codified laws of the Hindus which they first examined." But beyond certain statements as to boundary-marks and the procedure as to determining them and certain other matters to which I shall presently draw your attention, I have not been able to find anything in the Smriti to lead me to believe that the great sage had the idea of the property of Village Communities being, in any way, communal.

Each village had its grazing ground for the cattle of all its residents and cultivators. It was common property and none had the right to appropriate any part of it for purposes of cultivation. Manu\(^3\) has laid down that grazing grounds are the common property of the village, and the people encroaching upon them are liable to punishment. Yajnavalkya also lays down substantially the same rule, and the author of the *Mitakshara*, commenting on the passage, says—"A por-

---

\(^1\) Chap. XI.

\(^2\) Chap. XIX, p. 351.

\(^3\) Manu, Ch. VIII.
tion of land should be left uncultivated for the grazing of cows." ¹

These and similar customary rights which Village Communities had could hardly be construed as shewing that at any stage of the history of these Communities the entire land occupied or cultivated by the villagers was considered to be common property. Teutonic or Scandinavian Village Communities, no doubt, resembled in many respects similar institutions in India, but there were marked differences as regards the rights of individual members. As I have already said, these latter were, at least at their later stages, merely unions for political purposes—protection from outside enemy and peaceful domestic government. As to Bengal proper, Sir Henry Maine says that from causes not yet fully determined the village system has fallen into great decay. For all practical purposes, therefore, a detailed consideration of the history and rights of the Village Communities is unnecessary in these lectures.

Possession has always played an important part in all systems of jurisprudence in the acquisition of right in land, and the first tiller might lose his right by adverse possession by another. It is quite clear

¹ यामेष्क्रया गोपचारी मूृसीषाजबशेन वा। ग्रामधुरान्तः सर्वा निध्वच: समधदा चरंतु॥
बजादीन्तः प्रकाशाश्च कियान्य भूमियोकोऽर्थः परिक्षनसीनीय इत्यः।
चन्द्र:ग्रां परीणाहो गाई चौहार: मनवेत्॥
हे शाने खरंश्च स्याधग्रम्य चतुः: शतम्॥
Yajnavalkya Bombay Edition p. 221.

A certain portion of the land is to be set apart as pasture, according to the will of the villagers or the direction of the king. The twice born may glean fuel, flower or grass from any place and at all times.

Fields in a village are to be ordinarily separated from one another by an intervening uncultivated space of a hundred dhanus (i.e. 200 yards) on all sides. If the village abounds in thorn the space is to amount to 200 dhanus (400 yards). In cases of populous towns the space to be left open shall be 400 dhanus or (800 yards). See also Manu Ch. VIII. 237.
that during the period when the *sutras* were composed by the venerable sages with whose names you are familiar, right by possession and effect of adverse possession as creating prescriptive right were well understood and recognised. The Vishnu Smriti lays down:—"If possession has been held of an estate by three (successive) generations in due course, the fourth in descent shall keep it as his property, even without a written title."\(^1\) Vrihaspati has an entire chapter on title by possession. He says—"When possession undisturbed (by others) has been held by three generations (in succession), it is not necessary to produce a title; possession is decisive in that case."\(^2\) The next three slokas repeat the same idea, and in the thirty-first and thirty-second slokas uninterrupted and longstanding possession is considered to be necessary to create title by possession, and the sage adds—"A witness prevails over inference; a writing prevails over witness; undisturbed possession which has passed through three lives prevails over both."\(^3\) In another sloka the sage seems to imply that a period of thirty years is time enough. "He whose possession has been continuous from the time of occupation, and has never been interrupted for a period of thirty years, can not be deprived of such property."\(^4\) I can not here resist the temptation of quoting, though it is out of place, another verse from the same *sutra* in which the doctrine of estoppel by conduct is recognised as creating title. "He who does not raise a protest when a

\(^1\) विभ्रियारू पूर्व वा हस्ताप्तिः सूचितार्थः

\(^2\) जैनाभिक्षुपिता सभव चूर्यं समवार्यायाम्

Institutes of Vishnu. Chap. V. 187, Jolly p. 40

\(^3\) Chap. IX, V. 28, Jolly p. 313.

\(^4\) Chap. IX, V. 29, Jolly p. 314.

\(^1\) Vrihaspati, Chap. IX, V. 7, p. 310.
stranger is giving away his landed property in his sight can not again recover the same, even though he be possessed of a written title to it.\textsuperscript{4} Narada also refers to possession for three generations;\textsuperscript{5} other authors of the Sutras have reduced the period to twenty years. "If a man knowingly and without complaint allows another, who is in no way related to him, to be in possession of his land for twenty years and of movable property for ten years, his right to the same becomes extinguished."\textsuperscript{6} Vyasa, whose authority in these matters is very high, is also of opinion—"If the land of one is possessed by another for twenty years, his right to sue for possession ceases."\textsuperscript{7} Mitra Misra in his Viramitrodaya, a work of great authority in the Benares school, giving his own gloss on these texts, comes to the conclusion—"If a person whose land or movable property is enjoyed by another for more than twenty or ten years respectively, if he is not an idiot or a minor, his right to sue for the recovery of the same becomes barred and the possessor acquires a title."\textsuperscript{8}

Other sages, notably Katyayana, are of opinion that _asmartha kala_ (time immemorial) creates title. Raghu-nandana who was a contemporary and fellow student of Chaitanya and who lived in the fifteenth century

\textsuperscript{1} Vrihaspati, Ch. IX, V, 9, p. 310.
\textsuperscript{2} अन्तःविन स त्रित् तस्य ते महान् &c.
\textsuperscript{3} पमः तृतीयोवर्तितान्तरिज्जितापद्धतीकेऽऽ
परिश्रमितानायाः महान् द्वितीयांपद्धतीकेऽऽ
\textsuperscript{4} बष्पाश्चिं विन्दिता वश्य सम्भवा तु परं रिछ ।
मंत्र राजित समस्येऽऽ तस्य सूद्ध न समधीति ॥
\textsuperscript{5} अश्वाहंतोऽऽ प्रगाठ्य चास्य भूषणं ।
भगे तनु यच्चारिणम् भीक्षा वहनंमेधिति ॥

after Christ in Nuddea has attempted to reconcile the apparently conflicting texts, and has held that according to all authorities, “before the lapse of twenty years the possessor's right accrues only to the things produced by his own labour and after that period his right is perfected.”

We thus see that though originally the first occupier of land was considered as the true owner and entitled to the usufruct, he or his heirs could lose the right on account of adverse possession by another, that is to say, limitation in the language of Indian law. The period of adverse possession as creating right or barring remedy was originally considered to be time immemorial or three generations. It was reduced to thirty years, and later on, the most approved authorities considered twenty years as the legitimate time to perfect possession into prescriptive title. The law of England as to acquisition of right by prescription passed through similar stages, until the period was reduced to twenty years, and quite recently to twelve years.

The right to enjoy the usufruct by the first occupier or his legal heirs became in course of time alienable. It would seem that originally it was only heritable but not alienable. Vijnaneswara, in his well known commentary on the text of Yajnavalkya, expounded what was apparently in his days the idea as to non-alienability of land when it was occupied by the members of a joint family and was ancestral. But the rival idea as to alienability was making its way, and Vijnaneswara himself admitted that right as exercisable under certain circum-

---

1 “विन्द्रिति वर्षांश्च पूर्वं स्वातन्त्र स्त्रेष्ठार्थ स्वप्राप्तनार्थी चतुपदपृष्ठ एव
  खलं, तत्रतृत कालपरतन्त्र भूमिः गवादिरथी खलभिति।”
  Vyavaharatattwa, Madhusudan Smritiratna’s Edition p. 32.
  
  2 Act XV. of 1877. Sec. 28.
stances. Jimutavahana, however, entirely discarded the theory of non-alienability, and according to him every owner of land, if a male, had the full right to transfer the same either by gift or sale. The *sutras*—the prime source of Hindu law and the best means we have of knowing original Indian ideas on any subject—were slow to recognise the right. You will find in them texts in which the sages held that land once acquired was property which was for the benefit of all generations to come.

Such or nearly such were the principal juridical theories prevailing in India as regards ownership of land. In came the Mahomedan conquerors about the beginning of the thirteenth century. They had their own system of jurisprudence which differed in many respects from what they found to be in existence in India. But their doctrines of fiscal system were of recent date. Abu Haneefa and his two disciples Abu Yussoof and Mahammad had done much to consolidate and give a turn to the theories and practices of the earlier Caliphs; but considerable development was still needed. When the followers of Mahomed established themselves in India, they found that they were amongst a nation, just as the Romans had found themselves amongst the Greeks. The Hindus had a developed system of Jurisprudence, and a contest both as to theories and practices between the Hindu and Mahomedan nations was almost inevitable. The result, however, has shewn that in the contest the Hindu principles survived. Akbar's Hindu proclivities are especially well-known. Yajnavalkya¹ has said that as soon as a country is brought under subjection, the people ought

¹ यज्ञवल्क्य देश में आन्तरिक व्यवहार शुचिपर्यायः।

परिपयायः मो यद्य वशमप्रयतः।

KhiraJ.

23
to be governed according to their own laws, manners and customs. This is a well-approved rule of international jurisprudence, and the Mahomedans, however much they hated any rules or principles except those laid down in the Koran, were compelled in India to accept, in many instances, the ancient Hindu principles. They respected possession, and the strict rules applicable to infidels, according to their own jurists, were not applied to India. The principle of Musalmam Government was—"If the Imam conquered a country by force of arms, he was at liberty to divide it among the Musalmans or he might leave it in the hands of the original proprietors, exacting from them a capitation tax called the sezyat and imposing a tribute upon their lands known as the khiraj. The oosher (tithe) should be imposed only upon believers." 1 According to this theory, the conqueror was considered as the proprietor of the land, and the doctrine of Abu Yusooof is that the khiraj should be levied as a punishment, the land being considered as lapsed for infidelity. The khiraj according to the Mahomedan doctrine varied with the nature of the land, detailed rules being laid down both by Abu Yusooof and Mahammad. 2 In India, however, no land was distributed amongst the Musalmans. Small portions might have been given to soldiers as jaigirs and aymas, but

"Let him establish the laws of the conquered nation as declared in this book." See also—

भाषामात्रिक कुञ्जित नेष्ठा परमेंन्तु यथोदितानुः
रवैै पूजत्वेंद्रिन प्रधानमुखेः सह ||

Manu Chap. VII. v. 203.

"पर देहशास्यामी तदैशं दिर्गायति स्वायत्ता" \n
Vishnu Ch. III. v. 42.

Hamilton’s Hedaya Vol. II. p. 209.

1 Hamilton’s Hedaya, Vol. II, p. 207.
these were generally waste lands. They levied the khiraj, and applied the theory of proprietorship of the king in the soil, but, as I shall presently show, the khiraj was soon commuted into money rent; and, according to another theory of Mahomedan jurisprudence, the commutation of a share of the produce into a fixed money rate took away the sovereign's proprietary right. The practical result was the same as if the king was not the proprietor of the soil but was only entitled to rent. When rent was once fixed, there was no doctrine of increase from the unearned increment, and the sovereign's right was fixed for ever. The customary rent which had prevailed under the Hindu kings was no doubt superseded. A new custom in increased proportion was established, but there was nothing like competition rent.

The imposition of the khiraj did not deny the existence of property in land and take away the proprietorship of the cultivator. His right was alienable and "the lands cultivated continued to be the property of the inhabitants who might lawfully sell or otherwise dispose of them." The sovereign was entitled only to a share of the produce, which could be even as much as a half. But in India the khiraj was never formally levied, though an attempt was made to do so by Allauddin in the beginning of the fourteenth century. When the sovereign's share of the produce was converted into money rent, the liability became personal, the cultivator having higher rights as regards the land itself. In the words of the Fatwa Alumgiri, "by the imposition of the wasifa khiraj the sovereign ceased to be a partner of the cultivator." No permission of the sovereign was required to validate alienation. I have already adverted to the original Mahomedan doctrines as to waste lands. The first cultivator was the

---

1 Baillie's Land Tax, XX.
2 Tagore Law Lectures 1874-75, p. 48.
proprietor in virtue of having brought the land into a state of cultivation." He was bound to pay only the tithe, and, under some circumstances, the tribute. Thus, on the whole, the Mahomedan principles of fiscal government did not practically vary from the Hindu.

But causes other than the mere introduction of the Hanifite doctrines were at work to bring about the assimilation of the Mahomedan to the previously existing Hindu systems of fiscal administration. The Mahomedan conquest of India was never complete. The battle field on the Caggar, where Prithviraj and his brave followers sacrificed themselves to the cause of independence, broke down the imperial power of the Hindus, and most of the small principalities, with which Northern India was studded, yielded without struggle, and accepted the Mahomedan yoke agreeing to pay tribute. It was not until the days of Akbar that any serious effort was made for the collection of the khiraj direct from the cultivators. Even then the hereditary chiefs who had long ancestries to tell were not disturbed. They got sanads which provided for payment of nominal sums as rent (khiraj). The apathy and the carelessness of the Nabobs brought about a system of non-interference with the internal management, whether fiscal or judicial, of the various provinces of the empire, and the Hindu Rajas or Zemindars, call them by what name you will, took the fullest advantage of their position. Opportunity was afforded for the progress and development of indigenous systems of thought, language, literature and law, unchecked and unfettered by Semitic influence. It is a curious phenomenon in the history of the Indian people, a history which, I regret to say, has not yet been written, that, notwithstanding the alleged misgovernment and tyrannical sway of the followers of the

1 Hamilton's Hedaya, Vol. IV, p. 130.
Prophet in India, social and religious ideas, legal and philosophical conceptions of the Hindus, and even some of the vernacular languages, made, during the centuries just preceding the rise of the British power in India, an extraordinary progress without any encouragement from the ruling power. The customs, usages and customary laws of the Musalman sovereigns made little or no impression on the people except at the capitals and large cities, where only their influence was most felt. Both in Europe and in India, the fifteenth century was a period of rapid changes and development in religion and literature, not less in legal conceptions. The changes in India were, however, not revolutionary and bloody, as they were in Europe. The Musalmans, intolerant though they might be, did not persecute the Brahanical Hindus or any of the various sects that sprung up in that century, to the same extent as the Roman Catholics did the Protestants, or the Protestants the Roman Catholics.

The Hindu Rajas and Zemindars, though theoretically they were merely collectors of land revenue, had to perform almost all the functions of the sovereign. They heard and decided cases, civil and criminal, and enforced obedience to their decrees and sentences, in the same way as sovereigns. They had their own law-officers or Pandits. The police administration was under them. In fiscal matters, their authority was supreme, the interference by the ruling power being really few and far between. The necessary result was the practical continuation of the old Hindu systems. It was at this period that a number of glosses and commentaries on the sutras were composed and published, apparently for the purpose of facilitating the administration of justice, which gave fresh life to Indian legal conceptions. The Hindu kingdoms in the Deccan, notably Bijayanagar, did much for the revival and advancement of Sanskrit learning, literature and law.
I shall close this lecture with a few words on the history of the revenue settlements made under the Mahomedan rulers and on the advent of the British. Under the vigorous despotism of Allauddin Khiliji, an endeavour was made to increase the land tax (khiraj) and to exact it more vigorously, and settlement was, in some provinces, made with the cultivators direct. Sher Shah, a prince of consummate prudence and ability, introduced during his short reign many improvements in the civil government, and the settlement of land revenue was one of them. His son Selim Shah followed him and made some further improvements. Immediately after, followed a period of contest between the Afghan and the Moghul. The revenue system of Akbar is, however, celebrated for the benefits it conferred on India, though it was no new invention. Akbar's scheme was to carry out the previous system into effect with greater precision and correctness. "It was," to use the words of a learned historian of India, "only a continuation of a plan commenced by Sher Shah." 

I shall not detain you with a description of the revenue system of Akbar, known more generally as Raja Todar Mal's reform. You will find everything that can be said with reference to this matter elaborately dealt with in the Tagore Lectures for 1874-75, and in almost all the bigger histories of India. I need only add that Raja Todar Mal entirely ignored the distinction made by Abu Haneefa between Oosher and Khiraj, between Mahomedans and Hindus. Instead of the sixth levied by Hindu Rajas, the rate was increased to a fourth, and occasionally to a third. An average of ten years was taken, and the cultivators were allowed to pay

---

1 1295 to 1316 A. D.
2 1540 to 1545.
3 Elphinstone's India 5th Ed. 541.
money rent. The settlement was nominally for ten years. But there are reasons to believe that the settlement was never completed in Bengal. Many of the ancient Rajas of Bengal held out, and their lands were never measured or assessed. They paid only nominal tribute or revenue to the imperial exchequer. Raja Todar Mal, it is said, had ignored the zemindars, but those whom he had ignored in Bengal were few; and they were soon restored to power by the influence of circumstances.

The rights, under Mahomedan settlement, of the class known as zemindars and the rights of the cultivators are matters of great importance, as the principles of the settlement of Land Revenue under the Anglo-Indian Government, are to a great extent based on them. I propose to say a few words on the rights of the zemindars later on. The rights of the cultivators is a question of great difficulty. The distinct revival, in the reign of Akbar, of the old Hindu system under his Hindu minister, would seem to imply a revival of the principle which distinctly recognised the right of cultivators to hold on and enjoy the usufruct, and even to alienate and sub-let. It was, to all intents and purposes, a proprietary right, subject to the payment of a definite share of the produce, which, since Raja Todar Mal's settlement, could be called customary rent. Ejectment was unknown except for non-cultivation or continuous non-payment of rent. Competition-rent was never thought of. The very fact that abwabs or illegal cesses were now and then levied, shews distinctly that the raiyats believed that rent was fixed and unalterable except under very peculiar circumstances. To use the words of the framers of the Regulation Code of 1793,—"The ruling power was entitled to a share of the produce of every bigha of land"—not, however, as proprietor of the soil but as responsible for the protection afforded to the subject.

1 Preambles to Regulations XIX and XXXVII of 1793.
The victory of the English army at Plassey established in Bengal the nominal vice-royalty of Mir Jáffár and the actual sovereignty of a company of English merchants. This company had, on the last day of the sixteenth century, obtained from Queen Elizabeth the exclusive liberty of trading in the East Indian seas, and were attracted to Surat and the other Malabar cities for the purchase of cloth and calico. In those days, only three hundred years ago, India was, perhaps, the only country that supplied the world with piece-goods: Manchester has now practically taken the place of Indian cotton manufacturing cities. These merchants were bent only upon commercial aggrandisement, and had, until the year 1757, little to do, in Bengal, with the government of a nation, its laws or customs. An accident, however, made them the rulers of a people dissimilar from themselves in almost every respect. On the 12th August 1765, they were compelled under peculiar circumstances to obtain a formal recognition of their title as Dewan of the titular Emperor of Delhi, on an agreement to pay an annual sum of twenty-six lacs as revenue of Bengal, Behar and Orissa. They knew not at the time what to do for the proper administration of justice, and were, therefore, compelled to introduce in India a system of jurisprudence with rules of procedure and notions of proprietary right, which may well be characterised as a parody of what they then had in England. There was also another disturbing influence at work at the same time. Having obtained the Dewany from the Great Moghul, they thought that they should follow the Musalmán system. From the Mahomedan financial system, therefore, they claimed the inheritance of a right to seize upon an unduly large portion of the gross produce, and coupled the same with their own doctrine of the proprietary right of the sovereign by reason of conquest. The period of nearly seven years from the grant of the
Dewany was one of "utter darkness," especially on account of the double government—the Dewany of the English and the Nizamat of the Nabob of Mursidabad. The complications resulting from the operation of dissimilar, I may say inconsistent, fiscal systems brought about a state of things which may be said to be chaotic. The greed of the Board of Directors of the East India Company and the no less greed of their servants in Bengal, together with the impoverishment and depopulation caused by the terrible calamity of 1770, made confusion worse confounded. Under such circumstances, the British Parliament interfered; but even the genius of Warren Hastings was not sufficient to bring order out of chaos.

The English in India started with the assumption that "all the soil belonged in absolute property to the sovereign, and that all private property in land existed by his sufferance." This was, as we have seen, the doctrine of Abu Haneefa, and accorded with the English theory that "the proprietas or actual ownership of the land always resided in the sovereign." The existence of private property in land which is the fundamental doctrine of Hindu jurisprudence and which, as we have seen, even the Mahomedan government in India did not put out of sight, was entirely ignored. With this idea, the Government in 1793 transferred in perpetuity a vast and then unmeasured quantity of land to a class of men who were and are known as zemindars, and the property in the soil was formally declared to be vested in them. The remaining quantity of land, cultivated or waste, continued to be the property of the state.

1 13 Geo. III. c. 63.
2 Maine's Village Communities Lec. IV.
3 Stephen's Blackstone Book II, Pt. 1 Ch. II.
4 Preamble to Reg. II. of 1793.
Taking this theory of proprietary right as the basis, the subject of these lectures may be broadly divided under the following heads: \textit{viz.}—

1. Khás Maháls.
2. Revenue-free Estates.
3. Permanently and Temporarily settled Estates.
4. Intermediate Tenures.
5. Raiyati Holdings.
Khás Maháls.

"A Khás Mahál is an estate in the private possession of the Government as proprietor."¹ Waste lands not included within the area of any permanently settled estate, islands thrown up in large navigable rivers, resumed revenue-free lands, and settled estates which have lapsed to Government are included within this definition. In the Bengal Tenancy Act (VIII of 1885), Government khás maháls are "estates,"² and the Government is a "proprietor" owning estates.³ The Government is also a "landlord" like other landholders.⁴

Of the khás maháls, Calcutta, the metropolis of India, deserves our first attention. At the date of the Dewany (12th August 1765), the East India Company held by purchase the taluqdari right of Calcutta and of the adjacent villages, Sutanati and Gobindpur, subject to an annual payment of Rs. 1195 as revenue to the Great Moghul. The purchase was made in 1698. The lands of these three villages were partly occupied by the Company, but the major part was held by tenants who paid rent to the Company as taluqdar.

The ground-rent payable to the East India Company is revenue⁵ within the meaning of 21 George III. c. 70, and the Supreme Court had no power to interfere with its as-

¹ Field's Introduction to the Regulations of the Bengal Code, p. 41.
² Sec. 3, Sub-Sec. (1)
³ Sec. 3, Sub-Sec. (2)
⁴ Sec. 3, Sub-Sec. (4)
⁵ Act XXIII of 1850 and Act XVIII of 1856.
essment and collection, and the High Court in its Ordinary Original Civil jurisdiction has likewise no power in these matters.

There were a good many revenue-free tenures in Calcutta, and lands held exempt from assessment for sixty years were declared by the Act of 1850 valid lakhiraj. The revenue-paying holdings in Calcutta are estates in the ordinary significance attached to the word. The provisions of Bengal Act VII of 1876—the Land Registration Act—have been applied to all holdings, revenue-paying as well as revenue-free, though most of the other incidents of estates in the mofussil do not hold as regards them. It is said that there are about ten thousand holdings or estates in Calcutta. The Government-claim for land-revenue has priority over all other claims on the land, and the amount is leviable by distress, the period of limitation being six years. The Government has no proprietary right in these holdings; the right is simply to receive fixed sums as revenue or quit-rent. The proprietary right is in the holders. The tenure of land is of the nature of free-hold, and though pottahs are often taken from the Collector of Calcutta, they are not considered as muniments of title.

It is curious to find that such of the lands in Calcutta as were assessable, but had not been assessed before, were declared assessable at the rate of three annas per cottah, that is to say, three rupees and twelve annas per bigha. This low rate of revenue would seem to be surprising to any one familiar with the assessment of land revenue in other parts of Bengal; but land revenue or land tax is very low in England, and Calcutta had the advantage of being governed under the rules and princi-

---

1 Act XXIII of 1850, Sec. 12.  2 Act XXIII 1850, Sec. 2.
3 Act XXIII 1850, Sec. 6.  4 Act XXIII 1850, Sec. 7.
5 Gardiner v. Fell, 1 M.I.A. 299; Freeman v. Fairlie, 1 M.I.A. 305.
6 Act XXIII of 1850, Sec. 2.
ples that prevailed in England before the passing of the Regulating Act of 1773.¹

After the battle of Plassey, Mir Jaffar granted a sanad for the free tenure of these villages and six hundred yards of land without the Maharatta ditch. The rents of these mouzas were forgiven. Later on, and in the year 1778, the Company transferred to Maharajah Nobo Kissen of Sovabazar, in the town of Calcutta, the taluqdari right of Sutanuty, fixing the annual rent at Sicca Rs. 1237.

The holdings in taluq Sutanuty, which form nearly two-fifths of the town, are generally rent-free. The rent-paying holdings which have existed from before the year 1778 are all permanent, hereditary and transferable. The rent-charge is so small that it may be said to be nominal. The rent is realisable by suits in the Calcutta Court of Small Causes, provided the amount does not exceed its pecuniary limits. The taluqdaris of Sutanuty have not, by the terms of the grant, the right to demand or receive a larger amount of rent than "what has been customarily received, viz., Rs. 3-12 as. per bigha." By the terms of the grant the power of enhancing rent beyond that limit was taken away. But this restriction to enhancement can only apply to lands held under taluqdari right.

I may here mention some of the peculiarities in the law relating to landlord and tenant in Calcutta—I mean the part of the town which is within the Ordinary Original Jurisdiction of the High Court.² The rules of law laid down in the Indian Contract Act (IX of 1872) and the Transfer of Property Act (IV of 1882) must now regulate the general incidents of tenancy in Calcutta. The several Tenancy Acts passed for the Bengal Provinces have no application here. In the

¹ 13 Geo. III. c. 63.
² For the definition of Calcutta see Proclamation by the Governor-General in Council, dated the 10th September, 1794.
absence of express contract or any provision in the Contract and Transfer of Property Acts, the High Court has to apply the Hindu Law in the case of Hindus, the Mahomedan Law in the case of Mahomedans, and the principles of justice, equity and good conscience which, according to the majority of the English Judges who preside over our superior courts and the English lawyers who practise there, are the rules of English law with almost imperceptible variations. Section 17 of 21 Geo. III. c. 70 provided that "* * rents * * and all matters of contract and dealing between party and party shall be determined, in the case of Mahomedans, by the laws and usages of Mahomedans, and in the case of Gentoos, by the laws and usages of Gentoos." Until the passing of the Indian Contract Act and the Transfer of Property Act, the Supreme Court, and then the High Court in its Ordinary Original Jurisdiction were bound to act in all cases according to the direction given in the statute of 21 George III; but for causes, which are not far to seek, the law applied was the English law, except in rare cases. In Russick Lall Mudduck v. Loke Nath Kurmokar,\(^2\) the plaintiff had been ejected by a decree of the Calcutta Court of Small Causes from the land held by him as a tenant under the defendant, and claimed to be allowed to pull down and remove the buildings erected thereon by himself or his predecessors in title, or in the alternative, to be paid compensation in respect of them. Wilson J. applied to the case the doctrine of Hindu law as expounded in the judgment of the Full Bench in In re Thakoor Chander Paramanick,\(^3\) declining to apply, as amongst Hindus in Calcutta, the English maxim *quic-\(\)uid plantatur solo solo cedit.* In a later case,\(^4\) however, the Calcutta High Court threw considerable doubt

1. See also Letters Patent of 1865, Sec. 19.
2. I. L. R. 5 Cal. 688. 3. B. L. R. Sup Vol. 595.
both as to what the true rule of Hindu law is and its applicability to the town of Calcutta. The learned judges who decided the latter case were of opinion that the texts of Hindu law referred to in *In re Thakoor Chunder Paramanick* did not lay down any rule as to substantial structures.

_Huts_ come within the definition of immovable property.¹ In *Nattu Miah v. Nand Rani,*² a Full Bench of the Calcutta High Court held that they were not saleable in execution of a decree of a Small Cause Court, and in *Kally Parsad Sing v. Hoolas Chund,*³ the High Court, following the Full Bench decision, came to the conclusion that tiled huts were not "goods and chattels" and could not, therefore, be taken in execution of a decree of the Calcutta Court of Small Causes. But the right of a tenant to remove tiled huts built by himself was recognized, and in *Parbutty Bewah v. Wooma Tara Dabee,*⁴ Macpherson J. was of opinion that a tenant of land in Calcutta was entitled by custom to remove huts. This was rather anomalous. The legislature had to interfere, and section 28 of the Presidency Small Cause Court Act⁵ provides that huts which are removable at the termination of the tenancy should be deemed to be movable property. Tiled huts are thus saleable in execution of decrees of the Small Cause Courts at the Presidencies.

The Small Cause Courts, constituted under Act XV of 1882, have other special powers in cases between landlord and tenant, which are not possessed by similar courts in the moffusil. Rent for land is recoverable by suit if the amount does not exceed the Court's pecuniary jurisdiction, though such suits are not cognizable by the moffusil Small Cause Courts.⁶ Suits

---

¹ Act I. of 1868.  
² 8 B. L. R. 508.  
³ 10 B. L. R. 448.  
⁴ 14 B. L. R. 201.  
⁵ Art XV of 1882.  
⁶ Art IX of 1887. Schedule II. cl. (8).
for ejectment of tenants and persons holding land by permission may, under the procedure laid down in chapter VII, be instituted in these Presidency Courts, provided the annual value of the property does not exceed one thousand rupees. Distress for rent is also allowed.

The district now known as the Twenty-four Perganahs, as it contains twenty-four perganahs or local divisions, came to be held as a zemindari granted by the Nawab; but except the fifty-five villages or Dihi Panchannagram, the district of Twenty-four Perganahs was never dealt with as a khās mahāl. It was, as we shall presently see, permanently settled in 1793, the tract of jungle-land known as the Sunderbands excepted.

Mir Kasim when made the Nawab, the feeble Mir Jāffār having been deposed, granted in 1760 the three districts of Burdwan, Midnapur and Chittagong to the Company as a cession for the support of the army; but the Company allowed the zemindars to collect the revenue as before, and these districts were permanently settled along with the rest of the province; so that the districts of Twenty-four Perganahs, Burdwan (which in those days included the district of Hughly), Midnapur and the cultivated portions of Chittagong, though acquired earlier than 1765, were considered since the date of the Dewany to be covered by the Imperial sanad.

The Dihi Panchannagram was acquired by the Company in the year 1757 in taluqdari right, and has continued to be in the direct possession of the Government without the intervention of a zemindar. Readers of Indian History must be familiar with the facts connected with the grant of these fifty-five villages by Mir Jāffār and the pension to Lord Clive, and the charge subsequently brought against him on the ground of his accepting the pension.

---

1 Act XV of 1882, ch. VIII.
The holdings in Dihi Panchannagram are not all rent-paying. A good many of them are rent-free. The right of the Government to these holdings and the relationship between the Government and the landholders may well be expressed in the words of the Judicial Committee of the Privy Council in the case of Gunga Gobind Mundal v. The Collector of the Twenty-four Pergunnahs. Speaking of right to the land in dispute in the case and the word "property" in land as used by the High Court, their Lordships say:

"By the word 'property' is here evidently meant absolute ownership, though it may be by a grant from the East India Company, as the zamindars of the Twenty-four Pergunnahs. The well-known cases of Gardner v. Fell, and Freeman v. Fairlie (1 Moore's Ind. App. Cases, pp. 299 and 305), and the observations of Lord Lyndhurst in the latter case on the subject of Pottahs exclude any supposition that such absolute ownership of lands by private persons could not exist at that time in that part of India as against any claim of the Government to possession of the lands. In the latter case, his Lordship terms 'the rent' 'a jumma or tribute,' and says, 'the Pottah, therefore, proves no part of the title, it is the conveyance that gives parties a right to claim the Pottah.' The Pottah is evidence of title. If there were anything in the nature of the title of the Government to lands in the Twenty-four Pergunnahs, or any usage or custom in force there, which gave a less permanent interest to the possessors of proprietary right, some authority for, or some evidence of such a variation from, and limitation of the general law, should have been adduced to their Lordships. Their Lordships themselves are aware of nothing to take these titles out of the operation of the principles established by the cases above referred to. * * * The interest of the

person in possession is not a limited but an absolute interest; the title to the lands is one inheritance, the title to the khiraj or rent is another. Though these lands are treated as part of the khás-maháls yet there is no proof in this case of any relation of landlord and tenant ever existing between Johnson and the Government; Johnson appears to have been the absolute owner, and no reversion to have existed in the Government. It is not the case of a lease at all, still less of a lease of temporary duration; it is the case of an absolute ownership of the lands; and the title of the Government rather resembles a seignory than that of a lessor with a reversion. * * * There is no relation of landlord and tenant in such a case between the Government and the owner of the lands, who is the landlord, and not a Raiyat. The Government has a title to the rent or jumma. By whatever name it be called, the right and title is to the rent substantially; it does not include a right to the possession of the lands, though such a right might arise by forfeiture, or extinction of the ownership."

On the 17th March 1824, the Dutch settlements of Dacca, Fulta, Patna and Balasore and the town of Chinsurah were acquired from the Dutch government. They were ceded in perpetuity. By Regulation XVIII of 1825, the town of Chinsura was annexed and made a part of Zillah Hughly, and the other factories were annexed to the districts in which they were situated. Chinsurah is also a khás mahál. The rent of the holdings is fixed in perpetuity, the rates fixed being those which were prevalent when the Dutch acquired it from the Moghul government. The Government order dated the 21st August 1828 lays down, "the sanads or pottahs granted by the Dutch government should be maintained, and that long possession should be considered to constitute a good title." The holdings in Chinsurah are now permanent except a few
unsettled, concealed or wastelands, which however are insignificant. Serampur and Baranagar were acquired from the Danish government in 1845. These are also khās mahāls, the holdings being generally permanent, hereditary and transferable like the holdings in Calcutta, Panchannagram and Chinsurah. These holdings are tenures within the meaning of Act VII (B.C.) of 1868, and rent is recoverable practically as revenue under the procedure laid down in that Act and Act XI. of 1859, to which I shall draw your more particular attention later on. Section 195 of the Bengal Tenancy Act (VIII of 1885) excludes from the operation of the Act the right of the Government to realise rent of khās mahāl lands under these Acts and the Public Demands Recovery Act (VII of 1880). The holdings are frequently subdivided and the rent apportioned, so that each of these divisions may become a tenure by itself. It must be remembered that these holdings or tenures are not considered to be permanently settled estates, though in their incidents they very much resemble such estates. The property of the holders is of the same nature as it is in Calcutta and Dihi Panchannagram.

The khās mahāls in which the Government claims proprietary right, properly so called, may be divided into the following classes:

1. Waste lands brought under cultivation since 1793, such as Halabad, Noabad, Tanfīr and Patitabadi lands, and not included in any settled estate.

2. Lands not permanently or temporarily settled, including resumed revenue-free lands, lapsed and forfeited estates and island churs.

3. Temporarily settled estates including Orissa and the Sunderbunds.

4. Forest lands.

In the year 1819, the attention of the government was drawn to lands which were not included at the
TAUFIR LANDS.

period of the Decennial Settlement within the limits of the settled estates. The tract of land known as the Sunderbunds and the churs or islands formed since the Decennial Settlement and other halabad (newly cultivated) lands, patitabadi and jungle-buri taluqs were dealt with in section 3 of Regulation II. of 1819, but all waste lands included within the ascertained boundaries of permanently settled estates were left expressly unaffected by clause 1, section 31 of the Regulation. There were lands possessed by zemindars over and above what were originally included in the settlement, and such lands are called taufir; but nothing was definitely done until the year 1828 when Regulation III of that year was passed. By the rules framed under that Regulation taufir lands were especially dealt with, and officers were appointed to look after and settle them. New churs and jungle lands were declared to be the absolute property and at the disposal of the Government. Some portions of these lands were, after settlement of rent under the rules laid down by Regulation VII of 1822, formed into permanently settled estates, but large tracts of land newly reclaimed still continue to be Government property as khâs mahâls.

A large portion of the district of Chittagong was in 1793 covered with jungle, the clearances being chiefly in the level plains. By the year 1764 all the occupied lands had been measured, and when the Permanent Settlement of 1793 was concluded, it covered only the measured lands as they stood in 1764. All lands cultivated subsequent to that period are locally spoken of as noabad (newly cultivated). Regulation III of 1828 declared the absolute right of the Government to these noabad lands. They were assessed with revenue, and as new lands were brought under cultivation, fresh assessments were made. Between the years 1841 and 1848 all the noabad lands were surveyed, whether held by squatters, or taken by encroachment by the original

Noabad lands and taluqs in Chittagong.
settlers known as tarafdars. The lands of the estates formed in 1793 were defined and separated, and the noabad lands were made separate taluqs; but a large number was placed directly under the Collector and put under khás management. The noabad taluqdars are tenure-holders entitled to retain possession on the terms of their leases. The settlement made in 1848 was for fifty years for lands fully cultivated, and for twenty-five years for other lands. There was also in Chittagong a large number of small grants called jungleburi. Thus the district of Chittagong contains a very large number of little estates, taluqs, and jungleburi holdings, each with a kind of proprietary right different from that of the adjoining land, and complications in cases brought before courts of justice are necessarily great. Old permanently settled lands, noabad taluqs, resumed lakhiraj holdings assessed from time to time, and lands temporarily settled are so intermixed with each other that lawyers and judges feel the greatest difficulty in solving intricate problems of fact and law as regards them. The repeated measurements and assessments made by the Government have, however, to a certain extent brought things into order. The cases of raiyats holding lands under tarafdars or new settlement holders of noabad lands are rare. These parcels, being small, are generally held and cultivated by hired labourers, but where there are raiyats, the resumption and settlement do not affect the right of the cultivators who are protected 1.

The Hill tracts of Chittagong were removed from the operation of the general Regulations by Acts XXII of 1860 and IV. (B. C.) of 1863. By the forest laws a large part of these tracts is "reserved" forest. The chiefs of the hills paid originally a tribute known as kápás (cotton). Cultivation is still shifting. Some portions are permanently settled,

but a larger portion is *khás mahál*, in which settlers are being gradually introduced.

The hill lands of Bhagalpur are mentioned in Regulation IX of 1825. This tract of country did not form part of any permanently settled estate and was inhabited by the aboriginal inhabitants, mostly Santhals. The Santhal Perganahs now include this tract. A part only of the Santhal Perganahs, the plain, was permanently settled, namely, the part lying by the river side near Rajmahal, but the hill tracts in the interior were not measured or surveyed, nor was any attempt made to bring the people under regular control until the year 1855 when Act XXXVII was passed. As early as 1780, the tract known as the *Daman-i-koh* was withdrawn from the general settlement. But there was practically no settlement of any kind, the Government having only a theoretical right. The *paharias* cultivated land by the system known as "jum" or shifting cultivation. By Acts XXXVII of 1855 and X of 1857, the hill lands of Bhagalpur and Birbhum and the *Daman-i-koh* were removed from the operation of the Regulations and Acts then in force in the Bengal Presidency, as these were considered to be unsuitable to the Santhals. The permanently settled estates and *patni* taluqs were not touched by those Acts, and their incidents continued to be the same as before, but other portions of the district, thus formed, began to be dealt with as *khás mahál*. Regulation III of 1872 of the Bengal Code is now the Santhal Perganah Settlement Regulation.

In the Chotanagpur Division there are large Government estates, and the Palamow Subdivision is a *khás mahál* temporarily settled. The Government, as usual in all *khás mahál*, claims absolute proprietary right. Lands are never sold for arrears of revenue, and all sales

---

1 Reg. IX of 1825, Sec. 2, cl. 3.
2 Reg. III of 1872; Ram Charan Sing v. Dhaturi Sing I. L. R. 18 Cal. 146.
or mortgages of land require the sanction of the Commissioner.

The Bhutan Doars are parts of Jalpaiguri and were acquired in 1870. In that year the country was settled for ten years. The settlement was with the occupants called *jotedars*. The *jotes* are saleable for arrears of revenue.

Large tracts of land in Darjiling are dealt with as waste land. There are settlements with *jotedars* for terms varying from five to thirty years. The clearances, however, are few. The government has appropriated large tracts for cinchona cultivation. Some parts are held by *mahaldars* who are considered to be proprietors; but they pay revenue. Some portions, generally used for tea-gardens, are held in "fee simple" or as revenue-free holdings, the right of the Government to rent having been sold.

Angul was formerly a Tributary State. The Chief rebelled and was deposed in 1847, and the State was confiscated. The settlement is with the raiyats direct, though rent is realised through village headmen.

Khurda comprises nearly a half of the district of Puri. Until 1837 it was settled *mahalwari* on rough estimates, the persons admitted to engagement being called *Sarbarakars*. *Raiyatwari* settlement was made in 1837. The raiyats' holdings under the recent settlement for 15 years are generally small. Rent is still collected through *Sarbarakars*.

The settlement and adjustment of rent of these *khás maháls* were regulated by the procedure laid down in Regulation VII of 1822. That Regulation was passed for the Ceded and Conquered Provinces in Cuttack and the Perganah of Puttaspare, but its operation was extended to the other provinces of the Bengal Presidency by Regulation IX of 1825. The main object of the Regulation was "to revise, through the agency of the Collectors or Settlement Officers, the jumma payable to
Government after a full enquiry into and careful settlement of the rights and interests of all classes connected with the land." The framers of the Regulation further declared that "a moderate assessment being equally conducive to the true interests of Government and to the well-being of its subjects, it is the wish and the intention of Government that in revising the existing settlement, the efforts of the revenue officers should chiefly be directed, not to any general or extensive enhancement of the jumma, but to the object of equalizing the public burthen". This was a very laudable desire on the part of the State, but we know how the Regulation has worked. The cases of Khurda, Midnapur, Chittagong and Poosa raiyats are not examples of moderation in the assertion of the absolute proprietary right of the sovereign.

The Settlement Officer under the Regulation, who is either a Deputy Collector or a Sub-Deputy Collector, must give notices\(^3\) to the raiyats and all persons interested in the settlement, and then proceed to make the necessary enquiries and prepare chittas and jummabandis or rent-rolls. Clause 1 of section ix declares the jummabandi to be final for all practical purposes, "until distinctly altered after full investigation in a regular suit." These chittas and jummabandis and the maps prepared by settlement officers are, however, not public documents within the meaning of section 74 of the Indian Evidence Act (I of 1872). They are records prepared by those officers in their executive capacity for the private purposes of the Government.\(^4\) A contrary view was taken by Justice L.S. Jackson in Taru Pattar v. Avinas Chandra

---

1 Preamble to Reg. VII of 1822.
2 Preamble to Reg. VII of 1822.
Dutt. He said that the "act of a Deputy Collector in making a settlement or enquiry, under Regulation VII of 1822, is that of a public officer, whether it be judicial or executive, probably it partakes of both characters." But this view was not accepted as correct in the later cases. Garth C. J. went further and held that maps and plans prepared by the Collector for the purposes of settlement of rent would be no evidence under section 83 of the Act.

As regards the holder of a resumed invalid lakhiraj land within a khas mahal, the rent assessed is binding until the assessment is set aside or abated. The raiyats, however, are not bound unless they assent, or the provisions of the law as to enhancement of rent are complied with. This is a necessary consequence of the Government being considered as a private proprietor in the districts to which the Bengal Tenancy Act applies.

In the year 1828, Regulation IV was passed for extending the powers exercised by Collectors under Regulation VII of 1822, and for control and revision by the Board of Revenue; but the requirements of the law as laid down by these Regulations were never carried out satisfactorily. Considerable difficulty was felt in "ascertaining the amount of the jumma payable by raiyats in any mahal under settlement, on an ascertainment of the quantity and value of actual produce, or on a comparison between the cost of production and value of produce." The principle which was laid down in the previous Regulations, and which was then understood to be the only

---

1 Taru v. Avinas I. I. R. 4 Cal. 79.
5 Regulation IX of 1833, Sec. 2.
correct theory of rent and was generally accepted by European economists, was declared by this Regulation to be inapplicable, as it certainly was, to the Indian people. The principle of assessment based on customary rent, if I may use that expression, was adopted. This basis of calculation was the rate of the rent actually paid by a large class of tenants, or the rent paid for land of similar description and under similar circumstances in places adjacent. But the principle was not long adhered to, and the value and capabilities of land began again to be taken into consideration since 1837.

The powers conferred by the Regulation Laws upon settlement officers were considered insufficient, and in the year 1878, an Act was passed by the Bengal Legislature "to define and limit the powers of settlement officers with respect to enhancement of rent." This Act was, however, soon repealed, and in the following year, an Act was passed which is still the law in all the Regulation Provinces not touched upon by the Bengal Tenancy Act of 1885. I shall have to deal later on with the details of the system of enhancement prescribed by this Act and the corresponding Acts. I may notice here one peculiarity as to the power of the settlement officers, namely, that the jum Nabandis prepared by them are final after publication, unless contested in civil suits instituted within four months, and unless it be proved by the raiyat that the enhancement was not in accordance with the Act. This is a burden which it is always difficult for raiyats to discharge. There is no presumption that the rent previously paid was fair and equitable, a presumption that all civilized legislation ought

---

1 Reg. IX of 1833, Sec. 2.
2 Act III (B.C.) of 1878
3 Act VIII (B.C.) of 1879.
4 Act VIII (B.C.) of 1879, Sec. 15.
5 Act VIII (B.C.) of 1879, Secs. 9 and 10.
The Bengal Act of 1879 has now been repealed in the Regulation Provinces, under the Lieutenant-Governor of Bengal, except Orissa. The Local Government may, with the sanction of the Governor-General in Council, extend, by notification in the official Gazette, the whole or any portion of the Bengal Tenancy Act to the Division of Orissa or any part thereof, and chapter X of the Act has been extended by a notification. The Settlement Regulations are, however, in force throughout the territory under the Lieutenant-Governor, except the Scheduled Districts as defined in Act XIV of 1874. Section 195 clause (a) of the Bengal Tenancy Act lays down that nothing in that "Act shall affect the powers and duties of Settlement Officers as defined by any law not expressly repealed by the Act." Regulation VII of 1822 and the Regulations modifying the same have not been expressly repealed by the Bengal Tenancy Act, though for all practical purposes, and to avoid complexity, the rules of law and procedure laid down in chapter X of that Act about the record of rights and settlement of rent are adopted even in the khas mahals. In the Scheduled Districts there are special laws in force for land revenue administration. You will find them collected in chapter 1 of the Settlement Manual of the Board of Revenue.

I ought here to add that by the terms of section 14 of Regulation VII of 1822, the assessment made by the Collector and confirmed by the Board of Revenue is final as to the amount, except as to agricultural raiyats. The civil courts have no power to question it; only the right to assess may be questioned.¹

² Act VIII of 1885 Sec. 1.
³ Reg. VII of 1822, Sec. XII; Ram Chand v. Government 6 C.L.R. 365; Secretary v. Fahamidannissa I. L. R. 17 Cal. 590.
The Commissionership of Assam including Sylhet is, since the year 1874, under a separate administration. The whole forms a Scheduled District under Act XIV of 1874, and the Statute 33 Vic. cap. 3 applies to it. A part of the country, namely, the tract at the north foot of the hills in Goalpara, is regarded as permanently settled, but the rest is Government property. The Settlement Regulations of the Bengal Code, supplemented by rules framed by Government, are now in force in Assam.

By the operation of the Resumption Regulations, large quantities of land within the ambit of the permanently settled estates of Bengal and Behar came to be in the direct possession of Government. Many of these were, according to the practice and procedure that prevailed before 1871, permanently settled; but in that year certain general rules were framed by which the revenue officers were required to lease them out on temporary settlements. They are very seldom, if ever, kept under khās management. During the period of settlement, these resumed lands are necessarily subjected to the laws in force with respect to such estates, and revenue is settled under Regulations VII of 1822, IX of 1825 and IX of 1833 and Act VIII (B.C.) of 1879. I shall revert to this subject later on, when I deal with the Resumption Regulations.

It not unfrequently happens that there are no purchasers of estates put up to for arrears of revenue. If the gross assets of an estate are reduced by diluvion, or depopulation on account of epidemics, famine or inundations in successive years, so that there may be no purchasers, the Collector is authorised to purchase on behalf of Government. In such a case the acquisition is subject to the provisions of Act XI of 1859. Instances of escheated or forfeited estates are not rare. The Khurda estates in the

---

1 Act XI of 1859, Sec. 58.
district of Puri, Angul and Banki have come into the possession of Government by escheat. A few estates in Behar were made khās after the Indian mutiny, but most of them were re-settled permanently.

Island churs are, under Regulation XI of 1825\(^1\), the property of Government.\(^2\) Some of these have been temporarily settled. Alluvial accretions to an estate by the recession of the sea or of tidal navigable rivers are not the property of the State. They belong to the holder of the lands\(^3\) to which the newly formed lands have gradually accreted. But the Government has, under Act IX of 1847, the right to assess such accreted lands with additional revenue, if it be found that such lands are not reformations in the site of diluviated parts of settled estates, and if the holders of the estates have continued to pay revenue for the same without abatement.\(^4\) Several estates have been formed on account of the separate assessment of such accreted lands. They are seldom, if ever, kept under khās management, as under the law the Government is bound to allow the holder of the adjoining estate to have the settlement. It is only in cases where the holder of the estate declines to accept the assessment that the land becomes khās;\(^5\) but even then the proprietor is entitled to malikana.

Revenue is assessed on the principles laid down in Regulation VII of 1822 and the Regulations and Acts modifying it, and the proprietor is entitled to have settlement at a jumma calculated on the gross assets, less collection charges and malikana. Such accreted lands

\(^1\) Reg. XI of 1825, Sec. 4, cl. 3.
\(^2\) Khilat v. Collector W. R. (1864) 73.
\(^4\) Act IX of 1847, Sec. 7.
\(^5\) Secretary v. Fahamidannissa I. R. 17 I. A. 40, Sec. I. L. R. 17, Cal 590.
are numbered in the revenue roll of the District as separate estates.\(^1\)

The policy of Government was to settle lands permanently after assessment under the Settlement Regulations. In fact, those Regulations were framed in pursuance of that policy. Since 1861, the policy of selling estates outright after settlement was also adopted, a policy which may well be questioned from a financial point of view. In 1871, a change was introduced, since when temporary settlements only have been allowed. But in 1875, the Government ruled that there should be *khās* management whenever practicable, if the extent of land and cultivation are sufficient to support *tehsildari* (collection) establishment.

The settlement of land-revenue in temporarily settled estates and *khās mahāls* takes place periodically. The Government is a *landlord* within the meaning of the word as used in the Bengal Tenancy Act, and though the amount payable directly to Government in the *khās mahāls* is rent, the paramount title of the State carrying with it the right to receive revenue and the proprietary right to receive rent uniting in the Government, the proprietary interest merges in the paramount title, and rent in such cases is called revenue. The right, however, to settle the revenue is regulated, in the districts to which the Bengal Tenancy Act applies, by the procedure laid down in chapter X of the Act and the rules framed by the Local Government, and no fresh settlement of revenue can be undertaken until the lapse of fifteen years, though there may be decennial surveys under Act IX of 1847. In the temporarily settled estates the same rules are applicable. The Settlement Officer ascertains the amount justly payable or is actually paid by the raiyats which is ordinarily called *rent*, and after such assessment, deduction is made for collection charges

---

1 Act XXXI of 1858.
and *malikana* where this is payable, and temporary settlement is then made with the person who becomes the proprietor or landlord for the period during which the settlement may last.

**Settlement operations** are now going on in the province of Orissa which contains the largest number of temporarily settled estates. Although Regulations VII of 1822, IX of 1825 and IX of 1833 and Act VIII (B. C.) of 1879 apply with full force in this province, the procedure for fresh settlement adopted is that laid down by chapter X of the Bengal Tenancy Act and the rules framed under section 189 of the Act. I propose to deal with this province later on.

In the beginning of this century, the large tract of deltaic land known as the Sunderbuns and covered with dense forest was not included within the permanently settled area of the districts of Twenty-four Perganahs and Jessore. But squatting and encroachment by holders of adjacent permanently settled estates were common, even in those early days. The zemindars of Taki in the Twenty-four Perganahs were the most prominent in this practice of encroachment. In the year 1816, the Government thought it necessary to appoint a special officer called the Commissioner of the Sunderbunds for the fiscal management of this tract.\(^1\) Section 3 of Regulation II of 1819, wellknown as the Resumption Regulation, expressly referred to this forest tract,\(^2\) and in 1825, the settlement rules laid down in Regulation VII of 1822 were made applicable to it.\(^3\) Up to this time, however, the attention of Government was directed only to the cleared and occupied portions which were *encroachments* and which were technically *taufir*. But in 1828, rules were laid down for the determination of the boundaries of the tract which was formally declared\(^4\) to be the "property of the State, the same not having been

---

1. Reg. IX of 1816.
2. Reg. II of 1819, Sec. 3, cl. 3.
3. Reg. IX of 1825, Sec. 2, cl. 3.
4. Reg. IX of 1828, Sec. 13, cl. 2.
alienated or assigned to zemindars." The Governor-General in Council was declared competent to "make grants, assignments and leases of any part of it." The claims of persons in possession of cultivated lands in the neighbourhood of settled estates were left to be determined under the rules laid down in Reg. II of 1819. Any objection to the line of delimitation was to be made within three months from the date of the Commissioner’s proceeding fixing the same, and on no account later on. This sea-board of the delta of the Ganges was defined by the boundary line laid down in 1829 by Mr. W. Dampier, the then Commissioner of the Sunderbuns. Captain Hodge’s map is a well-known map of delimitation. The cultivated portions within the line were formed into permanently settled estates as "patit-abadi" taluqs.

Jungalburi leases or leases for reclamation and cultivation of waste lands in the Sunderbuns began to be granted from time to time until the year 1845, when a large number of grants were made, but no definite rules for grants of waste lands were framed until the year 1853. The Sunderbun grants made under these rules were for 99 years with conditions for progressive enhancement of revenue and compulsory clearance. There was liability to forfeiture for non-clearance. After the lapse of 99 years there is to be fresh settlement of revenue. Most of the important lots, thus granted, have now been cleared, and many of the present holders of the grants are rich land-holders. The rules of 1853 were virtually superseded by those laid down in accordance with Lord Canning’s Minute of 1861,—the sale-rules known as the “fee-simple” rules. But they proved inoperative, and a set of revised lease-rules was adopted in 1879. The rent-free

---

1 Regulation III of 1828, Sec. 13, cl. 1.
period is, under the new rules, ten years, and there is only one clearance condition, viz., that one-eighth of the entire grant should be rendered fit for cultivation at the end of the fifth year, the usual term of lease being forty years with condition of resettlement. The tenures are heritable and transferable.

The lands covered by the grants made under the old or the new rules are temporarily settled estates, and they come within the purview of the Regulations and Acts dealing with them. They are saleable for arrears of revenue under Act XI of 1859 and Bengal Act VII of 1868.

In the year 1865, the Government of India gave its special attention to the management and preservation of Government forests. The rules in force at the time were with modifications incorporated in Act VII of that year. The importance of the preservation of forests was insisted on by high authorities in India, and in 1878 an Act1 was passed to amend the law relating to them. Forest settlement officers were appointed, as also forest officers for the preservation and protection of forests, and provision was also made for income from forest produce. The settlement officers were vested with the powers of a Collector under the Land Acquisition Act of 1870. Penalties were laid down for infringement of the provisions of the Act and the subsidiary rules that might be framed thereunder.

These important provisions for the protection of forests required the establishment of a special department of officers. The income of Government may be classed mainly under three heads, viz., sale of timber, the catching of wild animals, especially elephants, and produce of trees such as rubber, caoutchouc, gum and cocoons. The working of the Act has occasionally caused hardship upon private owners of forest lands. Convictions under the provisions of the Forest Act are

1 Act VII of 1878.
not unfrequent, and you will find in the Reports a number of cases on the subject. ¹

A small quantity of land is held by Government as khas on acquisition either from settlement holders or holders of revenue-free lands. I leave out of consideration such lands as are still held by Government on payment of rent to zemindars. Acquisition of land for public purposes was not common in the beginning of the British rule. The only lands then apparently used were for military purposes and for manufacture of salt. The monopoly of salt-manufacture began since the year 1780. Large quantities of land on the sea-coast fit for the purpose were taken possession of by the Salt Agents of Government in the Twenty-four Perganahs, Jessore, Khulna, Chittagong, Midnapore and Balasore, for which, whenever the lands were included within the ambit of permanently settled estates, Government paid khalari rent. In 1824, Regulation I was passed for acquisition of lands for public purposes and the adjustment of the claims of zemindars for salt lands. This Regulation continued to be in force until the year 1857, when Act VI was passed, repealing it. In the mean time, two Acts had been passed in 1850—Act I, extending the first seven sections of the Regulation to the town of Calcutta, and Act XLII, declaring Railway to be public work within the meaning of the Regulation. Act X of 1870 repealed the Act of 1857, but the Act now in force is Act I of 1894. Under these Acts, acquisitions made by Government are free of all incumbrances.

Section 10 and the subsequent sections of Regulation I of 1824 deal with the right of Government as regards jalpai or salt lands. The Government gave up the monopoly of salt-manufacture in 1863, and such portions of the lands occupied for salt purposes as

were within the area of permanently-settled estates, were assessed and settled as *khás maháls*. Disputes arose between Government and some of the zamindars in the district of Midnapur, the latter claiming the right to hold the lands. One of these cases was contested but the Judicial Committee of the Privy Council decided in favour of Government, holding that Regulation I of 1824 gave Government the absolute right to these lands.

Road-cess under Act VIII (B.C.) of 1880 is payable by Government for the *khás maháls* in the same way as by the owner of private estates. Section 7 of the Act provides for payment of road cess by the local Government, the sum not exceeding what would be payable by a private person. The public works cess which is a fund originally levied for famine purposes, but now appropriated to imperial purposes, does not seem to be payable by the local Government.

The Government dues in *khás maháls* are generally realised by the certificate procedure laid down in the Act known as the Public Demands Recovery Act, 1880. The Act has not been found to work satisfactorily, and it is expected that a new Act will be passed by the local legislature early next year. The Act now in force gives the Collector, or a Deputy Collector duly empowered in that behalf, power to file a certificate in his office, and from the date of the service of notice thereof it has the effect of an attachment on the properties belonging to the debtors. After the expiry of thirty days, and if no objection be made or if an objection be made and the same be disallowed, the certificate has the force of a decree of the Civil Court, and the Collector has the right to enforce the same

---

1 Secretary v. Anandmoyee I. I. R. 8 Cal. 95, sc. 8 Cowell's Ind, App. 172.
2 Act VIII (B.C.) of 1880.
3 Act VIII (B.C.) of 1880, Sec. 5.
4 Act VIII (B.C.) of 1880, Sec. 10.
5 Act VIII (B.C.) of 1880, Sec. 11.
6 Act VIII (B.C.) of 1880, Sec. 18, 19.
and levy the amount as a civil court. The proceedings taken are generally loose, and the various steps for bringing the debtors' properties to sale are left without proper supervision to irresponsible agents. Instances of gross violations of private rights by sales under the Act are very frequent. I have been informed that Government dues are not also fully realised by the adoption of the Certificate Procedure. I hope the amending Act will be so framed that not only the interest of Government will be duly protected, but ample protection will be afforded to a poor but a large class of subjects who are now frequently made to suffer from the negligence and occasional stupidity of the subordinates in District Collectorates. It very frequently happens that the poor debtors, who cannot afford to have revenue-agents at the Collectorates to watch their interests, know nothing of certificates and sales of their properties under the Public Demands Recovery Act, until the fortunate or unfortunate purchasers, as the case may be, come to take actual possession. Litigations follow to the ruin no less of the purchasers than that of the debtors. The cases are taken through the various stages of the tardy and cumbersome procedure of civil courts. The extension of the provisions of the Cess Act\(^1\) for direct realisation of Government dues from the poor *lakhiraj-holders* has been a source of unmitigated mischief in several districts. The amounts realisable are small, but the means adopted for their recovery are expensive and occasionally bring down ruin.\(^2\)

---

\(^1\) Act IX (B.C.) of 1880, Sec. 70.

\(^2\) Since these lectures were delivered the Bengal Legislature has passed Act I of 1895 which has materially altered the Act of 1880. One important feature of the Act is the extension of the provisions of section 310 A of the Code of Civil Procedure to certificate-sales.
LECTURE III.

REVENUE-FREE LANDS.

When the East India Company took formal charge of the finances of the Bengal Provinces as Diwan of the Great Moghul, it was found that large quantities of land were in the possession of private individuals who paid no revenue for them. Starting, as they did, with the theory of the king's or the conqueror's absolute dominion over the soil, the Company was not bound to recognise any right that detracted from the right to take possession of or assess with revenue every inch of land in the country. But principles of humanity prevailed, and the Government continued to the "grantees or their heirs such of those grants as were hereditary and were made before the date of the Company's accession to the Diwani, provided the grantees or their heirs had obtained possession previous to that date."\(^1\) To use another utterance of the framers of the Regulation Code of 1793, "the lenity of the East India Company induced them to adopt it as a principle, that grants made previous to the date of the Diwani should be held valid,"\(^2\) though there were certain necessary restrictions.

The origin and history of these grants made by the previous ruling powers in India is a subject of some interest. The Hindu kings, as we have seen, were entitled to a share of the produce of the land for the protection they afforded to life, liberty and property. But the

---

1 Preamble to Regulation XXXVII of 1793.
2 Preamble to Regulation XIX of 1793.
Origin of Revenue-Free Grants.

great law-giver of ancient India said—"A king, even though dying with want, must not receive any tax from a Brahmin learned in the Vedas;" and he added,—"By that religious duty, which such a Brahmin performs each day under the full protection of the sovereign, the life, wealth and dominion of his protector shall be greatly increased." Our great poet Kalidasa in his Abhijnana-Sakuntalam was referring to the utterances of Manu and other sages and the universal practice of Hindu kings, in the following conversation between Dushmanta and Madhavya:

"Madhavya.—Say, you have come for the sixth part of the grain which they owe you for tribute.

"King. No, no, foolish man, these hermits pay me a very different kind of tribute which I value more than heaps of gold or jewels; observe—

The tribute which my other subjects bring,
Must moulder into dust; but holy men
Present me with a portion of the fruits
Of penitential service and prayer,
A precious and unperishable gift."

(Dr. M. William’s Translation).

1 समावणात्मकद्वीत न राजा ग्रीविप्रतृत कारस्।
Manu, Chap. VII, v. 133.

2 संरक्षणानि राजा य: कूडिक्षुः संस्कृतः
तेनायुक्ते राजी द्रवियः राष्ट्रियः
Manu, Chap. VII. v. 136.

3 विद्वेषकः की अवरोग्यं तुष्णां राजाः श्रीवार्धङ्गमाः अन्नां
उपहरलुः च।
राजा। मृ कृ मेये विद्वेषक्षेपण्यं रूपं निष्ठुति चारमानीशैलिपि
विष्ठायाधिकवाच
प्रagy
बद्दलितं वरोग्यं सारां वचि तस्य ततः च।
तपःप्रेरणामध्यं वद्यार्थः चिं नैः
Abhijnana-Sakuntalam, Act II.
Vishnu has also said,—"A sixth part both of the virtuous deeds and of the iniquitous acts committed by his subjects goes to the king."¹ This exemption from tax of a class of men on the principles thus enunciated is an instance of, what lawyers call, a legal fiction. The king is supposed to be entitled to a sixth of the produce from all persons in occupation of land, and the exemption of a class of pious men is ascribed to a fictitious payment—a payment which according to Hindu notions not only counterbalanced but outweighed by far, in both temporal and spiritual points of view, any benefit that might be conferred by actual payment in kind or specie.

This practice of allowing pious Brahmins, learned in the Vedas, to hold land revenue-free was soon extended to Brahmins, who had a large number of disciples to teach in other branches of learning, and also to other religious and charitable objects. By the time that Vrihaspati composed his sutras, who, according to European authorities, wrote long after the days of Manu, the legal fiction was lost sight of, and the sage distinctly speaks of gifts of lands to pious Brahmins learned in the Vedas without reference to it. The extension of the territories of Hindu Kings and the subjugation of aboriginal tribes necessitated the immigration and settlement of learned Brahmins in the newly acquired countries. Vrihaspati says, —"The king shall invite Brahmins versed in the Vedas and devoted to the maintenance of the sacred-fire and settle them in the newly acquired land and make provisions for them."² Yajnavalkya also says:—"The king shall provide a place for and

¹ राजा च प्रजाः: शुक्लदुर्गक्त-पंशिमानकः
Vishnu Smriti III 28.
² वेदवियाधविस्मानं श्लोकज्ञानसिद्धिविषय:।
ामास्य नागायनं सत नं तेनं वनस्मक्षायनं।
settle Brahmins, versed in the three Vedas, in the town, with provisions for their maintenance, charging them to perform the duties of their callings." There are various pious and religious acts which these Brahmins were expected to perform, and the texts of sages are many that require them to perform duties which, we would say, are necessary even for sanitary and agricultural purposes.

The grants made by Hindu kings were expressly revenue-free. The deeds which the kings were directed to execute as evidence of such grants were called sásana or rajásásana, and were required to be, if possible, on copper-plates. Vrihaspati states in detail what these copper-plate grants should contain. Grantees were to hold in perpetuity, or to use the rhetorical language of the sage, "as long as the sun and the moon shine on the horizon." All future kings are enjoined to respect these grants. Many copper-plate grants, almost in the very language of Vrihaspati's texts with immaterial modifications, have been recently discovered. For the purposes of the present lecture, I would draw your attention to only a few specimens covering lands in the Lower Provinces of Bengal. The tide of Aryan migration towards the East was rather slow. Bengal attained importance as an Aryan kingdom during the reign of the Pal Rajas and their successors, the well known kings of the Sen family. It is said that the celebrated Ballal Sen and his worthy descendant Lakshman Sen

---

1 राजा जला परिश्चानम् ब्राह्मणं वच्च तव तु
प्रेमिकां हरिमद्यानां लोकमण्डलस्थिति॥
Yajnavalkya quoted in Viramitrodaya, p. 423.

2 "चन्द्राकेस्वकालाक्रमे पवनपीवानवानाभि
प्रनासायं मनसाधायं स्वेतेजविविष्ठ्यं॥"
Vrihaspati quoted in Viramitrodaya, 192.

3 1066 to 1107 A.D.
4 1107 to 1129 A.D.
made a large number of grants in favour of learned Brahmins and even of Kayasthas, who had been invited by Adisur\(^1\) from the North-Western Provinces to take up permanent abode in the rich and alluvial lands of the Gangetic delta. Several ancient families in these provinces claim their descent from these settlers, whom the policy or liberality of the Sen Rajas drew down from the earlier habitations of our Aryan fathers, and they still hold lands under grants made eight or nine centuries ago. The copper-plates that have been discovered are legal documents, complete in every respect, executed apparently for pious and religious purposes. Vignaha Pal was one of the Pal Rajas, and the Amgachi plate\(^2\) is an instance of alienation of revenue made by him. A copper-plate was discovered near the Sunderbuns some years ago, executed by the celebrated Raja Lakshman Sen\(^3\). Another copper-plate was discovered in 1874 in the Tarpanidighi in Dinajpur, also executed by Lakshman Sen, by which the grantor granted a share in the land of the village of Bilahisti.\(^4\) A similar plate executed by Keshub Sen, son of Lakshman Sen, has also been found in Perganah Idipur in Bakhergunj.\(^5\) Copper-plates have also been discovered, similar in language and import, executed by the Hindu Kings of Behar—the Magadha and the Mithila Kings. Grants of lands revenue-free for the performance and continuance of the worship of Hindu Gods were also numerous. They are generally in the names of the priests, the sebayets.

Grants to Brahmins are known in Bengal by the generic name, *bramhattar*, and in Behar by the name, *brit* (ব্রিট), and lands dedicated to the gods by the name,

\(^{1}\) 986 to 1006 A.D.
\(^{2}\) Asiatic Researches, Vol. IX. p. 440.
\(^{3}\) A discourse on the Bengali Language and Literature by Pundit Ramgoty Nyayaratna. Part II p. 371.
different parts of the country and, according to the peculiarities of the terms and conditions, under various names, some of which require specification. *Mahatran* are revenue-free grants to persons or families other than Brahmins. These latter are also numerous in Bengal proper, especially in the Presidency Districts.

As I have already said, the Afgan conquest of Bengal was never complete. Many of the ancient Hindu royal families, which, according to the practice of olden days, had only become tributaries or subordinates of the Sen family, as the imperial power, continued to hold on, after the conquest, sometimes yielding only nominal allegiance to the Musalman viceroy or kings, and not seldom defying them. The grantees of revenue-free lands in these independent or semi-independent principalities remained in quiet possession, and we have reason to believe that fresh grants continued to be made even in the days of Afgan rule. The Great Moghul could not make much impression in Bengal. The same causes, which had worked in the days of India’s freedom from foreign yoke, impelled, with equal force, the class of men latterly called *zemindars*, to occasionally alienate the state share of the produce of lands in favour of Gods and Brahmins and the gentry in these provinces. Thus large quantities of land in the Bengal Provinces, especially in Bengal proper, came to be *lakhiraj* i. e., free from *khiraj* or revenue, and the East India Company, when they accepted the Diwani from the great Moghul, had many difficult problems to solve with reference to them.

The doctrines of the Mahomedan faith, as much as the Hindu, favoured grants or *appropriations* for religious and charitable purposes. "Superstitious uses" is an expression that could be applied equally to the practices of almost all nations and all creeds. Religious fervour existed in the Afgan and the Moghul Kings
and Emperors in a high degree. Even that extraordinary prince Akbar Shah with his broad views, which some historians have characterised as irreligious, was not slow in making gifts of lands to men of great merit, and for pious and charitable purposes. Instances of grants by other Mahomedan potentates to Hindus were not also uncommon.

Grants to military officers and servants of the state were called *jaigirs* in the days of the Mahomedan government. In the language of Regulation XXXVII of 1793, "*Jaigirs are to be considered as life-tenures only, and with all other life-tenures are to expire with the life of the grantee, unless otherwise expressed in the grant.*" They have often been said to be life-grants. Originally of a feudal character, but not hereditary, they were granted on condition of service. In India, however, offices frequently descend from father to son and they were renewed very frequently in favour of the sons of previous holders. But the terms of *jaigir* grants were not uniform. They were occasionally given to be held as hereditary and alienable grants. A *jaigir* must be taken *prima facie* to be an estate for life only, although it might be on such terms and conditions as to make it hereditary.  

Under British administration, many *jaigirs* have become hereditary and alienable.  

*Jaigirs* are said to be of two kinds—conditional and unconditional. Conditional *jaigirs* could be held as long as the grantee continued to perform the service for which the revenue was alienated in his favour.  

Unconditional *jaigirs* are personal grants

---

1 Reg. XXXVII of 1793, Sec. 15.
for life. In Bengal there are a few jaigirs, but in Behar there are a good many created by the emperor Shah Alum, and they have since been treated as estates of inheritance. It should be remembered that jaigirs are not grants of lands, but they merely indicate interception of the khiraj. They are not strictly lakhiraj.

Milk or Milik was, in Mahomedan times, a grant of land, and not merely interception of the revenue. The grantor was usually in occupation of the land. Such grants are very common in the North-Western Provinces; they are rather rare in Bengal and are generally known by other names. They are hereditary and transferable.

Regulation XXXVII of 1793 refers to altamgha, ayma and madadmash grants as hereditary and transferable by gift, sale or otherwise. Hereditary altamghas were royal grants under the Emperor's red seal, and referred to revenue of land under cultivation. They are now found chiefly in Behar.

Aymas were grants made to Imams by the sovereign. In Bengal they are of two descriptions,—revenue-free (lakhiraj) and revenue-paying (malgoozary). We shall deal with revenue-paying aymas later on, as they are now regarded as revenue-paying estates. Revenue-free aymas are in their incidents the same as milik and madadmash.

Madadmash grants are not uncommon in Bengal. They were made for religious purposes and, as such, are inalienable. The grants were in perpetuity. The distinction between madadmash and grants of a similar nature known by other names is very little, except as to origin and use of the lands; but whatever the origin, the Regulation of 1793 has done away with all distinctions.

---

2 Field's Introduction to the Regulations p. 68.
3 Reg. XXXVII of 1793, Sec. 15.
Seyurghal grants are not mentioned in the Regulation, but they are found in Bengal. These were grants of lands to learned men and scholars, to Madrasas or colleges, or to Fakirs or saints who withdrew themselves from worldly affairs. They were originally for life, but when grants were made to colleges, they were necessarily perpetual. These grants, like malgoozary aymas, were not free from revenue, and one fourth of the revenue was payable as the share of the state.

Nazarat lands are held for performance of services and for other religious purposes at musjids. They were granted for public purposes for the benefit of the Mahomedan community. Being public endowments, they are inalienable in their nature, like lands granted for other charitable and religious purposes. The succession is regulated according to the directions in the grants, or the custom and usage prevalent in the locality.

It does not appear that during the period of the Mahomedan government of the Bengal provinces, any serious attempt was ever made to resume revenue-free or rent-free lands, though, as a matter of fact, they were then almost as abundant as they were in the year 1793. After the assumption of the Diwani in 1765, some fresh alienations were undoubtedly made. The distressful visitation of the famine and the consequent depopulation, the necessary solicitation of the zemindars to have men of the higher classes as well as actual cultivators to occupy and cultivate the land and prevent its reverting into the state of primeval forest under the tropical sun and rain, and, not unfrequently, the fraudulent desire on the part of some zemindars to take advantage of the revolution and the disorder, attending the administration by a set of handful men, who were, from their ignorance of the people and their language, merely tools in the hands of crafty subordinates, had induced alienations of land as lakhiraj, without the authority of Government. The superior officers in the
Company's service had reason to believe that land to a considerable extent, held under exemption from payment of Government revenue, existed in the Bengal provinces, some under proper authority, but a good deal under fraudulent and forged grants. The Directors of the Company wanted money. Increase of revenue was urgently needed, and as a means of replenishing the exhausted coffer, plans were early adopted to check further alienations, and for ascertaining the real merits of the alienations already made. The first attempt was made by Warren Hastings in 1782, and Regulations were passed for the purpose. These were modified in the following year. These rules, again, were, with certain modifications, reproduced in Regulations XIX and XXXVII. But the plans thus made for the increase of revenue were ineffectual, and Regulation II of 1819 was passed to carry out effectively the object of the Resumption Regulations of 1793. The Regulation of 1819 is well known in Bengal by the vernacular name, Doem Quanoon. Other Regulations were subsequently passed in furtherance of the same object, and Regulations IX and XIV of 1825 and III of 1828 are the most important of them. This last Regulation empowered the appointment of special Commissioners, known in Bengal as Khás Commissioners, for the trial of the large number of resumption cases which were filed after the passing of Regulation II of 1819. The Government succeeded in resuming some lands, and the holders of permanently settled estates derived additional income by having occasional recourse to the resumption laws, but, more frequently, to forcible ouster.

The study of the resumption laws and the numerous rulings interpreting them is now of little practical utility. The legal machinery introduced by these laws, with all its crushing power, has done only a small

1 Ante p. 40

Study of resumption laws now of little practical utility.
portion of the work, it was intended and expected to achieve, but the stronger hand of time, with its rules of prescription and limitation, has now almost entirely quieted titles, however disputable at one time. Now and then, a purchaser under a sale for arrears of revenue or rent, obtaining land free of incumbrances, attempts to disturb long possession; now and then, the combination of raiyats sets up false and fraudulent lakhiraj titles to defeat or delay the realisation of rent by new or oppressive landlords, and, occasionally, the forcible ouster of lakhiraj holders compels them to seek remedy at law; but these cases are growing rarer with the lapse of time. The cases that are now instituted are decided more on general principles of prescription and limitation than on the technical rules laid down in the Bengal Regulations. But no treatise on the legal incidents of land in Bengal should be without a few words on the once important laws about resumption. Laws, which cost immense sums in litigation, and procedures, which brought forward immense learning and legal disquisitions, are matters of study and curiosity to legal antiquarians.

Broadly speaking, the Resumption Regulations referred not only to lands within the ambit of permanently settled estates, but also to lands outside the same. The latter class of lands was not dealt with by the earlier Regulations. Regulations II of 1819, IX of 1825, XIV of 1825, III of 1828 and IX of 1833¹ deal with lands not included within the limits of any perganah, mouzah or other division of estates, already settled. They were mostly waste or uncultivated lands at the time of the permanent settlement.² The proceedings, however, about them were also called resumption proceedings.

¹ Reg. II of 1819, Sec. 3; Reg. IX of 1825, Sec. 2; Reg. XIV of 1825, Sec. 3; Reg. III of 1828, Sec. 13.
² Ante p. 41.
At the time of the Decennial Settlement, large quantities of unascertained land had been left unassessed, though they were within the settled area. The Government, at the time, classed them under two heads, the one claimed to be held under Badshahi or royal grants, the other non-Badshahi. The rules passed on the 23rd April 1788 had dealt with Badshahi grants, and those passed on the 1st December 1790, with the other class. In the Code of 1793, passed on the 1st May of that year, the distinction between the two classes of grants was preserved. In the Proclamation announcing the Permanent Settlement, the Governor-General in Council retained the power to "impose such assessment, as he might deem equitable, on all lands at present alienated and paying no public revenue which had been or might be proved to be held under illegal or invalid titles." The Proclamation then went on to say—"the assessment so imposed will belong to Government, and no proprietor of land will be entitled to any part of it." This part of the Proclamation applied to both classes of lands claimed as revenue-free. Section 36 of Regulation VIII of 1793 also referred equally to both the classes.

Now, what are these Badshahi grants? It would seem from the expressions, Badshahi, Altamgha, etc., used in Regulation XXXVII of 1793, that the framers intended to denote by the word Badshahi, all sorts of grants made or alleged to have been made by the Mahomedan Emperors only. The corresponding Regulation XIX of 1793 refers in words to "numerous grants not only made by the zemindars but by officers of Government appointed to the temporary superintendence

---

1 Reg. I of 1793. Sec. 8, cl. 3.
2 Preamble to Regs. XIX and XXXVII. of 1793.
3 "The assessment is also to be fixed exclusive and independent of all existing lakhiraj lands, whether exempted from the Khiraj (or public revenue) with or without due authority." Reg. VIII of 1793, Sec. 36.
of the collection of revenue." The Regulation about Badshahi grants does not, in words, refer to grants made by the previous native governments. But it was not necessary to say anything about grants made by Hindu kings. Forged documents, purporting to be under the authority of native governments, might be produced, but Government either omitted, or did not care, to legislate about them. Regulation XXXVII contemplated cases more of expired grants than grants which might be held to be forged, altered or antedated. All grants of lands, whether Badshahi or not, made by whatever authority, for "holding land exempt from the payment of any revenue previous to the 12th August 1705, were declared to be valid, provided the grantee or his heirs had bona fide obtained possession previous to that date," and provided that the grants were made in perpetuity.

The burden of proving the genuineness and validity of these grants was on those who set them up, the presumption being that the Government was entitled to assess every inch of land. The burden was rather heavy, and it became heavier as years elapsed. Regulation XIV of 1825, therefore, enacted that uninterrupted possession, exempt from assessment from the date of the Diwani in Bengal, Behar and Orissa, and from the 14th October 1791 in Cuttack, would be sufficient to prove valid lakhiraj title, but proof of possession and the hereditary nature of the grant (in the case of persons not the original grantees) must be given by the claimant.

1 Preamble to Reg. XIX of 1793.
2 Reg. XXXVII of 1793, Sec. 12.
3 Reg. XIX of 1793, Sec. 2 and Reg. XXXVII of 1793, Sec. 2.
5 Sec. 3, cl. 2, 3; Maharaja v. Government 4 M. I. A. 466.
No royal grants could, in the nature of things, be made after the 12th August 1765, and no grantee could rely upon any imperial firman made after that date. The rules of 1793, therefore, held that, on the expiry of life-grants, and on any propounded document of revenue-free title being found to be forged, the lands covered by them would revert to the State, whatever the quantity might be; and on resumption, expiry or escheat, they would be assessed and settled in perpetuity, agreeably to the rules of settlement contained in Regulation VIII of 1793. The zemindars, within the ambit of whose estates the lands lay, were declared entitled to settlement, as if the lands were separate revenue-paying estates. Any questions as to the nature of the original grants, whether for life or in perpetuity, were to be decided by the terms of the grants, or if they were not found, according to the ancient usages of the country.

The more important class of grants, in a lawyer's point of view, is the non-Badshahi. As I have already said, proprietors of settled estates had no title to possession of lands covered by invalid or expired Badshahi grants though lying within the ambit of their estates and whatever the quantity might be. But the case was different with the other class. Regulation XIX of 1793 laid down different rules for resumption and assessment of lands according to quantities and dates of grant. They were classified as,—(1) exceeding one hundred bighas, (2) below one hundred and exceeding ten bighas, and (3) not exceeding ten bighas.

Again, for the sake of convenience, I may classify them with reference to time under the following heads:—(1) from 12th August 1765, the date of the Diwani, to the 12th April 1771, the beginning of the Bengal...

---

1 Reg. XXXVII of 1793, Sec. 6.
3 Reg. XXXVII Sec. 2, cl. 3.
year 1778 or the 26th September 1771, the beginning of the Fuslee and Waliaty year 1779, (2) from these latter dates \textit{i.e.}, the 12th April 1771 or the 26th September 1771 to the 1st December 1790, (3) the period subsequent to the 1st December 1790.

Regulation XIX declared "that all revenue-free grants made since the 12th August 1765 by any other authority than that of Government and which might not have been confirmed by Government are invalid."\(^1\)

As regards grants of land, exceeding 100 bighas, whether lying in one village or two or more villages and alienated by one grant previous to the 1st December 1790. the Government had the right to resume and assess the lands.\(^2\) The proprietor of the estate within the ambit of which the lands might be situated had no right to the same\(^3\); but if the grant was posterior to the 1st December 1790, the date of the Decennial settlement, the right to resume and assess was in the proprietors of estates or dependent taluqs, and they and their managers were enjoined to resume such lands.\(^4\)

Putnidars and owners of similar permanent tenures, holding estates or parts of estates, being vested with the right which might well be called proprietary within the meaning of section 10 of the Regulation, had the same powers as proprietors. But notwithstanding the grant of a putni or any other lease in perpetuity, the proprietor of the estate retains the power of bringing resumption suits, as the resumption would inure to his own benefit as well as to that of the putnidar.\(^5\)

\(^1\) Reg. XIX of 1793, Sec. 3.
\(^2\) Reg. XIX of 1793, Sec. 7.
\(^4\) Mahomed v. Umbica W. R. (1864) 132; Barbara v. Moonshee Mahomed W. R. (1864) 217; see also, Raj Kishen v. Dhone Bibee 1 Hay 421; Aikcowree v. Mohur 2 Sev. 115; Hurryhur v. Abbas 1 R. J. P. J. 23 (2 Sev. 875).
\(^5\) Okhoy v. Mahomed W. R. (1864) 212.
precluded from resuming lakhiraj land situated in a dependent taluq, though such dependent taluqdar has no right to resume. When land exceeding one hundred bighas was admittedly held by a lakhirajdar, the presumption was that it was held under one grant, and that it was resumable by Government and not by the zemindar. In order to rebut the presumption, the zemindar must shew that the land, though beyond one hundred bighas in extent, was held under different sanads.

If the grant of land in excess of one hundred bighas was made after the 12th August 1765, and previous to the 12th April 1771 in Bengal or the 26th September 1771 in Behar or Orissa, the Government had only the right to assess at revenue called, in vernacular, nisf-jumma i. e., equal to one-half of the produce of the land according to the perganah rate, the grantee being entitled to possession. If any part of the land remained uncultivated, russudi or progressive jumma was to be fixed. If the holder of the grant agreed to pay the revenue so assessed, the jumma was to be fixed for ever. The taluqs thus formed were called independent taluqs. If, on the other hand, the grant set up by the holder of the lakhiraj land bore a date between the 12th April 1771, or the 26th September as 1771, the case might be according to the Province in which the land was situated, and the 1st December 1790, the assessment was to be made as on ordinary revenue-paying lands according to the rules given in Regulation VIII of 1793. If the settlement was accepted by the holder of the land, the estate would likewise be recognised as an independent taluq. If, however, the grantee refused to accept settlement, the land was to be held khas and dealt with under the settlement rules as to khas mahals. Lands held under grants made after the 1st December

---

1 Jugunnath v. Pogose 4 W R. 43.
3 Reg. XIX of 1793, Sec. 8, cl. 3.
1790 were to be considered as parts of the *mal* or rent-paying lands of the holder of the estate within which they might lie, and the proprietors were entitled to eject the holders, whatever the quantity of land might be.¹

Land not exceeding one hundred bighas but exceeding ten bighas, whether lying in one village or two or more villages and alienated by one grant declared invalid, was to form part of the estate or dependent taluq within the ambit of which the land was situated.² Regulations I and VIII of 1793 had declared the right of the State to all lands unassessed at the date of the Decennial Settlement, but Government thought that the revenue payable by holders of permanently settled estates would be better secured if the benefit derived from the resumption of small *lakhiraj* lands were conferred upon these proprietors, and so it gave up in their favour the right which it undoubtedly had.³ If the grantee of land exempt from revenue held under a sanad bearing a date between the 12th August 1765 and the 12th April 1771 in Bengal and the 26th September 1771 in Behar or Orissa, he was entitled to hold the land as a dependent taluq subject to the payment of rent to the proprietor of the estate, the amount being fixed in perpetuity by the Collector acting under the revisional powers of the Board of Revenue. The amount assessed was to be, in such a case, *nisf* (one-half).⁴ But if the sanad propounded bore a date posterior to 1771 and previous to the 1st December 1790, the amount of rent assessable was in the discretion of the revenue-officers, the full rate being generally levied. The rent of these dependent taluqs was assessable under almost the same rules as those for lands of which revenue was payable to Government.

¹ Reg. XIX of 1793, Secs. 10 and 11.
² Reg. XIX of 1793, Sec. 6; Ram v. Deeno, 2 W. R. 279.
³ Reg. XIX of 1793, Sec. 6; Reg. II of 1819, Sec. 3, cl. 1.
⁴ Reg. XIX of 1793, Secs. 5, 6 and 9.
Land not exceeding ten bighas in area was not to be subjected to the payment of revenue, if the sanad bore a date between the 12th August 1765 and the 12th April 1771 in Bengal and 26th September 1771 in Behar or Orissa, provided it was found that the produce was "bona fide appropriated as an endowment on temples or to the maintenance of Brahmins, or other religious or charitable purposes." This rule was declared to extend also "to all grants of land whatever, not exceeding ten bighas, made previous to the Diwani, the produce of which was in 1793 so appropriated." Lands held under grants subsequent to these dates were declared assessable in the same way as lands exceeding ten bighas.

These are the substantive provisions of the Resumption Regulations, but legal practitioners, even in those early days when resumption cases were numerous, had seldom to deal with grants made subsequent to the date of the Diwani. No claimant of lakhiraj land, whatever its quantity might be, would think of setting up, if he was disposed to set up a false plea, a title by grant posterior to that date. The only practical questions, therefore, that arose, related to grants, which, if proved, would confer absolute proprietary right to the grantees. If the grants were declared invalid under section 17 of Regulation XIX of 1793, or if no grants were proved, bona fide possession could be relied on as evidence of title. The provisions of section 3 of Regulation XIV of 1825 were applicable to all classes of lakhiraj lands, and bona fide possession could be relied on in proof of title.

The later Resumption Regulations, of which II of 1819 is the most important, made no alteration in the substantive law as laid down in the Regulation Code of 1793. They modified only the procedure and established special courts for adjudication of claims to hold lakhiraj

---

1 Reg. XIX of 1793, Sec. 3, cl. 4.
lands. Resumption cases were originally triable by civil courts, the assessment of revenue on resumption being left to the fiscal authorities. Section 30 of Regulation II of 1819 gave concurrent jurisdiction to the civil courts and the Collectors. On the passing of Act X of 1859, a question was raised as to whether section 28 of the Act, which made a material alteration in the law of landlord and tenant, took away the right of the civil courts in the country to try resumption cases. In Gunga Hurry Dhobey v. H. D. Tripp,¹ a Division Bench of the High Court held that a suit by a landlord for resumption of land, alleged to have been set up as lakhiraj since 1790, was exclusively cognizable by the Collector under section 28 of Act X of 1859. The question subsequently came before a Full Bench, and the majority of the judges held that the Collector and the civil courts had concurrent jurisdiction. ² But the question ceased to be of much practical importance, as Bengal Act VII of 1862 took away the Collector's jurisdiction. In such of the Bengal districts in which Bengal Act VIII of 1869 was in force, and on its repeal, Act VIII of 1885 is now in force, the Collectors have ceased to have any judicial function in rent cases as well as resumption cases.

Questions were also raised as to the court that should try, the procedure that should be adopted and the statements that should be made in the plaint, in cases in which the allegation of the proprietor was that the lakhirajdar held under a grant made subsequent to the 1st December 1790, or had possession only subsequent to that date.³ Under Act X of 1859 the Collector has concurrent jurisdiction under section 28, and he has exclu-

¹ Gunga v. Tripp 1 W. R. 31.
² Sonatun v. Abdool 2 W. R. 91; see also Mahomed v. Lall Beebee 10 W. R. 103; Reazoonnissa v. Motee 12 W. R. 135; Ram v. Collector 22 W. R. 48; Sev. 704.
³ Moharanee v. Chokew W. R., Sp. vol., 81
sive jurisdiction in assessing rent, though he has no jurisdiction in cases for resumption of lands held under grants made previous to the 1st December 1790.¹

If the grant is made by the proprietor of an estate, it is binding upon him, his heirs, representatives and assigns, notwithstanding the declarations in the Regulations as to the invalidity of all rent-free grants.² A purchaser in execution of a civil court decree, a putnidar, or holder of any permanent tenure made since 1790, is a representative of the proprietor, and he is equally bound by such grants.³ But the invalidity of such a grant is a good plea, if set up by Government, in case it happens to come into possession under a title paramount or on a sale for arrears of revenue, or if it is set up by persons who may claim under Government or under a sale for arrears of an entire estate. The Government or such a purchaser is entitled to the right as granted by Government on the date of the Permanent Settlement*.⁴

Grants of land made since 1790 are really rent-free, and the lands are not revenue-free. The distinction between revenue-free and rent-free grants is commonly lost sight of, the vernacular words niskar or lakhiraj being equally applicable to both classes and used indiscriminately. The Bengal Tenancy Act of 1885 has defined the words tenant and rent, and they include cases in which grantees of land situated within the ambit of an estate hold under grants made by a proprietor subsequent to the Perma-

REVENUE-FREE LANDS.

The grantee or his heirs would be bound to pay, but for the contract or grant, rent, as holding under permission of the proprietor, for the use and occupation of the land. The relationship between the grantor and the grantee is thus really that of landlord and tenant. Such lakhiraj holdings are rent-free lands and not revenue-free, and they are resumable by a purchaser on a sale of an estate or tenure free of incumbrances.

Section 28 of Act X of 1859 repealed, as we have seen, section 10 of Regulation XIX of 1793 and the corresponding sections of the other Resumption Regulations, and laid down: “Any proprietor or farmer who may desire to assess any such land or dispossess any such grantee, shall make an application to the Collector, and such application shall be dealt with as a suit under the Act.” The limitation prescribed was twelve years from the accrual of the cause of action, but if the twelve years had already elapsed, the suit might be brought within two years from the date of the passing of the Act. Clause 14 of section 1 of the Limitation Act (XIV of 1859), also prescribed twelve years as the period of limitation.

The Limitation Act of 1871 re-enacted the same rule, with a proviso that no such suit should be maintained, where the land formed part of a permanently settled

---

1 Aft VIII of 1885, Sec. 3, cl. 3 and 5.
4 See 2 R. J. P. J. 146; Aft X of 1859, Sec. 28.
6 Aft X of 1859. Sec. 28.
8 Aft IX of 1871, Sch. 11, Art. 130; and see 3 R. J. P. J. 27 and Sev. 561.
estate and was held rent-free from the time of the Permanent Settlement. This proviso, however, was unnecessary, the sections dealing with the right of auction-purchasers on revenue-sales of entire estates having laid down the same rule.¹ The proviso to art. 130 was accordingly repealed, when Act XV of 1877 was passed.² The result seems to be that no title to lakhiraj land, created before the 1st May 1793, the date of the Permanent Settlement, can now be disturbed.³ The period of limitation for suits by Government is sixty years, but in other respects, the same law applies. Purchases made by Government under Act XI of 1859 are subject to the provisions of that Act.⁴ It has been held that lakhiraj tenures are incumbrances within the meaning of the Sale Laws, and they can be avoided only if they have come into existence since the Permanent Settlement.⁵ I presume there can now be no cases of resumption of revenue-free lands, as they are, by lapse of time, sufficiently protected.

It is necessary to say a few words on the registers of revenue-free lands. From the time that the attention of Government was drawn to, what was supposed to be, improper and unauthorised alienations of the share of the State in the produce of lands claimed as lakhiraj, and the separate department of Government office, known as the base-zemindufter, was established, the importance of keeping registers was felt. Regulations XIX and XXXVII of 1793 laid down definite rules for the purpose and declared that grantees of lakhiraj lands, badshahi or otherwise, should, within one year of the issuing of

¹ Act XI of 1859, Sec. 37; Act VII (B. C.) of 1868, Sec. 12.
² Act XV of 1877, Sch. 21, Art. 130; Bir v. Raj I. L. R. 16 Cal. 449.
³ Act XV of 1877, Sch. 11, Art. 149.
⁴ Act XI of 1859, Sec. 58.
⁶ Reg. XIX of 1793, Secs. 11 to 34; Reg. XXXVII of 1793, Secs. 16 to 41.
notifications inviting registration, put forward their claims in written applications. The Collectors of districts were, however, busy with other important matters, and notifications inviting claims were not issued in most districts, and even where notices were issued the registers were not duly kept. Regulation VIII of 1800 was, accordingly, passed, and it made stringent provisions for the issuing of the notifications prescribed by it. The Collectors issued notifications under Regulation VIII, and in some of the districts numerous applications were filed and registers of claims were prepared. The entries of claims are known as taidads, and those of 1802 A. D. (1209 B. S.), are well known. Copies of these entries in the registers kept under Regulation VIII, are often put in as evidence of lakhiraj title, and, I believe, they are almost always admitted. But I doubt whether section 13 of the Evidence Act can be invoked as giving these taidads any evidentiary value. It should also be remembered that the registers themselves have seldom been kept in the strict way prescribed by the Regulation. Registers of valid lakhiraj lands, admitted as such after regular judicial enquiry, were used to be kept in the Collectorates and were called C registers.

Under Act VII of 1876 of the Bengal Legislative Council, known as the Land Registration Act, provision is made for special registers of revenue-free lands. Register (B) is the general register of revenue-free lands and part I contains entries of all lands exempt from revenue in perpetuity held under badshahi, hukami and other lakhiraj grants which have been declared to be valid by competent authority according to the Regulations. Of the intermediate registers, part II

1 Reg. XIX of 1793, Sec. 24; Reg. XXXVII of 1793, Sec. 19.
2 Reg. VIII of 1800, Sec. 19.
3 Omesh v. Dukhina, W. R., Sp., vol., 95; and see Sev. 733.
4 Act VII (B. C.) of 1876, Sec. 4.
5 Act VII (B. C.) of 1876, Sec. 9.
refers to revenue-free lands. The Land Registration Act has made registration compulsory, and every proprietor, common manager appointed under the Bengal Tenancy Act, or mortgagee in possession must register his name within six months. Sections 78 and 79 of the Act afford indemnity to raiyats paying rent to the registered owner, manager, or mortgagee in possession, and take away from the unregistered owner the right of suing for rent, though the mere registration of name does not entitle the person, whose name has been registered, to get decrees for rent against tenants without any other evidence of title.

But the Bengal Tenancy Act includes these revenue-free lands in the definition of estate, and the owners thereof come within the definition of proprietors, and section 60 of the Act entitles the registered owner to a decree for rent without any other proof of title. The Land Registration Act does not, however, deal with lands which have not been admitted to be revenue-free by proceedings under the Resumption Laws. Registration of the name of the proprietor being compulsory, and no one being bound to pay rent to any person claiming such rent as proprietor unless his name is registered, it has been held that no suit for rent can be maintained, unless the claimant's name be on the register under the Act at the date of suit.

Such a rule obviously causes injustice in a great many cases, as the rules of limitation may bar claims before the claimant can obtain a decree for registration.*

1 Act VII (B. C.) of 1876, Sec. 17. 2 Act VII (B. C.) of 1876, Sec. 38.
3 Act VII (B. C.) of 1876, Sec. 42. As to common manager, see Maqbul v. Girish, I. L. R. 22 Cal. 634.
5 Act VIII (B. C.) of 1885, Sec. 3.

* In Alimuddin Khan v. Hira Lal Sen and others (I.L.R. 23 Cal. 87) the majority of the Full Bench have held that the production of the certificate of registration, when the suit comes on for trial, is sufficient. Such a rule will abate the rigour of the law.
There is another class of revenue-free lands which comes within these rules laid down in the Registration and Tenancy Acts, namely, lands of which Government has, in consideration of the payment of a capitalised sum, granted proprietary title free in perpetuity from any demand of land-revenue.

The Bengal Cess Act of 1880 has also included within the definition of "estate" the revenue-free lands entered in Register B, part 1. of the Land Registration Act, and the rights and liabilities of the owners of these lands under the Cess Act are the same as those of revenue-paying estates. The annual amount of road cess and public works cess is calculated upon the annual value, but no deduction is, of course, allowed as in the case of revenue-paying estates. The amount is payable in two equal instalments, or in one annual payment, on such day or days as the Local Government may appoint. The amount is recoverable under the Public Demands Recovery Act.

The Dawk cess under Bengal Act VIII of 1862 is not payable by holders of revenue-free estates. It was apparently an oversight. But the tax itself, under the present state of things, ought not to be levied, and the Act ought to be repealed.

Revenue-free lands are, generally speaking, heritable, partible and alienable as estates, except lands dedicated to pious and charitable purposes, as to which the law is somewhat complicated. But they are not partible by the Collector under the Estates Partition Act of 1876. The definition of estate in that Act does not include revenue-free lands. The partition of such lands must be made by civil courts, though the principles of partition may well be taken from the Estates Partition Act.

---

1 Act IX (B. C.) of 1880, Sec. 3.  
2 Act IX (B. C.) of 1880, Sec. 41.  
3 Act VIII (B.C.) of 1876, Sec. 4.  
6 Janokee v. Luchmun, 17 W. R. 137.
Subletting of *lakhiraj* lands is common, but the provisions of the Putni Sale Law (Regulation VIII of 1819) are not applicable to permanent tenures created by holders of revenue-free lands. In fact, such subordinate tenures go by other vernacular names, such as *istemrari*, *mukurrari* maurusi &c.

The *lakhiraj* lands, which, at the present day, become the subject of resumption-suits in the Bengal Provinces, are lands alleged to be held without any title from a time posterior to the Permanent Settlement, or held under grants made after the Permanent Settlement by holders of estates or permanent tenures. We have already seen that the grantors, their heirs or assignors are bound by the terms of the grants. In cases of adverse possession as *lakhiraj* (without payment of rent), the rules of limitation are strong barriers to claims at the present day. If the suit is for possession by the proprietor of an estate or a tenure-holder, on the allegation that the land claimed as *lakhiraj* is not really so, but is a part of the *mal* or *khiraji* lands of the estate or tenure, it is for the plaintiff to make out a *prima facie* case that, at any time since the Permanent Settlement, the land was dealt with as *mal*, and the holder of the land or some predecessor of his paid rent for it. If the plaintiff is not a purchaser entitled to set

---

aside all incumbrances created since the settlement under which he holds, proof of receipt of rent or possession within twelve years of the suit must be proved, to remove the bar of limitation. In the case of a purchaser of an entire estate under Act XI of 1859 or of a tenure under Act VII (B. C.) of 1868 desiring to exercise the powers conferred either by section 37 of the former Act or section 12 of the latter Act, or in the case of a purchaser of a putni on a sale under Regulation VIII of 1819, or of any tenure or under-tenure sold for its own arrears under the Tenancy Act and entitled to hold land free of incumbrances created by the defaulter, the suit must be brought within twelve years of the confirmation of sale.¹ But even in the latter case, the suit being within time, the burden of making out a prima facie title to eject a defendant who claims the land as lakhiraj is upon the plaintiff.² The presumption which the Regulation Laws allowed to be made in favour of the proprietors cannot now be invoked. In the language of their Lordships of the Judicial Committee of the Privy Council in the case of Harihar Mukhopadhyaya v. Madhav Chandra Babu,³ —"It lies upon the plaintiff to prove a prima facie case. His case is that his mal land has, since 1790, been converted into lakhiraj. He is surely bound to give some evidence that his land was once mal. 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 mal assets of the Decennial Settlement of the estate. His prima facie case once proved, the burthen of proof

is shifted on the defendant, who must make out that his tenure existed before December 1790." The presumption arising from long and uninterrupted possession amply rebuts any presumption of the land being mal, arising from its being situated within the ambit of an estate. The rule thus laid down by the Privy Council has been followed in the case of auction-purchasers in Erfanoonissa v. Pearce Mohun Mookerjee, in which Justice Mitter is reported to have said—"The presumption that every bigha of land within the ambit of his (the auction-purchaser's) estate was liable to be assessed with Government revenue is not sufficient to start a case for the plaintiff in a suit of the present description, because there is no presumption that every bigha of land within the ambit of an estate must be deemed to have been assessed with revenue until the contrary is proved." But circumstances may exist, in particular cases, where the plaintiff may be excused from giving prima facie evidence of the land being mal or rent-paying. A purchaser at an auction-sale for arrears, entitled to hold land free of incumbrances, may have to sue the defaulter himself, who may claim the right to hold land as lakhiraj, as distinct from the land of which he has been just deprived possession by sale. In such cases, it is the obvious duty of the defaulter to shew that his possession as the holder of lakhiraj land was based upon title distinct from that to hold as mal. In Newaj Bundopadhya v. Kali Prasonno Ghose, Garth C. J. and Field J. held that, in a suit for enhancement of rent where the tenant pleaded that

1 I. L. R. 1 Cal. 378, sc., 25 W. R. 209.
5 I. L. R. 6 Cal. 543.
a portion of the land, rent of which was sought to be enhanced, was held by him as rent-free, the onus was on the tenant to make out a *prima facie* case that such portion of the land was so held by him as distinct from *māl* lands. In *Akbur Ali v. Bhyea Lal Jha* also, the same judges held that where the defendants admittedly held certain lands within the plaintiff's zemindari, some at least of which were rent paying, the defendants, if desirous of proving that any of these lands was rent-free, were bound to give some *prima facie* evidence of this fact before they could call upon the plaintiff, the zemindar, to prove that the whole or any part of the lands was *māl*. But in two later cases, *Bacharam Mundul v. Peary Mohun Banerjee* and *Narendra Narain Rai v. Bishun Chundra Das*, the High Court doubted and distinguished the above rulings.

Questions about *onus probandi* can only arise in determining which of the parties to a suit ought to begin, and which party should fail, if no evidence be given by either party. Evidence is, in the large majority of civil cases, adduced on both sides, and it is desirable that the conclusions of judges should depend upon findings based upon weight of evidence. Though the burden of proof in any suit in ejectment, on the ground that the land in suit in the possession of the defendant as rent-free was, since the year 1790, a part of the *malgoozari* lands of an estate, is generally on the plaintiff, but to say that the plaintiff must discharge the burden by the best and the most satisfactory evidence, and that the defendant need not adduce any evidence until the plaintiff has strictly made out his case, is giving the rules about the burden of proof an importance which they do not deserve. Undue weight to technical rules frequently leads to failure of justice. Scanty evidence on one side may be quite sufficient, if there is no evidence on the other side to rebut it.

---

1 I.L.R. 6 Cal. 666.  
2 I.L.R. 9 Cal. 813.  
3 I.L.R. 12 Cal. 182.
LECTURE IV.

PERMANENTLY SETTLED ESTATES.

The history of the Permanent Settlement of Bengal, Behar and Orissa, and of the origin and gradual rise of the class which was benefited or ruined by it, has been repeatedly told by men whose learning and ability command the highest respect. The discussions about the propriety or impropriety of the act by which Marquis Cornwallis, the then Governor-General, declared, with the approbation of the Court of Directors for the affairs of the East India Company, the Decennial Settlement to be permanent and unalterable, cover volumes; and nothing more remains to be said even on a matter of so vast an importance and of so great an historical value. The introduction of the Permanent Settlement by that nobleman whose moderation, love of justice and humanity no one ever doubted, and which indeed the very code of 1793 displays in almost every part of it, has been repeatedly made the subject of rancorous debates and bitter controversies, both sides being partially right and partially wrong. The zemindars were said to have been tax-gatherers and servants of the State, paying into the exchequer amounts fluctuating, arbitrary and unequal. They were, on the other hand, said to be hereditary landlords, having proprietary right like the feudal lords of European countries. When the government of Mr. Hastings attempted to ignore their right, made temporary settlements of land-revenue,
appointed managers of their estates, and ousted many of them, they complained loudly, and their complaint reached the House of Commons. Statute 24 Geo. III cap. 25, known as Pitt’s India Act, was passed in 1784, the 39th section of which required the Court of Directors "to give orders for settling and establishing, upon principles of moderation and justice, according to the laws and constitution of India, the permanent rules by which the tributes, rents, and services of the rajahs, zemindars, polygars, taluqdars and other native landholders should be in future rendered and paid to the United Company."

The claim of the zemindars to proprietary right was asserted, and denied, and discussed hotly even in those early days of the Company’s government, and you will find the latest dissertation on the subject in Sir William Hunter’s *Bengal M.S. Records* published this year.

The policy of Lord Cornwallis, in fixing for ever the land-tax payable to Government, was, if I may venture to pass any opinion on the point, a matter of necessity, and the despatch of the Court of Directors, dated the 29th September 1792, indorsing the Governor-General’s views, was in accordance with the spirit of the age and the views of the Parliament as contained in Pitt’s India Act. The necessities of paying the great military and civil establishments of the Company and the dividends to the proprietors required the punctual realisation of the land-tax, and the amount needed was large. To avoid fluctuation and ensure punctual realisation, some means was absolutely necessary to be adopted, and the Government adopted not only the best, but the event shows, the most successful one. The tax was at the time so heavy, and the rules adopted for realising it so paralysing, that most of the ancient rajahs and zemindars of Bengal, who had the good fortune of the Permanent Settlement being thrust upon them, succumbed in the course of a few years. The then prevailing feeling in England about its
own land-tenures, coupled with the exigencies brought on by the revolutionary war, a feeling which resulted in the passing of the statute 38 Geo. III cap. 60, whereby the tax on landed estates in England was perpetually fixed "subject to purchase and redemption by proprietors," led more than any other cause to the introduction in India of the same principle of giving certainty to the demand of Government upon land.

The error of the Permanent Settlement was in the application to India of English principles of land law, and the assessment of the tax on insufficient materials. The zemindars were the only class of persons whom in the then existing state of things the Government could look to for punctual realisation of State-dues. There was at the time this important body who had widely different sources of origin, but known to the Mahomedan governors by one name only. Some of them had long ancestries to tell, beginning at a period coëval, if not anterior, to the Mahomedan conquest of Bengal. Many of them were hereditary princes, owing only financial allegiance to the authority of the Great Moghul or his viceroys. Their law of succession was the law of principalities—primogeniture. Even those who were of recent origin were very influential and wielded power not much inferior to that wielded by the very ancient families. The more influential and the intelligent amongst these were, to borrow a modern expression, members of the viceregal council at Murshidabad. They were ministers of state, and the government of the country was practically, to a considerable extent, entrusted to their hands. If we classify them, the first class would represent the old Hindu Rajas of the country, whose ancestors had held independent principalities or principalities that owed only nominal allegiance to the imperial government, either Hindu or

---

1 See Raj Kishen v. Ramjoy, 19 W. R. 8.
Mahomedan. The Rajas of Assam, Tipperah, Cuch-Behar, Bishenpur, Birbhum and Chota-Nagpur may be placed in this class. The second class consisted of the great land-holding families that came into existence during the Mahomedan government through its sufferance or favour. The Rajas of Rajshahi, Dinajpur, Burdwan and Jessore with many others were de facto rulers in their own states or territories, and used to pay only fixed tribute or land-tax. They were like feudatory chiefs. The third and the most numerous class consisted of persons whose families had held offices for collecting revenues for two or three generations and who thus claimed a prescriptive right to hold on. Then there were the revenue-farmers who, since the grant of the Diwani in 1765, had been placed in office and also happened to be called zemindars. Thus all the persons or families known as zemindars in 1790 were not merely collectors of land-revenue or tehsildars removable at pleasure. The office of zemindar had, in fact, in most instances become hereditary, and they paid fixed sums of money to the Nabob's treasury, more as tribute than as land revenue. The Nabob sometimes extorted more money than the settled or customary amount, but that was not by right or law, but by might or violation of law.

When the Government of India, that is to say, the power in England and the Governor-General's Council in India, agreed in dealing with all these zemindars in the same way as if they were feudal lords, some of them were no doubt raised in position and emolument, but the status of many of them was lowered.

Causes much similar to those that led to the feudalization of Europe after the fall of the Carolingian dynasty were in force in India at the beginning and middle of the Eighteenth Century, and when the English found themselves masters of the country,

---

1 Hunter's Manuscript Records, p. 31.
they saw a state of things very much similar to the feudal government of the Middle Ages. Consciously or unconsciously, Lord Cornwallis was thus led to introduce an imitation of the English system of landed property. The State assumed to itself and made over to the zemindars its own supposed proprietary right to the soil, as if the cultivators had no right to hold land against the will of the Government and its grantees. Deeper and closer observation, however, would have disclosed, underlying the upper layer, conditions of life and ideas of legal rights and obligations dissimilar to any with which Englishmen were familiar, and they consequently failed to grapple with, far less, to appreciate them. The words of Sir John Shore were of no effect. To repeat the words of the preamble to Regulation II of 1793, "the property in the soil was formally declared to be vested in the landholders," but adequate provision was not then made for the protection of the class of persons who were the real proprietors of the soil and who deserved for their weakness the largest amount of protection from the hands of Government.

The haste with which the amount of revenue was fixed was another cause of defect in the Permanent Settlement. The revenue fixed was so high that, within the course of fifteen years, the Rajas of Nadia, Rajshahi, Bishenpur, Dinajpur, Kasijora and many others almost submerged under its wave. The Birbhook zemindar was completely ruined. A host of smaller zemindars shared the same fate. It is perhaps scarcely too much to say that in a few years a complete revolution took place in the constitution and ownership of the estates which formed the subject of the Settlement. The dismemberment was quick, and the ruin subversive of its very principles. The revenue assessed on other

---

1 Hunter's Manuscript Records, p. 45.
estates did not include the then unknown item of waste land, and many estates situated at a distance from the metropolis escaped rather cheap. Only the Raja of Burdwan, heavily assessed as his estates were, escaped through an accident.

Opinion of financiers.

Financiers in India now regret that there was this Permanent Settlement, as the zemindars of the present day make large profits. That some of them do make profit is undoubted. A good many of them, however, derive title by purchase i.e., outlay of large capitals. These financiers think that it is the State, and not the zemindars, who should have profited by the increase of the cultivated area in Bengal and the more manifold increase in the value of the produce. But they forget that the East India Company would have been reduced to bankruptcy, if they had not adopted the principle of permanent settlement; they forget that the vested rights of a large number of zemindars required permanent settlement, and that, taking all things into consideration, the State has not suffered,—the ancient Rajas and the cultivators of the soil have suffered. In fact, notwithstanding the Permanent Settlement, the amount of revenue has increased from Rs. 2,85,87,722 in 1790-91 to Rs.3,70,11,385 in 1892-93, exclusive, in the latter year, of a good many districts. The best authorities, I think, are now agreed that the adoption of the principle of the Permanent Settlement was not a mistake.

Regulation I. of 1793, passed on the 1st May 1793, by his Excellency the Governor General in Council, contains the Proclamation making the Decennial Settlement of Bengal, Behar and Orissa permanent. Orissa at that time contained only a portion of the district of Hughli and Midnapur—it included only the tract of country lying between the Rupnarayana and the

---

1 Bengal Administration Report, 1872-1873, p. 40.
Suvernarekha. Orissa proper, which was conquered from the Mahrattas in 1803, is even now, as you have seen, subject to a temporary settlement. The Decennial Settlement was commenced in 1789 and completed in 1791. The temporary settlements made from time to time before that year had been found unsuccessful in a financial point of view, and the Proclamation was issued on the 22nd March 1793, by which the Governor-General in Council declared, with the concurrence of the Court of Directors, that the zemindars, independent taluqdarz and other actual proprietors of land, with whom the Decennial Settlement had been concluded, would be allowed to hold their estates at the same assessment for ever, "and that the jumma, which might be hereafter agreed to by the proprietors, whose lands had been held khas or let in farm, be fixed for ever."  But "no claims for remission or suspension of rent was to be admitted on any account, and lands of proprietors were to be invariably sold for arrears." Proprietors were also declared to have the privilege of transferring their lands without the sanction of Government, and partition or division of estates was to be freely allowed. These were the main provisions of the Regulation, which has sometimes been said to be the "charter of the landed aristocracy of Bengal." The Government reserved the right to enact such regulations as might be necessary for the protection and welfare of the dependent taluqdarz, raiyats and other cultivators of the soil, without detriment to its right to levy the fixed sum payable by the actual proprietors as revenue. But, as you will presently see, the power was not exercised until very recently.

Regulation I of 1793 should be read along with Regulation VIII of that year, as it contains the principles

---

1 Reg. I of 1793, Sec. 5.  
2 Reg. I of 1793, Sec. 7.  
3 Reg. I of 1793, Secs. 9 and 10.  
4 Reg. I of 1793, Sec. 8, cl. 1.
of settlement and the mode of assessment. Section 4 of the latter Regulation enacted—"The settlement, under certain restrictions and exceptions hereafter specified, shall be concluded with the actual proprietors of the soil, of whatever denomination, whether zemindars, taluqdars or chowdhuris." These taluqdars are called in the Regulations independent taluqdars, who were entitled to hold land with all the privileges of zemindars, paying revenue direct to Government. Section 5 of the Regulation specifies who these independent taluqdars are, while the following three sections deal with taluqdars who are not independent. I have already said that some lands were held under grants made by the Mahomedan government as malguzari aymas i.e., on payment of fixed sums as quit-rent, and those granted for the benefit of learned men and colleges were classed as independent taluqs, while malguzari aymas granted bonâ fide for the purpose of bringing waste lands into cultivation were to be classed with other jungleburi taluqs as dependent

1 Reg. VIII of 1793, Sec. 4.
2 The Taluqdars to be considered the actual proprietors of the lands composing their taluqs are the following:—
First.—Taluqdars 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 taluqs, 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 sannads from the khalsa, making over to them his proprietary rights therein.
Second.—Taluqdars whose taluqs were formed before the zemindar, or other actual proprietor of land, to whom they now pay their revenue, or his ancestors succeeded to the zemindari.
Third.—Taluqdars, the lands comprised in whose taluqs were never the property of the zemindar or other actual proprietor of the soil, to whom they now pay their revenue, or his ancestors.
Fourth.—Taluqdars, who have succeeded to taluqs of the nature of those described in the preceding clauses, by right of purchase, gift, or inheritance from the former proprietor of such taluqs.

1 Ante. p. 65.
taluqs.¹ Regulation VIII of 1793 also contained the general rules for other permanent settlements and provisions as to the existing subordinate rights in land, the rights of the settlement-holders in relation to raiyats, and rules as to sayer compensation and zemindar's private chakran lands. Many of the sections of this Regulation have been formally repealed, and with the exception of those that deal with the substantive rights of the different classes of persons interested in land, the Regulation itself is now of little practical use. The rules of assessment laid down in the Regulation were the basis of further permanent settlements, and they continued to be in force until 1822, when they were considerably modified. Permanent settlements continued to be made until about the year 1871,² and thus the permanently settled area in the Bengal Provinces is now very large.³

The Regulation Code of 1793 laid down, with sufficient precision, the rules intended to govern the legal relation between the State and the proprietors with whom permanent settlements were concluded, but they occasionally required explanations, modifications and additions, as experience and altered state of things from lapse of time demanded. Much of the complications now existing in the law relating to landlord and tenant in the Bengal Provinces is due to modifications and amendments

¹ Reg. VIII of 1793, Sec. 9.
² Ante. p. 51.
³ The permanent settlement extends over the following districts —

Bengal — Burdwan, Bankura, Birbhum, Hughli, Howrah, 24-Perganas, Jessore, Nadia, Murshedabad, Dinajpur, Malda, Rajshahi, Rungpur, Bogra, Pubna, Maimensing, Faridpur, Backerganj, Chittagong, Noakhali, Tipperah, Dacca, portions of Chota-Nagpur, Jalpaiguri and Sylhet.

Behar — Patna, Gya, Shahabad, Tirhoot, Sarun, Champaran, Purnea, Bhagalpur, Monghyr and part of Sonthalia.

Orissa — Midnapur.

Assam — Part of Goalpara.
made now and then since 1793. The exact extent of the
repeal, made indirectly and by implication, is difficult
even for professional lawyers to discover. The Laws' Local Extent Act and the Repealing Act (Acts XV of 1873 and XVI of 1874) are not sufficient to guide us safely through the labyrinth.

The settlement-holders, their heirs, successors and representatives were exempted from any additional demand of revenue. In the words of the Proclamation issued on the 22nd March 1793, ""the assessment was irrevocable and unalterable." 1 They were, on the other hand, to pay into the exchequer the assessed amount without any abatement. The original assessment and the mode of payment were by sicca Rupees. In 1835, the Rupee, known as the Company's Rupee, was declared to be legal tender for the Calcutta sicca Rupee, and the value of the Company's Rupee was declared to be fifteen-sixteenths of the sicca Rupee. 2 Act XVII of 1835 came into operation on the 1st September 1835, and since then the amount of revenue, payable by every settlement-holder, was increased by one-fifteenth. This, however, was not an actual alteration in the amount of the revenue. 3

The Bengal Legislature passed in 1862 an Act for improving the system of Zemindari Dawks, in as much as the conveyance of letters on public service between Police officers and Police stations and the Magisterial offices was defective, irregular and uncertain; and, as fund was required to improve the system, 4 Magistrates of districts were empowered to raise annually the total sum necessary for postal service, known as the Zemindari Dawk Service. The apportionment is ratably on the sudder jumma, subject to the approval of and revision by the Commissioner of the Division. The payment is required to be made half-yearly in advance,

---

1 Reg. I. of 1793, Sec. 7.
2 Act XVII of 1835.
4 Preamble to Act VIII (B.C.) of 1862.
and double the amount is levied in default.\(^1\) The amount is recoverable under the Public Demands Recovery Act. The performance of the duties for which the tax was originally imposed is now actually under the control of the Government Postal Department, and, except in isolated tracts, no zemindari dawk is maintainable between any two places;\(^2\) but the Dawk cess continues to be levied as rigorously as in 1862, as an additional impost upon the sudder jumma. It is now a legalized abwab.\(^3\) The Dawk cess is not recoverable from under-tenants or raiyats without special contract, and even where there is a contract it is not realisable as rent.\(^4\)

The Bengal Legislature passed in 1871 an Act for local rating for the construction and maintenance of roads (Act X of 1871). The rate was local, and persons interested in land and being in possession, zemindars, tenure-holders and raiyats, all were to contribute to the fund,—zemindars being primarily liable to Government. This Act was followed by Act II (B.C.) of 1877, known as the Provincial Public Works Cess Act. The Settlement Proclamation required the zemindars to improve their estates, making use of the profits secured to them by the fixity of revenue, and if they failed to execute and maintain works of public utility, the State could interfere and compel them to do so. But how far the terms of the Proclamation would permit the State to levy cesses for the construction and maintenance of roads and for other works of public utility, or for a fund for use at times of scarcity and famine for relief works, is a question which has been a constant topic of discussion.

These Acts were consolidated with amendment in the Bengal Cess Act (IX of 1880), which is now in force.

\(^1\) Act VIII (B.C.) of 1862, Sec. 9.  \(^2\) Act VIII (B.C.) of 1862, Sec. 4.  
\(^3\) Bissonath v. Ranee Shurno Moyee, 4 W. R. 6.  
The amount levied under this Act is an addition to the assessed revenue, though it is not realised as such. These cesses are personal debts of the proprietors, and are not charges\(^1\) on the estate or tenure for which they are due, and cannot be realised by sale of such estate or tenure, if the debtor's right has passed to a third person. They are recoverable by the procedure laid down in the Public Demands Recovery Act\(^2\). Under section 41 of the Cess Act—"Every holder of an estate shall yearly pay to the Collector the entire amount of the road cess and public works cess, calculated on the annual value of the lands comprised in such estate, at the rate or rates which may have been determined for such cesses respectively for the year as was in this Act provided, less a deduction to be calculated at one-half of the said rates for every rupee of the revenue entered in the valuation-roll of such estate as payable in respect thereof." The Collector is to prepare the valuation-roll of each estate, the annual value of the lands comprised in it being determined either summarily or from materials supplied in accordance with the rules laid down in the various sections of the Act\(^3\). The maximum rate for every rupee of the annual value is half an anna for each of the cesses, and the maximum is now levied in almost all the districts in the Bengal Provinces. The amount payable to the Collector, if the full rate be levied, is, in the words of section 41, one anna for every rupee, less half an anna for every rupee of the revenue payable to Government. Supposing an estate is valued by the Collector at Rs. 1000, and the revenue payable is Rs. 700, the amount pay-


\(^2\) As to sales under certificates under the Public Demands Recovery Act, see Sadhusaran v. Panchdeo, I. L. R. 14 Cal. 1; Ram v. Bhawani, I. L. R. 14 Cal. 9, and Monindra v. Saraswati, I. L. R. 18 Cal. 125. As to mode of service of notice, see Rakhal v. Secretary, I. L. R. 12 Cal. 603.

\(^3\) Act IX (B. C.) 1880, Secs. 14 to 29.
able for the two cesses together is 1,000 annas minus \( \frac{1}{2} \) of 700 annas, that is to say, Rs. 40-10 as. As we shall presently see, a part of this amount is recoverable by the holder of the estate from subordinate tenure-holders and raiyats and holders of rent-free lands, and the amount payable under the law by him from his own profit is 300 half-annas, that is to say, Rs. 9-6 as. The principle is that every holder of land must pay half an anna per rupee of his profit, the raiyat or actual cultivator paying half an anna per rupee of the rent payable by him. So that the holder of an estate is made to pay an additional sum besides the revenue, and he is primarily liable to Government for the entire amount of cesses payable to the State. The days for payment by the holders of estates to the Collector are the same as those fixed for the payment of the instalments of revenue, but the instalments of cesses are equal. In most of the districts in the Bengal Provinces, the amount is payable in four instalments except in cases of small estates. The instalments of revenue, however, are generally unequal.

The Income Tax, which, there is every reason to apprehend, will be permanent, is not payable for profits derived by zemindars from their estates. But estates or parts of estates situated within municipalities are exempted from the operation of the Cess Act of 1880. Income Tax is payable in respect of such estates.

The payment of revenue, which is a charge on the land, demands our special attention. It is a liability on the land as a first charge and is realisable by Government, in the first instance, by the sale of the land for which the arrear is due.

The original engagements with the proprietors and farmers of land were for the payment of the annual revenue in monthly instalments, the amount of each instalment varying generally with the instalments of rent

---

1 Act VIII (B.C.) 1880, Sec. 42, cl. 1.  
2 Act II of 1886.  
3 Reg. I of 1793, Sec. 7.
recoverable from raiyats. An arrear of revenue has been defined to be "the whole or portion of the kist or instalment payable in any month and remaining undischarged on the first of the following month." On an arrear of revenue being due, the Collector, under the law as originally framed, was required to serve a notice on the defaulter, and on his failure to pay, notwithstanding the service of the notice, the Collector had the option of confining the proprietor. The Board of Revenue only might direct the sale of the whole or a portion of the estate of the defaulter, but the sanction of the Governor-General in Council was in every case necessary. If the proceeds of the sale were not equal to the Government demand, other properties of the defaulter might be sold to make good the deficiency. Before the end of the year 1793 the law had to be modified; restrictions were placed on the powers of the Collectors to direct the confinement of proprietors, and sales of estates were directed to be advertised even without the sanction of the Governor-General, but no sale was to take place without such sanction. A material alteration was, however, made in the law by Regulation VII of 1799, the practical effect of which was that the confinement of defaulters for non-payment of revenue was abolished, the personal properties of defaulters and their sureties were made liable to be attached, and the Board of Revenue was for the first time authorised to conduct sales. The next Regulation on the subject was I of 1801, but it made no material alteration in the law. Regulation V of 1812 made an important alteration as regards payment of inter-

1 Reg. XIV of 1793, Sec. 2; Act XI of 1859, Sec. 2.
2 Reg. XIV of 1793, Sec. 4.
3 Reg. XIV of 1793, Sec. 13; Kirt v. Govt., 5 W. R. (P. C.) 41, sc. 1 M. I A. 383.
4 Reg. XIV of 1793, Sec. 44.
5 Reg. III of 1794.
6 Reg. VII of 1799, Sec. 23.
7 Reg. VII of 1799, Sec. 30.
The liability to penalty directed to be imposed by the previous Regulations was removed and interest at twelve per cent. per annum was made chargeable, unless the same was remitted by the Board of Revenue. By Regulation XVIII of 1814, a further modification was made, which dispensed with the previous sanction of the Governor-General in Council for sales of estates and gave to the Collectors of Districts larger powers. In the year 1822 when sales became less frequent and the necessity of superintendence by the superior officers of revenue became smaller, the Board of Revenue was vested only with the revisional power of annulling sales, and civil courts were empowered under certain circumstances to set aside revenue-sales. In 1841 Act XII was passed, discontinuing the levying of interest and penalty upon arrears, appointing fixed days for payment of revenue, and providing fixed dates for sales of estates in arrear.

The law as to revenue-sales was considerably modified by Act I of 1845. It is not necessary to go into the details of the rules laid down by this Act, as it was with slight modifications reproduced in Act XI of 1859—the sale-law, which, with certain modifications made by Act VII (B.C.) of 1868, is now in force. You will find in the reports several cases on the Act of 1845, and I shall advert to them when referring to the corresponding sections of the existing law. There is, however, one leading case on the construction of section 9 of the Act of 1845 which deserves attention, as it is often quoted—viz., the case of Nagendra Chundra Ghose v. Kamini Dasi: Kamini Dasi was a Hindu widow in possession of her husband's estate as his heiress. Nagendra Chundra had deposited money under section 9 of the Act to protect his interest as mortgagee of a revenue-paying estate belonging to Kamini Dasi as heiress of

---

1 Reg. V of 1812, Sec. 28.  
2 Reg. XI of 1822.  
3 8 W. R., (P. C,) 17, sc., 11 M. I. A. 241.
her husband, when the estate was about to be sold for arrears of revenue, she having defaulted to pay. The question that was raised in the suit instituted by Nagendra Chundra for the recovery of the money deposited by him was whether the amount deposited by him for the protection of the estate was a charge on the inheritance, or whether it was a personal debt of the widow, Kamini Dasi. The Judicial Committee of the Privy Council held upon the construction of section 9 of the Act that the amount of deposit with interest was recoverable from the proprietress and that it was her personal debt. The Judicial Committee, however, was of opinion that "considering that the payment of revenue by the mortgagee did prevent the taluq from being sold, their Lordships would, if that were the sole question for their consideration, find it difficult to come to any other conclusion than that the person, who had such an interest in the taluq as entitled him to pay the revenue due to the Government and did actually pay it, was thereby entitled to a charge on the taluq as against all persons interested therein for the amount of the money so paid." Their Lordships, however, dismissed the suit, as they could not, having the express words of section 9 of the Act before them, apply the general principle stated in the words I have quoted from the judgment. Section 9 of the Act of 1845 was amended by Act XI of 1859, and holders of lien on estates were reasonably secured.¹

¹ Act XI of 1859, Preamble and Sec. 9.
take place of valuable estates at extremely inadequate prices and for petty arrears, the non-payment of which did not arise from inadvertence, or neglect, or want of means of the proprietors; the Commissioners of Revenue, however, do not think it proper to set them aside for reasons which it is difficult to appreciate. The sales of estates with revenues less than Rs. 500, and of which the number is very large and is increasing every year on account of partition and separation of shares, have been found to be still more injurious, as these sales are not advertised in the Official Gazette. The publication of the notices required by the Act are left to ignorant and ill-paid agents, who are often required to serve notices on the lands of estates of which they have no personal knowledge. The punctuality with which the revenue of the permanently settled estates in Bengal are now realized is no doubt due, to a considerable extent, to the stringent provisions of the "sunset laws"; but the time has come for further legislative enactment for the protection of capitalists, who are absolutely necessary for the commercial interest of the country, and of those holders of estates who have parted with direct possession in favour of tenure-holders and mortgagees. Stricter rules for the publication of the fact of the non-payment of revenue, for the service of notices of sale and the like, a revival of the law for personal service on defaulters, and greater facilities for setting aside sales on payment of penalty, may, to a considerable extent, lessen the rigour of the present law. Sales for arrears of revenue are not of constant occurrence, as is supposed by the Judicial Committee of the Privy Council in Gobindolal v. Ramjanam Misser and others.\(^1\) There is now no reason for any apprehension that "any thing which impairs the security of purchasers at those sales tends to lower the price of the estates put up for sale." As a matter of fact, many of the sales for arrears of revenue that are attempted to be set aside are

---

\(^1\) I. L. R. 21 Cal. 70, sc. L. R. 20 I. A. 165.
brought about for serving the fraudulent purpose of defeating rightful owners, creditors and incumbrancers. If on the other hand, the estate is sold at an adequate value, seldom, if ever, is an application made for setting aside the revenue-sale.

But the Bill to amend and consolidate the existing provisions of the Sale Law may, like many others, be shelved, and I think it proper to give here a short summary of Act XI of 1859 and of the Bengal Acts modifying the same, in so far as they bear on the present subject. The *kists* or instalments of revenue are

*Table of latest dates fixed for the payment of the revenue of all classes of estates in all districts:—*

<table>
<thead>
<tr>
<th>Estates paying an annual revenue not exceeding Rs. 10.</th>
<th>Estates paying an annual revenue exceeding Rs. 10, but not exceeding Rs. 50.</th>
<th>Estates paying an annual revenue exceeding Rs. 50, but not exceeding Rs. 100.</th>
<th>Estates paying an annual revenue exceeding Rs. 100.</th>
</tr>
</thead>
<tbody>
<tr>
<td>In districts where the Bengali or Amli era prevails, except the division of Orissa and the district of Chittagong.</td>
<td>28th March...</td>
<td>12th January...</td>
<td>28th June...</td>
</tr>
<tr>
<td>In districts where the Fasli era prevails.</td>
<td>28th March...</td>
<td>12th January...</td>
<td>28th June...</td>
</tr>
<tr>
<td>In the division of Orissa.</td>
<td>28th April for the 8 punnee kist...</td>
<td>28th April for the 8 punnee kist...</td>
<td>28th April for the 8 punnee kist...</td>
</tr>
<tr>
<td>In the district of Chittagong.</td>
<td>28th June...</td>
<td>25th May...</td>
<td>25th May...</td>
</tr>
<tr>
<td>Darjeeling.</td>
<td>12th January.</td>
<td>12th January.</td>
<td>25th May...</td>
</tr>
<tr>
<td>Hazaribagh (except Kharukdina)</td>
<td>28th March...</td>
<td>28th March...</td>
<td>28th October...</td>
</tr>
<tr>
<td>Loharduga...</td>
<td>28th January.</td>
<td>28th January.</td>
<td>28th October...</td>
</tr>
<tr>
<td>Singbhum...</td>
<td>28th March.</td>
<td>28th March.</td>
<td>28th January...</td>
</tr>
<tr>
<td>Manbhum...</td>
<td>28th March...</td>
<td>28th March...</td>
<td>28th March...</td>
</tr>
<tr>
<td>Kharukdina in Hazaribagh...</td>
<td>28th January.</td>
<td>25th February...</td>
<td>25th Feb...</td>
</tr>
</tbody>
</table>

not now payable monthly. Section 3 of the Act empowers the Board of Revenue to determine upon what dates arrears of revenue shall be paid in each district under their jurisdiction. If any quarterly instalment is not paid up before the sunset of the latest day thus fixed, the estate practically lapses, and the defaulter has no right to bar or interfere with the sale by subsequent payment or tender of payment; but the Collector has the power at any time before commencement of the sale, and the Commissioner at any time before the final bid is accepted, to exempt the estate from sale by recording a proceeding, giving the reason for granting such exemption. The order of the Commissioner, however, has no effect if it reaches the Collector after sale. The mere receipt by the Collector of the arrears of revenue after the latest day, without an express order for exemption, is not enough to prevent the sale, or invalidate a sale that has taken place.

If there is no arrear and all sums due as revenue have been paid by the proprietor or any person on his behalf before the sunset of the latest day, no sale can take place, and if by inadvertence or mistake a sale does take place, the sale should be set aside, and the Civil Courts may interfere, the sale being one not under the Act.

---

1 Act XI of 1859, Sec. 6; Gossain v. Ishri, I. L. R. 21 Cal. 844. See also Azimuddin v. Secretary, I. L. R. 21 Cal. 360.
2 Act XI of 1859, Sec. 18; Mohabeer v. Collector of Tirhooit, 13 W. R. 423.
A deposit in the collectorate to the credit of the proprietor or even of the estate in arrear, sufficient to cover the amount of revenue payable to Government, is not enough to exempt the estate from sale, unless the Collector has been asked by especial petition, on or before the latest day, to appropriate the amount in deposit to the satisfaction of the amount payable as revenue. The existence of such deposit in the collectorate, or the fact that the arrear was small and that it was not put in owing to inadvertence or mistake, may only be a reason for inducing the Collector or the Commissioner of Revenue to grant exemption from sale, and it may also be a good reason for setting aside the sale, when it has taken place, on the ground of hardship or injustice. But the deposit of money or Government securities endorsed and made payable to the order of the Collector under the provisions of section 15 of the Act would protect the estate from sale, such deposit being considered as actual payment made before the latest day.

When default has been made in the payment of revenue on the latest day provided therefor, the Collector is required to issue two sets of notices. The first set is to contain a particular description of the estate or share of estate in default, the revenue assessed thereon, and the date fixed for sale; and one of these notices is required to be affixed in the court-house of the District Judge and the other in the office of the Collector who is to hold the sale. The day fixed for sale should not be less than thirty days from the date of the affixing of the notification in the Collector's office. If the annual revenue payable for the estate or share of estate in default exceeds the sum of Rs. 500, a notification of the sale should also be published in the Official Gazette. The other set of notices is required

---

1 Att XI of 1859, Sec. 8.
2 Att XI of 1859, Sec. 26; Womesh v. Collector, 8 W. R. 439.
3 Att XI of 1859, Sec. 15.
4 Att XI of 1859, Sec. 6; Att VII (B.C.) of 1868, Sec. 3.
IRREGULAR PUBLICATION OF SALE NOTICES.

107

to be published for the benefit of under-tenants and raiyats who are thereby forbidden to pay rent to the defaulter. They are required to be published and affixed at the Collector’s office, at the Moonsiff’s court, at the Subdivisional cutchery, at the Police stations within the jurisdiction of which the lands of the mahāl in arrear lie, and at the principal cutchery of the mahāl or some conspicuous part thereof.¹ The non-publication or any irregularity in the publication of any or all of these notices is, however, not sufficient to vitiate the sale. That may amount to irregularity but not illegality, making the sale absolutely void. Even if the date fixed for sale be within thirty days of the affixing of the notification in the Collector’s office, the sale that follows will not be a nullity, and Civil Courts cannot set it aside on that ground; but such sale may be annulled on proof of substantial injury by reason of the irregularity complained of.² It should, however, be noted that the Court cannot infer, in the absence of direct evidence, that inadequacy of price is due to irregularity;³ and the non-publication of the notification under section 7, which is intended for the benefit of the purchasers, cannot amount to material irregularity in publishing the sale. The Commissioner of Revenue has the power, on an appeal being presented to him within sixty days from the date of sale or forty-five

¹ Act XI of 1859, Sec. 7; Act VII (B.C.) of 1868, Sec. 7. As to what omissions in the sale-notification are not material, see Zerkalee v. Doorga, 16 W. R. 149; Secretary v. Rasbehari, I. L. R. 9 Cal. 591, sc., 12 C. L. R. 27; Amirunnessa v. Secretary, I. L. R. 10 Cal. 63, sc., Amirunnessa v. Browne, 13 C. L. R. 131; Ram v. Mahabir, I. L. R. 13 Cal. 208. And as to irregularities, see Cornell v. Oodoy, 8 W. R. 372.


days, if presented to the Collector for transmission to the Commissioner, to annul the sale, if it appears to him not to have been conducted according to the provisions of the law, and he may also lay down terms for payment of compensation to the purchaser.\(^1\) A sale may also be set aside under section 26 of Act XI of 1859 on the ground of hardship.

An exception is made in the case of arrears other than those for the current year or for the year immediately preceding, arrears due on account of estates other than that to be sold, and arrears of estates under attachment by order of any civil judicial authority,\(^2\) whether the attachment be of the whole or of a part, and of estates managed by the Collector in accordance with such order.\(^3\) In such cases the law declares that the estates shall not be sold otherwise than after a notification shall have been affixed at the courts of the District Judge and the local Munsiff, at the police station, and also at the cutchery of the payer of the revenue, or at some conspicuous place of the locality for a period of not less than fifteen clear days preceding the date fixed for payment in the office of the Collector. This notification is imperative, and its non-service is a material irregularity, for which the sale for arrears may be set aside. This provision as to special notice, however, applies only where the attachment has been effected at least fifteen days before the last date fixed for the payment of any instalment of revenue for which it is sought to bring the estate to sale.\(^4\)

---

1. Act VII (B.C.) of 1868, Sec. 2; Womeshe v. Collector, 8 W. R. 439; Gobind v. Ram, 1 L. R. 21 Cal. 70, sc., 1 L. R. 20 I. A. 165.
2. Act XI of 1859, Sec. 5. An attachment under Sec. 10 of the Public Demands Recovery Act is not a judicial proceeding. Ram v. Mahabir, 1 L. R. 13 Cal. 208.
3. Act VII (B.C.) of 1868, Sec. 1; Bunwari v. Mohabir, 12 B. L. R. 297 sc., 1 L. R. 1. 1. A. 89.
Section 6 of Act XI of 1859 does not require that the name or names of the proprietor or proprietors should be specified in the notice, and no analogy can be drawn in this respect between a sale by the civil court and that by the Collector.¹

The jurisdiction of civil courts to set aside revenue-sales is of an extremely limited character. A suit to set aside a revenue-sale must be brought within one year from the date when the sale is confirmed and becomes final.² The sale becomes final at the noon of the sixtieth day from the date of sale, that day being included, and if an appeal be preferred, from the date of the dismissal of the appeal by the Commissioner, if such date be beyond the sixtieth day. The ground or grounds for setting aside the sale by a civil court must be such as has or have been declared and specified in the petition of appeal to the Commissioner, and no sale can be set aside unless such appeal has been preferred and the ground or grounds specifically taken.³ But if there is illegality and not mere irregularity, or the sale is a nullity, there being no arrears, no appeal to the Commissioner is necessary before suit.⁴ No person who has received the purchase-money or any part thereof is entitled to contest the legality of the sale.⁵

There is another difficulty as to the exercise of the power of civil courts in setting aside sales on the ground of material irregularity. Under section 8 of Bengal Act

² Act XI of 1859, Sec. 33; Act XV of 1877. Schedule II, art. 12, cl. (c); Raj v. Kinoo, I. L. R. 8 Cal. 329.
⁵ Act XI of 1859, Sec. 33.
VII of 1868, every certificate of sale issued under Act XI of 1859 "shall be conclusive evidence in favour of such purchaser and of every person claiming under him that all notices in or by this Act or by the said Act XI of 1859, required to be served or posted, have been duly served and posted; and the title of any person who may have obtained any such certificate shall not be impeached or affected by reason of any omission, informality, or irregularity as regards the serving or posting of any notice in the proceeding under which the sale was had at which such person may have purchased."

The rule of law here laid down confines the inquiry merely to the ground of nullity, i.e., illegality and not mere irregularity, the sale not being under the provisions of the said Acts. Unless the suit is brought with the utmost expedition, before the issuing of the certificate of sale, and unless the issuing of it by the Collector is stayed by temporary injunction under the provisions of the Code of Civil Procedure, the grounds for interference by civil courts are very narrow. In Lala Mobaruk Lal v. The Secretary of State for India in Council, the majority of the Full Bench of the Calcutta High Court held that non-compliance with the provisions of section 6 of Act XI of 1859 was not a mere irregularity, and was not one of those errors in procedure, which was intended to be cured by section 8 of Bengal Act VII of 1868. But the decision of the Privy Council in the case of Govind Lal Roy v. Ram Janam Misser has thrown considerable doubt as to the correctness of the view taken by the High Court.

The title of the purchaser dates from the day after that fixed for the last day of payment, and not from

---

1 Thakoor v. Collector, 13 W. R. 533.
3 I. L. R. 21 Cal. 70, sc., I. R. 20 I. A. 165.
4 Act XI of 1859, Sec. 28 and Sch. A.
the day of the purchase or confirmation of the sale. The purchaser is also liable for instalments of revenue that have fallen due from that day. The notices under section 7 of Act XI of 1859 prohibit payment of rent to the defaulter, the principle being that his right ceases with the default.

Provision is made in the Act against *benami* purchases, no suit for possession being maintainable against a certified purchaser on the ground of his being a *benamidar*. This provision is very similar to the provision contained in section 317 of the Code of Civil Procedure, but the plea under this section is not allowed unless the case comes strictly within its words. There is, however, no bar to any of the defaulters purchasing the estate, though he himself has failed to pay his share of the revenue; but the sale does not avoid incumbrances.

Section 31 of the Act provides for the distribution of the surplus sale-proceeds. It is made payable to the recorded proprietor or proprietors or his or their heirs or representatives, in shares proportioned to the recorded interest, and if there is no record of shares, the aggregate sum is payable to the whole body of proprietors. The mortgagee has the right to recover his money from the surplus sale-proceeds, when mortgaged lands are sold for arrears of Government revenue which remained unpaid not through his default. An assignee

---

1 Act XI of 1859, Sec. 30; Wazeer v. Fazloonnissa, W. R. (1864) 373; Khema v. Nund, 4 W. R. 75.
5 Act XI of 1859, Sec. 53; Mahomed v. Leicester, 7 B.L.R., Ap., 52.
7 Act IV of 1882, Sec. 73; Heere v. Janaki, 16 W.R. 222.
of recorded proprietors is not their representative under the Act. The Land Registration Act of 1876 has made registration of the names of proprietors and their respective shares compulsory. No difficulty can arise under the present law, unless death or alienation, very shortly before or after the sale or before payment, brings in complications. If the amount is attached under a decree of a civil court or by the Collector himself under the Public Demands Recovery Act, no payment can be made by the Collector himself without compliance with the ordinary procedure.

The amount remains in deposit with the Collector until it is paid out, and according to a recent Full Bench decision of the Calcutta High Court, the period of limitation as against the Secretary of State for India, is six years under article 120 of Schedule II of Act XV of 1877. Pigot, J., differed from the majority of the Court and was of opinion that the Collector held as trustee, and under section 10 of the Limitation Act he was bound to pay the amount on demand.

The ordinary laws of succession amongst Hindus and Mahomedans are applicable to these permanently settled estates, except where long established custom or family usage (kulachar), such as is provided for in Regulation X of 1800, is found to exist. There being in India no territorial law, the succession is in all cases governed by the personal law of the holder. Holders of estates have free power of alienation not only of the whole but also of portions and fractional parts. It was,

---

1 Secretary v. Marjum, I. L. R. 11 Cal. 359.
3 Secretary v. Guru, I. L. R. 20 Cal. 51. See also Secretary v. Marjum, I. L. R. 11 Cal. 359.
4 Reg. XI of 1793.
5 Raja Deedar v. Ranee Zuhooroon, 2 M. I. A. 441; Babu Bir v. Moharaja, 12 M. I. A. 1.
therefore, absolutely necessary to make rules for the recognition of the claims and protection of the interest of persons who have, by inheritance or purchase, right to estates or parts of estates, and also for the partition of estates amongst co-owners. One of the objects for enacting Act XI of 1859 is stated in the preamble to be "the expediency of affording sharers easy means of protecting their shares from sale by reason of the default of their co-sharers."

Regulation XLVIII of 1793 laid down rules for the registration in the Collectorate of the names of proprietors of estates. This Regulation was followed by Regulation XV of 1797. The registers were called quinquennial, as they were required to be prepared every five years. These registers are public documents within the meaning of sections 35 and 74 of the Indian Evidence Act. The Registration Regulation of 1800 made further provisions, but the law as to registration of names in the Collectorate was not strictly enforced until the passing of the Bengal Land Registration Act (VII of 1876). Under this Act, "A" is the general Register kept by Collectors of revenue-paying lands, and the names and addresses of proprietors are required to be kept in it. Intermediate Registers are also required to be kept for noting changes affecting entries, and part I refers to revenue-paying lands. Sections 38 and 42 of the Act make registration of the names of proprietors or joint-proprietors in possession of estates compulsory, fines being imposed for non-compliance with the provisions of the Act, and there being a further penalty under section 78 of the Act, as the right to sue under-tenants and raiyats for rent is taken away on failure to

1 Reg. XV of 1797, Sec. 2.
3 Reg. VIII of 1800, Sec. 21.
4 Act VII (B.C.) 1876, Sec. 8.
procure registration. After the registration of the name of a proprietor under Bengal Act VII of 1876 has been completed, the person whose name is registered may get a mutation of name in the register of *toujies* or revenue-paying estates in the Collectorate, and he thus becomes a recorded proprietor or a recorded sharer of an estate. Copies of these registers are admissible in evidence.

A recorded sharer of a joint estate, desiring to pay his share of the Government revenue separately, may get a separate account opened, and the separate liability of such recorded sharer commences from the opening of such separate account. This rule applies also to holders of shares consisting of specific portions of the lands of an estate. The power of the Collector, however, to open a separate account is restricted to cases where no objection is made by any other recorded proprietor. On an objection being made, the Collector is to refer the parties to the Civil Court.

The rules for the realization of revenue and for sale on non-payment thereof applicable to entire estates are also applicable to separated shares, except that if the highest offer for the share exposed to sale be not equal to the amount of arrear due, the Collector is required to give notice to the other sharers, and if the amount due be not paid within ten days from the date of notice, the entire estate may be sold after due publica-

---

2 An administrator to the estate of deceased proprietor is also bound to have his name registered before bringing a suit for rent—McIntosh v. Jharu, I. L. R. 22 Cal. 454.
4 Act XI of 1859, Sec. 10; Rajendro v. Doorga, 7 W. R. 154.
5 Act XI of 1859, Sec. 11; Gour v. Tara, 6, W. R. 217.
tion of notice. The payment by a sharer, if made within ten days, has the effect of a purchase of the share in arrear, and such sharer may obtain a certificate of sale and delivery of possession under the Act. A purchase thus made by a co-sharer is considered to have all the incidents of a sale under the Act, and it is subject to the same rules as to annulment of the sale and avoidance of encumbrances as ordinary sales of shares under the Act.¹

The partition of estates by the Collector gives the sharers complete security, and the shares carved out by such partition have all the advantages of a parent estate, each partitioned share being recognised as an estate. It is supposed that complete security for the realization of Government revenue requires that partition should be effected by a revenue-officer or, at least, that he should sanction the same. The civil courts in the country have the power to pass decrees for partition after ascertainment of the shares of the parties interested,² but actual partition cannot be effected except by the Collector.³ A private partition may be binding on the parties but not the Government, unless special sanction of the Collector is obtained. But if the division of the lands of any estate has been made by private arrangement, and each proprietor is in possession of separate lands in accordance with such arrangement, the Collector has no power to interfere at the instance of any one or more of the co-sharers⁴. A joint application must in such a case be made by all the co-sharers.⁵ The jurisdiction

¹ Act XI of 1859, Secs. 14 and 53; Gossain v. Ishri, I.L.R. 21 Cal. 844.
² Act VIII (B.C.) of 1876, Sec. 29; Act XIV of 1882, Secs. 265 and 395; Mohsun v. Nuzum, 6 W.R. 15; Ramjoy v. Ram Runjun, 8 C. L. R. 367.
⁴ Act VIII of 1876, Sec. 12; Bujrungee v. Syud, 5 W.R. 186.
⁵ Act VIII (B.C.) of 1876, Secs. 101, 105; Joymonee v. Imam, 13 W. R. 471.
of the Collector is not, however, excluded, unless it be shown that separate possession of the lands is due to a special arrangement effecting partition, and unless all the lands are held in severalty and no part is held jointly. The mere possession of specific portions of land is not enough to oust the jurisdiction of the Collector. Of course, a presumption of arrangement may be made from long possession. But as regards lands originally waste, the mere occupation and cultivation by co-sharers separately may rebut the presumption arising from long possession. Extreme inequality of lands, disproportionate to the share in the possession of each co-sharer, may also rebut such presumption.

No person having a proprietary interest in an estate for a term of his life only is entitled to claim a partition by the Collector. It should be remembered that it is optional with the Collector, according to the circumstances of each case, to allow a partition to the holder of a life-estate. A Hindu widow and other Hindu females holding under the same sort of right as that of a Hindu widow are not, however, tenants for life; they are entitled to claim partition by the Collector. The Civil Courts may exercise their discretion in any suit for partition by a female having only a Hindu widow’s estate, though the better rule seems to be that partition should always be allowed.

There can be no partition by the Collector where the separate estate of any of the proprietors would, on partition, be liable for an annual amount of land-revenue not exceeding one rupee. This rule prevents, in most cases, the partition of small estates by the Collector; but, perhaps, a Civil Court may decree partition though

1 Aft VIII (B.C.) of 1876, Sec. 13 ; Doorga v. Radha, 7, W. R. 51; Joy v. Lall, I. L. R. 8 Cal. 126, sc., 10 C. L. R. 146; Kalup v. Lala, I. L. R. 16 Cal. 117. See also Hridoy v. Mohobut, I. L. R. 20 Cal. 285.
2 Aft VIII (B.C.) of 1876, Sec. 10.
4 Aft VIII (B.C.) of 1876, Sec. 11.
the apportionment of revenue will not be binding on the Collector.\(^1\)

If the Revenue officers refuse on insufficient grounds to direct the partition of an estate, any party aggrieved may sue in a civil court for a decree for partition.\(^2\) A party may also, before applying to the Collector, ask a civil court to declare the rights of the several co-sharers and to direct the Collector to effect a partition.\(^3\) But no civil court can direct a partition by the Collector, if the revenue payable by any sharer for his share be less than one rupee. On a decree by the civil court for partition, the successful plaintiff may apply to the Collector for actual partition. A civil court may also, during the pendency of partition proceedings before the revenue authorities, declare the shares of the parties,\(^4\) and even after partition declare the respective shares of the parties which may be different from their recorded shares in the partition proceedings, but cannot, after a partition already made, modify the allotment made by the revenue authorities.\(^5\)

There is now a conflict of cases as to the jurisdiction of civil courts in the matter of the actual partition of estates by metes and bounds. Division of the lands of an estate by metes and bounds, accompanied by a proportionate division of the revenue binding on the Government, is

---


\(^2\) Act VIII (B.C.) of 1876, Sec. 29; Act XIV of 1882, Sec. 265; Secretary v. Nundun, I. L. R. 10 Cal. 435.

\(^3\) Act VIII (B.C.) of 1876, Sec. 26; Dewan v. Jebunnissa, 16 W.R. 34; Mussamat v. Woman, 3 C. L. R. 453; Meherban v. Behari, I. L. R. 23 Cal. 679.


complete partition, and the revenue authorities have exclusive jurisdiction to effect such complete partition. But partition may be incomplete in two ways,—there may be a division of the lands and a proportionate division of the revenue without the sanction of and recognition by the revenue authorities, the liabilities of the sharers being determined as amongst themselves, and there may be a division of the lands only, the liability as to revenue remaining joint. Have civil courts in the country jurisdiction as to either of the latter modes of incomplete partition? The question must be settled either by a Full Bench of the High Court or by the Legislature.

The first important Regulation as to the procedure to be followed in the partition of estates by the Collector was XIX of 1814. The present Act VIII (B.C.) of 1876, by which Regulation XIX has been repealed, is somewhat elaborate and removes many of the difficulties that must necessarily attend a partition by the Collector. I understand that it is in the contemplation of the local Government to introduce a bill to amend Act VIII (B.C.) of 1876 with a view to simplify the procedure as to partition by the revenue authorities. It seems to me, however, to be an anomaly—a survival—that while the civil courts in Bengal have exclusive jurisdiction in the partition of all kinds of immovable properties, there should be special courts and a special procedure for the partition of revenue-paying estates. The existence of the Estates Partition Act in the statute book of Bengal indicates a want of confidence of the State in its civil courts, where its own interest is concerned. There is no reason to suppose that the Government would suffer, if the apportionment of revenue be left to be determined by the judicial procedure adopted in civil courts. The exclusive jurisdiction of the Collector often requires, as we have seen, to be supplemented by the interference of civil courts. Various questions, which can only be determined by civil courts, do frequently arise on an application for partition and
during the course of partition-proceedings, and litigants in this country are unnecessarily harassed by being compelled to have recourse both to the Revenue officers and Civil judges, when one and the same tribunal may, by the framing of proper rules of law and procedure, be made to perform the same duties. A partition by a Collector is necessarily one which cannot be, and is really not, equitable in the sense in which an English lawyer would use the word. If there are four estates belonging to two proprietors jointly, the Collector would require four separate applications, and there must be four separate proceedings, and each estate must be divided into equal moieties. But if the civil courts have jurisdiction, they may allot two of these estates to one of the joint proprietors, two others to another, equalizing the partition by payment of owelty; and all this may be done in a single suit. They may also allot two of these estates to one, a third to another, and divide the fourth between the two. The complications which arise from the existence of subordinate tenures, the holders of which have not the right to be heard by the revenue authorities, may also be avoided by the civil courts being allowed jurisdiction. It is now freely admitted, and, in fact, it is pointed out as a gross mistake of the Permanent Settlement of Bengal, that profits of holders of estates, are nearly ten times the revenue which the Government realizes from them. Financiers have, therefore, no reason to suppose that the realization of the land tax to the last copper piece will be jeopardized by small inequalities in value and dimension of land, resulting from a partition by a civil court. The proverbial delay and cost in Butwara proceedings, even with the procedure laid down by Bengal Act VII of 1876, which has repealed the Regulation of 1814, may also be avoided to a considerable extent by partition by commissioners appointed under the Code of Civil Procedure.

I would not detain you with a recital of the proced-
ure for partition of estates. Part of the duty to be performed in these proceedings may be done by the Deputy Collectors, others and the more weighty ones are left to the Collector himself, and only the Collector may declare an estate to be under partition. In most matters an appeal lies to the Commissioner of Revenue, and in some to the Board of Revenue, and the Board may always exercise its revisional powers. Partition by the Collector is usually the separation of the share of the applicant by allotting to him a proportionate share of the land, and not the separate allotment to all the sharers of their respective shares, unless the other sharers also ask for partition of their shares. The parties may, at any time, cause proceedings to be stayed by consent, and the Commissioner may also stay proceedings, and, if need be, quash them. Confirmation of partition by the Commissioner is necessary to give it validity. But the Lieutenant-Governor may within twelve years set aside any allotment and direct a fresh allotment, if it appears that, through fraud or error, the land revenue assessed on any share is not in proportion to the lands allotted. Each separate estate formed by partition bears a separate number in the revenue-roll of the district, and is separately liable for the land-revenue assessed upon it.

Estates are exempted from liability to sale under the sale-laws in cases of disqualified proprietors, and in cases of attachment by revenue authorities or management by a revenue officer. The properties of minors, idiots, lunatics and disqualified proprietors require peculiarly the protection of the sovereign. The Hindu law recognised the king as the supreme guardian of the property of all minors. This is in accordance with the law

---

1 Act VIII. (B.C.) of 1876, Sec. 33. 2 Act VIII. (B.C.) of 1876, Sec. 35. 3 Act VIII. (B.C.) of 1876, Sec. 36. 4 Act VIII. (B.C.) of 1876, Pt IX. 5 Act VIII. (B.C.) 1876, Sec 132. 6 Act VIII. (B.C.) of 1876, Sec 125. 7 Tagore Lecturers 1877, p. 37, and the authorities cited therein. See Manu, VIII., 27.
in all civilized countries, it being a prerogative of the Crown, flowing from its general power and duty, as *parens patriae*, to protect those who have no other lawful protector\(^1\). The Mahomedan law also enjoined the Quazi to exercise vigilant supervision over guardians in the management of their wards’ properties,\(^2\) as he is the representative of the government of the sultan. In England, this jurisdiction was exercised by the Court of Chancery. Provision was made by the Regulation Code of 1793\(^3\) for the protection of the estates of minors and other disqualified proprietors—idiots, lunatics and others incapable of managing estates on account of natural defects or infirmities. Females incapable of managing their estates were also declared to be disqualified proprietors.\(^4\) Regulation X of 1793 provided for the establishment of the Court of Wards, and made rules relative to disqualified landholders and their estates. The Proclamation declaring the Decennial Settlement Permanent exempted the estates of disqualified proprietors from liability to sale for any arrears accruing during the period of their disqualification.\(^5\) The sale-laws, passed from time to time, made similar provisions in favour of minors. The sale-law of 1859 provided—"No estate shall be liable to sale for the recovery of arrears which have accrued during the period of its being under the management of the Court of Wards; and no estate, the sole property of a minor or minors and descended to him or them by the regular course of inheritance, duly notified to the Collector for the information of the Court of Wards, but of which the Court of Wards has not assumed the management under Regulation VI of 1822, shall be sold for arrears of

\(^1\) Story’s Equity Jurisprudence, Sec. 1333.

\(^2\) Ameer Ali’s Mahomedan Law, p. 572.

\(^3\) Reg. VIII. of 1793, Sec. 21. \(^4\) See Reg. I of 1793, Sec. 8, cl. 5.

\(^5\) Reg. XIV of 1793, Sec. 48; Reg. VI of 1822, Sec. 4.
revenue accruing subsequently to his or their succession to the same, until the minor or minors, or one of them, shall have attained the full age of eighteen years. The age of majority of infants under the Court of Wards and of those whose properties are under the management of civil courts is now twenty-one years. The present Court of Wards Act is Bengal Act IX of 1879, as amended by Bengal Act III of 1881, and the present law relating to infants who are not under the Court of Wards is Act VIII of 1890. The protection from sale of estates belonging to minors, as contained in section 17 of Act XI of 1859, is now given by section 4 of Bengal Act III of 1881, which has repealed the words of section 17 of Act XI of 1859 I have quoted above. The present law as to the liability of the estates of minors to sale for arrears may be thus summarised:—(a) Every estate or a separated share of an estate is exempt from sale for arrears of revenue which have accrued, while it has been in charge of the Court of Wards; but it may at any time be sold for such arrears, if the Court of Wards certifies in writing, with its reasons, that the interest of the ward requires that it should be sold under the sale-laws. (b)—All unpaid arrears of revenue accruing during the period of the management by the Court shall be a first charge upon the sale-proceeds, if the estate or share of an estate be sold for any other cause than for such arrears of revenue; and if any arrears remain due, when the estate ceases to be under the charge of the Court, the Collector may attach it for the arrears and incidental costs. c)—In case of minors, not brought under the Court of Wards, no estate, the sole property of a minor or of two or more minors, shall be sold for arrears of revenue

1 Act XI of 1859, Sec. 17.  
2 Act IX of 1875, Sec. 3.  
3 Act IX (B. C.) of 1879, Sec. 23, cl. 1.  
4 Act IX (B. C.) of 1879, Sec. 23 A.  
5 Act IX (B. C.) of 1879, Sec. 23, cl. 2.
ESTATES EXEMPTED FROM SALE.

Accruing subsequent to the succession, until the completion of the age of majority, if the Collector has been served with a written notice of the fact that the estate is the sole property of the minor or minors;¹ but such arrears shall be the first charge on the proceeds of the estate, if it is sold for any other cause during the minority; and the estate is also liable to be attached by the Collector.² Under the Court of Wards Act, the Board of Revenue is the Court of Wards,³ but the Collectors and the Commissioners do the actual work through managers appointed by the Court. The Revenue Officer is thus the payer as well as the receiver of revenue, and I think it is an anomaly for the same individual, who is the receiver as well as the payer of money, to sell the property of an infant under his custody for non-payment of such money.

While on the subject of exemption from sale for arrears of revenue, I may add that, under the repealed provisions of section 17 of Act XI of 1859, no estate held under attachment by the Revenue authorities, otherwise than by order of a judicial authority, is liable to sale for arrears accruing whilst it is so held under attachment; and similarly an estate held under attachment or managed by a Revenue Officer in pursuance of an order of a judicial authority is not liable to be sold until after the end of the year. But the mere issuing of a certificate of attachment does not operate as an attachment by the Collector.

Besides the payment of revenue and cesses by the holders of permanently settled estates, there are duties of minor importance which the Government has imposed on them. The liability to supply provisions to the army is one of these. Regulation XI of 1806 made provision for compelling landholders and farmers of estates to supply,

¹ Act IX (B. C.) of 1879, Secs. 24 and 25.
² Act IX (B. C.) of 1879, Sec. 24.
³ Act IX (B. C.) of 1879, Sec. 5.
for troops passing through their estates, the required provisions, boats and coolies. Regulation VI of 1825 made further provisions for compelling zemindars to provide supplies, boats, &c., the penalty for default being fine not exceeding one thousand sicca rupees.¹

The duty of giving information of the commission of certain offences within the ambit of the estate, especially, offences regarding the manufacture of salt, offences with respect to the excise-law and certain serious offences under the Indian Penal Code, has been imposed upon zemindars as a matter of necessity. By the Settlement Regulations² the zemindars were disburdened of their police and magisterial duties. But the duty of sending reports to police officers and magistrates has continued to be on them, and the native officers of landholders are also responsible. These provisions are now embodied in section 154 of Act XLV of 1860 and section 45 of Act X of 1882.

On the acquisition of lands which are revenue-paying, the basis for calculating the amount of compensation is the actual price for which the land, subject to the burden of payment of land-revenue, would sell in the market. In determining the amount of compensation, the Collector has to determine the exact amount of land-revenue payable for the land, the subject of acquisition. The procedure that should be followed by Collectors in ascertaining the amount of revenue payable for lands under acquisition is laid down in the rules promulgated by the Government of Bengal under section 59 of Act X of 1870,³ and these rules have remained unaltered after the passing of Act I of 1894. The market value being determined after deduction made for Government revenue, no question of apportionment can arise between the

¹ Reg. VI of 1825, Sec. 2.
² Reg. VI of 1810; Reg. I of 1811, Sec. 10; Reg. III of 1812, Sec. 4; Reg. VIII of 1814; Reg. III of 1821, Sec. 7.
³ Calcutta Gazette, 7th July, 1875, p. 880.
Government and the claimant for compensation. None of the Land Acquisition Acts laid down definite rules as to abatement of government-revenue, but the rules made under section 55 of the Act of 1894 (Act of 1870, Sec. 59) have the force of law, if the sanction of the Governor-General in Council be obtained. Under the above rules, the Collector, after the determination of the amount of revenue payable in respect of the land acquired, should grant remission to that extent to the holder of the estate. But if the area of the land acquired does not exceed one-twentieth of the area of the entire estate, and the claimant, the proprietor, declines to accept abatement of revenue, the Collector may pay an additional sum calculated at the same number of years' purchase of the government revenue as is the basis of calculation of the rest of the amount of compensation paid. When abatement is allowed, it has effect from the date of the possession taken by the Collector of the land acquired.

I shall now say a few words on the right known as *malikana*. It is an allowance for proprietary right to a person who was owner or proprietor. The rules making the Decennial Settlement Permanent directed that the proprietors, who might finally refuse to enter into engagements for the amount of revenue required of them, should be allowed *malikana*, in consideration of their proprietary rights, at the rate of ten per cent. on the revenue, if the lands were let in farm. The amount of the *malikana* was payable by the farmer to the proprietor, in addition to the amount payable to the Government as revenue, in instalments according to the instalments of government-revenue. The Collectors were to realise the *malikana* in the same way as Government revenue, and the Government guaranteed the amount to the proprietors. In the event of the land being held *khas* by Government, the *malikana* was payable by the Collector at ten per cent. on the net
collections, after defraying the *malikana* and other charges.\(^1\) In Bengal proper, instances of payment of *malikana* by Government or any farmer are very rare, except in cases of recent temporary settlements, specially of lands gained by accretion and assessed under Act IX of 1847. Grants of *malikana* are largely to be found in Behar.

Regulation VII of 1822, enacted for the Ceded and Conquered Provinces and Cuttack, rescinded "all provisions in the then existing Regulations regarding the allowance" known as *malikana*.\(^2\) As we have already seen, this Regulation was extended to all the other provinces in Bengal by Regulation IX of 1825. Under these Regulations, the rate of *malikana* was required to be fixed by the Board of Revenue, but the rate was not to be under five nor above ten per cent. unless there was a special sanction of Government for a higher rate. The highest amount of revenue tendered by a farmer was the basis of calculation, and, when no tender was made, the net realisation of the previous year.\(^3\) But the rules laid down in these Regulations had only prospective effect\(^4\) and did not affect *malikana*-holders who were entitled to *malikana* under Regulation VIII of 1793.

*Malikana* is a distinct proprietary right and is an interest in land. But it is not rent, nor has it the elements which constitute the idea conveyed by the word 'rent.' A suit for *malikana* is a suit for money charged upon immovable property\(^5\), and the period of limitation

---

\(^{1}\) Reg. VIII of 1793, Secs. 44 to 47.  
\(^{2}\) Reg. VII of 1822, Sec 5, cl. 1.  
\(^{3}\) Reg. VII of 1822, Sec. 5, cls 2 and 3.  
\(^{4}\) Reg. IX of 1833, Sec. 11.  
CONTRIBUTION.

is twelve years from the time when the money sued for becomes due.¹

Notwithstanding the direction contained in section 46 of Regulation VIII of 1793 for the realization of malikana-allowance by the Collector from the farmers, suits for recovery of malikana are maintainable. The High Court at Calcutta at one time doubted whether such a suit would lie, having regard to the provisions of section 46 of the Regulation.² But the express provisions in the later Limitation Acts contemplate such suits, and notwithstanding the doubt thrown out, such suits have always been allowed.

The relative duties and obligations of the joint holders of an estate deserve a few words. I have already given you a summary of the legislative enactments as to the rights of co-sharers of permanently settled estates in relation to Government. As between themselves, they have rights and obligations of complicated character, which it will be difficult to narrate in the compass of this lecture. I draw your attention only to what may be said quasi-contracts arising out of payment of government-revenue and similar other dues for the protection of the estate. The law is laid down in the Contract Act (IX of 1872).³ It was at one time understood that a co-sharer, paying into the Collectorate the amount of revenue due from another co-sharer for the protection of the estate and consequently of his own share also, was entitled to a charge on the share thus protected by him; and the case of Nugender Chunder Ghose v. Kaminee Dossee,⁴ already cited, was considered as an authority for the proposition.

¹ Act XV of 1877, Sch. II, Art. 132; Act IX of 1871, Sch. II, Art. 132.
² Bhuli v. Mussamut, 4 B. L. R. 29.
³ Act IX of 1872, Secs. 69 and 70.
But the earlier decisions\(^1\), based on the dictum of the Judicial Committee, have been overruled by the Full Bench decision in the case of *Kinu Ram Das v. Mozaffer Hosain and others.*\(^2\) The rule laid down in this case by the majority of the Full Bench, that there is no lien created by the advances made by a co-sharer, is in conflict with the decision of some of the other High Courts on the same subject. It seems to be extremely hard, that a co-sharer should have no security for the advances made by him which have saved the property from sale. The case of a mortgagee is distinctly provided for in the Sale Laws\(^3\) and the Transfer of Property Act.\(^4\) The Bengal Tenancy Act,\(^5\) which contains the latest ideas of our lawgivers on the rights of co-sharers, gives to the advances made by a co-sharer priority over every other charge. The attention of the Legislative Council has been drawn to the mischief caused by the exposition of the law by the majority of the judges of the Calcutta and the Allahabad High Courts, and I hope remedy will soon be provided for.

Disputes between co-owners very frequently cause inconvenience to the public and injury to private rights. In 1812 provision had to be made to prevent the mischief arising out of such disputes, and the Revenue authorities or any one of the co-owners or other persons interested in an estate could apply to the District Judge having jurisdiction for the appointment of a common manager and to remove such manager when appointed.\(^6\) Regulation V of 1827 empowered the District Judge to

---


\(^3\) Act XI of 1859, Sec. 9

\(^4\) Act IV of 1882, Secs. 72 and 73.

\(^5\) Act VIII (B C) of 1885, Sec. 171.

direct the Collector to hold an estate under his management through a manager. Frequent disputes amongst co-owners required the passing of definite rules for the appointment and removal of common managers, and the Bengal Tenancy Act (VIII of 1885) accordingly made provision for the appointment of a common manager "on the application of the Collector or of any person interested in the estate in case of inconvenience to the public, or on the application of a recorded co-owner in case of injury to private rights." The District Judge is, in such cases, directed to issue notices upon the co-owners to shew cause why a common manager should not be appointed, and on their non-appearance or failure to shew cause, or on their failure to appoint a common manager within the time that may be fixed for the purpose, the District Judge has the power to appoint a common manager or to place the estate in the hands of the Court of Wards, if the Court consents to accept the charge. The District Judge has also the power to restore the management to the co-owners, if he be satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights. The order of a District Judge for the appointment of a common manager is not appealable to the High Court as a decree. But the High Court has the power of revision under section 622 of the Code of Civil Procedure.

Various questions may and do constantly arise between the proprietors of different estates, many of which are highly complex. Survey and demarcation of estates are fertile sources of dispute. Alluvial accretions and reformations in site are constant sources of

1 Act VIII (B. C.) of 1885, Secs. 93 to 96.
2 Act VIII (B. C.) of 1885, Sec. 99.
litigation in the alluvial delta of the Ganges. It will be impossible within the limits of these lectures to deal with the various ramifications of the law with reference to these matters.

I shall close this lecture with a few words on independent taluqs. At the time of the Decennial Settlement of the Bengal provinces, there was a large number of land-holders known as taluqdars, and their holdings were known as taluqs.¹ The word taluq is Arabic in origin and means "some thing hanging or dependent."³ The term is applied to various intermediate holdings differing in their incidents, but in Bengal it is more frequently used with reference to lands held under zemindars or lands originally carved out of zemindaries.

The Settlement and Resumption Regulations of the Bengal code divided the then existing taluqs into two classes, and called them either independent (hazuri or khariji), or dependent (mazkuri, shikmi or shamilat). We have already seen⁵ that the Government recognised the independent taluqdars, in the Decennial and Permanent Settlements, as actual proprietors of land, and they were allowed to enter into direct engagements at fixed sums of revenue payable in perpetuity into the Collector's treasury.⁴ These taluqs, as well as those subsequently created under the rules laid down in the Resumption Regulations, to which I have already referred,⁵ have the same incidents of law as zemindaries, and the taluqdars have the same rights and obligations in relation to the State. Regulation VIII of 1793 laid down distinct rules for the guidance of Collectors for separate settlement with independent taluqdars.⁶ A

¹ For the origin and history of Bengal Taluqdars, see Tagore Lectures for 1874-75, pp. 149-158 and Land Revenue Systems by Mr. Baden Powell, p. 223.
³ Introduction to the Bengal Regulations by C. D. Field, p. 30
⁵ Ante p. 94.
⁴ Reg VIII of 1793, Secs. 13, 14.
⁵ Ante pp. 73-4.
⁶ Reg. 1 of 1801, Sec. 14.
large number of taluqs was thus separated and recognised as estates before the year 1802. In the year 1801, a Regulation was passed to fix a period for applications for separation of taluqs as independent, and it was laid down "that all taluqdars who might deem their lands entitled to be separated from the zemindaries which included them must make their applications within one year from the 15th January 1801, the date of the passing of the Regulation; otherwise the claim to separation would be barred." This law has put a stop to the recognition of independent taluqs as estates, except those that have been created under the rules laid down in Regulations XIX and XXXVII of 1793 and II of 1819.

The distinction between independent and dependent taluqs was at one time of considerable importance, but the sections of Regulation VIII of 1793 dealing with them have now been repealed as obsolete.¹

¹ Reg. VIII of 1793, Secs. 10, 11.
² Repealing Act XVI of 1874.
LECTURE V.

PERMANENT TENURES.

(TALUQS).

Between the zemindars and persons actually occupying the lands of an estate, there were, at the dates of the Decennial and the Permanent Settlements, a large number of intermediate holders who paid to the former fixed sums in perpetuity; and their number has since largely increased. Most of these tenures are known by the name of taluqs. Those existing at the Decennial Settlement and not recognised as estates (independent taluqs) and those created by proprietors of estates after the date of the Settlement, the revenue payable for them not being separated and separately recorded in the Official Registers of Collectors as estates or shares of estates, are said to be dependent¹, and the holders of the taluqs are called taluqdars.

I propose to deal first with the taluqs existing at the time of the Decennial Settlement. They may be classed :— (1) Taluqs "for which the revenue was paid through zemindars and the title deeds in respect of which contained a stipulation that it should be so paid,"²; (2) Taluqs held under grants from zemindars, which did not expressly transfer the property in the soil, but operated simply as leases on terms of payment of rent and other conditions; (3) Jungle buri taluqs held under permanent leases on conditions of clearance of jungle-lands and payment of fixed amounts of revenue after a fixed rent-free period; and (4) Taluqs which might have been recorded as independent, but for

¹ Ante pp. 94, 130. ² Reg. VIII of 1793, Sec. 6.
which applications to the Collector were not made within one year from the passing of Regulation I of 1801.¹

Regulation VIII of 1793 speaks of two classes of dependent taluqs existing at the date of the Permanent Settlement—those of which the rent was capable of being enhanced, and those of which the rent was not enhanceable. If there was a grant to hold in perpetuity at fixed rent, and payment had been made of such fixed rent for more than twelve years before the Permanent Settlement, neither the grantor nor his heirs, nor even the Government, could enhance the rent. But if the grantee had held on payment of fixed rent for less than twelve years, the Government or any proprietor other than the grantor or his heirs could demand increased assessment.² The presumption was generally in favour of the taluqdar, as soon as it was proved that the taluq had existed from before the Decennial Settlement.³

Section 51 of Regulation VIII of 1793 declared—¹¹No zemindar or other actual proprietor of land shall demand an increase from the taluqdar dependent on him, although he should himself be subject to the payment of an increase of jumma to Government, except upon proof that he is entitled so to do, either by the special custom of the district, or by the conditions under which the taluqdar holds his tenure; or that the taluqdar, by receiving abatements from his jumma, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it."⁴ Section 48 of the Regulation required proprietors of estates to enter into engagements with these taluqdars, "provided the taluqdar

¹ Reg. I of 1804, Sec. 24.
² Reg. VIII of 1793, Sec. 49.
⁴ See Act VIII of 1885, Sec. 6.
agreed to such revenue, progressive or otherwise, as the proprietor might be entitled to demand from them." But this power of demanding increase could only be exercised subject to the provisions of Sections 49 and 51 of the Regulation.\(^1\) Section 7 of Regulation XLIV of 1793 made the matter clearer by enacting that even auction-purchasers at sales for arrears of government-revenue under section 5 of the Regulation had not the "authority to assess increased rent upon the lands of such dependent taluqdar as were exempted from any increase of assessment at the date of the Decennial Settlement by virtue of the prohibition contained in clause 1, section 51 of Regulation VIII of 1793. The revenue payable by such dependent taluqdar was declared fixed for ever, and their lands were accordingly to be rated at such fixed assessment in all divisions of the estate in which their lands were included." Their position was not to be affected, even if no engagements, such as those contemplated in section 48 of Regulation VIII of 1793, were entered into, and even if no engagements were recorded in the Collectorate.

In the leading case of *Bama Soondery Dassvah v. Radhika Chowdhraim and others,\(^2\)* the Judicial Committee of the Privy Council have thus summarised the effect of the provisions of the Regulations relating to dependent taluqs—(a) A zemindar holding under the Perpetual Settlement has the right, from time to time, to raise the rents of all rent-paying lands within his zemindari according to the perganah or current rates, unless he is precluded from the exercise of that right either by contract binding on him, or unless the lands in question can be brought within one

---


of the exemptions recognized by Regulation VIII of 1793: (b) The burden of proving that the lands claimed are within the ambit of a dependent taluq and that the taluq existed at the Decennial Settlement is upon the taluqdar: (c) Section 51 of Regulation VIII of 1793 imposes upon the zemindar the burden of showing that he is entitled to raise the rate of rent either by special custom or by contract, or by reason of certain specified conduct on the part of the taluqdar.

The amount of evidence necessary to prove the existence of a dependent taluq at the date of the Decennial Settlement varies according to circumstances. Assertions made about its existence shortly before the Decennial Settlement have been considered to be good evidence. Neither does the non-mention in the Decennial or Quinquennial papers afford strong inference against its existence.

If, however, in a suit by an auction-purchaser for arrears of revenue, a taluqdar pleaded exemption from liability to enhancement on the grounds set forth in section 49 of Regulation VIII of 1793, viz., that the taluq had been held at fixed and invariable rent for more than twelve years antecedent to the Permanent Settlement, or if he set up a contract valid under that section, the burden was on the taluqdar: the onus of proof varied according as the plea was set up either under section 49 or section 51 of the Regulation.

The right to enhance the rent of a dependent taluq could be exercised only after notice. Regulation V of 1812 laid down that no tenant would be liable to pay en-

---

1 Bama v. Radhika, 13 M. I. A. 248; Romesh v. Modhoo, 5 W. R. 252.
4 Reg. V of 1812, Sec. 9: Nilmoney v. Chunder, 14 W. R. 251; Nilmoney v. Ram, 21 W. R. 439; Srimati v. Girish, 7 B.L.R. App. 44.
hanced rent, though subject to enhancement under the subsisting Regulations, unless a formal written notice had been served on such tenant on or before the month of *Jaisth*, notifying the specific rent to which he would be subject for the ensuing Fasli or the current Bengali year. The notice must specify upon which of the grounds mentioned in section 51 of Regulation VIII of 1793 the enhancement was sought.¹

If the zemindar succeeded in showing that a dependent taluq lying within the ambit of his estate could not claim exemption from liability to enhancement and that the notice required by law had been duly served, the grounds of enhancement could be taken into consideration. But if the plaintiff failed to prove due service of notice, or if the notice served did not comply with the requirements of section 51 of Regulation VIII of 1793, the court might grant a declaration that the taluq was liable to enhancement.² The special custom of the district mentioned in section 51 of Regulation VIII of 1793 referred to rents according to pergah rates or rates paid by similar taluqdars in the district, and not those payable by cultivating raiyats.³ If the rent paid by a taluqdar was less in rate than that paid by other taluqdars having the same status, enhancement should be allowed, provided that the lands were capable of affording an increase. It was, however, extremely difficult to prove special custom, and the practical result has been that we have very few instances of enhancement of rent of dependent taluqs existing from before the Permanent Settlement.⁴ If the taluqdar had obtained the benefit of

¹ Nobo *v.* Mazamooddeen, 19 W. R. 338; Nilmoney *v.* Ram, 21 W. R. 439. See Act VIII of 1885, Sec. 6.
² Nuffer *v.* Poulson, 19 W. R. 175.
³ Brojo *v.* Kalee, 8 W. R. 496; Nobo *v.* Mazamooddeen, 19 W. R. 338.
a decrease of rent on the ground of diluvion, increase in area on account of reformation in site or accretion would be a very good reason for enhancement.¹

The right conferred on these taluqdar by Regulation VIII of 1793 is statutory, and, as we have seen, auction-purchasers on sales for arrears of revenue are bound to respect it. Section 37 of Act XI of 1859 and section 12 of Bengal Act VII of 1868 gave permanency to tenures existing at the time of the Permanent Settlement as against auction-purchasers for arrears of revenue of entire estates. If the rent has changed since that date, the tenure is only liable to enhancement, but there can be no ejectment. Such tenures are placed in the same category as dependent taluqs existing from before the settlement, the rent of which was enhanceable under certain circumstances. But tenures which have been held at fixed rents from the time of the Permanent Settlement were declared valid—both as regards permanency and fixity of rent—as against such auction-purchasers. Act X of 1859 supplemented the provisions in the Regulation-laws by enacting in section 15:—

"No dependent taluqdar who, in the Provinces of Bengal, Behar and Orissa holds his taluq (otherwise than under a terminable lease) at a fixed rent which has not been changed from the time of the Permanent Settlement, shall be liable to any enhancement of such rent, anything in section 51, Regulation VIII of 1793, or in any other law, to the contrary notwithstanding."

Section 16 of the Act enacted that a presumption should be made that the rent was not changed from the Permanent Settlement, if the taluqdar succeeded in proving uniform payment for twenty years before the commencement of the suit. The Act made no change in the law as to the rights of taluqdar under section 51 of Regulation VIII of 1793 with reference to the grounds

¹ Compare Hem v. Ashgur, I. L. R. 4 Cal. 894.
of enhancement of rent, but it gave to these taluqdars the additional right of exemption from enhancement, the declaration in the statute being that uniform payment of rent from the date of the Permanent Settlement rendered the taluq permanent and gave fixity of rent; and, as there is always considerable difficulty in proving uniform payment for such a long period, a rebuttable presumption was directed to be made in favour of the taluqdar. This presumption might be rebutted by proof that the tenure came into existence or that the rent was changed after the date of the Permanent Settlement. Taluqs are generally, if not always, hereditary and transferable, and they are seldom, if ever, held on terminable leases. The word "taluq" prima facie imports a permanent tenure. The onus of proving the nature of the tenure, its permanency and the fixity of rent, is, however, on the taluqdar, and the presumption arising from name and duration is only some evidence in proof of these matters.

The rules laid down in the Regulations and Act X of 1859 are still in force in some parts of the Bengal Provinces. The Bengal Act VIII of 1869—the Landlord and Tenant Procedure Act—was not enforced in the Scheduled Districts and the province of Orissa, including Cuttack, though it was extended to Sylhet. Besides, the Bengal Act being merely a Procedure Act, changing only the tribunal for the trial of cases, made no alteration in the substantive law as laid down in Act X of 1859. Sections 15 and 16 of Act X of 1859 were reproduced, word for word, in sections 16 and 17 of the Bengal Act VIII of 1869. The Bengal Tenancy Act (VIII of 1885, which has repealed Act VIII (B.C.) of 1869, has made no material alteration in the law as laid down in

---

2 Act VIII (B. C.) of 1869, Sec. 106 and Sch D.
sections 15 and 16 of Act X of 1859. The words "Permanent Settlement," occurring in the Bengal Tenancy Act, have been defined to mean the Permanent Settlement of Bengal, Behar and Orissa made in 1793. These words were not defined in the previous Rent Acts, but they referred to the 22nd March 1793, the date of this Permanent Settlement of 1793. In any locality, where permanent settlement has not been effected, the taluqdar claiming permanency and fixity of rent must show that rent has not been changed since the 22nd March 1793. But no presumption can arise under the Bengal Tenancy Act, where the taluq is situated within the ambit of a temporarily settled estate, in which the Government has the right to raise its revenue on the occasion of every fresh settlement. The Government is not bound by the acts of the holder of land under a temporary settlement. Express recognition in the settlement proceedings by a Revenue officer, especially empowered by the local Government to make or confirm settlements, may be evidence of the right to hold a taluq exempt from enhancement.

But supposing that the rent of a taluq is fixed in perpetuity, can there be abatement or enhancement of rent on the ground of decrease or increase in area, when there is the absence of an express contract? The Bengal Tenancy Act has solved the disputed question of law by adding to the words of the Regulation the clause—"except on the ground of an alteration in the area of the tenure." This clause must be read along with section 52, subsection 1, clauses (a) and (b) of the Bengal Tenancy Act, which provide for alteration of rent in respect of

---

1 Act VIII of 1885, Sec. 50, cls. 1 and 2; Suda v. Nowruttun, 16 W. R. 289.
2 Act VIII of 1885, Sec. 3, cl. 12.
4 Act VIII of 1885, Sec. 191.
5 Act VIII of 1885, Sec. 50, cl. 1.
alteration in area, either by alluvion or diluvion or any other cause. I shall revert to this ground of enhancement and deal with it at length later on.

Section 51 of Regulation VIII of 1793 has been repealed by the Bengal Tenancy Act,1 but its provisions are embodied with a slight modification in section 6 of that Act. Sections 48 and 49 of the Regulation are still in force. Section 6 of the Bengal Tenancy Act restricts its operation to tenures existing from the time of the Permanent Settlement, and consequently includes tenures or taluqs existing from before the Settlement, while sections 48, 49 and 51 of the Regulation apply only to those that have existed from before. Practically the distinction is of little consequence, as any claim based on the existence of a dependent taluq exactly from the date of the Settlement is seldom made, and, as we have already seen, taluqs existing from before that date have generally acquired the status of permanent tenures at fixed rent. Let us, however, see wherein the Bengal Tenancy Act has modified the rules laid down in the Regulations—rules which are still in force in various parts of the Bengal Provinces. The Regulation speaks of the "special custom of the district" as one of the grounds of enhancement.—the words in the Bengal Tenancy Act are "local custom." I do not think the change is material, though the word local is wider in its import. "Local" may include a district, part of a district and even two or more districts. The other alteration is the insertion, in clause (b) of section 6 of the Act, of the words, "otherwise than on account of the diminution of the area of the tenure." This seems to imply that an abatement received by a taluqdar on account of decrease in area by diluvion or dispossession by title paramount, would not make the tenure liable to enhancement except under section 52 of the Act, which relates to increase in area from allu-

1 Act VIII of 1885, Schedule 1.
vion, encroachment by the tenant or other similar causes. The reduction of rent contemplated by section 6 must be one on account of the diminution of the rent-roll due to the productive power of land having decreased by reason of its being covered with sand, or to depopulation or causes of a similar nature.

The Bengal Tenancy Act has made a material alteration in procedure, by doing away with the necessity of notice upon taluqdar's before the institution of a suit for enhancement. Section 154 of the Act now regulates the procedure in those districts in which that Act prevails.

Thus you see the rent of dependent taluqs existing at the date of the Permanent Settlement is not enhanceable in the following cases: (a) where the taluqdar have paid rent at fixed rate for at least twelve years before the Decennial Settlement; (b) where the taluqdar have paid rent uniformly at fixed rate from the time of the Permanent Settlement. The rent is enhanceable in all other cases, except where the parties are bound by the terms of the grants. The grounds of enhancement are those stated in Regulation VIII of 1793 and section 6 of the Bengal Tenancy Act. Ejectment is not allowed in any case.

We now come to that class of dependent taluqs which have come into existence after the Permanent Settlement. The policy of the earlier Regulations was to prohibit proprietors of estates from "disposing of any dependent taluq to be held at the same or at any jumma for a term exceeding ten years." In those days such a provision was absolutely necessary for the protection of government-revenue, as ejectment was unknown, and cases of enhancement of rent extremely few. Leases for any term exceeding ten years were declared "null and void." This prohibition was repeated in 1795 and 1803, and it was declared that on sale

1 Reg. XLIV of 1793, Sec. 2.
2 Reg. L. of 1795, Sec. 2; Reg. XLVII of 1803, Sec. 2.
for arrears of government revenue, all such leases would be cancelled. ¹ But in 1812, it was deemed advisable to change the policy, and proprietors were declared competent to grant leases to dependent taluqdarṣ on any terms most convenient to the parties, even in perpetuity, and reserving any amount of rent, provided the interest the proprietors had in their estates authorised them to make such grants. ² In the year 1819, all leases granted either before or after 1812 were declared valid, notwithstanding that the rules in force before the passing of Regulation V of 1812 had prohibited the creation of such tenures. ³

Most of these taluqs created by the proprietors of estates after the Permanent Settlement were, by the terms of the grants, permanent and hereditary with rent fixed for ever. The terms of the grants regulate the relation between the lessors and the lessees. A good many of these are known by the name of putni taluqs. A few go by other names. Others again are, by the conditions of the grants, permanent hereditary and alienable, though the rent is not fixed for ever—a condition being inserted in the leases for enhancement at customary or perganah rates, or whenever there may be a general enhancement in the perganah or district. Some taluqs are held without written leases, and custom or usage regulates their incidents. These last also are generally hereditary and alienable, though the rent may be enhanced. I propose to deal with them in the order I have mentioned them.

Putni taluqs have their origin in the estates of the Maharaja of Burdwan.⁴ The original meaning of the word putni seems to be, as Mr. Harrington thinks, "settled," and putni taluq means a dependent tenure settled

¹ Reg. XLVII of 1803, Sec. 5.
² Reg. V of 1812, Sec. 2 Reg. XVIII of 1812, Sec. 2.
³ Reg. VIII of 1819, Sec. 2.
⁴ Preamble to Reg. VIII of 1819.
in perpetuity at fixed rent. The estates of the Maharaja of Burdwan were saved by the creation of these putni taluqs, as the system afforded the only means of escape from the ruin of ancient families in Bengal, brought about by the Permanent Settlement. The assessment of land-revenue on the estates settled with the Burdwan Raj was very high. For easy and punctual realisation of rent, leases to middlemen in perpetuity and at fixed rent were granted to a large number of intermediaries, who were thus made proprietors in the same way as the Government had made the Maharaja of Burdwan a proprietor. Regulation VIII of 1819 placed on a legislative basis this system of subinfeudation. By degrees, the system extended to other zemindaries, and we have now a very large number of putni taluqs, especially in the districts of Hooghly, Burdwan, Bankura Nuddea, and Purnea. The general characteristics of these tenures may be summed up in the words of the Regulation:—"The character of the tenure is that it is a taluq created by the zemindar to be held at a rent fixed in perpetuity by the lessee and his heirs for ever; the tenant is called upon to furnish collateral security for the rent and for his conduct generally, or he is excused from this obligation at the zemindar's discretion; but even if the original tenant be excused, still in case of sales for arrears or other operations leading to the introduction of another tenant, such new incumbent has always, in practice, been liable to be so called upon at the option of the zemindar. In case of an arrear occurring, the tenure may be brought to sale by the zemindar, and if the sale do not yield a sufficient amount to make good the balance of rent at the time due, the remaining property of the defaulter shall be further answerable for the demand." The Regulation admitted these Putni tenures to be saleable in execution

1 Preamble to Reg. VIII of 1819.
of ordinary money-decrees, and transferable by sale, gift or mortgage, and also admitted the right of the putnidars to create similar subordinate tenures called *dur-putnis.* The putni taluqs were also declared not liable to be cancelled for arrears of rent. They were saleable for arrears, the surplus sale-proceeds, after deducting the rent due to the zemindar, being left to the credit of the defaulting putnidar.

None of the Rent Acts—Act X of 1859 or Act VIII of 1885—has touched the provisions of the Putni Regulations i. e., Reg. VIII of 1819, modified, in matters not very material, by Regulation I of 1820, Regulation VII of 1832, Act VIII of 1835, Act XXV of 1850, Act VI of 1853 and Act VIII (B.C.) of 1865. The Bengal Tenancy Act (VIII of 1885 has expressly provided:—“Nothing in the Act, shall affect any enactment relating to Putni tenures in so far as it relates to those tenures.” In matters in which the Regulation, as it now stands with the amendments, is silent, Act X of 1859 and the other Acts, dealing with the incidents of the relationship of landlord and tenant, furnish rules of substantive law and procedure; but the express provisions of the Regulation have not been, in any way, affected by them. The zemindar has, however, the additional right of bringing putni taluqs to sale under the ordinary procedure laid down for other kinds of tenures, and the effect of such a sale is the same as to the right of the purchasers to avoid incumbrances and get other reliefs, as in sales under the Regulation.

The summary procedure for biennial sales for

1 Reg. VIII of 1819, Sec. 3, cls. 1 and 2.
2 Reg. VIII of 1819, Sec. 3, cl. 3.
3 Act VIII of 1885, Sec. 195, cl. (c): Gyanada v. Bromomoyi, I.L.R. 17 Cal. 162
arrears of rent, through the agency of the Collector of the District in which the putni taluq is situated, is the chief peculiarity noticeable in the Putni Regulations.  

Summary sales for arrears of revenue or rent are not allowed to any landlords, except the Government and the zemindars qua putni taluqs. The reference to months according to the Bengali Calendar, and not the Fasli or the Walaity, seems further to indicate that the Regulation itself was intended only for Bengal Proper, as it professedly referred to the Burdwan Raj. I am not aware of any instance of the application of the provisions of the Regulation, as to summary sales, in the Behar and the Orissa districts. The Maghee and Mulki eras correspond exactly in months and days with the Bengal era, and where these eras prevail, instances of sales under this Regulation are common.

The first biennial or six-monthly sale, generally known as sashmahi sale, is the one that takes place for the arrears from Baisakh to Aswin. The application for sale may be made to the Collector of the district in which the lands of the taluq or the greater part thereof are situated, on the first day of Kartik following, or if that be a close day, on the first open day of the month.

The second biennial sale, generally known as the dwazdomahi (twelve-monthly) sale, takes place for arrears remaining due at the end of the year (Chaitra), the zemindar being entitled to make the application on the first day of Baisakh or the first open day thereafter, the sale taking place in Jaisth following.

Only the recorded proprietor, or proprietors jointly, or a common manager whose name is duly reg-

---

   a Reg. VII of 1832, Sec. 16, cl. 1; Act VI of 1853, Sec. 1; Act VIII (B.C.) of 1865, Sec. 3.
   b Act VI of 1853, Sec. 1.
istered, may make the application. One of a number of co-proprietors or fractional co-sharers is not entitled to make the application, unless the putni taluq is co-extensive with the interest of such fractional sharer or sharers. If $A$, $B$ and $C$ are joint owners of an estate, and if they have jointly created a putni taluq, $A$ alone is not entitled to apply for sale under the Regulation, either for the whole rent due from the putnidar, or for his own share only. But if $A$ had created a putni of his own share, he would be entitled alone to apply. Even if after the creation of the putni by a number of proprietors jointly, the putnidar pays rent separately to each of the proprietors according to his share, such a proprietor has not the right to apply. But if the several fractional proprietors and the putnidar enter into separate engagements by executing leases and counter-parts, the right of each proprietor may then be recognised by the Collector. The Regulation itself does not contemplate the case of any but owners of entire estates; but it seems, however, that the general law as to the rights of co-sharers is applicable. Registration of the proprietor’s name under Act VII (B.C.) of 1876 is, of course, absolutely necessary to entitle him to any relief under the Regulation. The rule as to who may apply for sale under the Regulation must be taken to be the same as that in suits for arrears of rent, where the tenure is sought to be made liable.

On the application to the Collector being admitted, three copies of the notice of sale are required to be served, the first by being stuck up in some conspicuous part of the Collector’s office or cutchery,¹ the second by being stuck up at the sudder cutchery of the zemindar himself,² and the third by publication of a copy, or extract

¹ Reg. VIII of 1819, Sec. 8, cl. 2; Rajnarani v. Ananta, I. L. R. 19 Cal. 703.
² Reg. VIII of 1819, Sec. 8, cl. 2; Bykunt v. Maharajah, 17 W. R. 447, 2e., 9 B. L. R. 87.
of such part of the notice as may apply to the individual case, at the cutchery or at the principal town or village upon the land of the defaulter. This third notice is required to be served in the moffusil by a single peon "who shall bring back the receipt of the defaulter or his moffusil agent, or in the event of his inability to procure this, the signatures of three substantial persons, residing in the neighbourhood, in attestation of the notice having been brought and published on the spot." In case, however, the people of the village should object or refuse to sign their names in attestation, the peon is required to go to the cutchery of the nearest moonsiff, or if there should be no moonsiff, to the nearest thana, and there make an affidavit of due publication—certificate to which effect shall be signed and sealed by the officers there and delivered to the peon. The non-publication of any one of these notices is sufficient to vitiate any sale that may follow, even if there be no proof of substantial injury to the defaulter. The notice required to be stuck up at the cutchery of the defaulter may be published at the cutchery of an adjacent taluq belonging to him, when he has no cutchery on the taluq in arrear. A place where the zemindar's agent usually transacts business, though it is not a regular cutchery, may, in the eye of law, be considered a proper place for the publication of the notice.

The question, as to who are substantial persons com-

---

petent to attest the notice to be served on the land of the defaulter, was at one time the subject of considerable discussion. But the matter has now been set at rest by the judgment of the Judicial Committee of the Privy Council in *Ramsebak Bose v. Monmohini Dasi and others*, in which it has been held that respectable persons of good character, such as *mondols*, *choukidars* and *holders of lakhiraj lands* are substantial persons. The proof of the service of notice is enough. The observance of special formalities in the mode of service or attestation by witnesses is merely directory.

The zemindar is, in the words of the Regulation, "exclusively answerable for the observance of the forms prescribed for the publication of notice." The burden of proving due publication is entirely upon the zemindar who, in every suit brought to contest the legality of the sale, has to prove the due observance of all the formalities, even if the plaintiff gives no evidence in support of his plea of non-service. There is no presumption, in favour of the zemindar, of the notices having been duly served. It is not even incumbent upon a plaintiff, who has brought a suit to contest the legality of a summary sale under the Regulation, to set out distinctly the grounds for impeaching the sufficiency and due publication of the notices. The plea of non-service of any particular notice or of any informality in publication may be taken at any stage of the suit, and even for the first time in appeal.

---

2 Sana v. Lall, 9 W. R. 242; Pitambur v. Damodar, 24 W. R. 129.
3 Reg VIII of 1819, Sec. 8, cl. 2.
5 Ashanulla v. Hurri, I. L. R. 20 Cal. 86. See the same case in High Court in I. L. R. 17 Cal. 474.
The notice of sale at the middle of the year should contain a statement that "unless the whole of the advertised balance be paid before the date of sale or so much of it as shall reduce the arrear including any intermediate demand for the month of Kartik to less than one-fourth or a four-anna proportion of the total demand of the zemindar according to the kistbandi, calculated from the commencement of the year to the last day of Kartik." This provision is not merely directory; it is mandatory, and the want of such a statement in the notice has been held to vitiate the sale.

The mid-year sale usually takes place on the first of Aughran and, if that is a close day, on the first opening day of the month. But if the application could not be presented on the first day of Kartik, the day fixed for sale is thirty days from the first open day in Kartik. The sale on a proceeding at the end of the year takes place on the first day of Jaisth following, but if it is a Sunday or a holiday, the next subsequent day not being a holiday is fixed for the sale, thirty days' time being always allowed.

The Collector himself or an officer exercising the full powers of a Collector of the district and having revenue jurisdiction over the tenure is required to conduct the

---

1 Reg. VIII of 1819, Sec. 8, cl. 3.
3 Reg. VIII of 1819, Sec. 8, cl. 2. The practice of holding sales under Regulation VIII of 1819 on any day subsequent to the 1st day of Aughran or the 1st day of Jaisth, the full period of thirty days being allowed to intervene between the date of application and the date of sale, is based upon the authority of a decision of the late Sudder Court (Woomes Chandra Roy v. Esan Chandra Roy, S. D. A. 1859, p. 1198). S. D. A., Construction No. 329, 15th Sep. 1820; Huronath Goopto v. Juggunath Roy Chowdhry, 11 W. R 87. See also Sreemuttee v. Pitambur, 24 W. R. 129.
4 Act VI of 1853, Secs. 1 and 9; and Act VIII (B.C.) of 1865, Sec. 3; Ram Mohan v. Radhanath, S. D. A. 1850, p. 320.
sale, and he must hold the sale if he finds that the notices have been duly served at least fifteen days before the day of sale. If the amount of the debt, specified in the notices, be not paid to the zemindar before the date of sale, and if from any informality in the service of notice or any other cause, such as the death of the zemindar, the application for sale be not struck off by the Collector, the Collector is bound to hold the sale, unless the zemindar or his agent asks the Collector to stop it.

At the time of the sale, the notice previously stuck up in the Collector's cutchery is required to be taken down, and each putni taluq is required to be called up for sale by the Collector successively, in the order in which notices have been stuck up. If there is any want of "fairness or publicity" on the part of the person holding the sale or any irregularity as to the procedure at the sale, the Collector is responsible, and the sale should be set aside. A person on the part of the zemindar should be in attendance at the sale to satisfy the Collector as to the actual arrear due up to the date of sale and the due publication of the sale-notice in the moffusil, and no sale can take place unless a statement of the payments made by the putnidar and the receipt or certificate of due publication of the notice in the moffusil are produced before the Collector, who should record a proceeding separately as

---

* In order to obviate the difficulty of serving notices in the moffusil before the 15th of Kartik, the Collector was required each year, a few days before the office was closed for the Durga Puja holidays, to fix the day on which the Putni sales will be held and to put up a notice to that effect in his cutchery. This being fixed authoritatively, the zemindars might proceed to issue their notices in the moffusil at any time after the first day of Kartik—Board's Letter No. 226 A, dated 1st April 1881.

1 Reg. VIII of 1819, Sec. 8, cl. 3; Srimooyi v. Grish, I. L. R. 18 Cal. 363 (Matungsee v. Moorarty, I. L. R. 1 Cal. 175 overruled.)

2 Reg. VIII of 1819, Sec. 14.

to each lot. If the statement of account produced is incorrect, and there is no arrear of rent at the date of sale, the sale held is void.¹ At the mid-year sale, the *kistbundee* of the defaulter should also be produced, so that the Collector may see that the amount of arrear at the date of sale exceeds a fourth part of the annual rent. The actual defaulter, whether he is registered or not, cannot bid, but every other person is free to do so. The zamindar himself is entitled to bid, or any under-tenant², including the *durputnidar* of the defaulter,³ if he has not fraudulently withheld payment of his rent. A person, who holds a mortgage of the putni, is not a defaulter, and is entitled to make the purchase.

Fifteen per cent of the purchase-money, and not twenty-five per cent, as in execution-sales by a civil court, is required to be deposited by the highest bidder, and the balance of the purchase-money must be put in by the noon of the eighth day from the date of sale. If the deposit be not made by the noon of the eighth day, the putni is required to be re-sold on the ninth, that is, the following day. The first purchaser forfeits on such re-sale the advance of fifteen per cent, and is further liable for any deficiency at the second sale, the Collector being competent to realise the deficiency by the process for the execution of decrees of civil courts. The forfeited deposit is applied towards the defrayal of the expenses of the sale, and the surplus is forfeited to Government.⁴

The Commissioner of Revenue has the power to set aside any sale under Regulation VIII of 1819 on the ground of irrelevancy of law or procedure, or on proof of

¹ Shuroop v. Rajah, 7 W. R. 218; Mussamut v. Radha, 24 W. R. 63.
³ Reg. VIII of 1819, Sec. 9; Fukeer v. Hills, 8 Sel. Rep. 153.
⁴ *Sec. 9* as amended by Sections 1 and 2 of Act XXV of 1850.
payment of the entire rent before the date of sale.\textsuperscript{1} This, however, is a power which the Commissioners are slow to exercise, as any person interested in setting aside a sale may get complete remedy in a civil court.

After the entire amount of purchase-money is deposited on the eighth day, the sale becomes confirmed, and the purchaser is entitled to get a sale-certificate at once\textsuperscript{2} and possession of the taluq. No formal order of confirmation is required by law, the sale becoming \textit{ipso facto} confirmed on the payment of the full purchase-money.\textsuperscript{3} The limitation of suits to set aside a sale under the Regulation begins to run from the date of the payment of the full purchase-money, the period being one year under article 12, clause (d) of the second schedule of the Limitation Act (XV of 1877). The sale becomes final and conclusive on the payment of the full purchase-money.

Besides the remedies by a summary investigation before the sale\textsuperscript{4} and an appeal to the Commissioner after sale, the defaulter or any party interested in contesting the validity of the sale may sue the zemindar and the purchaser in the civil court for a decree for the reversal of the same on the ground of the non-publication or irregular publication of any of the notices or want of arrears.\textsuperscript{5} An unregistered defaulter\textsuperscript{6}, or an unregistered co-sharer of the defaulter\textsuperscript{7}, an under-tenure holder whose tenure is voidable on the sale,\textsuperscript{8} or a mortgagee may sue for setting aside the entire sale in the proper forum and on full

\begin{itemize}
  \item \textsuperscript{1} Act VIII (B.C.) of 1865, Sec. 13.
  \item \textsuperscript{2} Reg. VIII of 1819, Sec. 15.
  \item \textsuperscript{4} Reg. VIII of 1819, Sec. 14. cl. 2.
  \item \textsuperscript{5} Ibid, Sec. 14, cl 1.
  \item \textsuperscript{6} Raj Narain \textit{vs} Ananta, I. L. R. 19 Cal. 703.
  \item \textsuperscript{7} Chunder \textit{vs} Shuvadra, I. L. R. 12 Cal 622; Joykrishna \textit{vs} Sarfannessa, I. L. R. 15 Cal. 345.
  \item \textsuperscript{8} Unnoda \textit{vs} Erskine, 12 B. L. R. 370; Suresh \textit{vs} Akkori, I. L. R. 20 Cal. 746.
\end{itemize}
valuation, and he may be entitled to a decree on a sufficient plea being made out. The zemindar as well as the purchaser are necessary parties in such suits. If the sale be set aside by the civil court, the zemindar is liable to pay full costs and damages, the purchaser also being fully indemnified against all losses.1

Any durputnidar or any other under-tenure holder, whether his name is registered in the zemindar's office or not, may protect the putni from sale by paying the amount of arrears;2 and he is entitled to pay the amount into the Collectorate at any time before the sale. If the under-tenure holder is himself in arrear, the amount deposited by him would go towards the satisfaction of his debt3, but if he is not in arrear, and there is nothing due from him on account of rent to the zemindar, the amount lodged is considered to be an advance from private funds for which a statutory lien arises in favour of the person making the advance;4 and he is also entitled, on applying for the same, to obtain immediate possession of the defaulting tenure in order to recover the amount so advanced. If the defaulter shall desire to recover his tenure from the hands of the person or persons, who by making the advance may have acquired such an interest therein and entered into possession in consequence, he shall not be entitled to do so except upon repayment of the entire sum advanced with interest.

1 Reg VIII of 1819, Sec. 14, cl. 1; Preolall v. Gyan, 13 W. R. 161; Bykunt v. Maharajah, 17 W. R. 447; Mobaruck v. Ameer, 21 W. R. 252; Tara v. Nafar, 1 C. L. R. 236.
3 Reg. VIII of 1819, Sec. 13, cl. 3; Lalit v. Srinivas, I. L. R. 13 Cal. 331.
PERMANENT TENURES.

at the rate of twelve per cent per annum up to the date of possession given as above, or upon exhibiting proof in a regular suit, to be instituted for the purpose, that the full amount so advanced with interest has been realised from the usufruct of the tenure.' The under-tenure holder has also the right, which the ordinary law gives him, of suing for the advance and for declaration of his lien.¹

If after the sale becoming final, it is set aside, the zemindar is entitled to bring a suit for the arrears under the ordinary Rent Law, as if no application was made. If the suit for setting aside the sale remains pending for a long time, limitation does not run as to the arrears of rent, but upon the sale being set aside and upon the restoration of the parties to possession, they take back the taluq, subject to the obligation to pay the arrears. Until the sale is finally set aside, the position of the zemindar is as if his claim has been satisfied. The sale is not also an act of trespass by the zemindar which can be considered as amounting to dispossession by the landlord. The defaulter is entitled to sue the purchaser, if he has taken possession, for mesne profits; but he is himself liable to the zemindar for the arrears of putni rent, and limitation does not run in his favour until the suit for the reversal of the sale is finally disposed of.²

On a sale under the Regulation being finally confirmed, either no suit being brought, or when a suit is brought, the sale not being set aside by the civil court, the under-tenures such as durputnis, seputnis or chaharputnis (taluqs of the second, third and fourth grades) and all charges created by the defaulter or any person holding under the defaulter, and all charges existing on the putni that have accrued through the act

¹ Ambica v. Pranhari, 4 B. L. R., F. B., 77.
of the defaulter, become voidable. The purchaser is entitled to have possession of the taluq in the same state as it stood at its creation by the zemindar, free of all incumbrances. 1 Adverse possession of any part of the lands either by a neighbouring landlord or by any person claiming a lakhiraj title is an incumbrance which the purchaser is entitled to get rid of. Any incumbrance created or allowed to remain on the taluq by the act or omission of any taluqdar, whether the defaulter himself or a previous holder or any person who had previously made default which ended in a sale of the putni for arrears, is voidable. 2 But the purchaser must exercise his option within twelve years from the date of his purchase or rather the confirmation thereof, when the cause of action accrues; and he must by some act shew that he has exercised the power vested in him by law to avoid incumbrances. They are not ipso facto void, but are only voidable. 3 If however he has accepted rent, his acquiescence may bar his right. 4 He cannot sue the raiyats for rent, when there is an intermediate holder, before getting a decree for possession against such intermediate holder. I need hardly repeat that the incumbrances which a purchaser is entitled to avoid must be such as have come into existence since the date of the creation of the putni taluq. 5 Any incumbrances existing from a previous date are not such as are void or voidable. Any under-tenure or incumbrance

---

2 Gopendra v. Mokaddan, I. L. R. 21 Cal. 702.
5 Bishumbhur v. Doorga, S. D. A., 1858, p. 369.
created with the permission of the proprietor is also not voidable. Standing as the representative of the zemindar, the purchaser is affected by the same rules of limitation and the same rules as to the onus of proof as the zemindar himself. The burden of proof is in the first instance upon the purchaser to shew when the incumbrance was created. But as soon as he makes out this prima facie case, the burden is shifted, and the holder of the incumbrance has then to shew that he is protected either on account of the consent given by the zemindar or for any other reason valid in law.

If the zemindar himself is the purchaser, his position is the same as that of a stranger purchasing the property. Limitation which would run against the defaulting putnidars would not bar him. Neither does the law of merger—the extinction of the putni right in the higher right as zemindar—necessarily apply, as the common law about merger, applicable in England, is not applicable in this country. The doctrine of equitable merger which depends upon the intention of the parties ought to be applied to transactions in this country, unless there is express legislative enactment to the contrary. A zemindar purchasing a putni under him, in a sale either for arrears or under an ordinary decree of a civil court, has, qua the putni, the position of a putnidar, unless by his acts and conduct he shews that he intends to deal with his two rights as one, the inferior right merging in the superior.

There are certain rights in land which are protected notwithstanding a sale under the Regulation Khodkast raiyats or resident hereditary cultivators are not liable to ejectment, and bonafide engagements with them by the defaulter cannot be interfered with by a purchaser. But

---

3 Reg. VIII of 1819, Sec. 11, cl. 3; Magaram v. Rajah, 21 W. R. 326, sc., 13 B. L. R. 198.
if it can be proved in a regular suit that a higher rate was demandable from any raiyat at the date of the engagement, the rent of such a raiyat may be adjusted. Notwithstanding that the Regulation speaks only of khodkast raiyats, I presume occupancy and non-occupancy raiyats are also protected. Protection from ejectment ought expressly to be extended to all classes of tenure-holders and raiyats included in section 160 of the Bengal Tenancy Act (VIII of 1885.)

The distribution of the surplus sale-proceeds on a sale under the Regulation is dealt with in section 17. The Government is entitled to one per cent upon the net proceeds realised by the sale. Next, the zamindar gets the amount due to him with costs incurred by him in bringing the putni to sale. The remainder is in the first instance kept in deposit in the Collectorate to answer the claims of subordinate tenure-holders. If a subordinate tenure-holder has paid the rent due by him to the putnidar, he is entitled to bring a suit for compensation against the putnidar for his loss on account of the putni-sale; and a decree may be passed in his favour for compensation which should be directed to be paid out of the surplus sale-proceeds. But if any part of the amount due by the durputnidar as rent has remained unpaid, he is not entitled to bring a suit for damages, and has no claim to compensation.\(^1\) The principle seems to be that negligence on the part of a durputnidar in not fully paying the amount due by him may have contributed to the non-payment by the putnidar of the amount due by him to the zamindar. Any express contract between a putnidar and a durputnidar, as to the division of the surplus sale-proceeds, has always to be taken into consideration. Any suit under the Regulation by the durputnidar, claiming a part of the surplus sale-proceeds.

---

proceeds, must be brought within two months from the date of the sale, otherwise the defaulter may claim to have the money paid out to him.¹

The rights of mortgagees of putni taluqs are not dealt with by the Regulation. But the surplus sale-proceeds should be considered to represent the mortgaged property, and a mortgagee will be entitled to be paid out in the first instance therefrom.² In the case of a contest between the mortgagee and the durputnidar, a question of priority may arise which, I presume, will be answered according to the law as laid down in the Transfer of Property Act, and the principles of equity and good conscience, which the legislature in this country directs to be applied wherever the positive law is silent.

Antecedent balances due by the putnidar to the zemindar, namely, those that are not covered by the summary proceedings under the Regulation, become mere personal debts of the individual taluqdar, and must be recovered in the same way as other debts, by a regular suit in the civil court. Arrears that have accrued subsequent to the application under the Regulation are a charge on the taluq, and the purchaser is bound to pay the same. He cannot excuse himself by pleading that he has taken possession after a part of the arrears accrued. Such arrears are realizable by the summary process. If a putni taluq is sold for arrears of rent in execution of a civil-court decree and the sale is confirmed within the first six months of the Bengali year, a question arises as to the right of the zemindar to bring the putni to sale under the Regulation for the entire arrears of the first six months. The High Court at Calcutta has answered the question in the affirmative.³

¹ This rule of limitation does not apply where there is a special contract between the putnidar and the durputnidar. — Judoo v. Nobo, 3 W. R. 2.
² Act IV of 1882, Sec. 93; Gosto v. Shib, I. L. R. 20 Cal. 241.
A purchaser of a putni taluq under the rules laid down in the Regulation is entitled to have his name registered in the proprietor's office and to obtain possession without the payment of any fee, but he is liable to be called upon to give security under the conditions of the tenure purchased.\(^1\) A purchaser at a sale under a decree for arrears of rent held by a civil court or by a Collector under Act X of 1859 is also entitled to be registered without fee.\(^2\)

A purchaser at a sale under an ordinary civil-court decree, or a voluntary alienee is required to pay to the proprietor a registration-fee at two per cent on the rent, the maximum sum being Rs. 100.\(^3\) He may also be required to furnish security to the extent of one-half of the annual rent.\(^4\) If no security be given, the taluq may be attached by the proprietor and kept in the possession of sezawal or curator. Any question as to sufficiency of the security may be determined by the civil court of the district\(^5\) and the judgment of such court is final.\(^6\) The zemindar cannot bring a suit for compelling the purchaser\(^7\) to give security.

The registration of name in the landlord's office is one of great importance to the outgoing putnidar as well as the purchaser. The outgoing putnidar is

\(^1\) Reg. VIII of 1819, Sec. 5.
\(^2\) Act X of 1859, Act VIII (B.C.) of 1869, and Act VIII of 1885, Sec. 14.
\(^3\) Reg. VIII of 1819, Sec. 5; Act X of 1859, Sec. 27, and Act VIII (B.C.) of 1869, Sec. 26 and Act VIII of 1885, Sec. 12. Sections 13 and 14 of the latter Act make provision in cases of execution-sales. But see section 195, cl. (e) of Act VIII of 1885 and Gyanada v. Bromomoyi, I. L. R. 17 Cal. 162.
\(^4\) Reg. VIII of 1819, Secs. 5 and 6.
\(^5\) Ibid., Sec. 6. Can security be required on a sale in the civil court for arrears ?
\(^7\) Joy v. Jankee, 17 W. R. 470.
thereby freed from all personal liability on account of arrears accruing subsequent to the cessation of his possession; and the registration of the purchaser's name entitles him to deal directly with the landlord and to have notices and summonses of all proceedings and suits for recovery of arrears of rent. He thus gets a direct opportunity of protecting the tenure. If the purchaser's name is not registered in the landlord's office, the latter may bring suits against the registered putnidar for recovery of arrears of rent, or institute proceedings under the Regulation, and the effect of the sale thereunder will be the same as if the purchaser has himself been sued, unless it can be proved that fraud has vitiating the sale. On a sale in suits or proceedings against the registered taluqdar, a durputnidar or a mortgagee may be affected in the same way, as if the proceedings were against the actual putnidar. The non-registration of name in the landlord's office does not, however, make the aliencee a trespasser. He becomes, to all intents and purposes, the putnidar, subject only to the disabilities stated above. It should be noted that applications for registration of name may be made, or suits for compelling the landlord to register may be instituted at any time after the purchase, and there is no bar of limitation, the cause of action being a recurring one. The provisions of the Bengal Tenancy Act with respect to the registration of permanent tenures in the zemindars' office as contained in sections 12, 13, 14, 15 and 16 of the Act have been held to be supplementary to the provisions contained in the Regulation.

3 Ram v. Tweedie, 12 W. R. 161.
4 Govind v. Rungo, I. L. R. 6 Cal. 60; Ishan v. Chandra, I. L. R. 6 Cal. 70.
The laws in force for the recovery of government revenue declare that, on a sale of an entire estate for arrears, "the purchaser shall acquire the estate free from all incumbrances, 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 certain exceptions, one of which is taluqdari tenures such as putnis and dependent taluqs duly registered under the provisions of Act XI of 1859. The registration under the Act is either common or special. Common registry secures such tenures and farms against any auction-purchaser at a sale for arrears of revenue, except the Government. Special registry secures such tenures and farms against any auction-purchaser at a sale for arrears of revenue, including the Government. Applications to the Collector for registration of tenures, created before the passing of Act XI of 1859, were required to be made within three years from the 21st April, 1862. Applications for the registry of tenures, existing on the 21st April 1862, but created after the passing of Act XI of 1859, were required to be made within three months. An application for the registration of any tenure, created after the passing of Act III of 1862 (21st April 1862), must be made within three months from the date of the deed constituting the tenure. Objections to the registration of tenures under Act XI of 1859 may be summarily dealt with by the Collector, and the Collector may also suspend the proceedings pending a decision by the civil court, the decision of such court being final. But no civil court can direct special registration by the Collector, and no special registration can be effected without the sanction of the Revenue Commissioner of the Division.

1 Act XI of 1859, Sec. 37. See also Act VII (B.C.) of 1868, Sec. 12.
2 Act XI of 1859, Sec. 37, cl. 3.
3 Act XI of 1859, Sec. 39.
4 Act III (B.C.) of 1862.
5 Act XI of 1859, Sec. 41.
6 Act XI of 1859, Sec. 42.
The purchaser of a share or shares of an estate, sold for arrears of revenue, purchases subject to incumbrances, and does not acquire any rights which were not possessed by the previous owner or owners.¹

Benami purchases by defaulters, even of an entire estate, have also the same effect upon incumbrances.² If the purchase be made by one or more of a large number of defaulters, the result is the same as regards holders of incumbrances.³

Taluqs not registered in the common or special registers are liable to be avoided by a purchaser of an entire estate. An assignee of such a purchaser has also the same right, though the privilege has not been extended to assignees of fractional shares.⁴ The burden of proving that the taluq came into existence subsequent to the Permanent Settlement is upon the purchaser. But a prima-facie case being made out, the onus shifts, and it is then for the defendant to make out a case which would bring the tenure within any of the exceptions to section 37 of Act XI of 1859.⁵ The period of limitation of suits to avoid incumbrances is twelve years from the date when the sale becomes final and conclusive.⁶

The amount of road and public works cesses, payable by taluqdars, is leviable according to the provisions of section 41, clause 2 of the Cess Act of 1880.⁷ The clause runs thus—"Every holder of a tenure shall yearly pay to the holder of the estate or tenure within which the land

¹ Act XI of 1859, Sec. 54. See also Sec. 53. Alum v. Ashad, 16 W. R. 138; Kasi v. Banku, 3 B.L.R., A. C., 446; Madhub v. Raja, 20 W.R. 264.
⁶ Act XV of 1877, Sch. II, art. 121.
⁷ Act IX (B. C.) of 1880.
held by him is included, the entire amount of the road-cess and public-works cess, calculated on the annual value of the land comprised in his tenure at the rate or rates which may have been determined for such cesses respectively for the year as in this Act provided, less a deduction to be calculated at one-half of the said rates for every rupee of the rent payable by him for such tenure". Every taluqdar is, under this clause, bound to pay to the zemindar for the two kinds of cesses a sum calculated at one anna per rupee on the amount given in the valuation-roll of the taluq, less a half-anna for each rupee of the rent payable by him. He is himself entitled to realize one-half of an anna for each rupee of rent payable by the raiyats, and he is thus made to pay from his own purse half an anna on each rupee of his profits. But he may, notwithstanding this statutory provision, be bound by any contract with the zemindar to pay the entire amount of the cesses realizable by the Collector for the taluq. His liability is determined by the terms of the contract. It very frequently happens that, by the terms of the lease, the zemindar is entitled only to a net income in the shape of an annuity, the taluqdar being bound to pay all items of demand by the Government. ¹

Cesses are recoverable in the same way, and under the same procedure, and in similar instalments, as rent, though they cannot be, strictly speaking, rent. ² They are not charges on the tenure in the same way as rent, and a sale, for arrears of cesses only, has not the same effect as to incumbrances as a sale for arrears of rent.

There are various other kinds of taluqs held directly under the zemindars at fixed rent, in perpetuity, known in Bengal, by different names in different districts. Their

² Act IX (B.C.) of 1880, Sec. 47. For definition of rent—see Sec. 3 of Act VIII of 1885; Uma Charan v. Ajadannissa, I. L. R. 12 Cal. 430.
incidents are the same as those of dependent and putni taluqs. Every district has peculiar names for these tenures and subordinate tenures or under-tenures, with various shades of rights and liabilities. The legal profession and the judges administering law are constantly puzzled with local names and local peculiarities. Sufficient data have not yet been obtained with respect to them, and even if they are available, it will be difficult to lay down rules for the guidance of courts, except by taking the different localities piecemeal. In many instances, the rights and obligations of the holders are regulated by custom.

The holders of permanent taluqdari tenures are not liable to ejectment, except on breaches of contract. They are generally heritable and transferable. But exceptions are not unfrequent. Taluqdari grants for life only, though at fixed rent, are not uncommon; and it has been held that a lease, at fixed rent, without words creating a heritable or transferable right, is a lease for life only, with reversion to the landlord. But every grant must be construed according to the ordinary rules of interpretation, custom and usage in the locality, the surrounding circumstances, and the way in which the lands demised has been dealt with by the parties being taken into consideration. If the zemindar has allowed sons and grandsons in succession or alienees after alienees to hold a tenure, the presumption will be that it is heritable and transferable, even without express words to that effect in the grant.

A permanent tenure being heritable and transferable, the king is the ultimate heir in default of any other heir, and not the zemindar in whose estate the tenure is situated. The zemindar has no reversion.

1 Act VIII of 1885, Sec. 10.
4 Sonel v. Himmut I L. R. 1 Cal. 301.
These taluqs are partible as any other property, and civil courts have exclusive jurisdiction in directing and effecting partition. But the zemindar is not bound to apportion the rent payable to him on a division of the taluq. He is at liberty to hold the entire taluq liable for the entire rent without reference to the division made amongst the co-sharers.

We have already seen that if a taluq has been in existence either from before or from the exact date of the Permanent Settlement, and the rent has never been varied, it acquires fixity by the operation of Act X of 1859. A mere declaration in a decree that any such tenure was liable to enhancement, if there was actually no enhancement of rent, would not prevent the operation of the statutory provision contained in section 15 of Act X of 1859, or section 50 of the Bengal Tenancy Act.

A dependent taluq, of which the rent has varied from the date of the Permanent Settlement, is not liable to be annulled on the sale of an entire estate for arrears of revenue under Act XI of 1859. The exemption, however, with reference to these taluqs, existing at the time of the Settlement, but not at fixed rent, is only as respects ejectment, but not enhancement. The rent is liable to be enhanced at the instance of the purchaser of an entire estate, in the same way and under the same conditions as at the instance of any other holder of the estate. The policy of the earlier sale-laws and the Settlement Regulations was not to eject tenure-holders, but to cancel their leases and to allow them to hold on upon payment of customary rent. This policy was in accordance with the common law and the established usages of the country; but it has been ignored in later

1 Act VIII of 1885, Sec. 88.
3 Act XI of 1859, Sec. 37, cl. 2.
4 Ante p. 140.
days on account of the introduction by English lawyers of English notions of proprietary right and competition-rent. The existence up to this day of a good many dependent taluqs, created without any contract of fixity since the 22nd March 1793, is due to the earlier statutory provisions against ejectment. Some of the contracts with dependent taluqdars contain stipulation to pay enhanced rent, on general measurement and assessment, at customary rates, and such agreements have been enforced; but as regards others, the law made no provision until the Bengal Tenancy Act of 1885 was passed. The rules laid down in section 51 of Regulation VIII of 1793, and the corresponding rules in other Regulations, were consonant with principles of equity and good conscience, and the customary law of the country, and courts were guided in all cases by these rules without reference to the date of the creation of a dependent taluq. The Bengal Tenancy Act has, as we have already seen, adopted the rule with slight modifications; and I shall now draw your attention to the sections of that Act dealing with the subject.

Section 7 of the Act says that the rent of a taluq may be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity. This is also the rule laid down in the Regulation of 1793. The difficulty of finding out the customary rate was long felt, and in some instances when the rate was found out, the enhancement was excessively high, considering the amount paid just before the enhancement. Act X of 1859 made rules for the enhancement of rent of raiyati holdings, but there were no rules for taluqs and other intermediate permanent tenures. The grounds of enhancement laid down in section 17 of that Act and the corresponding section of Act VIII (B. C.) of 1869 were not applicable

1 Reg. VIII of 1793, Secs. 49 and 51; Bama v. Radhica, 13 M. I. A. 248.
to taluqdari tenures. Suits for enhancement of rent of such tenures generally failed for want of evidence as to customary or perganah rates, and in many cases, courts simply granted decrees declaring the liability of the tenure to enhancement, without being able to grant consequential relief. It was, therefore, thought necessary to lay down definite rules in the Bengal Tenancy Act. Though the rates payable by taluqdars and those payable by raiyats are different, courts in some instances, in the absence of definite rules, decreed suits for enhancement, giving the taluqdars reasonable amounts for collection-charges and profit. There was, however, no rule for determining what was reasonable profit. Accordingly, the Bengal Tenancy Act has laid down, that in the absence of evidence as to customary rate, rent may be enhanced up to such limits as the court thinks fair and equitable.\(^1\) The Act also lays down what fair and equitable rent is.\(^2\) In order to avoid the hardship of an excessive immediate increase of rent, power is given to order gradual enhancement yearly for a number of years, not exceeding five, until the limit of the enhancement allowed has been reached.\(^3\) The Act also provides that when rent of a tenure-holder has been enhanced by the Court or by contract, it shall not again be enhanced by the Court during the fifteen years next following the year in which rent at the enhanced rate is first allowed to be levied.\(^4\)

The protection, which the law has afforded to tenures existing at the date of the Settlement, ought, with modifications, to be extended to other tenures of long standing, in consonance with the provisions of the earlier Regulations of the Bengal Code. As the law now stands, such tenures have no permanency, and in the absence of any contract, they are liable to be cancelled

---

\(^1\) Act VIII of 1885, Sec. 7, cl. 2. \(^2\) Act VIII of 1885, Sec. 7, cl. 3. \(^3\) Act VIII of 1885, Sec. 8. \(^4\) Act VIII of 1885, Sec. 9.
and determined by proper notice. The purchaser on a sale for arrears of revenue of an entire estate may deal with the holders of these tenures as trespassers, and may eject them without notice, some overt act indicative of the desire of the purchaser to avail himself of the stringent provisions of section 37 of Act XI of 1859 being sufficient to give a cause of action for the institution of a suit for ejectment.
LECTURE VI.

PERMANENT TENURES
AND
UNDER-TENURES.

We have already seen\(^1\) that the Smritis, the recorded utterances of the law-givers of ancient India, afford no indication that intermediate holders were recognised or even known in those days. The owner of the land, whether an individual or a joint family consisting of coparceners, cultivated it with the occasional assistance of servants and hired labourers—the hire being generally the payment of a share of the crops. The system of intermediate holding originated, in all probability, under Mahomedan rule. The financiers of the Afghan and the Moghul emperors attempted, now and then, to put down the growing system, but without success. It made extraordinarily rapid progress about the time of the downfall of the imperial power at Delhi and the first establishment of the British rule. Causes which led to the feudalization of Europe were at work at this time, just as they were about the time of the breaking-up of the Carlovingian Empire. As each satrap under the Great Moghul aspired to independence and hereditary kingship, each subordinate holder was anxious to have a similar kind of permanent and hereditary interest in the land held by him; and the idea being once in, it filtered down to the lowest strata of intermediate holders. Ejection under legal right and legal procedure was unknown, and was looked upon with horror by a people, fond, more than any other on the face of the earth, of holding the

\(^1\) *Ante* p 12.
same piece of land for generations—'as long as the sun and the moon shine on the horizon.' Each holder of land, if he had any self respect and status in society, thought that some sort of recognition should be had for holding, in perpetuity, lands occupied by himself, and occupied by the poor peasantry, who hung upon him for protection against illegal eviction. The nomadic life which it is said by high authorities, was led by the ancient Aryans was long forgotten. There was a material change in the thoughts and ideas of the descendants of these Aryan immigrants, if they had really come from a land outside the natural boundaries laid down by the Indus and the snow-clad range. The desire in some landlords of retiring with an annuity from the troubles and difficulties of managing their estates, and, the desire in enterprising men of making profit by enhancing the rent of raiyats and bringing waste lands into cultivation, led to subinfeudation in very many cases. Various other causes also operated to bring about the creation and recognition of subordinate rights in land, and thus a large number of tenures and subordinate tenures came into existence. We have already dealt with dependent and putni taluqs which fall under the highest class of tenures.

Tenures may, in general, be classed as follows, namely:

(a) Maurusi (heritable), (b) Mukurrari (at fixed rent), and (c) Maurusi mukurrari (heritable and at fixed rent). Similar holdings directly under the holders of any of these classes of tenures are known respectively as durmaurusı (hereditary of the second degree), durmukurrari (at fixed rent of the second class), and durmaurusı-mukurrari (hereditary and at fixed rent of the second degree). If, again, grants are made by the holders of these under-tenures, the under-tenures thus created are respectively called se-maurusi (hereditary of the third degree), se-mukurrari (at fixed rent of the third
degree) and se-maurusi-mukurrari (hereditary and at fixed rent of the third degree). Similarly, there may be under-tenures of the fourth grade (chahar-maurusi &c.) and further infeudation. Putni taluqs, durputni taluqs or se-putni taluqs are in reality mukurrari and maurusi, durmukurrari and dur-maurusi, and se-mukurrari and se-maurusi tenures and under-tenures, the distinction being that the putni class covers an entire village or villages in revenue-paying estates, while the latter class covers portions of land within defined boundaries, or are demises of land held revenue-free. There is also another distinction—viz., taluqs are always grants of intermediate tenures between the zemindar and the raiyat, while mukurraries are not necessarily grants of intermediate tenures. Istemrari grants combine the two qualities of the mukurrari and the maurusi. In their broad features, all grants of tenures in perpetuity and at fixed rent, or with either of these qualities, by whatever name they are designated, come within the classes I have indicated above.

Tenures held at fixed rent and in perpetuity (istemrari or mukurrari and maurusi) are in reality instances of alienations of land, subject only to payment, by the alienees and all persons holding through them, of fixed sums in perpetuity to the alienors and those claiming under them. This sum is called rent in the English language, though, in reality, it is an annuity with a charge on the land demised. Under the Mahomedan law as administered in India, the amount payable was not a charge—it was merely a personal obligation in the tenure-holders. Even after the Rent Act of 1859 had come into force, and for a long time afterwards, the judges were not agreed as to whether rent was a charge on the tenure.¹ The doubt, however, has been set at rest by

the legislature in section 65 of the Bengal Tenancy Act which makes rent the first charge.\(^1\) In the view of the framers of the Regulation Laws in Bengal, the transfer of land at fixed rent in perpetuity was a transfer of proprietary right. They did not use the word *rent* with reference to this annuity payable to the transferor, but used the word *revenue*. Later on, a distinction was made between revenue and rent\(^2\) — a distinction drawn from a similar use of the words in England. The term *revenue*, used with reference to land, is now understood to mean the amount which is paid by the superior landowners to the State, while *rent* is the amount payable to the superior landowners by those who hold under them, whether they are the actual occupants or intermediate holders. The word *rent* has been very broadly defined in the Bengal Tenancy Act, and, I believe, the definition is practically accepted even in districts to which the Act has not been extended, *i.e.*, Orissa and the Scheduled districts. "Whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land, held by the tenant" includes all kinds of rents, even *quit-rent*.\(^3\) Under that Act, the Government is a landlord with respect to the *khas mehals*,\(^4\) and it follows, therefore, that with respect to the *khas mehals*, the amount payable to the State by a tenant is also rent. The amount payable by a tenant at a fixed rate in perpetuity is thus called rent, and even if, instead of a fixed sum of money, a fixed amount of corn or any other product, such as a fixed number of mangoes, be agreed to be supplied yearly for the use of the land, it must be called *rent*.\(^5\) This use of the word in cases of *maurus* *mukur-\(^6\)\

---

1. Act VIII of 1885, Sec. 65.
2. Piziruddin v. Madhusudan, B. L. R., Sup Vol., 75; Mahomed Akil v. Asadunnissa, B. L. R., Sup. Vol., 774.
3. Act VIII of 1885, Sec. 3, cl. 5.
4. Act VIII of 1885, Sec. 3, cl. 4.
rent leases is also in consonance with the Transfer of Property Act,\(^1\) which includes permanent tenures at fixed rent within the definition of leases of immovable property. We have, in this use of the word rent an instance of an unconscious, though a complete, change of ideas from what the early British rulers in India entertained, as to the legal effect of the transfer of property in the soil by means of grants in perpetuity. The Hindu conception would make the actual occupant the master or lord of the soil; the Afghan and the Moghul sovereigns would ignore the actual occupier and assume proprietorship in themselves; the early British rulers of India, conceiving the right to be in the State, could and did transfer it, reserving only a perpetual sum as land-tax; and the modern legislator would make the rent-receiver or the rent-receivers in succession the owner or owners of land, and according to him, the rent-payer, though directly in occupation, paying only a fixed sum in perpetuity and incapable of being ejected (the rent-receiver having no reversion), pays for the use and occupation only of the land. This is anomalous—perhaps, an imperfection in language; but the anomaly cannot now be helped. It is the necessary result of the use of foreign words to express Indian conceptions. Such misuse of words is, however, common in sciences other than the science of law, and however much to be regretted, is unavoidable.

Where there are written contracts, the terms thereof regulate the relation between the lessor and the lessee. But legal rules of interpretation have occasionally to be invoked to find out the real intention of the parties, whenever the language and the context are inartificial or difficult to understand and reconcile. The law, not unfrequently, affords protection, notwithstanding the express terms of a contract, when they are

---

\(^1\) Act IV of 1882, Chap. V.
too hard and stringent, and when equity or public policy requires that the parties should be released from their operation. Rules of law have also been deemed to be necessary for the protection of the lessors and their heirs or assignees from the effects of alienation by the lessees without the knowledge and consent of the lessors. Instances are also not uncommon of the instruments of lease being silent as to matters of importance in the relationship between the parties; and customary and codified laws, and customs, have to be invoked for the judicial determination of the rights of the parties in such cases.

But written grants are not always available. In most cases, either they never existed or they are lost. In such cases, presumptions of facts and occasionally positive law are availed of to make up for a written instrument. In the provinces in which the Rent Act of 1859 or the Bengal Tenancy Act does not apply, the holding of land for a very long time and by successive generations on uniform payment of rent, may, in the absence of evidence to the contrary, be sufficient for a presumption of a tenure being permanent and at fixed rent by a grant which is lost. It may be asserted that in all such cases, it is reasonable to presume, from the long occupation of land by the first lessee and his sons and grandsons in succession and on uniform payment of rent, that the original lessor intended to create a permanent lease. If, in addition to the mere holding at uniform rent, evidence be forthcoming of transfers by the original grantor or his heirs, acquiesced in by the other party, presumption may also be made of the tenure being transferable. Such presumptions, however, are always rebuttable. The presumption is not based upon any artificial rule of law or legal fiction, but it is an inference that may be drawn from the

---

common course of natural events and human conduct. It is thus competent for a judge of facts to come to the conclusion, from long existence of a tenancy, payment of rent at the same rate, alienations from time to time, erection of substantial works on the land, and similar other matters, that the tenure must have been of a permanent nature by the grant creating it, the use being the best evidence of its nature.

The Indian legislature has, as we have already seen, laid down positive rules, for making presumptions of fact in such cases. Taking the Permanent Settlement of 1793 as the starting point, it has framed rules for the assumption of a statutory title to permanency in favour of persons holding land from that date on payment of uniform rent. It is difficult, however, to prove possession and payment of rent for such a long time; and possession for twenty years and uniform payment of rent for that period raise a rebuttable presumption, not of a grant which has been lost, but of possession and the payment of rent at the same rate from the time of the Permanent Settlement. In the provinces in which the Rent Acts of 1859, 1869 or 1885 apply, a person who can shew possession and payment of rent from the time of the Permanent Settlement, has the benefit of a perpetual lease, irrespective of the existence of any original title-deed.

But if there be a title-deed of a date posterior to the Permanent Settlement, or if it can be shown that the tenure was held on a terminable lease, the Rent Acts give no relief, notwithstanding possession and uniform payment of rent. But a lease, renewing an old lease, the rental remaining the same and not giving the superior holder a right of re-entry, does not prevent the operation of the statutes. It is, however, for the tenant to shew

---

1 Act I of 1872, Sec. 114.
2 Optimus interpres rerum usus —Broom's Legal Maxims
3 Ram v. Romesh, 2 W. R. (Act X) 47; Kishen v. Eshan, 4 W. R. (Act X) 36; Luch nee v Koochil, 6 W.R. (Act X) 46; Greesh v. Kalee,
that the new lease is only confirmatory, and if he cannot do so, he will not be entitled to the presumption. Even if he sets up a written lease which is found to be false, he may in the alternative rely upon a statutory title. The words in section 15 of Act X of 1859, are—"otherwise than on a terminable lease." In the Bengal Tenancy Act these words have been amplified into—"held for a term of years or determinable at the will of the landlord."

The question whether any tenure or undertenure is permanent and held at fixed rent frequently arises in suits for enhancement of rent or for declaration of the right to enhance the rent, or for ejectment. The defendant claiming to be a permanent tenureholder and relying upon a statutory title, should plead distinctively that the tenure has been in existence on payment of uniform rent since the date of the Permanent Settlement, and the issue in the case is whether the tenure has been in existence from that date and whether rent has been paid without any variation. Strict rules of pleadings are not applied in this country and if the defendant's written statements contain allegations sufficient for the court to come to a finding of payment of rent at an uniform rate for twenty years, the Court may give relief, as if a plea of a demise from the Permanent Settlement has been raised. Proof of uniform payment of rent for twenty years, preceding the year in which the suit was instituted, raises a presumption in favour of the defendant's plea.


3 Dhun v. Chunder, 4 W. R. (Act X) 43.
As to the amount of proof necessary, it is always a question of fact to be decided from the circumstances of each case. The reported decisions on the point, laying down rules and giving directions for the mode of dealing with the evidence, are not apparently consistent with one another. Each case depends upon its own facts and circumstances, and it is extremely difficult to lay down rules of law applicable to all cases. It has been held that there should be no room for an inference of payment at fixed rent for twenty successive years, and that strict proof is necessary. Again it has been held that such proof is not necessary, provided the proof of payment extends over twenty years. Payment of the same amount every year need not be proved, but the rate must be the same. Small variations arising from calculation may be dispensed with as immaterial and

---


4 Tarinee v. Kalee, 3 W.R. (Act X) 123


---

Amount of proof necessary for a presumption of uniformity.
unexplained. Evidence also may be given of fraudulent
conduct\(^1\) on the part of land-lords, as an element
decreasing the amount of burden on the tenant. If
during this period of twenty years, the tenant was out
of possession for a short time, on account of illegal evic-
tion by the landlord, and did not, therefore, pay rent, such
period will not be taken as a break.\(^2\)

The presumption from twenty years’ uniform payment
is rebuttable. It may be rebutted by the tenant’s own
evidence shewing creation of the tenure or the beginning
of the lease at any time subsequent to the Permanent
Settlement. Proof of material variation of rent at any
period before the twenty years will also have the same
effect. A decree, in a suit instituted after the passing
of Act X of 1859, declaring the tenure liable to enhance-
ment, is also sufficient to rebut the presumption.\(^3\) But
a decree passed in a suit instituted before the Act came
into force, declaring liability to enhancement, has not
the same effect.\(^4\)

The partition of a tenure and the consequent apportion-
ment of rent with the consent and approval of the
landlord do not amount in the eye of law to a variation
of rent.\(^5\) This is only the distribution of the same
rent on different parcels of land which were originally
considered as one single parcel. Neither would the
abatement of rent on account of loss of land by diluvion
or dispossession by title paramount, or acquisition of

---

\(^1\) Gyaram v. Gooroo, 2 W. R. (Act X) 59.


\(^3\) Rakhal v. Sheikh, 2 W.R. (Act X) 69; Lauder v. Benode, 6 W.R.
(Act X) 37; Woodoy v. Tarinee, 11 W.R. 496. See also Nuffer v.

571. See also Doorga v. Doya, 20 W.R. 243.

ruth, 1 W.R. 10. See also Kenaram v. Ramcoomer, 2 W.R. (Act X)
17; Hills v. Hurolal, 3 W.R. (Act X) 135; Kazee v. Nubo, 5 W.R.
(Act X) 53; Soodha v. Ramguttee, 20 W.R. 419.
land for public purposes, be considered as variation of rent, disentitling the tenant from getting the benefit of the statutory provision in his favour. The law, as contained in the Rent Act of 1859, was not distinct in its terms, but Courts of law gave effect to the true intention of the legislature, and the Bengal Tenancy Act has given effect to the case-laws by inserting the words "rate of rent" in section 50. According to these cases crystallised into the rule of law laid down in the Bengal Tenancy Act, uniformity in the rate of rent according to the local unit of the measure of land is enough to give rise to the presumption of permanency. But the effect of such a provision in the law necessarily entitled the landlord to raise the rent on account of increase in area. Such increase of rent without an increase in the rate of rent does not prevent the operation of the statutory provision. The increase may be due to alluvial accretion, to encroachment by the tenant on the landlord's adjoining land or the land belonging to a stranger, the tenant dealing with it as a part of the holding, imperfection in the original measurement and causes of a similar nature. In such cases the Bengal Tenancy Act expressly provides for an increase of rent for an increase in area.

We have already seen that the existence of a grant, explicit or sufficiently intelligible in its terms, regulates in most cases the legal relations between the parties, and the law seldom interferes except where its general policy or the weakness of one of the parties renders its interference absolutely necessary. I need not repeat what the policy of the authors of the Permanent Settlement of Bengal was, and how that policy was abandoned in 1812.

1 Act VIII of 1885, Sec 50, cl. 1.
4 Act VIII of 1885, Sec 52.
5 Ante. p. 88.
the proprietors being given free permission to enter into contracts of lease on any terms best conducive to their interest. Ignorance, poverty, fear of oppression, absence of independent advice—when these or some of these circumstances are always expected to exist in a class of men, such as the poor peasantry of Bengal in their dealings with their landlords, the law has laid down definite rules declaring certain conditions in leases as unconscionable and void, even without evidence of weakness in the one party or exercise of undue influence on the other.1 But those who take permanent leases belong generally to a class not very inferior in intelligence, local influence and power to those who grant such leases. The Bengal Tenancy Act has, therefore, provided—"Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently settled area from granting a permanent mukurari lease on any terms agreed on between him and his tenant."2 We are not, however, to understand from this that any terms or conditions whatsoever will be binding between the parties. The general policy of law, and not merely the policy of the Anglo-Indian legislature, has occasionally to interfere.

Non-liability to be ejected for non-payment of arrears of rent, notwithstanding express words in a contract to the effect, is an incident of permanent tenures. The law, unaffected by the provisions of the Bengal Tenancy Act, lays down that a condition for ejectment for non-payment of rent is enforceable, though the ejectment is capable of being enforced by the land-lord, only if the tenant does not pay arrears and costs of suit within fifteen days of the decree.4 In cases where there

---

1 Vide Act VIII of 1885, Sec. 178; Fry v. Lane, 40 Ch. Div. 322.
2 Act VIII of 1885, Sec. 179.
4 Act X of 1859, Sec. 78; Act VIII (B.C.) of 1869, Sec. 52. See also
EJECTMENT.

... is an absence of legislative enactment, courts have always exercised an equitable jurisdiction, in not enforcing such a penal condition as to ejectment. The Bengal Tenancy Act has expressly laid down that "where a tenant is a permanent tenure-holder, he shall not be liable to ejectment for arrears of rent, but his tenure shall be liable to sale in execution of a decree for the rent thereof." This rule applies to all cases whether there is a written lease or not.

Conditions for ejectment for breach of any covenant in a lease has always been looked with disfavour, and opportunity has always been given for remedying the breach. If the breach of a covenant is of such a nature that it is easily susceptible of remedy, the penalty of forfeiture is not enforced. The Bengal Tenancy Act has laid down special rules restricting, as much as possible, the right of the landlord to eject on the breach of a covenant. No ejectment can take place except in execution of a decree, and no decree for ejectment can be passed unless the "landlord has served, in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or


2 Act VIII of 1885, Sec. 65. See also Act VIII of 1885, Sec. 10.


4 Act VIII of 1885, Sec. 155, cl. 4.

5 Act VIII of 1885, Sec. 89.
breach, and the tenant has failed to comply within a reasonable time with that request. The court passing the decree is required to make similar provisions in the decree and to fix a time for the performance and extend the time at its discretion. Sections 111 and 112 of the Transfer of Property Act also lay down strict rules guarding as much as possible the interest of tenants, and I think, these rules apply to permanent tenures. The period of limitation for a suit based upon a breach of condition has been limited by the Bengal Tenancy Act to one year from the date of the breach.

In cases where the remedy lies in a grant of compensation, what is the measure of compensation or damages? This is a question very difficult to answer, specially in a country where the judge has to perform the functions of the jury as well. Each case has also its own peculiarities, specially arising from the nature of the tenancy. If there is a condition in a lease that the tenant shall not excavate a tank without the written sanction of the landlord, the grant being permanent, the measure of damages cannot be the cost of restoring the ground to its former condition. It would be giving the landlord too much, if he be paid the whole cost of restoring the state of things which existed before the wrong was done. The true measure of damages in such a case seems to be the extent to which the value of the landlord's interests in the land has diminished. It may happen that the taking away of a part of the soil has improved the land, instead of diminishing its value. In such a case the damages should be nominal, merely for the legal injury, the landlord not having sustained any actual loss. Where the lease is permanent, the landlord's interest lies in the security for his rent, and if the security is not impaired, he loses little by the breach of the covenant. In cases, however, in which the lease

Compensation for breach of contract.

is not permanent and there is a reversion to the landlord, the matter requires to be considered in a different light.

The law also looks with disfavour upon a covenant in a lease restricting the tenant's right of alienation. Section 11 of the Transfer of Property Act, which reproduces the English law on the subject, seems to indicate that such a covenant in a lease is valid as between the landlord and the tenant, notwithstanding that the tenure may be permanent. But Section 11 of the Bengal Tenancy Act, on the other hand, lays down without any reservation, that every permanent tenure is capable of being transferred and bequeathed in the same manner and to the same extent as any other immovable property. The section would seem to lay down that a covenant restricting alienation as inconsistent with the chief condition in the grant, and would reject it as incapable of being enforced. But whatever the true intention of the legislature may be, it is now settled law that, notwithstanding a condition in a lease taking away the power of the lessee to alienate his right, and making forfeiture a penalty, the condition is not enforceable against a purchaser, unless there is an express right of re entry in case of a breach of a covenant against alienation. Such a condition in a lease is also restricted in its operation, and applies only to voluntary alienations, and not to sales in execution of decrees or assignments by operation of law as in the case of bankruptcy. The right of a purchaser in execution cannot be defeated by such a condition in a lease.\(^1\)

Instances have occurred of cases of permanent mukurrari tenures being allowed reduction of rent,\(^2\)

---

2. I. L. R. 17 Cal. 826.
notwithstanding that the rent has been fixed permanently. But no deduction is allowed if there is an express stipulation to pay at the particular rate in spite of diluvion or decrease of land on any other account. In Assarudi v. Sorosibala Debi, Sir Barnes Peacock, C. J., held that "according to the ordinary rules of law, if a taluqdar agrees to pay a certain amount of rent, the tenant of it is exempt from the payment of the whole rent, if the whole of the land be washed away, or of a portion of the rent, if a portion only be washed away." Even a putnidar has been held to be entitled to abatement.

The interpretation of instruments of lease is a matter of considerable importance in this country, where the art of conveyancing is almost unknown. Documents in the vernacular languages are generally drawn, even at the present day, by men who have little legal training. The intention of the parties is not unfrequently left in the dark, and left to be gathered from custom or usage, as difficult to ascertain as any other fact depending for proof upon oral evidence of a highly conflicting character. These documents are apparently simple, but their very simplicity is sometimes a source of litigation and a puzzle to lawyers and judges. The difficulty of interpretation is not unfrequently enhanced on account of our ignorance of the language, the manners, customs, habits and usages of the people. Help from legal literature or lexicons is rarely available. There is thus a conflict of authorities as to the interpretation of deeds. It has, however, now been settled that the words—"with your sons and grandsons in succession," "putra poutradi kramé," i.e. from generation to generation, or "generations born of your womb successively enjoy the same," and words of similar im-

1 Marsh Rep. 558.
port convey a permanent and transferable right. They convey an absolute right subject to payment of rent. If there are no words fixing the rent in perpetuity, the tenure becomes maurusi, but not mukurrari. It is not, however, essential that words indicating heritable interest or fixing the rent in perpetuity should always be in, in order to create maurusi mukurrari right. The intention of the parties may be drawn from surrounding circumstances and from local custom or usage. Not unfrequently, the name given to the tenure created connotes its incidents. A putni taluq, as we have seen, imports a permanent hereditary tenure. The word taluq raises the presumption of a tenure being permanent. The howlas and nimhowlas of Bakhergunj are instances of names of permanent tenures. The words mukurrari maurusi or mukurrari istenrari indicate permanent tenures at fixed rent. But their Lordships of the Privy Council have said that the words "istenrari and mukurrari." do not of themselves, denote that the estate granted is an estate of inheritance. Not that such an estate cannot be so granted unless, in addition to the above words, such expressions as "bafarzandan" or 'naslan bad naslan' or similar terms are used." The use of the word mukurrari, without the word maurusi, has been interpreted as creating tenures, in some instances, for the life of the grantee only, in others of the grantee and his heirs in succession. The intention is drawn, not from the use of any particular words, but from surrounding circumstances. The intention has occasionally to be gathered from the context of the deed, as in leases of jungle lands the rent of which increases from time to time, until it reaches a fixed maximum.

In the absence of any written instrument of lease or express contract, the incidents of a tenancy are those laid down in the Regulations and the several Rent Acts, supplemented by custom and usage. The law of England, when it accords with the rules of justice and equity, has occasionally been applied to cases where the statute law in India is silent, and where there is no proof of any custom or usage bearing on the question at issue.

Maurusi tenures, which the Bengal Tenancy Act has called permanent, are, by the definition itself, "heritable and which are not held for any limited time." They have most of the incidents of maurusi mukurrari leases, but the rent is enhanceable. Act X of 1859 made no provision as regards the enhancement of rent of these tenures, and courts of law had, accordingly, to rely upon custom. In dealing with dependent taluqs, I have stated the grounds upon which enhancement of rent can be claimed by the proprietor of an estate, and the same rules and principles are applicable, whether the tenure is held directly under a proprietor of a revenue-paying or revenue-free estate, or whether it is a subordinate tenure. Instances of tenures purely maurusi are, however, extremely rare. The fact seems to be that where no contracts exist, there have been constant disputes between the holders of such tenures and the superior landlords as to liability to enhancement, and in a large number of cases the tenants have escaped. The rent of dependent taluqs in some of the districts, especially Rajshahi and Mymensing, and of under-tenures in some others, has been enhanced, but the enhancement has been so high that new cases of enhancement seldom arise. These heritable tenures were not always transferable. But the Bengal Tenancy Act has, as we have seen, made all permanent tenures capable of being transferred or bequeathed in the same manner and to

---

1 Act VIII of 1885, Sec. 3, cl. 8.  
2 Ante p. 166.  
3 Lilanand v. Munorunj, 13 B. L. R. 124.
HEREDITARY TENURES.

the same extent as other immovable properties. In districts where that Act is not in force, and when the lease is not for agricultural purposes, but is a lease for the collection of rent, as all intermediate tenancies are, the Transfer of Property Act would be applicable, and section 108, clause (j) of that Act provides—"The lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease." The words I have quoted from the Transfer of Property Act are prefaced in the section itself by the words—"in the absence of a contract or local usage to the contrary." So that the burden of proving non-transferribility is on those who assert it. The common law of the country, if I may use that expression, seems to be in favour of heritability and transferribility of all classes of tenures, unless there is express contract legally enforceable or positive law prohibiting succession and transfer. The opposite view has sometimes been taken, though there is no foundation for it. I think, however, the Transfer of Property Act, though not applicable in Bengal to tenancies for agricultural purposes, should be taken to express the rule of law applicable to all cases where there is no special or local law. The reported cases on the question of the onus of proof are not, however, quite in harmony with one another. Intermediate tenures cannot be said to be leases for agricultural purposes within the meaning of section 117 of the Transfer of Property Act, as the purpose of the creation of such tenures cannot, from the very nature of the thing, be for cultivation of land by the lessees.

1 Act VIII of 1885, Sec. 11.  
2 Act IV of 1882, Sec. 108.  
PERMANENT TENURES.

Tenures at fixed rent only.

Mukurrari, also known as kaimi, tenures are always for the lives of the grantees and are dependent upon written leases. Not that such tenures could not be created by oral demise, but the universal practice was to have written instruments of lease, though registration was not compulsory. The Registration Acts, passed since 1864, practically did away with oral agreements of lease for any term exceeding one year, and the Transfer of Property Act requires that they should be by registered instruments.\(^1\) The question in all cases of grants at fixed rent is, therefore, a question of the interpretation of instruments. Wherever the Transfer of Property Act applies, the law attaches certain incidents when the contract is silent, and when there is no local custom or usage preventing the operation of the law. Generally speaking, these tenures are alienable, and not terminable without the consent of the parties. Leases for a term of years at fixed rent are temporary, and I propose to deal with them separately.

Registration in the office of the landlord is a peculiar liability attaching to all intermediate transferable tenures. By whatever names they go, taluqs, howlas, jotes, mukurraris or maurusies, if they are transferable by law, custom or local usage, every transfer or succession requires to be registered in the landlord's office, the penalty for non-compliance being in some cases very severe.\(^2\) The leasehold interest belonging to A may be sold in execution of a decree against B, if A claims by assignment from B, without giving legal notice of the assignment to the rent-receiver of B. This peculiarity in the Indian law of landlord and tenant was considered in the case of Sham Chand Koondoo and others v. Brojo Nath Pal Chowdhury and others\(^3\) by a Full Bench of the

---

\(^1\) Act. IV of 1882, Sec. 107.

\(^2\) Act X of 1859, Sec 27; Act VIII (B.C.) of 1869, Sec. 26; Act VIII of 1885, Secs. 12 to 16.

Calcutta High Court. In that case the learned judges held that the law, as understood before the Act of 1859 came into force, did not, in order to protect an assignee and under-tenants under him by service of notice of suit for arrears of rent, make the registration of the name of the assignee of a saleable tenure compulsory. Registration was certainly known and was always insisted upon, but no penalty was attached to non-registration. Regulation VII of 1799, known as the Haptam in Bengal, gave proprietors the right to bring tenures to sale for arrears of rent. The Regulation further provided, as security to the zemindar, that dependent taluqdars should register in his sherista or office all transfers, as well as successions, of taluqs or portions of them. But, in the words of Sir Richard Couch, C.J., in the Full Bench case, "the Regulation does not provide, as Act X does in the proviso to section 106, that no transfer which is required to be registered shall be recognized, unless it has been so registered, or unless sufficient cause for non-registration be shown to the satisfaction of the Collector. More stringent provisions in favour of zemindars are inserted in Act X of 1859 than in the Regulation. It appears to me, taking sections 105 and 106 together with the proviso, that it was intended that the zemindar should be at liberty to treat, as the holder of the tenure and the person whom he might sue for the arrears of rent, the person who is registered in his books as the owner, unless any one could show that there had been a transfer and sufficient cause for non-registration. In such a case, a zemindar might find that he had been suing the wrong person. Taking these sections together, I think that the zemindar, having obtained a decree for arrears of rent, is entitled to sell the tenure; and that the person who has obtained a transfer which he has not registered, and cannot show a sufficient cause for

1 Reg. VII. of 1799, Sec. 15, cl. 8.
not registering it, is bound by the sale, and cannot set up a title which he has acquired by a previous sale.\(^1\) This liability of intermediate transferable tenures exists not only on voluntary sales but on sales in execution of civil-court decrees, and even in the case of an assignee of an insolvent taking under a vesting order.\(^2\)

This provision about registration in the office of the zemindar or superior landlord, contained in section 27 of Act X of 1859 and reproduced in section 26 of Act VIII (B.C.) of 1869, entailed a higher penalty for non-registration than what would be the result upon the application of the law of hypothecation to rent. As we now understand the law and the procedure for foreclosure and sale of hypothecated immovable property, no foreclosure-proceeding, whether under Regulation XVII of 1806 or the Transfer of Property Act, nor a decree for sale under that Act, has any effect on a person having an interest in the property but not made a party to the proceeding or suit, if his interest in such property arose before the institution of the proceeding or the suit. The right of puisne encumbrancers or assignees of mortgaged premises is not in the least affected, if they have no legal notice of the proceeding or suit on the mortgage.\(^3\) But the registration sections of the Rent Acts of 1859 and 1869 would affect, for want of registration, mortgagees of tenures as well as subordinate tenure-holders in a suit against the registered tenant only. The personal liability of the registered tenant for rent continue so long as an assignee from him did not get his

---


name registered in the office of the superior landlord.\(^1\)

As regards the assignee himself, he had no legal status, though it was optional with the landlord to accept him as a tenant, and it was even held that he could not sue for possession after illegal eviction by the landlord.\(^2\)

Non-registration of name did not, however, make the assignee a trespasser—the assignee at once becomes a tenant.\(^3\) Fraud vitiates the most solemn transaction. A fraudulent decree or fraudulent eviction ought always to be a good cause of action against the perpetrators of the fraud. It is impossible to conceive that any humane legislature would impose, for non-registration, the penalty of forfeiture, or the severer one of negativing the existence of the relationship of landlord and tenant.

The hardship of this law was early felt by the judges, and every indulgence was shown to the tenants if they had made the slightest attempt to have their names registered in the zemindar's sherista. Recognition by receipt of rent, though the receipt was granted in the name of the old tenant, knowledge of the superior landlord of the assignment of the tenure under circumstances that would lead any honest man to recognize the assignee, or a long course of dealings with the assignee, used to be considered tantamount in law to registration. On the other hand, the landlord had the option of ignoring the old tenant and sue his assignee in possession. He could ignore a registered benamdar and sue the real tenant for rent. Suits for registration, on the refusal of the landlord to register, have always been allowed, the tenant being made to pay only the usual fee for registration.

On the death, however, of the registered tenant, a suit for rent against his legal heirs was considered insufficient in law to bind an assignee of the tenure. The registration-law was not stretched in favour of the land-

---

2 Mooktakeshee v. Pearee, 7 W. R. 158.
lord, so as to deprive a stranger of his right by proceedings in a suit against a person who was never in possession and who had no connection with the property at the time when the succession opened out. Registration of successions is now required by the law. No suit can lie against a dead man, the landlord must, therefore, seek out the real tenant and sue him for rent. The same principle should apply in cases of survivorship under the Mitakshara law, though a suit against the karta, when he is alive, binds the co-parceners.

Under the Bengal Tenancy Act, it is no longer the duty of the transferee of an intermediate tenure to ask for registration of his name in the sherista of his superior landlord,—it is now the duty of the registering officer, when he registers the assurance conveying a tenure or any interest in it to send notice to the landlord. Transfer of a permanent tenure either by sale, gift or mortgage, merely by word of mouth or delivery of possession, has now been abolished. A registered instrument is the only means by which a permanent tenure may be transferred. A fee for registration in the office of the landlord is now levied by the Registrar himself, and it is the duty of the registering officer, after levying the fee, to send it to the Collector with a notice of the transfer and the registration of the assurance, and it is then the duty of the Collector to cause the fee to be paid to, and the notice to be served upon the landlord. The fee is two per cent. on the annual rent, provided the total amount of fee shall not exceed one hundred rupees; and where no rent is payable, the fee is two rupees only. The duty of the original tenant and his assignee, which the former law imposed upon them, has now devolved on Government officers,

---

1 Act VIII of 1885, Sec. 15.
3 Act VIII of 1885, Sec. 12, sub-sec. 1.
4 Act VIII of 1885, Sec. 12, sub-sec. 3.
and whether the superior holder receives the fee and the notice or not, the liability of the previous tenant for rent accruing subsequent to the date of the registration ceases, and the landlord is bound to look to the new tenant for the rent for such subsequent period.

On a sale in execution of a decree other than a decree for arrears of rent, or on a decree for foreclosure being passed, the Court has to perform a similar duty, i.e., to levy the fee from the purchaser or mortgagee entitled to possession, and transmit it with a notice through the Collector.¹ But no fee is levied nor any notice sent to the landlord, when the sale is brought about by the landlord himself for arrears of rent, or when the landlord himself is the purchaser.

Under the law, as it stood under the Rent Acts of 1859 and 1869, the registration of successions was necessary, but there was no penalty for non-registration. A suit for arrears must be brought against the heir or successor of the deceased tenant, whether registration of his name was effected or not. The Bengal Tenancy Act has imposed a penalty, taking away the right of the heir to sue his under-tenants for rent, or get any relief as against them until he pays to the Collector the landlord's fee, and until the notice of such succession is given to the landlord.² But if the succession had opened out before the Act came into force, registration of succession would be unnecessary.³ The provisions of the law applicable to assignees and heirs apply to transfers of or successions to shares in a permanent tenure. But the landlord is not bound to accept a sharer as his tenant with respect to that share. He becomes only one of the joint tenants liable to be sued along with the others as joint tenants.⁴

If due effect be given to these provisions of the Bengal Tenancy Act, and the officers entrusted with the

¹ Act VIII of 1885, Sec. 13. ² Act VIII of 1885, Sec. 16. ³ Profullah v. Samiruddin, I. L. R. 22 Cal. 337. ⁴ Act VIII of 1885, Sec. 88.
task of causing notices to be served cause them to be properly served, both the landlord and the tenant are likely to derive considerable benefit. The Act, however, is silent as to any but permanent tenures. As we have seen, there are a good many tenures which are not permanent. The law has also made no provision for involuntary transfers, as on survivorship or insolvency. It has made no provision for unregistered transfers and successions that had taken place before the Act came into force. What is the landlord to do in those cases in which the law is silent? What, also, is the position of the tenant in occupation whom the landlord does not recognize? It would seem that in these cases the landlord must find out the tenant. He ought not to be allowed any relief by proceedings against the registered tenants—a benefit which the law, as it now stands, does not allow him.

One amongst a number of co-sharers, forming joint owners of a superior tenure, has not the same rights as a sole owner or all the co-owners jointly. He cannot sue alone for the rent of his share except under peculiar circumstances. He cannot sue for ejectment or enhancement of rent. He labours under various other disabilities. The Bengal Tenancy Act, following numerous rulings on the subject, expressly provides that he cannot singly avail himself of the remedies which that Act gives to land-owners in relation to their tenants.¹ It would, therefore, seem that a suit by a co-sharer against a registered tenant ought not to bind any but the person sued. The High Court at Calcutta held in one case that a decree in such a suit has the same effect on a sale in execution of the decree, as if the suit had been brought against the tenant in occupation.² But the law of landlord and tenant has now been changed as

---

¹ Act VIII of 1885, Sec. 188; Beni v. Joad, I. L. R. 17 Cal. 390.
regards the greater part of the Lower Provinces of Bengal, and it will not be necessary to consider how far that judgment correctly expounded the law.

Intimately connected with the law about registration of the tenant’s name in the office of the superior landlord is the especial procedure of sales for arrears of rent and avoidance of incumbrances. Shortly after the publication of the Proclamation in 1793 announcing the Permanent Settlement, the necessity of a law for the sales of tenures for arrears of rent was felt by the legislature. Punctual realization of revenue required punctual realization of rent by those who had to pay the revenue. In 1799, Regulation VII was passed for sales of dependent taluqs and other similar transferable tenures for realization of arrears of rent due in respect thereof. Act X of 1859, which vested in the Collectors the power of entertaining suits for rents and bringing tenures to sale, laid down specific rules of procedure for sales of tenures and under-tenures. The Bengal Act of 1869 made no alteration in the procedure or the substantive law. These Acts made two sets of provisions—one for sales at the instance of the sole landlord or a body of landlords jointly, and the other for sales at the instance of a co-sharer.

Process of execution could be issued against either the person or the property of a judgment-debtor; but the process could not simultaneously be issued against both the person and the property.¹ Immovable property of the judgment-debtor other than the tenure in arrear could not be sold, till movable property was exhausted. The Bengal Tenancy Act has made a material alteration in the procedure in this respect, and a judgment-creditor is not now compelled to sell the tenure in arrear before attempting to enforce the decree against other immovable properties of the judg-

¹ Act VIII (B.C.) of 1869, Sec. 57
ment-debtor. He is now entitled to realize the amount of the decree by attachment and sale of any property of the judgment-debtor, movable or immovable. If, however, the contract between the parties contains a precise stipulation to the effect that the tenure should be first sold, and if after such sale there should remain a balance due to the landlord, other properties of the tenure-holder might be sold, the decree should contain a direction for the sale of the tenure in arrear before the sale of the other properties of the judgment-debtor. If there is no express contract or no express direction in the decree, it is optional with the decree-holder to proceed to execute the decree in the mode best conducive to his interest.

A proclamation of sale of a transferable tenure for its arrears should contain, amongst other particulars provided for in the Code of Civil Procedure, the name of the village, estate and perganah or other local division in which the land comprised in the tenure is situated, the yearly rent payable and the amount recoverable under the decree.¹ Order for simultaneous attachment and proclamation may be made.² The old Acts required five notices of sale to be stuck up: (1) at the Court-house in which the sale is to take place, (2) in the office of the Collector, (3) in the office of the Judge of the district, (4) on some conspicuous place on the land of the tenure, and (5) on some conspicuous place in the town or village in or nearest to which the land is situated.³ The Bengal Tenancy Act, however, has dispensed with the publication of the notice in the office of the Collector and the District Judge, and the local government, by Notification dated the 20th February 1886, has directed that the notice should be published

¹ Act VIII (B.C.) of 1865, Secs. 5 and 162; Act VIII (B.C.) of 1869, Sec. 60.
² Act X of 1859, Sec. 105; Act VIII (B.C.) of 1865, Sec. 4; Act VIII (B.C.) of 1869, Sec. 59.
³ Act VIII (B.C.) of 1865, Sec. 4; Act VIII (B.C.) of 1869, Sec. 59.
in the mal kutchery or rent office of the estate and at the local thanah.\(^1\) The non-publication of any of these notices is a material irregularity, but is not in itself sufficient to make the sale a nullity. The proclamations have to be served in the customary mode by beat of drum. Under the procedure laid down in the older Acts,\(^2\) the hanging up of the notice in the court-house in which the decree is in course of execution must take place not less than twenty days before the day fixed for sale. The Bengal Tenancy Act has, however, made an alteration in the period, by enacting that no sale shall take place until after the expiration of at least thirty days calculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the tenure or holding ordered to be sold.\(^3\) Under the Code of Civil Procedure, the period is at least thirty days from the date on which the copy of the proclamation has been fixed up in the court-house of the judge ordering the sale,\(^4\) and the Code also requires that the copy of the proclamation should be fixed up in the court-house after the service of the proclamation on the land ordered to be sold. Thus you see the alteration in the period made by the Bengal Tenancy Act has created an anomaly. It agrees in the number of days with that prescribed in the Civil Procedure Code for ordinary sales in execution, but materially differs in the starting point. The infringement of this rule as to the time of the publication of the notice is only a material irregularity. The reported cases, however, are not quite in unison. But the Calcutta High Court has been of opinion that this is merely an irregularity; and the judgment of the

---


\(^2\) Act VIII (B.C.) of 1865, Sec. 4; Act VIII (B.C.) of 1869, Sec. 59.

\(^3\) Act VIII of 1885, Sec. 163, cl. (4).

\(^4\) Act XIV of 1882, Sec. 290.
Privy Council in *Govindalal Rai v. Ramjanam Misser*\(^1\) seems to have overruled all the cases which took a contrary view.

The effect of a sale for arrears at the instance of the sole landlord or a body of landlords jointly, the sale taking place under the procedure stated above, is to set the tenure free of all encumbrances and under-tenures which might have been created by any act of the defaulter, unless the right of creating such encumbrances was expressly vested in the holder by the terms of the grant, or unless expressly assented to by any subsequent written authority of the superior landlord.\(^2\) The power to avoid encumbrances and under-tenures created by the defaulter, is, as we have already seen, a necessary right for the security of the rent for which the tenure is hypothecated. Under the law, as it stands in districts where the Bengal Tenancy Act is not in force, the right to avoid encumbrances may be exercised at any time within the period of twelve years from the date of the confirmation of the sale. There are certain interests which are, however, protected, such as the interest of khodkast raiyats and occupancy tenants. The sale of a tenure for arrears is, however, not necessarily a sale under the provisions of the Rent Act. The decree holder, even if he is the sole rent-realiser, may proceed to attach and advertise the tenure in arrear under the Code of Civil Procedure, as if he wants to execute a simple money-decree. There is nothing to prevent him from doing so. Their Lordships of the Judicial Committee held in the case of *Doolar Chand Shahoo v. Lalla Chateel Chand*\(^3\) that it is always a question of intention, and the intention is to be gathered from the proceedings and the certificate of sale. What passes when the sale is under the ordinary

---

\(^1\) *I. L. R. 21 Cal. 70, sc., L. R. 20 I. A. 165.*

\(^2\) *Art VIII (B.C.) of 1865, Sec. 16; Art VIII (B.C.) of 1869, Sec. 66.*

\(^3\) *L. R. 6 I.A. 47.*
procedure prescribed in the Code of Civil Procedure is the right, title and interest of the judgment-debtor, and not the tenure in arrear. The construction of sale-certificates has given rise to considerable difficulties and consequent litigation. In order to avoid these difficulties the High Court at Calcutta prescribed different printed forms for the proclamation of sale of a tenure and for the sale of the right, title and interest of judgment-debtors in it. The Bengal Tenancy Act has made a material alteration in the law for the avoidance of encumbrances, for the greater protection of holders of encumbrances and under-tenure-holders. The Act makes a distinction in the first place between protected and unprotected interests. Protected interests are defined in section 160 of the Act, and these are interests in land which the sale-laws, whether for revenue or rent, have always protected. Unprotected interests, again, are divided into two classes—registered and notified encumbrances, and ordinary encumbrances not so registered and notified. Section 161 of the Act defines registered and notified encumbrances to be "encumbrances created by registered instruments, of which a copy has, not less than three months before the accrual of the arrear, been served" under the provisions of section 176 of the Act and in the manner prescribed by Rule 3 of Chapter I of the rules made by the local government. The proclamation of sale of a tenure, when first published, is required to be for the auction-sale of the tenure subject to registered and notified encumbrances. If the final bid at the sale on such a notification is sufficient to liquidate the amount of the decree and costs, the tenure is sold subject to such encumbrances; but the purchaser acquires,

2 Act VIII of 1885, Sec. 161, cl. (b).
3 Ibid, Sec. 163 (2) (a).
4 Ibid, Sec. 164 (1).
the right to annul any encumbrances not registered
and notified as aforesaid. If, however, the bidding
does not reach a sum sufficient to liquidate the amount
of the decree and costs, the decree-holder may require
that the final bid be not accepted and a sale free of
registered and notified encumbrances do take place. A
proclamation should then be issued, fixing a date of sale,
not less than fifteen or more than thirty days from the
date of the postponement of sale. On such a sale
taking place, the purchaser acquires the right to avoid
all encumbrances including registered and notified encumbrances.

The encumbrances which a purchaser is entitled to
annul do not become ipso facto void by the sale, but are
only voidable at the option of the purchaser. In a Full
Bench case decided before the Bengal Tenancy Act was
passed, the High Court at Calcutta held that on a sale,
either for arrears of revenue or for arrears of rent, tenures
and under-tenures are not ipso facto avoided, but are
voidable only at the option of the purchaser. The
principle laid down by the Full Bench of the High Court
was adopted in the Bengal Tenancy Act, and in section
167 the legislature has provided that in order to enable
a purchaser to avoid an encumbrance, whether it is
registered and notified or not, he must within one
year from the date of the sale, or if he had no notice of
the encumbrance at the date of the sale, within one
year from the date on which he first has had notice of the
encumbrance, present to the Collector an application in
writing, requesting him to serve on the encumbrancer
a notice declaring that the encumbrance is annulled.
The encumbrance becomes annulled from the date
of the service of the notice. A suit for possession

1 Act VIII of 1885, Sec. 164 (2).
2 Act VIII of 1885, Sec. 165 (1).
4 Act VIII of 1885, Sec. 167, subsec. 1.
against the encumbrancer must be brought within the usual period of limitation, namely, twelve years from the date of annulment.¹

Such being the consequences of a sale for arrears of rent on holders of under-tenures and mortgagees, persons interested in averting the sale have been given not only the power to pay in the amount of the decree and thus prevent the sale taking place, but there are also provisions for affording sufficient security for the amount thus paid. Bengal Act VIII of 1865, which supplemented the provisions of Act X of 1859, gave to under-tenure holders and other persons interested in the protection of any tenure or under-tenure from sale the same relief as section 13 of Regulation VIII of 1819 afforded to durputnidars and other persons similarly situated. Section 62 of Act VIII (B.C.) of 1869 reproduced the provision contained in the Act of 1865. The Bengal Tenancy Act allows any person, having an interest which could be voidable upon a sale for arrears, to pay into Court the amount requisite to prevent the sale. He has a lien on the tenure like a salvage lien—the amount being recoverable, with interest at twelve per cent per annum, as the first charge on the tenure. He is also entitled to take possession of the tenure and to retain such possession until the debt with interest thereon has been discharged.² But besides these remedies, a person paying the money into Court, whether as a person interested or a person making the payment lawfully, but under a mistake as to his interest, is entitled to get back the amount by an ordinary civil action, or he may deduct the amount so paid in satisfaction of his own debt.³ If he is himself the mortgagee, he may add the amount to the mortgage debt.

¹ Act XV of 1877, Art 121. ² Act VIII of 1885, Sec. 171.
The right of one of a number of joint landlords, as we have seen, is that of an ordinary judgment-creditor. The older Acts, following similar provisions in the laws for sales for arrears of revenue, prescribed the ordinary procedure followed in execution of decrees for money, and not the special procedure in execution of decrees for rent, and such sales had the same effect even if the tenure itself were sold, as the sale of any other immovable property sold in execution of a decree not being a decree for arrears of rent payable in respect thereof. An additional restriction was put upon execution of decrees given in favour of sharers, as the tenure could not be brought to sale before the movable properties of the judgment-debtor lying within the jurisdiction of the Court were exhausted. Act VIII of 1885 contains no special procedure on the point. Section 188 of the Act seems to imply that a co-sharer has not the right to sue for rent in the same way and under the same procedure as the older Acts enabled him to do. The High Court, following the old practice, has, however, allowed suits for rent to be entertained at the instance of one co-sharer only, if he has been separately collecting his share of the rent. But an execution of a decree for arrears of rent due to a co-sharer is an execution under the Code of Civil Procedure only, and not one under chapter XIV of the Bengal Tenancy Act. A suit for rent by a co-sharer must be treated as a suit upon an ordinary contract based upon the implied consent of parties, the tenant agreeing to pay to one of his landlords a portion of the total amount payable by him. There is no reason why such a suit should not be entertained, it being perfectly immaterial whether you call the amount claimed rent, or register the suit in the rent register.

1 Act X of 1859, Sec. 108; Act VIII (B.C.) 1869, Sec. 64.
Permanent tenures, whether they are mukurrari or not, cannot be relinquished without the consent of the landlord, and the holder of the tenure cannot put an end to the contract at his own option. Notice to the landlord of an intention to relinquish cannot have the effect of determining the contract, which is a contract in perpetuity.

Tenures and under-tenures are partible by the civil court; but the partition does not bind the landlord. On a partition amongst the landlords, the tenure is split up, and each co-sharer is entitled to consider the land allotted to him on partition as a distinct tenure. The rent is thus split up, and by such a partition one single tenure may be converted into a number of separate tenures. Thus, you see, a partition amongst the landlords is binding on the tenants, but the converse is not true. The effect of a partition of an estate under the Estates Partition Act is also the same.

The acquisition of land for public purposes very frequently raises questions of considerable difficulty as to the apportionment of the amount of compensation between the superior and the inferior tenure-holders. Where the quantity of land acquired is appreciably large in proportion to the entire area of the tenure, abatement of rent is, as we have seen, a necessity for the benefit of both the tenure-holder and his rent-receiver. But in most cases, especially where the rent is fixed in perpetuity, abatement of rent is not sufficient to compensate the tenant’s loss. The fundamental principle, which ought to guide us in all discussions as to the legal relation between the proprietor of the estate or the taluqdar or other superior tenure-holder and the subordinate holder at fixed rent in perpetuity, is that the former is an annuitant and the latter is the real proprietor of the land. The security for the annual payment is all that the annuitant may fairly

1 Act VIII of 1885, Sec. 88; Act X of 1859, Sec. 27; Act VIII (R.C) of 1869, Sec. 26; Judoo v. Jadub, 11 W. R. 294.
claim, if no abatement is allowed. If, however, abatement is allowed, he is entitled to the capitalized value of the amount of his annual loss. It is difficult to see how he can get any thing more, having parted with his proprietary right, reserving only an annual sum. But the reported cases on the subject of the division of the amount of compensation are not quite in harmony with one another. The facts and circumstances of each case have no doubt considerable weight in influencing the decisions of the judges, and inducing them to deviate from apparently well-established and well-recognised principles of law. In one of the oldest cases, a case decided under Act VI of 1857, the Sudder Dewani Adawlut said:—"The Zemindar and the Putnidar are entitled to compensation in proportion to the losses they respectively sustain from the appropriation of their lands and to the remission of the rents which they pay respectively to the Government or the Zemindar. In respect to remission, as the gross rental of the whole putni is to the gross rent of the land proposed to be taken, so will the entire putni rent be to the particular portion of rent to be remitted; and, with regard to compensation, the principle may just conveniently be stated as follows:—As the gross profit of the putni is to the profit of the putnidar, so will the gross compensation be to the portion of the compensation the putnidar is entitled to recover." These formulas are not, however, easy to work out, and if the zemindar has received a large bonus for the grant, another element of uncertainty comes in and complicates the question. In Rayekissory Dassee v. Nilcant, Couch, C.J., after stating that the zemindar is only entitled to be compensated for

3 20 W. R. 379.
the loss of annual rent he may sustain by an abatement, being allowed, but nothing, if there is no abatement, his loss being scarcely appreciable, lays down, "the proper mode of settling the rights of the parties is to give to the putnidar an abatement of his rent in proportion to the quantity of land which has been taken from him. The zemindar ought to be compensated for the loss of rent which he sustains, and the money ought to be divided between the parties accordingly. The putnidar's getting an abatement of his rent is to be taken into account, as partly the way in which he is compensated for the loss of the land." The rule here laid down is in accordance with the rule laid down by the Sudder Dewani Adawlut and agrees with the recognised principles as to the rights of the parties. The rule applies to apportionment as between tenure-holders and under-tenure holders. The High Court at Calcutta, however, did not in two later cases\(^1\) stick to the rule laid down above. In one of these cases, it was observed that the zemindar was entitled to something more than the mere capitalized value of the loss sustained by him in the shape of rent. It is difficult to see, however, why the zemindar should make a profit by the Government acquiring land. In later cases,\(^2\) however, the High Court held that the under tenant was entitled to the entire compensation, no abatement of rent having been granted to the superior tenure-holder.

---

\(^1\) Godadhar v. Dhunput, I. L.R. 7 Cal. 585; Bunwari v. Burnomoyi, I. L. R. 14 Cal. 749.

\(^2\) Regular Appeals, Nos. 271 & 272 of 1885 (unreported).
LECTURE VII.

NON-PERMANENT TENURES.

We have already seen what the policy of the earlier Anglo-Indian legislators was with reference to intermediate tenures—a policy which emanated not only from a desire to have the largest amount of security for the government revenue, but also from an earnest desire to protect the weak peasantry of the country from the rapacity of revenue-farmers and other extortionate intermediate holders. The antipathy of Anglo-Indian statesmen against middlemen could not and did not last long, but apathy took the place of antipathy, and they were extremely slow to legislate for them. No effectual steps were, until very lately, taken to bring, within positive rules of law, questions about the rights and liabilities of farmers and other intermediate holders. Only one class of dependent taluqdars and other similar tenure-holders, whose estates had been recognised at the Settlement, were taken within the purview of Act X of 1859. The Bengal Tenancy Act has only a few sections on permanent tenures, but it is practically silent on temporary or non-permanent tenures. That Act is not a complete code of laws dealing with the relationship of landlord and tenant; it only amended and consolidated a portion of the law, leaving the other portion to be drawn by the legal profession and judges from scattered rulings of the supe-

1 Ante p. 141.
2 Act X of 1859, Sec. 15.
3 Act Vlll of 1885, Chap. Ill.
rior courts in India and legislative enactments of doubtful application.

There are, in the Bengal Provinces, a very large number of temporary lease-holders, intermediate between the actual cultivators of the soil—the raiyats—and the proprietors of estates and permanent tenure-holders. The main sources of the law as to temporary leases are now the Indian Contract Act (IX of 1872) and the Transfer of Property Act (IV of 1882), and it is occasionally necessary to look to the law as administered in other countries, and especially in England, to find out, in the words of the Indian legislature, "the rules of justice, equity and good conscience." 1

I have already discussed 2 the question of the applicability of the provisions of Chapter V of the Transfer of Property Act to intermediate leases—leases not for agricultural purposes but of agricultural lands, the object of the lessee being not to cultivate lands and make profit by such cultivation like tea-planters or indigo-planters, but to profit by the collection of rent from raiyats on the lands demised or by settlement of new raiyats. The settlement of new raiyats can hardly be said to be an use of land for agricultural purposes.

Temporary leases of immovable property are known in the Bengal Provinces by various names, the term ijara being the most common, and the term thika being generally used in Behar. A sub-lease granted by an ijaradar is called dar-ijara. Following the usual nomenclature, a lease taken from a dar-ijaradar is called se-ijara. Mostajiri is a word derived from the word ijara and is frequently applied to temporary leases in Behar instead of the word thika. The word thika in Bengal has not always the same signification, it being used in some districts, as in the Twenty-Four Perganas, for permanent raiyati interest and in others for tem-

---

1 Act XII of 1887, Sec. 37, cl. 2.  
2 ante p. 187.
porary raiyati leases. A sub-mostajiri tenure is dur-
mostajiri, while the words katkina and dur-katkina are
used for inferior subordinate leases in Behar. Other terms
are also used in connection with temporary leases.
Zuripeshgee leases in Behar have the double character
of a mortgage and a lease.

Before the Transfer of Property Act came into
operation, leases of immovable property like convey-
ances of land could be effected by parol. Since the
passing of Act XVI of 1864, the first Act that made reg-
istration of leases of immovable property for any term
exceeding one year or from year to year compulsory,—
such a lease of immovable property, when effected by a
written instrument, could be valid only if the instrument
was registered; but the Registration Acts did not make
the execution of written instruments compulsory, and
oral evidence could be adduced to prove a lease for
any term. The existence of an instrument executed
since the passing of Act XVI of 1864, if the instrument
was unregistered, would exclude oral evidence under the
Evidence Act. So that in those days, a lease for a term
of years or from year to year could be valid, if made by
parol or by a registered instrument. The anomaly,
however, has been removed by the Transfer of Property
Act. Leases from year to year, or for any term ex-
ceeding one year, or reserving a yearly rent, can now be
made only by a registered instrument. Leases for a
term of less than a year only may now be made
by any instrument, registered or not, or by parol
agreement.

1 Meerza v. Nawab, 4 Sel. Rep., 168; Sheikh v. Sheikh, i B. L. R.
(F.B.) 58, sc 10 W. R. (F.B.) 51; Nemai v. Kokil, i L. R. 6 Cal. 534;
Chunder v. Krishna, i L. R. 10 Cal., 710.
2 Act IV of 1882, Sec. 107.
3 Act III of 1877, Secs. 18 (cl. c.) and 48; Surendra v. Bhai Lal,
i L. R. 22 Cal. 752.
4 Act IV of 1882, Sec. 107.
An unregistered instrument of lease for a term of years or from year to year, executed before July 1882, when the Transfer of Property Act came into force, is void, and so also a demise by an oral or unregistered lease for a similar period made since that date. But if the tenant enters into possession under such a void lease, he becomes a tenant from year to year upon the terms of the contract, in so far as they are applicable to, and are not inconsistent with, a yearly tenancy.

The lessee in possession under a void lease is liable for damages for use and occupation, the rent stipulated in the inadmissible contract of lease being the measure of damages. If the lessee has not entered into possession, he will not be liable for rent or damages, nor can he ask for possession by a suit. The practice of delivering possession to ijardars before the completion of the written instrument of lease was very common, and is not unfrequent even now. This is done by the issuing of a notice by the lessor to the village headmen and the raiyats, requiring them to pay rent to the lessee, such a notice being called an amalnama or amaldastak. An amaldastak given as a preliminary to a formal lease has never been considered to be equivalent to a lease, and creates no title whatever. It is retained by the lessee as evidence of the contract of lease and of delivery of possession. Under the present law, an amalnama cannot be used as evidence of a lease for a term of years, but the delivery of possession evidenced by the instrument may be treated as creating a lease.

2 Surendra v. Bhai, I. L. R. 22 Cal. 752.
from year to year, terminable upon proper notice to quit. 1

An agreement for a lease to be executed in future is not required to be in writing, but if there is a written contract, the registration of it is compulsory. 2 An agreement merely creates a right to obtain another document, which will, when executed, create an interest in immovable property. 3 But an agreement for a lease of immovable property is required to bear the same stamp under the Indian Stamp Act (1 of 1879) as a lease, 4 and as registration is compulsory, it has no advantage in saving any stamp duty, and is, in most cases, dispensed with. If, however, one is executed, it may be enforced by a decree for specific performance. 5 If the agreement is registered, as it must be, in order to be admissible, the tenant holding under it is not a tenant from year to year only, but a tenant holding under the lease itself. 6 An agreement for a lease, however, does not of itself entitle the lessee to obtain possession. Relief on an agreement may be had under the rules and in the manner prescribed in the Specific Relief Act (1 of 1877).

Every person competent to contract and entitled to transfer immovable property is also competent to grant a lease for any term of years co-extensive with his own dominion over it; 7 and every agent of such person, duly authorized in that behalf, may also

---

1 See Syed Sufdar v. Amzad, I. L. R. 7 Cal. 793.
2 Act III of 1877, Sec. 3 (Definition of lease). Bhairab v. Kishori, 3 B.L. R., App. 1; Bunwaree v. Sungum, 7 W. R. 280.
3 Syed Sufdar v. Amzad, I. L. R. 7 Cal. 793.
5 Parker v. Taswell, 27 L. J., Ch. 812.
7 Act IV of 1882, Sec. 7.
WHO MAY GRANT LEASES.

A lease is a mode of transferring property for a term, and is nothing but a conveyance of the property let out for the term mentioned in it, subject to the payment of rent and the other conditions and covenants contained therein. A person, having full power of alienation, may grant a permanent lease or a lease for any number of years, and for any premium, and at any rate of rent as he chooses.

A *karta* or manager of a joint family, governed by the Mitakshara law of inheritance, is competent to grant a lease on any reasonable conditions, best conducive to the interest of the joint family, the restrictions being almost the same as those on his power of alienation. He is in the position of an agent of the corporate body of which he himself is a member. Under the Bengal school of Hindu law, a *karta* of a joint family has much the same powers, and though the shares of the different members are, in the eye of law, ascertained or always ascertainable, authority in him is generally presumed, though he is bound to exercise that authority as a prudent owner.

Under the Mitakshara law, a lease granted by one member, even though he may be the *karta*, may be absolutely void, even as regards the grantor, if the conditions are such as a prudent owner would not agree to; but in Bengal, a lease under similar circumstances may be valid to the extent of the share of the grantor himself.

Permanent leases of endowed properties, both under the Hindu and Mahomedan laws, are void, except under very peculiar circumstances; but a *sevaet* or a *mutwalli* may grant temporary leases on reasonable conditions and for reasonable terms of years, and

---

2. Mayne’s Hindu Law, Sec. 320, 4th Ed.
his successor in office will be bound by his acts, the question really being one of necessity and prudence.\(^1\) The power of a *mohunt* of a public *muth* is also similarly restricted. Trustees of charities have similar powers to grant leases for the due administration of the trusts.

The power of a *de facto* guardian of an infant to grant leases is, necessarily, of a limited character. He can act only for the benefit of the infant, but if he exceeds his power, the lease granted by him may be avoided in the same way as any other contract made by him.\(^2\) If it is not for the infant's benefit, the lease is voidable, but it is not absolutely void. The infant on attaining majority, or if he dies under age, his heir may avoid the same. If the *de facto* guardian be removed, the person who succeeds him may also avoid the lease. The authority of a guardian appointed by a civil court under Act XL of 1858 or the Guardian and Ward's Act (VIII of 1890) is limited to grants of temporary leases for any period not exceeding five years, unless the grant is made under sanction of the court appointing him.\(^3\) The power of a manager under the Court of Wards is also similarly restricted. The Court of Wards (the Board of Revenue) may, however, direct the grant of leases for any term, under the rules laid down in the Court of Wards Act.\(^4\) Whether the infant on attaining the age of majority is bound by a grant made by his guardian or the Court of Wards is a question, the answer to which depends upon the circumstances of each particular case.

---

1 Radha *v.* Juggut, 4 S. D. A. 151 (192); Maharanee *v.* Mothoora, 13 M. I. A. 270; Juggessur *v.* Rajah, 12 W. R. 299; Taboonissa *v.* Koomar, 15 W. R 228; Arruth *v.* Juggurnath, 18 W. R. 439; Bunwaree *v.* Mudden, 21 W. R. 417


3 *Aft* VIII of 1890, Sec. 29, cl. 6; *Aft* XI. of 1858, Sec. 18; Debi *v.* Subodra, I. I. R. 2 Cal. 283.

4 *Aft* IX (B.C.) of 1879, Sec. 18.
If the guardian or the manager under the Court of Wards has acted within the powers given him by the law, the infant, when he attains majority, can set aside the lease on proof of fraud, the onus of proof being upon him.\(^1\) Even if the sanction of the court were obtained in the manner prescribed by law, the infant may shew that the sanction was obtained by misrepresentation or fraud.

Hindu widows and females enjoying what is known to be the *widow's estate*, have the same limited powers in granting temporary leases as in dealing with their properties in other ways. The test is *necessity*. A lease granted by a Hindu widow terminates with her death, even if her death takes place at the middle of a year of the lease. The after-taker is entitled to take possession at once; but the lessee may protect himself by showing that the lease was for necessary purposes, granted for the protection of the estate or improvement of the property demised, and he may then be allowed to hold on till the end of the term. If, however, the lease is such that prudential considerations only induced the widow to grant it without actual necessity, and if it be not a burden on the estate, the lessee ought to be allowed to hold on till the end of a year of the lease.\(^2\)

The case of mortgagors granting leases is very common in this country, notwithstanding the covenant, generally to be found in mortgages, prohibiting such grants. A covenant in a mortgage, restraining alienations by a mortgagor, merely creates a personal liability, but does not render a lease granted by him void and inoperative.\(^3\) A temporary lessee from the mortgagor is a necessary party in a suit upon the mortgage, and if the decree is not passed in a suit properly framed, the decree

---

2. Loll v. Hurre, 1 Marsh 113.
Interpretation of leases.

The purchaser on a sale under the mortgage is not entitled to possession, evicting the lessee, if the lessee has not been made a party to the suit.

Difficulties occasionally arise in the interpretation of deeds. The intention of parties must be gathered from the written instrument taken as a whole. Ambiguities and omission of material and necessary covenants are frequent sources of litigation. Parol evidence, evidence of circumstances existing at the time of the execution of the lease, and evidence of custom and usage may be given to explain ambiguities and supply the absence of material covenants. The description of the property demised is occasionally a source of litigation, but well known local divisions, such as villages and perganahs, defined by Thak and Survey maps, and mouzawar registers generally help us in finding out with sufficient exactness the property demised. Where the lease is of land lying within specified boundaries, the estimated area is not the test of what is really conveyed. Evidence may be given of the names used generally by the people and the names used during a long course of years by the lessor himself in his zemindari books and zemindari papers previous to the lease. When any technical word is used, evidence may be given to show its meaning.

A lease, like most other grants, begins to operate from the date of its execution, entitling the lessee to have possession and the lessor to have rent, unless a contrary intention appears from the words used in the instrument. The inartistic way, however, in which leases in the vernacular languages are generally drawn, leaves out, in many instances, the dates of the commencement of the leases. The beginning of the agricultural year or of

---

3 Woodfall on Landlord and Tenant, p. 141.
4 Underwood v. Horwood, 10 Ves. 209.
the year according to the local calendar is considered, in such cases, to be the time whence the lease begins to operate and is calculated to supply the omission in the written instruments. The custom in each locality and the convenience of the parties in the collection of rent from the raiyats on the land, are, also, to be taken into consideration. If the lessor has not collected from the raiyats rent from the beginning of the month of Baisakh in districts in which the Bengali year prevails, and the lease is executed in one of the earlier months, a presumption arises that it was the intention of the parties that the lease should operate from the first day of Baisakh of the current year. If the lease has been executed at the middle of the year or later, and the landlord has received from the lessee rent from the beginning of the year at the time of the execution of the instrument, the lease should be considered to have retrospective effect. So in the province of Behar, the presumption, in similar circumstances, will be, that the lease has begun to run from the beginning of the month of Aswin. But the express covenants in a lease cannot be controlled by custom. Evidence of the custom of the country or locality may be given to fix the time, only if the lease is entirely silent.

It is not necessary, in order to give validity to a lease, that the lessor should be in possession at the date of its execution or be capable of giving possession to the tenant at once. A lease to commence upon the expiration of a previous lease, or on the happening of a contingency is good in law and may be enforced. An agreement to grant a lease or a lease itself, executed by a person who is out of possession and who is litigating or intends to litigate for possession, with the help of the person who has taken or has agreed to take the lease,

1 Wigglesworth v. Dallison, 1 Dong 201, sc., 1 Smith's L. C. 598.
though the transaction is champertous, is not illegal in India and may be enforced.\textsuperscript{1} A covenant in a lease to grant a new lease on the same terms on the expiration of a subsisting lease, is good, and covers all the covenants except the covenant for renewal.\textsuperscript{2} But if the stipulation to renew the lease is coupled with conditions to be performed by the lessee, and the lessee fails to perform the same, the fact of the landlord allowing the tenant to hold over does not affect the landlord's right to resume possession after due notice.\textsuperscript{3}

The lessor is bound at the lessee's request to put him in possession of the property.\textsuperscript{4} If the lessor fails to deliver possession, the tenant is not bound to pay rent, as rent is payable only for the use and occupation of the land.\textsuperscript{5} The failure of the lessor to point out the land or to give proper notice of attornment to the raiyats, or any defect in the lease which incapacitates the lessee from recovering rent from the raiyats in occupation, is a good ground for absolving the lessee from liability to pay the rent reserved in the contract of lease.

The omission of words fixing the rate of rent or the insertion of words for the ascertainment of rent on measurement, raises questions of construction. If the rate of rent is not mentioned, the rent previously paid for the land or the total amount of collection, less a reasonable percentage for collection-charges, should be considered as the annual amount agreed to be paid. In a suit for provisional rent, there being a condition in the lease for measurement or ascertainment of the rent-roll

\begin{flushright}
\textsuperscript{1} Chedambara v. Renja, 13 B. L. R. 509; 22 W. R 148; L. R 1 A. 24; Abdool v. Doorga, I. L. R. 5 Cal. 4.  \\
\textsuperscript{2} P. & O S. N. Co v. Konnoy, 2 Hyde 217.  \\
\textsuperscript{3} Fukeeroonissa v. Chunder, 12 W. R. 558  \\
\textsuperscript{4} Aft IV of 1882, Sec. 108, cl (b); Munee v. Campbell, 11 W.R. 278; 12 W. R 149. Radhanath v. Joy, 2 C. L. R., 302.  \\
\textsuperscript{5} Aft VIII of 1885, Sec 3, sub-sec. 5: Hurish v. Mohinee, 9 W. R. 582; Bullen v. Lalit, 3 B. L. R. App., 119.
\end{flushright}
by local investigation, the defendant may plead that he is not bound to pay the provisional rent and may ask that the rent may be ascertained. But until ascertainment, the landlord is entitled to receive the provisional rent. ¹ Assessment for excess land, according to a contract of lease, need not necessarily be made in a suit for the purpose; it may be made in a suit for arrears of rent. ²

The landlord is not only bound to deliver possession, but to do every thing in his power to keep the tenant in quiet possession during the continuance of the tenancy. ³ Eviction by title paramount causes suspension of rent. ⁴ But if the eviction be the effect of a mere trespass, the lessee is not excused from the payment of rent, as in such a case the lessee is entitled to recover possession and damages from the trespasser. ⁶ If the lessor has no title, the lessee has no remedy against eviction by title paramount, and the landlord’s right to rent ceases with the cessation of the tenants’ possession.

According to English law,” as expressed by Peacock, C. J., in Gopanund Jha v. Lalla Gobind Pershad, ⁷ “if the lands demised be evicted from the tenant or recovered by a title paramount, the lessee is discharged from the payment of the rent from the time of such

---

¹ Bharuth v. Bepin, 9 W. R. 495.
³ Act IV of 1882, Sec. 108, cls. (b) and (c).
Eviction from a part.

Complete eviction by a landlord himself, it is needless to add, causes total suspension of rent.\(^1\) Where the lessee is evicted from a part of the lands by a stranger who has a title superior to that of the lessor, he has to pay to his landlord only a ratable proportion of his rent for the land that remains in his possession.\(^2\)

If a part of the lands be destroyed by an act of God, as by the action of a river, the same effect would follow, and the tenant will be bound to pay only a ratable proportion of the rent. But if the tenant be evicted from a part of his lands by the landlord himself, his assignee or any person claiming through him, the question of abatement is one of a little difficulty. In the case of Gopanund Jha and others v. Lalla Govinda Pershad already cited,\(^2\) the tenant defendant had been evicted under a title paramount from two out of a number of mouzas held by him under a lease, and Peacock, C. J., gave a decree to the plaintiff landlord, for a proportionate amount of rent according to the quantity of land in the possession of the lessee. His Lordship, in the course of the judgment, quoted, as apparently applicable to this country, the following passage from Bacon's Abridgment—"Where a lessor enters forcibly into part of the land, there are variety of opinions whether the entire rent shall not be suspended during the continuance of such tortious entry, and it seems to be the better opinion and the settled law at this day, that the tenant is discharged from the payment of the whole rent till he be restored to the whole possession, that no man may be encouraged to injure or disturb his tenant in his possession, whom by the policy of the law, he ought to protect and defend."\(^3\)

\(^1\) Morrison v. Chadwick, 7 C. B., 266; 6 D. and L. 507. See Dhunput v. Mahomed Kazim, I. L. R. 24 Cal. 296.


This suspension of the whole rent is a sort of punishment, as a dispossession of a proportionately small parcel of land, from a mistake or misapprehension, may make the landlord lose the entire rent. In a country like India, where land is plenty, waste and unoccupied lands lying on the border between adjoining estates are common enough, and where demarcation by fences and pillars is little known, this stringent rule may cause serious injury, and it would appear to be inequitable and unjust to deprive the landlord of the entire rent. The judges in this country are not bound to adopt the rules of Common Law, prevailing in England, and I hope that in any future case that may arise the dictum of Sir Barnes Peacock, which is an obiter, will be reconsidered. In England, the rule of law as to the suspension of the whole rent is guarded by conditions, and is allowed to operate under peculiar circumstances only. It is doubtful, whether, even in England, the rule would be applied to cases of permanent leases at fixed rent, which partake more of the nature of out and out sales of land and less of ordinary leases, though according to the definition of lease given in the Transfer of Property Act (IV of 1882), permanent tenures are leases.¹

There is no suspension of rent, if the eviction by the landlord has followed upon some wrongful action of the lessee. If the lessor enters by virtue of a power reserved,² there is no suspension of rent. Even if the power to enter reserved to the landlord be exercised in a way not strictly regular, there will not be entire suspension of rent. In the case of Rani Swarna-mayi v. Shashimukhi Barmani,³ a putni sale, under which a purchaser under Regulation VIII of 1819 had evicted the defendant and taken possession of the taluq,

was set aside for irregularity in the service of notice of sale proclamation. In a subsequent action for rent for the period including the period of dispossession, the Privy Council held that the zemindar could not be said to have committed an act of trespass, because she had pursued the remedy which the law allowed. The mere inadver-
tence resulting in the omission of one of the formalities prescribed by the Regulation was considered sufficient to deprive her of her remedy for rent—and it could not be said that the plaintiff was taking advantage of her own wrong. The principle laid down in this case may well be followed in cases, where the dispossession of a part of the lease-hold property is the result of mere inadver-tence or mistake.

If the lessor enter as a mere trespasser, but the lessee be not actually evicted, there will be no suspen-
sion of rent. It is only on actual eviction that suspension of rent may take place. But if there is substantial interference with the tenant’s enjoyment of the property though there may not be actual eviction, the trespass by the landlord may cause suspension of rent. An action for damages may lie in case of trespass, as also in the case of partial eviction. Where possession by an ijardar or lessee is by collection of rent, and if he is once properly in possession, the raiyats having attorned to him, eviction is not an easy matter. Payment of rent to a trespasser does not amount in law, as administered in this country, to dispossession of an ijardar during the term of his lease. He may sue the tenants for rent, even if they have voluntarily paid rent to a trespasser.


2 Upton v. Townend, 17 C. B. 30; Edge v. Boileau, L. R. 16 Q. B. D. 117; Neale v. Mackenzie, 1 Keen 474; Kadumbinee v. Kashee-

Otherwise it will rest with the tenants in actual occupation of the land to select their landlord, and change the landlord as often as they like.

Encroachments made by a tenant during his tenancy upon the adjoining land of his landlord are *prima facie* for the benefit of the tenant during the term, and afterwards for the benefit of his landlord, unless it clearly appears by some evidence that at the time they were made, the tenant intended to use the lands for his own exclusive benefit, and not to hold them as a part of the property leased.¹ Strong evidence is necessary to rebut the presumption in favour of the landlord. Speaking of this presumption in favour of the landlord, Markby, J., says—"In India where there is a great deal of waste land, and whose quantities and boundaries are very often ill-defined, there are very strong reasons for the application of such a rule. * * * If an act is capable of being treated as either rightful or wrongful, it shall be treated as rightful," and his Lordship adds—"that in practice encroachments made by a tenant are not considered as held by him absolutely for his own benefit against his landlord."² Encroachments being thus for the benefit of the landlord, the landlord may, after the determination of the lease, recover the encroached lands together with and as part of, the land let out.³ A separate suit may lie for the recovery of the encroached lands within twelve years from the expiration of the term. Even during the term of the lease, however, the landlord may sue for separate possession, if the encroachments are without the landlord's permission, and no limitation

² Gooroo v. Issur, 22 W. R. 246.
would run against the landlord merely because the lessee is in possession for twelve years.\(^1\) We have also seen that for the increase of area of land under such circumstances, the landlord may demand an increase of rent.\(^2\)

Encroachments by a lessee upon the land of a third person enures to the benefit of the landlord, if the tenant holds the lands as a part of the tenure, as he is considered to have made the encroachments not for his own benefit but for that of his landlord; and if he has acquired a title against the third person by adverse possession, he has acquired it for his landlord and not for himself.\(^3\) But if it can be distinctly proved that the encroachments have been made adversely even to his landlord, twelve years' possession may give the tenant a separate title. Land encroached upon by a tenant before the commencement of his tenancy of the adjoining land cannot, however, be recovered by the landlord.\(^4\)

During the continuance of the lease, the lessee cannot acquire any right in the lands demised, that may be set up against the lessor after the determination of the lease. He cannot acquire a right of occupancy\(^5\) by cultivating land, whatever the length of time may be. Neither can he acquire the right to hold on any land by erecting substantial structures on it\(^6\) or excavating tanks. On the expiry of the lease, he is bound to deliver possession of the lands demised, without the slightest abatement of the right which the landlord had

---

\(^1\) Gooroo v. Issur, 22 W. R. 246; Nuddyarchand v. Meajan, 1 L. R. 10 Cal. 820.

\(^2\) Ante p. 139.


\(^5\) Act VIII of 1885, Sec. 22, sub.-sec. 3; Mr. Gilmore v. Sreemunt, W.R., 1864, (Act X) 77; Woomunath v. Koomdun, 19 W.R. 177; Ranee v. Mr. Binny, 23 W.R. 347; Rai Komul v. Laidley, 1 L. R. 4 Cal. 957.

\(^6\) Act IV of 1882, Sec. 108, cl. (p).
at the date of the demise. He is entitled to remove the structures, but if his actions have, in any respect, deteriorated the value of the land or any part of it, he is bound to pay compensation for the loss that may be sustained by the lessor on re-entry. If a lessee ejects raiyats and takes khas possession of any land, he is not entitled to retain possession of such land after expiry of the lease, if he takes away earth from the land for the purpose of making bricks, the landlord may restrain him by injunction and may, at his option, sue for damages. He is also not entitled to cut down and appropriate timber or fruit trees, unless he himself has planted them. He cannot also appropriate any land as his rent free holding. If, after the expiration of the lease and delivery of possession to the landlord, he claims to hold possession of any land comprised in the demised premises, under any title independent of the lease, the burden of proof is heavily upon him to show that such title exists, the presumption being against his having any independent right to any parcel of land.

Limitation which bars the tenant does not bar the landlord. If the lessee negligently allows a third person to take possession of the lease-hold property or any part of it, and if such person acquires, by adverse possession for more than twelve years, a title, such title is good against the lessee only or his assignees or legal representatives, but cannot be pleaded against the landlord. The landlord may bring a suit for declaration of his right during the continuance of his lease, but his

---

1 Act IV of 1882, Sec. 108, cls. (m) and (q).
2 Act IV of 1882, Sec 108, cl. (h).
1 Ramsarun v. Veryag, 25 W. R. 554.
having the right to ask for declaration does not prevent his suing for possession, at any time within twelve years after the determination of the lease.

"If the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor." This is in accordance with the well known principle of law, that a person is entitled to be reimbursed for payments made by him for the protection of his own interest, when the payment ought lawfully to have been made by another person.

On the assignment of the interest of the lessor or of any part of his interest therein, the transferee has all the rights of the transferor and all his liabilities. A notice ought, on such transfer, to be given to the lessee; otherwise the lessee shall not be liable to pay rent to the transferee, and any payment made bona fide by the lessee to the original lessor would be considered as good.

Rent is considered as accruing due from day to day, and it is apportionable, between the original lessor and his transferee on the principle that it has so accrued. If the assignment is made at the middle of a month, the apportionment should be made like interest on money and as accruing from day to day; but the tenant is not bound to pay the original lessor and his transferee separately and he may claim to pay the rent in one lump sum as the instalment falls due. When a part only of the property or a part only of the lessor's interest is assigned, the apportionment of rent may be made by consent of all the parties.

1 Act IV of 1882, Sec. 108, cl. (g).
2 Act IX of 1872, Sec. 69.
3 Act IV of 1882, Sec. 109.
4 Act IV of 1882, Secs. 36, 108, cl. (g); Act VIII of 1885, Sec. 72.
concerned. But if they disagree, any court, having jurisdiction to entertain a suit for possession of the land, may determine the question.¹

In the absence of a contract or local usage to the contrary, a lessee has power to transfer during his term, either absolutely or by way of mortgage or sub-lease, the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it.² As a matter of fact, express prohibition against assignment and creation of subleases is generally found in contracts of tenancy. The custom or usage of non-transferability has to be proved in each case. The burden is always difficult to discharge, and it being on the landlord, the lessee's right is generally held to be transferable. The reported cases, however, are not quite in harmony.³ The case of a farmer of a revenue-paying estate, in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, is an exception as to the right of assignment.⁴ A lessee, however, continues liable upon the covenants in the lease notwithstanding the assignment. An action for breach of covenant will lie against a lessee for a term of years on the covenants, notwithstanding that he has assigned his term and the lessor has accepted rent from the assignee.⁵ The liabilities attaching to the lease must, however, be express. The liability of the assignee begins with the assignment, and so of the assignee of an assignee. The lessor may sue both the original lessee and his assignee for breach of

¹ Act IV of 1882, Sec. 109, cl. (3); Bliss v. Collings, 5 B. and A. 876.
² Act IV of 1882, Sec. 108, cl. (j); Ram Baran v. Salig Ram, I.L.R. 2 All. 896.
⁴ Act IV of 1882, Sec. 108, cl. (j), proviso.

Assignee's liability.
any covenant, but he can have execution against one only. A deed of assignment is necessary to be registered under the law for the registration of deeds.

The assignee, however, is bound only by the covenants which run with the land, and not the personal covenants of the original lessee.¹ Covenants that run with the land are real, i.e., annexed to an estate. Such covenants bind all persons who come into possession of the real property, either by operation of law or by act of parties.² In countries where conveyancing is a science and an art, the word “assigns” is almost invariably mentioned in leases, whether a covenant is implied by law to be real or expressly made so by contract. But in this country instruments in the vernacular languages do not, as a rule, contain the word “assigns”, and questions, therefore, may arise here as to what are the covenants in a lease which run with the land? All covenants implied by law run with the land, and both the lessor and the lessee and their respective assignees are bound by them. A covenant to pay rent⁵ or taxes is essential to the existence of the lease and must run with the land. A covenant to maintain an embankment in use for protection against inundation is also an important one and is real.⁶ Conditions as to paying rent to the superior landlord of the lessor, to renew a lease, and to pay damages for not giving information to the police of the commission of an offence or for not supplying provisions to an army passing through the estate, are other instances of covenants that run with the land. An express condition for re-entry on the breach of a covenant is also an instance of a real covenant. The rights and liabilities of the lessor and the

³ Parker v. Webb, 3 Salk. 5.
⁴ Morland v. Cook, L.R., 6 Eq. pp. 212 267, sc., 37 L.J., Ch. 825.
lessee, as indicated in section 108 of the Transfer of Property Act, are all instances of covenants running with the land.

The duration of a lease depends upon the term fixed in it, and where that is uncertain, it may be ascertained with reference to collateral circumstances. "Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences." 1

An option to determine a lease before the end of the term mentioned in the contract is sometimes given by the instrument itself. The option may be in the lessor or in the lessee, in either of which cases previous notice in writing is generally stipulated for in the contract. If the lease omits to mention at whose instance it is to terminate, the lessee, and not the lessor, shall have the option. 2

Covenants to renew leases occasionally raise nice questions of law. These are, as I have already said, covenants that run with the land. 3 The right may be forfeited by not applying in time. 4 If the tenant, however, is allowed to hold on, a renewal may be presumed, though the presumption may be rebutted. 5 The non-performance by the lessee of any covenant causes forfeiture of the right to renew, as such covenants are strictly construed. 6 Where there is a condition for renewal at an enhanced rate of rent, according to the

1 Act IV of 1882, Sec. 110, cl. 2
5 Moss v. Barton, 35 Beav. 197, sc., L. R. 1 Eq. 474; Bogg v. Midland R. Co., L. R., 4 Eq. 310; Fukeeroonissa v. Chunder, 12 W. R. 538.
6 Finch v. Underwood, L. R. 2 Ch. D. 310; Bastin v. Bidwell, L. R. 18 Ch. D. 238.
rate prevailing in the neighbourhood at the date of the expiration of the existing lease, the lessee must apply in time for assessment of rent; otherwise he forfeits his right of renewal. If he does not agree to pay as much as is paid for neighbouring lands, he loses his right.

Section 111 of the Transfer of Property Act enumerates the conditions for the determination of leases. Of these, cases of merger and forfeiture for breach of covenant referred to in clauses (d) and (g) require special attention. The determination of a lease by notice to quit is also an important matter for consideration.

In *Womesh Chunder Goopto v. Rajnarain Roy*, Peacock, C.J., is reported to have said:—"My impression is that the doctrine of merger does not apply to lands in the mofussil in this country;" and L. S. Jackson, J., concurring with the Chief Justice added in the same case—"I am not aware of any solid foundation for the opinion that that doctrine is any part of our mofussil law." But the decision of the appeal was based upon another ground, and the opinion expressed by Peacock C. J., and Jackson, J., was merely an obiter. In a later case the question of the applicability of the English law of merger in the mofussil of this country was raised, but was not decided, although the judges were inclined to hold that it did not; but Markby, J., said that, assuming the English law of merger was applicable, the dry rule of merger according to the Common Law of England should not be applied, but "that rule should be modified by all the equities which an English Court of Chancery would import into the consideration of the case." There can be no doubt that the rule of Common Law, which is highly technical, ought not to be applied to the dealings of parties in the mofussil of this country. It is not only opposed to the well-known practice of landlords and

---

1 *W. R., 15.*
2 Rushton *v.* Atkinson, 11 *W. R., 485.*
tenants, but it does not rest on any broad intelligible principle of justice, and ought not to be applied to Indian transactions. At all events, its operation ought to be excluded or defeated, wherever there are clear declarations of intention and unequivocal evidence of conduct of the person, who has become the owner of the superior as well as the inferior right. In Savi v. Punchanun Roy, the High Court at Calcutta declined to follow the technical rule of English law, and ever since it has been taken to be established, that the rule does not apply in India. The decision in Prosunno Nath Roy v. Jogut Chunder Pundit turns upon the facts of the particular case and not upon the application of the maxim "Nemo potest esse tenens et dominus". In England too, this strict rule of Common Law was found to work injustice, and required to be modified in equity, and at last the Judicature Act of 1873 distinctly laid down—"There shall not, after the commencement of the Act, be any merger by operation of law only of any estate, the beneficial interest of which would not be deemed to be merged or extinguished in equity." Our legislature, however, has laid down broadly, in the Transfer of Property Act, the rule that a lease of immovable property determines, "in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right." This rule applies to all kinds of leases—temporary or permanent, and there is no express reservation for the application of any equitable doctrine, such as the Judicature Act would require in England.

2 25 W. R. 503.
3 3 C. L. R. 159. (The reporter's note is erroneous).
4 1st of Nov., 1875.
5 Judicature Act, 1873, Sec. 25, sub-sec. (4).
6 Act IV of 1882, Sec. 111, cl. (d).
The framers of the Act adopted the rule from the old Common Law cases, apparently forgetting that in India the art of conveyancing has been and is of a very simple character, that formal conveyances to trustees expressly to prevent merger are almost unknown to the people and the lawyers practising in the mofussil, and that benami conveyances, which are looked upon with disfavour by the judges, are not sufficient to mitigate the rigidity of the rule thus laid down. Evidence of intention to keep both the rights alive would, I apprehend, be now excluded. If a zemindar lets out a village, included in his estate, in putni, and afterwards purchases the putni himself, the interests of the lessor and the lessee in the whole of the village would undoubtedly vest in one person at the same time. It is difficult, however, to understand the exact intention of the Legislature in the use of the expression "in the same right," and these words may afford some means of escape from the rigidity of the rule. If it implies that the purchase by the zemindar of the putni and the consequent vesting may be in a right different from that of his zemindari right, and not in the same right, we may, perhaps, escape from the difficulty. But such a distinction is inappreciable and too fine for the judges and lawyers for whom the Anglo-Indian Codes have been professedly framed.

Determination of a lease by forfeiture may take place—(a) in case the lessee breaks any express covenant which provides for re-entry on breach thereof or renders the lease void, or (b) the lessee denies the landlord's title. The landlord's right to eject the tenant and re-enter on a forfeiture under the first head cannot accrue, unless there is a breach of a condition, and the penalty for the breach is expressly

---

1 Belaney v. Belaney, L. R. 2 Ch. Ap. 188; See also Gokal v. Puran Mal, I. L. R. 10 Cal. 1903.
3 Act IV of 1882, Sec. 111, cl. (g).
FORFEITURE.

231

re-entry¹ and avoidance of the lease, and the landlord does some act showing his intention to take advantage of the conduct of the lessee. The breach of an implied condition cannot cause forfeiture. Even non-payment of rent cannot in itself be a cause of incurring the penalty of forfeiture, unless there is an express covenant to that effect.²

Forfeiture by disclaimer or denial of the landlord’s right cannot happen as to permanent tenure-holders and occupancy-riayats under the Bengal Tenancy Act.³ But the law, as understood before and as enunciated in the Transfer of Property Act, and which is applicable to all classes of tenants except raiyats with rights of occupancy, is broader than the English law on the subject. The rule of English law is, that where, by matter of record, a tenant disclaims his landlord’s title, and sets up an adverse title either in himself or in some third party, he thereby forfeits his tenancy; but denial by parol does not cause the forfeiture of a lease for a term certain. In Bengal, however, denial by parol is admissible. In order to make a disclaimer sufficient, it must amount to a direct repudiation of the relationship of landlord and tenant, or to a distinct claim to hold possession upon a ground wholly inconsistent with that relationship, so that there is by necessary implication a repudiation of it. As to what is a disclaimer is a question of fact.

The right to eject a tenant on disclaimer which has caused forfeiture arises on the tenant’s action, and no

notice to quit is, therefore, necessary to entitle the landlord to sue. It is enough, if the landlord shows by any overt act, his intention to re-enter. The law, as understood before Act IV of 1882 came into force, did not require the landlord to do any act showing his intention to determine the lease.

The mere assertion by the tenant that he holds under a right superior to that of a temporary lessee, when the relationship of landlord and tenant is admitted, does not amount to a disclaimer of the title of the landlord.\(^1\) The principle of the decision in \textit{Vivian v. Moat}\(^2\) and \textit{Baba v. Vishvanath Joshi}\(^3\) has been held to be wholly inapplicable in Bengal, where there are numerous tenures held by persons at fixed rents. It has never been understood in this part of the country, that the assertion of such a right is a denial of the landlord's title as such. Courts in this country are reluctant, for obvious reasons, to give the landlord the right to cancel a lease for conduct on the part of a lessee, which is easy of explanation or arises out of confusion of facts. The frequent disputes between rival landlords and uncertainty of title common in this country are fertile causes of confusion in ignorant and illiterate people, and it will be inequitable to take advantage of their weakness and credulity.

The denial of the title of an assignee or other legal representative of the landlord may, also under certain circumstances, cause forfeiture. The rule, that a tenant may not dispute his landlord's title, applies only to the title of the original landlord, who let him in and not to the assignee of such landlord or any other person claiming through him.\(^4\) The tenant may


\(^2\) I. R., 16 Ch. D., 730.

\(^3\) I. L. R. 8 Bom. 228.

dispute the title of the assignee and put him to the strict proof thereof. If, however, the lessee or tenant has paid rent to the assignee, he can defeat the title of the assignee only by showing that he paid rent in ignorance of the true state of things and that some third person is entitled to it. The burden is on the tenant to make out a case of fraud, misrepresentation or mistake. The Land Registration Act, compelling the registration, of the names of the proprietors of estates, and the Bengal Tenancy Act, of assignments and succession to permanent tenures, will, it is hoped, materially diminish, in future, litigation with reference to such questions.

The period of limitation for a suit by the landlord to eject a tenant on the determination of a lease is, under the general law, twelve years. The tenancy may be determined on the happening of any of the events contemplated by section 111 of the Transfer of Property Act, and that section includes the case of the determination by forfeiture, either on account of a breach of a covenant or disclaimer of the landlord’s title. Under the Bengal Tenancy Act, however, the rights of permanent tenureholders and of raiyats holding at a rent, or rate of rent, fixed in perpetuity, or having occupancy-rights, cannot be terminated on account of disclaimer of landlord’s right, and the period of limitation, for a suit for the ejectment of a tenure-holder or a raiyat on account of any breach of condition in respect of which there is a contract expressly providing that ejectment shall

3. Act IV of 1882, Sec. 111, cl. (g). 1 Act VIII of 1885, Sec. 10.
4. Act VIII of 1885, Sec. 18.
5. Act VIII of 1885, Sec. 25.

D (1)
be the penalty of such breach, is only one year. The rule of twelve years applies to all non-agricultural leases and leases of agricultural lands in districts to which the Bengal Tenancy Act has not been extended. The divergence as to the periods of limitation, with reference to similar kinds of interests in land, is rather wide, and I hope there will be early interference by the legislature.

Courts are always reluctant to allow a landlord to take advantage of a breach of covenant entitling him to re-enter. Any act, on the part of the landlord, showing an intention to treat the lease as subsisting, has been held to operate as a waiver of the forfeiture. But the mere lying by and witnessing the breach is no waiver; there must be some positive act. Neither will an act done, acknowledging the continuance of the tenancy, operate as waiver, if the act be done by the landlord without knowledge of the tenant having committed a breach which would cause forfeiture. Notice or knowledge of the forfeiture, at the time of the supposed waiver, affords evidence of intention in the landlord to accept the lessee as a tenant, notwithstanding the breach.

Acceptance of rent accruing, due after the forfeiture, operates as waiver of forfeiture. But if it is accepted after the institution of a suit for ejectment on the ground of forfeiture, there is no waiver. Forfeiture may also be waived by distress for rent, as distress can be levied only on a tenant. Forfeiture may also be waived by pleading. But the waiver of one breach does not bar the cancelment of the lease for a subsequent

---

1 Act VIII of 1885, Sch. III, Art. 1.
2 Act IV of 1882, Sec. 112.
3 Sheppard v. Allen, 3 Taunt. 78.
4 Act IV of 1882, Sec. 112.
7 Evans v. Davis, L. R., 10 Ch. D. 747.
breach.¹ Receipt of rent or distress can only be an acknowledgment of the tenancy up to the date of the receipt of rent or distress, and the waiver of any forfeiture up to a certain day cannot be pleaded in defence to an ejectment for a subsequent breach, even where the breach is of a continuing nature.²

As regards non-permanent tenures, it is doubtful whether the remedial provision, such as is provided by section 155 of the Bengal Tenancy Act, apply to them. It would seem from the definition of the word 'tenant', as given in the Act, that the section does apply to non-permanent leases as well to permanent leases and raiyati interests. If so, the sections of the two Acts have to be read together, and the restrictions put upon the right of the landlord by section 155 of the Bengal Tenancy Act should be attended to. The Conveyancing and Law of Property Act, 1881, 44 and 45 Victoria, Cap. 41, which came into operation from the 1st January 1882, restricts in England the landlord's right of forfeiture, and the main provisions in this respect have been embodied in section 155 of the Bengal Tenancy Act, but attention was not paid to these provisions when the Transfer of Property Act was passed in the beginning of the year 1882, and the reason seems to be that the Act had been drafted before the Conveyancing and Law of Property Act, 1881, was passed.

Special provision has been made for relief against forfeiture for non-payment of rent.³ Before the Transfer of Property Act came into force, Courts in Bengal, following the analogy of section 78 of Act X of 1859 and section 52 of Act VIII (B.C.) of 1869, granted, in similar cases, equitable relief against forfeiture, by allowing the

---

¹ Dulli v. Meher, 8 W. R. 138; Chunder v. Sirdar, 18 W. R. 218.
² Doed. Mustin v. Gladwin, 6 Q. B. 953.
³ Act IV of 1882, Sec. 114.
judgment-debtor to pay in the amount of debt and costs within fifteen days of the date of the judgment. The Bengal Tenancy Act has made a provision similar to that laid down in the old Rent Acts, in the case of tenants other than permanent tenure-holders, raiyats holding at fixed rates and occupancy raiyats, who cannot be ejected for non-payment of rent. Under that Act, the landlord is entitled to institute a suit for ejectment of a tenant, other than tenants specified above, for non-payment of rent, when an arrear of rent remains due after the end of the Bengali year, where that year prevails, or at the end of the month of Jaist where the Fasli or Amli year prevails. This right may be exercised whenever arrears are due at the end of the year, whether a decree for rent has been passed or not. The right does not depend upon any covenant for ejectment on failure to pay rent, as it does not arise out of contract, but is given to the landlord by the statute. When the right is given by a contract, the provisions of section 114 of the Transfer of Property Act apply. But do they apply to temporary leases of agricultural lands in the Mofussil? The same legislature has, in the course of three years, passed two enactments, many of the provisions of which interlap each other, while some of them are not quite consistent. The earlier enactment is broader in application, both as to its local extent and the class of cases to which it applies, the later one applies only to agricultural lands in Bengal and is merely the reproduction of the law enunciated in Act X of 1859 with slight modifications. You will observe that a tenant, the incidents of whose relationship with the landlord are

1 Mothoora v. Ram, 4 C. L. R 469; Mahomed v. Peryag, I. L. R, 7 Cal. 566.
2 Act VIII of 1885, Sec. 66.
3 Act VIII of 1885, Sec. 65.
4 Act IV of 1882.
5 Act VIII of 1885.
governed by the Transfer of Property Act, must, before he can ask for relief against forfeiture for non-payment of rent, at the hearing of the suit, pay or tender, to the lessor, the rent in arrear with interest and full costs, or give such security within fifteen days as the court thinks sufficient for making such payment. There is no such restriction in the Bengal Tenancy Act.

We must take it, therefore, that in the Moffusil of these provinces, where either Act X of 1859, Act VIII (B.C.) of 1869 or Act VIII of 1885 applies, the remedial provisions contained in these enactments apply to temporary leases. The reported cases, bearing on the construction of section 78 of Act X of 1859 and section 52 of Act VIII (B.C.) of 1869, seem to indicate that the rule applies to all leases, temporary or perpetual, whenever there is a condition for ejectment for non-payment of rent. The Bengal Tenancy Act has, as we have already seen, practically, made the condition for ejectment for non-payment of rent, in cases of permanent leases, void and incapable of being enforced by judicial process. The condition is enforceable only in cases of non-permanent or temporary tenures.

The remedial provision in section 66 of the Bengal Tenancy Act, which is applicable even when there is no covenant for ejectment on non-payment of rent, gives fifteen days' time from the date of the decree to pay in the arrears of rent, interest and costs, and if the Court be closed on the fifteenth day, the time is extended to the day on which the Court re-opens. The time may also be extended by the Court for special reasons. The liability to ejectment may thus be avoided, and thus the

2 Ante p. 181.
tenant may save himself from forfeiture, notwithstanding his agreement. The fifteen days' time runs from the date of the final decree, if there be an appeal, and the Appellate Court has also the power to extend the period. Payment under protest may be sufficient.

Holding over. *Ijara* or *thika* leases are generally, at the creation, for a term exceeding one year. The lessee or underlessee remains in possession after the end of the term, and the lessor or his legal representative accepts rent from the lessee or underlessee, otherwise assents to the continuance of the lease. The tenancy thus becomes one from year to year, and is terminable by notice to quit. The notice may be waived on the part of the person giving it by any act showing an intention to treat the lease as subsisting.

A notice sufficient in law to determine the tenancy must, however, be given to one party by the other, and must be duly served. The Bengal Tenancy Act contains provisions for service of notices to quit on non-occupancy raiyats and under-raiyats, but it has made no provision for service of notice for determination of other kinds of tenancies terminable at the option of either of the parties. We are not, however, to understand from this omission that notice to quit is unnecessary in other cases. The Transfer of Property Act says — "In the absence of contract or local usage to the contrary, a lease of immovable property granted for purposes other than agricultural or manufacturing, shall

---

5 Act IV of 1882, Sec. 116.
6 Act IV of 1882, Sec. 111 (h); Ram v. Mussamut, 7 W. R. 152; Chaturi v. Makund, I. L. R. 7 Cal. 710.
7 Act VIII of 1885, Sec. 45.
8 Act VIII of 1885, Sec. 49.
be deemed to be a lease from month to month, terminable, on the part of either the lessor or the lessee by fifteen days' notice, expiring with the end of a month of the tenancy."¹ The notice must be given in writing by the party or his authorized agent, and served generally as summons in a suit in a civil court. Proof of the posting of a letter containing the notice has been considered sufficient, there being a general presumption in favour of the delivery of letters properly addressed and posted, and the endorsement on the cover, purporting to be by an officer of the post office to the effect that the addressee refused to accept the letter, has also been considered sufficient service. If personal service cannot be had, the delivery or tender to a member of the family or servant or authorized agent at his residence, and not on the demised premises, has also been considered sufficient. There may be substituted service by the notice being affixed on a conspicuous part of the property.

The Act is, however, silent as to what would be considered proper notice, when by contract, express or implied, or by local usage, the tenancy is one from year to year. It has been held in some cases, that the notice to quit is required to be reasonable only.² The notice must, however, be to quit at the end of a year of the tenancy. A notice to quit at the middle of the year or at the end of any one but the last month of a year appears to me to be bad.³ The notice, however, need not mention the particular day on which the tenant is required to quit. The words —"at the expiration of the current year's tenancy"—

¹ Act IV of 1882, Sec. 106.
are sufficient. In some of the Calcutta cases it has been held that it is not necessary that the notice should be to quit at the end of a year of the tenancy, if the notice is otherwise reasonable. But whatever the law might have been, the Transfer of Property Act and the Bengal Tenancy Act have practically settled the question. A notice to quit at the end of ten days, terminating on the 25th Jaist, or within thirty days from the date of service or the date of notice, is equally bad.

The notice to quit at the end of a year of the tenancy must be served in reasonable time. In all cases six months' time is sufficient, unless there is a special contract. But a notice to quit must be served before the beginning of the agricultural season or the season for making settlement with raiyats. If a year of the tenancy in Bengal ends in Choitra, as it almost always does, the notice must be served at least in Falgoon. What is a reasonable notice is a question of fact and should be determined from the evidence and circumstances of each case. It was at one time contended, and contended with success, in the Calcutta High Court that the service of a notice to quit was not absolutely necessary to entitle the landlord to maintain a suit for possession of the demised land, and that the suit itself might be considered as a notice. But this view was not upheld by the Full Bench of the Court which held that previous service of a reasonable notice to quit was absolutely necessary to entitle the plaintiff to maintain a suit for possession against

\[\text{Six months' notice.}\]


3 Jubraj v. Mackenzie, 5 C. L. R. 231.


5 Jagut v. Rup, I. L. R. 9 Cal. 48; Radha v. Rakhal, I. L. R. 12 Cal. 82.

the tenant, and the Transfer of Property Act has apparently adopted the principle of this decision. It seems to me that the safest course for the landlord is to adopt the English rule i.e., six months' rule.

If there is an annual rent reserved, the tenancy is one from year to year and is not terminable except at the end of a year of the tenancy. This rule of English law is consonant with justice and equity and consistent with the principle laid down in section 106 of the Transfer of Property Act.

A notice in the alternative form to quit or pay additional rent is very common in this country. In one case, Garth, C. J., was of opinion that such a notice was bad, but the opinion of the Calcutta High Court, as also the practice of the country, are against the view expressed by the learned Chief Justice. No particular form of words is necessary in this country,—it is sufficient if the notice is explicit enough as to the meaning conveyed.

The determination of a lease of immovable property also determines sub-leases and interests created by the lessee. As I have already said, the interest created by a lessee cannot be more extensive than his own interest, and as soon as the lease terminates, the landlord is entitled to have possession of the leasehold property in the same condition as it was at the date of its letting. But there is an exception in the case of a surrender of a lease, either express or implied. The landlord ought not to be allowed, to the prejudice of an underlessee or a mortgagee, to take advantage of a relinquishment, which, by law, he

4 Act IV of 1882, Sec. 115.
is not bound to accept, and which can be valid only with the consent of parties.\(^1\) The landlord ought not also to take the same advantage as regards limitation in suits to avoid encumbrances, as he would be entitled to do on the determination of the tenancy upon the terms of the original contract or by operation of law.\(^2\) To allow the lessor to take advantage over third persons by an action depending on the will of himself and his lessee, after such third persons have acquired rights either through acts or omissions of the lessee, may give a premium to fraud.\(^3\)

Forfeiture for a breach of covenant, unless it is brought about by fraud, has the same effect as the determination of the lease by efflux of time. It annuls all underleases and charges created by the lessee.\(^4\)

The expiry of a lease does not entitle the lessor to put an end to rights acquired by the lessee by purchase of subordinate rights in the lands leased to him, whether the purchases are made on voluntary conveyances or on forced sales in execution of decrees, even if the sales are for arrears of rent. We have already seen\(^5\) that the doctrine of merger ought not to be applied in its entirety to the dealings of people in this country. If a lessee for a term of years purchases a transferable subordinate right or a right of occupancy on a sale in execution for arrears due to him, there is no reason, in the law as administered in this country or in equity, why he should lose the

\(^1\) Mellor v. Watkins, L. R. 9 Q. B. 400; Judoo v. Schoene Kilburn, 1. L. R. 9 Cal. 671; Great Western Railway Co. v. Smith, 2 Ch. D. 253; Venkata v. Ananda, 5 Mad. H. C. 120


\(^3\) Act IV of 1882, Sec. 115. Heera v. Gunga, 10 W. R. 384

\(^4\) Act IV of 1882, Sec. 115 Great Western Railway Co. v. Smith, 2 Ch. D. 253.

\(^5\) Ante p. 229.
benefit of the purchase and lose also the money which he is legitimately entitled to have, and which, perhaps, he has himself paid to his own lessor. The interest of an ijaradar or farmer of rent is only temporary, while that of a proprietor or a permanent tenure-holder is such that the merger of a right of occupancy, under the provisions of section 22 of the Bengal Tenancy Act, cannot, in the great majority of cases, prejudicially affect his right. The section itself contemplates the case of a proprietor or a permanent tenure-holder, and not that of an ijaradar or farmer of rents.

But rights acquired by a lessee as such in the nature of increments to the demised premises pass to the lessor. If a lessee for a term of years gets the renewal of a temporary lease from Government, in his own name, the landlord will be entitled to claim the right so acquired from Government as one acquired on his behalf.

The determination of a lease cannot affect any right of occupancy acquired by the lessee before the creation of the lease. The reported cases go further, and it has been held, that in the course of acquisition, a lease only keeps the right in abeyance.\(^1\) A person ought not to be made to lose a right for ever, simply because he acquires a superior right of a temporary character, and the landlord ought not to be allowed to take, from the creation of a lease, the advantage of extinguishing rights, which he would not otherwise be entitled to do.

\(^1\) Mokoondy v. L. G. Crowdy, 17 W. R. 274.
LECTURE VIII.

SERVICE TENURES.

In ancient societies, payments even in grain, in lieu of services rendered to the State or communities, were rare, if not quite unknown. Assignment of definite pieces of land was the usual mode for requiting public officers—the village headman (mandal), the accountant (patwari), and other important functionaries in the villages. The village watchman, the chowkidar, has, even now, his land—land held in his family for countless generations. The appropriation of land for the discharge of duties to the State was, in fact, the normal condition of things in almost all countries, in the earlier stages of civilization. Military service was peculiarly within this rule.

The progress of time brought on necessary changes. The tendency in all offices to become hereditary, and the hereditary possession of land for the discharge of the same duties for generations, became the source of considerable inconvenience, and the system, of allotting land for services to the State, became rarer and rarer. Where hereditary employments and consequent possession of land had become inseparably connected, the conversion of service into rent was found to be advantageous both to the holders of the land and to the State. Service was commuted into rent by mutual consent, and what were originally service-tenures became revenue-paying or rent-paying tenures.¹ Some service-tenures, however, have existed as such, up to this day, and the creation of such tenures, even in modern days, in India at least, is not very uncommon.

¹ Ante p. 87.
During the five hundred and fifty-four years of Mahomedan rule in India, all traces of land-holding for military purposes, by means of grants made by Hindu kings, must have been obliterated, except in the border countries, where Mahomedan influence was least felt, and where the necessity of protection from the ravages and attacks of wild and hilly tribes kept up the ghatwals and tekaits in hereditary succession. Semetic instinct was opposed to hereditary possession of land for military services and hereditary succession in public offices. Mr. Shore, afterwards Lord Teignmouth, after that careful and elaborate investigation which was so characteristic of that eminent Anglo-Indian statesman, said in his Minute dated the 2nd April 1788:—"In the Moghul Empire, there are no hereditary dignities. The rank of the nobles was conferred by special appointment for life only, and revocable at pleasure, and it was estimated by the number of horse they were supposed to command. This command was denominated musnud, and a jaigir was an appendage to it." These jaigirs or military fiefs, granted for the support of the dignity of the officers and the troops kept up by them, were few in Bengal proper, but they were numerous in Behar. At the time of the Decennial Settlement many of these jaigirdars put forth claims to hereditary title. But such claims were against the constitution of the empire. It was accordingly declared that jaigirs were not heritable and permanent properties, and that, upon the demise of their present possessors, they should revert to the State. This declaration was embodied later on in Regulation XXXVII of 1793.

But there is a class of service-tenures, partly military in character, which existed during the days of the Moghul rule and which survived the revolution brought on by the battle of Plassey—I mean, the tenures granted for

---

1 Harrington's Analysis, Vol. III. 361.
2 Ante p. 69.
police purposes. The origin of some of these tenures may be traced to the Hindu period. At the time of the grant of the Diwani by the Emperor Shah Alum, many of the zemindars were, within their respective zemindaries, entrusted with the rights, and charged with the duties, which properly belonged to the Sovereign. They were bound to maintain peace and order and administer justice, and for these purposes they had to retain police forces and to employ judges or quazis. The police was under the control of Than-nadars appointed by the zemindars, and lands were generally appropriated for the maintenance of these officers.

In addition to the police-forces thus kept, there were, in every village, watchmen for the protection of the person and property of the villagers. These were known as chowkidars, paiks, goraets &c. These village-watchmen also were remunerated by appropriation of land, and, it would seem, that this practice had continued from time immemorial. In Bengal proper, these lands are known as chowkidari chakeran lands, and have recently been the subject of legislation.

There was a third and a superior class of police officers, who protected the districts lying near the hills, which were exposed to the ravages of the lawless tribes who inhabited them, and who asserted a wild independence from the jungles with which they abounded. To prevent the incursions of these turbulent savages, it was necessary to guard and watch the ghats or the hill-passes through which the marauders used to make their hostile descent on the peaceful inhabitants of the plains. The persons who were employed to protect the ghats were known as Ghatwals, and the lands held by them were known as Ghatwali lands. The ghatwali tenures

1 Mhar, Tillari, Paggi, Paik, Pasban, Goraet.
2 Act VI (B.C.) of 1870, as amended by Acts 1 of 1871, 1886 and 1892. See also Reg. XX of 1817, Sec. 21.
play an important part in the history of litigation in Bengal. In some of the districts, specially in the Chota Nagpur Division, these ghatwals are known as Tekaits.¹

The chakeran or service lands, held for purposes other than military or police, are small in extent and not of much importance. These are lands held in the so-called village communities, by watchmen and others, or else lands held under private individuals and families for the performance of services, generally relating to religious worship. Commutation of service into rent has, of late, been very common in the latter class of lands, and, perhaps, in the course of a few years, we shall cease to hear of lands held for the performance of services to individuals or families or even deities. In Bengal proper, lands held by officers, except the watchmen in the villages, can now hardly be said to be chakeran lands, for village communities as corporations have admittedly ceased to exist. And with their decay and dismemberment, and the want of recognition of their legal existence by the State, the power of enforcing services, from the holders of service lands, passed away, and is no longer enforceable. The descendants of the original holders now possess these lands without payment of rent or performance of service; and, in most instances, the zemindar or the person who represents him in the collection of rents, is capable of enforcing only occasional service. The chowkidar alone, having to perform a duty, which is necessary for the preservation of life and property, and which is enforced by the Government itself, has survived the ravages of time.

The few years that followed the Battle of Plassey, the years of the double government and the uninformed government of the civil officers of the East India Com-

¹ Raja Lelanund Sing Bahadoor v. The Government of Bengal, 6 M. I. A. 101.
pany, have been counted as the most miserable period in the history of the British rule in India. In this transition stage, the state of these Provinces was most deplorable. Famine with its attendant evils, murder and rapine, cast a gloom over the whole country. The Mahomedan nawab was weak, and his police-administration was weaker than ever. The position of the zemindars was uncertain. They had no inducement to improve the condition of the people, and were busy with schemes for self-preservation. The freebooters and dacoits became the scourge of the country, whom even the strong hand of Warren Hastings could not sufficiently repress. When Marquis Cornwallis determined to assess land-revenue, for a period of ten years in the first instance, with a view to the same being made ultimately permanent, and to convert the zemindars into land-owners, it was proposed to make the landholders responsible for the peace of these districts, as they had been under the Mahomedan government. Regulation LXXII of 1791 declared the zemindars responsible for the peace of the country, and the thannadars and the chowkidars were allowed to remain under their control. But within the course of a year, the Government found that the thannadars and other police officers appointed by the zemindars were very inefficient, and incompetent to repress thugs and dacoits, and it had to appoint its own officers to assist in keeping peace and order. This was extremely inconvenient, and in 1792, Regulations XLIX and L were promulgated, by which the police establishments maintained by landholders were suppressed, and the Government took upon itself exclusively the duty of preserving peace and preventing crime, by means of a police force of its own. As a necessary consequence, the Government declared its intention of resuming all police-lands and discontinuing any allowances to zemindars for the expenses of the police establishment. Regulation XLIX
of 1792 made provision for the appointment by Government of police forces, in different stations throughout the Provinces, each under the charge of a Daroga or Superintendent, the Magistrate of the district having the direct control over them. The village chowkidars or watchmen were declared to be subject to the control of the darogas, and they had to apprehend and send offenders, as well as to bring informations to the darogas and not to the zemindars.

Regulation L of 1792 made provisions for the levying of a police tax, and for obtaining information as to the nature of allowances made to the zemindars and of the lands held by them for maintaining thannadars and other police officers, and the Magistrates of districts were required to report on these matters. The Regulation and the circulars issued under it referred only to thannadars and superior police officers, and not to chowkidars or village watchmen.¹

The enquiries directed to be made by Regulation L of 1792 were not completed, when the Decennial Settlement was declared to be permanent. In the amended Code of the Regulations of 1793, provision had, therefore, to be made for the resumption and assessment of thannadi lands. Regulation I of 1793, Section 8, clause 4 enacted that the jumma declared permanent was exclusive of, and unconnected with, the lands or allowances for keeping up thannas or police establishments, and that the Governor-General in Council had the power to resume the whole or any part of such allowances or lands according as he thought proper. The clause further declared that the allowances or the produce of the lands, which might be resumed, would be applied exclusively to the defrayal of the expense of the police. The amount that was to be thus collected was not to be added to the permanent jumma, but was to be assessed and collected separately.


F (I)
The amounts thus separately collected were known in Bengal as *police jumma* or simply *police*, though they are collected in the same way as land-revenue.

Regulation XXII of 1793 re-enacted, with alterations and amendments, the Police Regulations of 1792, whereby the Government had discharged the landholders from the superintendence of the police establishment. Regulation XXIII of 1793 re-enacted the provisions of Regulation L of 1792. Provision was made in this Regulation for the assessment and collection of a police tax by the Collectors of land-revenue, and section 36 of the Regulation provided—"The Collectors are to report all allowances that may have been made to the proprietors of land for keeping up police-establishments, either by deductions from their jumma, or by permitting them to appropriate the produce of lands for that purpose, or in any other mode, which may not have been already resumed, with their opinion how far the whole or any portion of such allowances can with equity be resumed, in consequence of the proprietors of land being exonerated from the charge of keeping the peace, as declared in Regulation XXII of 1793." This Regulation was repealed by Regulation VI of 1797, as any further provisions with respect to *thannadari* lands were considered to be unnecessary. The *thannadari* lands were by this time converted into revenue-paying estates or were amalgamated with estates within which they lay, the additional revenue called Police-tax having been imposed as additional burden upon them. Though some of these lands were formed into estates, subsequent experience has shewn that they have been so intermixed with the lands of parent estates that they are almost incapable of identification.

The next class of police lands were those appropriated for the maintenance and support of village chowkidars. Previous to the passing of Regulations XLIX and L of 1792, the zemindars, having the duty of maintaining peace and order, had to appoint
not only the thannadars, but also a large number of other officers under the names of chowkidars, pikes, pashans and goraeis, for the maintenance of order in particular villages, for the protection of themselves and their properties, and also for collecting rents and enforcing services personal to themselves. The village functionaries, including the chowkidar, became, to a certain extent, the servants of the zemin- 

dars, and, though the services of the other village functionaries ceased in course of time, those of the chowkidars could not be dispensed with. The two classes of chowkidars, those appointed by the zemin- 
dar himself and to whom he granted chakeran lands for service, and those who held lands for generations as village watchmen, became almost undistinguishable in character. They agreed in this, that they had lands known as chakeran lands, that they acted under the orders of the same class of masters, and that they were performing the same sort of duties, but they differed materially in origin. Regulation I of 1793 (section 8, cl. 4), and the previous Regulations passed before that year did not distinctly refer to chowkidars or village watchmen. Section 41 of Regulation VIII of 1793 enacted—"The chakeran lands, or lands held by public officers and private servants in lieu of wages, are also not meant to be included in the exception contained in section 36. The whole of these lands, in each province, are to be annexed to the malguzari lands, and declared responsible for the public revenue assessed on the zemindaries, independent taluqs, or other estates in which they are included, in common with all other malguzari lands therein." Section 36 of the Regulation excepted only lakhiraj lands, though thanna- 
dari lands were also excluded from settlement.

While the Government made over absolutely, to the landholders, its supposed proprietary right, in all lands lying within the ambit of an estate, excepting only Regulation XX of 1817, Sec. 21.
thannadari and lakhiraj lands, and included chakeran lands in the assessment of land revenue, the question necessarily arose, and arose very shortly after the Settlement, as to whether the lands held by village chowkidars were so included within the estate, as to make them the servants of the zemindar, removable at his pleasure, or whether these chowkidars should be under the direct control of the Government and the superior police officers. The distinction between chakeran lands held by public officers and those held by private servants in lieu of wages, was easily lost sight of. The Government, having taken the responsibility of the police administration of the country, was, to a certain extent, entitled to have superintendence over village chowkidars, and rules were passed from time to time for enforcing strict control over them. Regulation XX of 1817, which repealed all the previous Police Regulations, enacted—"Darogas of police should preserve and keep at the police stations (thannas) a complete register of village watchmen, employed within the limits of the authority of the said darogas," and these watchmen were declared subject to their orders. The Regulation further enacted—"Upon the death or removal of any of the watchmen, the landholders and other persons, to whom the right of nomination to such vacancies shall belong, shall send the names of the persons whom they may appoint to the daroga of the jurisdiction, that they may be registered by him as above directed."

In 1855, the late Babu Joy Kissen Mookherjee, a zemindar of Utterpara, in the District of Hugli, raised, with reference to a piece of land in putin taluq Govindapur, in the District of Burdwan, an important question as to the relative rights of the State and the Zemindar with respect to chowkidari lands. It was contended on his
behalf, as he had recently purchased the taluq at a sale under Regulation VIII of 1819, that the land held by the chowkidar was for performance of services personal to the zemindar, and that the chowkidar was removable at his pleasure. The Collector of the District, on behalf of the Government, contended, on the other hand, that the land was chakeran, reserved for the performance of police or chowkidari duties, and that the zemindar had no power to interfere with the possession of the land, as long as the policemen carried out their various duties. The Collector further contended that chowkidars were not bound to attend to duties personal to the zemindar. Lord Kingsdown, in delivering the judgment of the Judicial Committee, said, "We can find nothing in these Regulations (referring to Regulation XX of 1817 and the previous Regulations) which takes from the zemindar the right of nomination of these officers, or which deprives him of the power of himself removing them and appointing other fit persons in their stead, and nothing which deprives him of the right of requiring from the chowkidar such services, as he was bound by law or usage to render to the zemindar. It might well happen that, either by long usage or by the original contract, when the lands were granted, the village watchman might become liable, in addition to his police duties, to the performance of other services personal to the zemindar, as the collection of his revenue and the like. Indeed, the rules laid down for the Decennial Settlement appear to us to recognise the interests both of the zemindars and the public in lands of this description. They were not to be included in the malguzar lands for the purpose of increasing the jumma, because the zemindars had not the full benefit of them; but they were to be included in the malguzar lands for the purpose of securing the assessment, because in the event of a sale upon default of payment of the assessment, it would be important that they should be trans-
ferred to the purchasers under the Government, with whom the appointment of the person, whose duty would in part be to attend to public interests, would vest."° The lands in suit were not held as thanna-dari lands, in the strict sense of the term, but as chowkidari lands appropriated to the maintenance of an officer whose duty it was to act as village watchman. It was further held that the chowkidars in the district of Burdwan had always been accustomed to perform services personal to the zemindars as well as to the Police. Their Lordships of the Judicial Committee accordingly held, "that the lands in question were at the time of the Decennial Settlement appropriated, and still are liable, to the maintenance of such an officer, and that the taluqdar has no right to take possession of them for his own purposes, and hold them, discharged of the obligation to which they were subject." The decree passed by Her Majesty declared "that the lands in question were to be considered as appropriated to the maintenance of a chowkidar or village watchman, and that the right of appointing such an officer belonged to the taluqdar, and that such officer was liable to the performance of such services to the taluqdar, as, by usage in the zemindari of Burdwan, chowkidars have been accustomed to render to the zemindar."°

The case of Joy Kishen Mookerjee versus the Collector of East Burdwan established the following propositions and set at rest the disputes arising out of a confusion between the ancient chowkidari chakeran lands and lands granted by the zemindars for the performance of private duties. In each case, it is now a question of fact to be decided from the evidence of usage, as to whether the chowkidar is bound to render to the zemindar services other than what are strictly chowkidari. If the person in occupation of chowkidari lands in

Remarks.

a village has been accustomed to perform private duties, in addition to his chowkidari duties, he must continue to do so, as if, in the words of section 41 of Regulation VIII of 1793, "the chakeran lands" are lands held by a private servant performing both public and private duties. The Government, however, was always unwilling to allow the zemindars the right of enforcing private services from the chowkidars, and in many districts, it has been held that such private duties to the zemindars are not performable by village watchmen. But whether the service was strictly police or not, the power of appointment, in cases of vacancy from death, and of removal for negligence and misconduct or for inability to perform chowkidari duties of a chowkidar, was always with the landholder. The zemindar had no right to take possession of the chowkidari lands and hold them discharged from the obligation of maintaining chowkidars. As regards strictly police duties, the chowkidar was under the superintendence of the higher police officers and the Magistrates of the districts, and in cases of misconduct, such police officers might require the landholder to nominate other chowkidars.

Chowkidari lands were heritable, only in this sense, that if the son or other heir of the chowkidar was competent to perform the duties his predecessor had been used to do, he was always elected, but it is difficult to say whether the zemindar was bound to elect him. It would seem, however, from analogy to the case of ghatwals, that the succession was hereditary, if the heir was competent to perform the duties attached to the lands. The lands, however, were inalienable and impartible, and the acts of one chowkidar with reference to them would not bind his successor. They were not saleable in execution of decrees. Non-performance of service, or refusal to serve, worked forfeiture.
The decision of the Privy Council in *Joy Kishen Mookerjee v.* The Collector of East Burdwan was followed, within six years, by the passing of Bengal Act VI of 1870 and the amending Act I of 1871. The police administration in most districts in Bengal required strict control and vigilant supervision over village watchmen, and the interference of landholders was a frequent source of trouble and consequent maladministration. The Village Chowkidari Act of 1870, after making provisions for the appointment of punchayets, enacted—"All chowkidari chakeran lands assigned for the benefit of any village in which a punchayet shall be appointed, shall be transferred to the zemindar of the estate or tenure in which such lands may be situated." The assessment was to be fixed at one half of the annual value of the land, and the Collector of the district was, after the approval of the assessment, to transfer such land to the zemindar, subject to the assessment as a permanent charge. The assessed amount is realizable under the provisions of the Sale-laws, and is subject to the same rules as respect the avoidance of encumbrances. The amount thus assessed becomes a part of the police-fund of the locality, the land itself ceasing to be *chowkidari land.* The appointment and dismissal of chowkidars rest, under the Act, with the punchayet, subject to the sanction of the Magistrate of the district. Section 57 of the Act declared—"That the right to the performance of any services to any person by the occupier of chowkidari lands transferred to any zemindar shall wholly cease and determine." The Act has been further amended by Acts V of 1871, 1886 and 1892.

1 *Act VI (B.C.) of 1870.*  
2 *Ibid., Sec. 48.*  
3 *Ibid., Sec. 50.*  
4 *Act XI of 1859, Sec. 55.* and *Act VII (B.C.) of 1868.*  
5 *Act VI (B.C.) of 1870, Sec. 35.*
Questions as to whether any and what lands are *chowkidari chakeran* lands occasionally cause difficulties and disputes. The Village Chowkidari Act of 1870 made provisions for the appointment of a Commission in any district or part of a district for the determination of such lands, and every order of the Commissioners, made under the provisions of section 61 of the Act, was declared to be final and conclusive, respecting all matters which the Act authorized the Commission to determine. The words, "final and conclusive," in section 61 of the Act, are used in their ordinary and literal sense, and where a Commission has been appointed under section 58 of the Act for the purpose therein mentioned, and the Commissioners have ascertained and determined that certain lands are chowkidari chakeran lands, their decision, in the absence of fraud or non-compliance by the Commissioners with the provisions of the Act, is conclusive evidence in any subsequent civil suit, that the lands are what they have found to be.

The Village Chowkidari Act of 1870 has not been extended to all villages in the Bengal Provinces, and section 21 of Regulation XX of 1817 is still in force in the villages to which the Act has not been extended.

The services, which the *ghatwals* were required to perform, have, under the strong hand of British administration, ceased to be of much importance. In many districts, they may be dispensed with; in others, the emoluments of the ghatwals are, at the present day, disproportionately high. The Government on the one hand, and the zemindar on the other, claimed to take advantage of the want of necessity of further retaining their services, while the ghatwals themselves claimed to have hereditary title to hold the ghatwali lands, whether their services were required or not. This triangular contest

---

1 Act VI B. C. of 1870, Secs. 58, 60 and 61.
2 Nobokrista v. The Secretary, I L. R. 11 Cal. 632.
3 Act I (B. C.) of 1871, Sec. 1
was, a few years ago, a source of constant litigation. The Banaili Raj, as owning the large estate known as Kharakpore in Bhagulpore, was tempted or compelled to enter the law-courts as a litigant rather too constantly; and you will find in the Law Reports a good many conflicting judgments of the highest court, sometimes of different judges, and sometimes of the same judges in review. But the law as to the rights of the parties has, at last, been settled, partly by the Privy Council, and in some instances, by the good sense of the contending parties, by amicable settlement. The study of this branch of the law is still, however, one of great importance.

The *ghatwali* tenures, with which the legal profession in this country is most familiar, are those of Birbhoom, Bissenpore and Bhagulpore. But almost all the hilly districts in the west of Bengal have *police-service* tenures which go by that name. In the district of Burdwan, there were ghatwals, whose nominal duty was to protect the hill-passes and travellers. Some of these, though they go by the name of ghatwals, hold their lands rent-free, some pay a quit-rent to Government known as *panchaki*, while others pay a similar quit-rent to the zemindars. These latter tenures are sometimes called *panchaki* tenures.

In Chotanagpore, the ghatwali tenures are much of the same nature as ghatwali jaigirs in the districts of Birbhoom and Bhagulpore, where the Government is interested in the performance of police duties by the ghatwals.¹

In Hazaribag, there were thirty-eight ghatwali tenures² and each of these tenures was held by a head-ghatwal called *Tikaet*. They were semi-independent, but paid a small annual sum as rent. Of these thirty-eight, twenty-six have, since 1780, become mukurrari

¹ Hunter's Statistical Account of Bengal, Chotanagpur.
tenure-holders. Ten others also subsequently obtained mukurrari leases. These tikaets have now no services to perform, but are merely holders of permanent tenures. The remaining two tenures were confiscated.

In the district of Lohardagga, the ghatwals hold under the zamindar of Chotanagpur, and the Government has nothing whatever to do with them. Many of these ghatwals are holders of hereditary ghatwali lands. It appears that the zamindar has the right of resuming these lands, if the ghatwals do not perform the services required of them.

A holder of a ghatwali service-tenure, in Manbhoom, subject to the payment of quit-rent to the zamindar, died, leaving his rent for the last three years unpaid. The zamindar was held not entitled to sue his son and successor in the tenure for such arrears, as it was a service-tenure, which could not be made liable for the debts of the person, who had ceased to hold the same.¹ The dismissal of a ghatwal carries with it the forfeiture of his tenure.² The dismissal itself is an executive act of the Government, and the civil courts cannot direct that he should be reinstated.

In the district of Monghyr, the ghatwals were originally revenue-free service-tenures granted to petty hill chieftains, and the holders thereof were required to prevent the inroads of hillmen of Ramghurh and Western Santalia. These tenures are now found chiefly in Perganah Chakai. The tenure-holders now pay revenue after resumption, though they still go by the name of ghatwals and tikaets. In Tekaet Doorgapershad Sing v. Tekaetnee Doorga Kooeree,³ which was a case of one of these tikaets of Perganah Chakai, the dispute was as to kulachar, and the main question was

¹ Rajah v. Bukro, 10 W. R. 255, (Raja v. Madhab, 1 B. L. R., A. C., 195).
² The Secretary v. Poran, I. L. R. 5 Cal. 740.
³ 20 W. R. 154.
whether females could succeed, the tenure having originally been ghatwali. Pontifex J. in delivering the judgment of the High Court at Calcutta said—"It would be difficult to hold that a ghatwali estate must necessarily be held by a male to the exclusion of females." But the property in dispute in that case had long ceased to be a true ghatwali tenure. It was an ordinary revenue-paying estate, and the descent was regulated by the ordinary law of inheritance, and the plaintiff’s suit against the female heir of the last male owner was accordingly dismissed.1

The ghatwali tenures of Bankura were originally jaigirs granted by the Raj of Bissenpore, which was at one time an independent Hindu principality. It is said that the Raj came into existence more than eleven hundred years ago. The conditions, on which the ghatwali lands were held under the Raj, were that the mountain passes should be protected and the roads kept open for travellers. Some of these ghatwals paid no rent, and others paid a small quit-rent called panchaki. Originally, there were forty-three rent-paying service-tenures, the rent being payable to the Raja of Bissenpore. In 1802, these ghatwali tenures were separated from the zemindari, and the ghatwals were placed immediately under the English officer in charge of the district. The ghatwals were placed under direct Government supervision, and the mehals were entered in the District register of estates. These ghatwali tenures are neither transferable nor heritable,2 as similar tenures in Bhagulpore and Birbhum are. But the male heirs of the ghatwals are appointed to succeed to their posts, unless there are very strong objections to the contrary. “The

---

2 Hunter’s Statistical Account of Bengal.
heir usually gets a new sannad of office; and if he is a minor, a servant or his guardian officiates for him, until he comes of age. Although the ghatwali lands are not alienable by right, the ghatwals contrive to encumber them by deeds of all descriptions, short of out-and-out sales. They mortgage them and grant mukurrari and mourusi leases, but inasmuch as a ghatwali tenure endures, only so long as the ghatwal personally discharges his functions, such encumbrances are easily avoidable, and are the source of much oppression and fraud.¹ In Harrington's Analysis, published shortly after the promulgation of the Regulation about the Birbhoom ghatwals, the Bissenpur ghatwali tenures are described to be small, specific portions of land, in different villages, assigned for the maintenance of the ghatwals and their subordinate officers, such as pikes and chowkidars. The distinction between these ghatwali tenures and the common chowkidari chakerans is thus expressed—"first that these tenures being expressly granted for purposes of police, at a low assessment, which has been allowed for, in adjusting the revenue payable by landholders to Government at the formation of the Permanent Settlement, the land is not liable to resumption, nor the assessment liable to be raised beyond the established rate, at the discretion of the landholders: and secondly that although the grant is not expressly hereditary, and the ghatwal is removable from his office, and the lands attached to it liable to be taken away for misconduct, it is the general usage on the death of a ghatwal, who has faithfully executed the trust committed to him, to appoint his son, if competent, or some other fit person in his family to succeed to the office."²

¹ Hunter’s Statistical Account of Bengal, Bankura
The ghatwali tenures of Surhut and Deoghur, called, in Bengal Regulation XXIX of 1814, ‘ghatwalis in the zemindari of Birbhoom,’ have their main incidents defined by that Regulation. Perganah Surhut lies in the north western part of the Birbhoom District, and Deoghur is now a part of the Sonthal Perganahs. These ghatwalis consist of entire villages, and some of them contain extensive tracts of land. The preamble to Regulation XXIX of 1814, passed for the settlement of these ghatwali mehals, states—"Every ground exists to believe that according to the former usages and constitution of the country, this class of persons are entitled to hold their lands, generation after generation, in perpetuity, subject nevertheless to the payment of a fixed rent to the zemindar of Birbhoom and to the performance of certain duties for the maintenance of the public peace and support of the police." The rent payable by the ghatwals to the zemindar of Birbhoom is made payable directly to a Government officer, and the amount is credited to the revenue account of the zemindari.¹ The mehals, are saleable for arrears of rent.² But the most important provision in the Regulation is that contained in section 2—"The ghatwals and their descendants in perpetuity shall be maintained in possession of the lands, so long as they shall respectively pay the revenue assessed upon them, and they shall not be liable to any enhancement of rent, so long as they shall punctually discharge the same and fulfil the other obligations of their tenures." Though nominally included in the Birbhoom estate, they have no connection with the zemindar, the Government being the sole director. The ghatwali lands are not partible, and not divisible into small portions amongst the heirs of the ghatwals, as the very end for which the grants were made would be defeated by the lands being frittered away into small portions. The tenure usually

¹ Reg. XXIX of 1814, Secs. 3 & 4. ² Reg. XXIX of 1814, Sec. 5. ³ Heralal v. Jerawan, 6 Sel. Rep. 169, 171.
descends to the eldest son, and though the estates of these ghatwals are estates of inheritance according to the terms of the Regulation, no ghatwal has the power of alienation, nor are the lands attachable in execution of a decree for personal debts. The holder of a ghatwali tenure is entitled to the whole income of the estate, and its rents are not liable, in the hands of the heir in possession, to attachment for the debts of his ancestor or of the deceased holder. A ghatwal has not ordinarily the power to grant a lease of the whole or any portion of his ghatwali tenure in perpetuity. He cannot create any encumbrance, so as to bind his successor.

The power to grant leases by holders of ghatwali lands in the district of Birbhum, for terms extending beyond the term of their own possession, is, however, exercisable under certain restrictions contained in Act V of 1859. The development of the mineral resources of the country, discovered only a few years before, the clearance of jungles, and the erection of dwelling houses and manufactories, required that leases for long periods should be granted, and that the Government should be able to give good title to the grantees. It was, accordingly, enacted that the ghatwals should have the power of granting leases for any period, provided however, the Commissioner of the Division approved of the grants and certified the approval by an endorsement on the leases, with his own signature. If the ghatwali lands are under the superintendence of the Court of Wards, the Court of Wards or the Commissioner of the Division

---

2. Binode v. Deputy, 6 W.R. 129. The same case in review 7 W.R. 178; Raja v. Madhab, 1 B.L. R. 195; Grant v. Bangsi, 6 B. L. R. 652.
5. Act V of 1859, Sec 1.
has the power to grant such leases. This Act has finally settled all questions about the right of alienation and creation of encumbrances and under-tenures by the Birbhook ghatwals. The grants made to persons who have of late erected buildings in and near Deoghur are valid, being under the provisions of Act V of 1859, and approved by the Commissioner of the Division. Leases, not for the special purposes mentioned in the Act, are now no more valid than they were before the passing of the Act.

The ghatwali tenures, in Mehal Kharakpore in Bhagalpore, have a history of their own. The tenures in Birbhook and Bankura came under the direct superintendence of the Government in the early part of the British rule, and the Government compelled the tenure-holders to perform the police duties which they had been performing from ancient times. But the Government did not find it necessary to exact these services from the Kharakpore ghatwals for a good many years. Their duties had fallen into abeyance, and the Government, accordingly, determined, in the year 1836, to subject the ghatwali lands to resumption proceedings under Regulations II of 1819 and III of 1828. This was the beginning of a series of cases. In Raja Lilanund Sing Bahadur v. The Government of Bengal; their Lordships of the Judicial Committee, after reviewing the whole law with reference to thannadari lands and other police-service lands, say,—"They (the ghatwali tenures) were held by a tenure, created long before the East India Company acquired any dominion over the country, and though the nature and extent of the right of the ghatwals in the ghatwali villages may be doubtful, and probably differed in different districts, there clearly was some ancient law or usage by which these lands were appropriated to reward the services of the ghatwals; services which, although they

1 6 M. I. A. 101.
would include the performance of duties of police, were quite as much in their origin, of a military, as of a civil character, and would require the appointment of a very different class of persons from ordinary police officers. We find accordingly that the office of ghatwal in this zemindari was frequently held by persons of high rank. Lands of this description could not properly be considered as lands of which the zemindars had been, before the year 1792, permitted by the government to appropriate the produce to the maintenance of Thanah or police establishments.” Their Lordships accordingly held, after reviewing the facts of the particular case, that the ghatwali lands of Kharakpore were a part of the zemindari of Kharakpore and were included within the settlement of that Zemindari. The claim of the Government to resume these lands was dismissed. The Government, however, was entitled to enforce police duties, though it had not done so for many years, and though the performance of these services was no longer necessary. After the decision of the Privy Council in 1855, the Government entered into an arrangement with Raja Lilanand Sing. The ghatwals were absolved from the performance of the services required of them, as in fact such services were unnecessary, and the Government accepted from the Raja the sum of Rs. 10,000 in lieu of these services. The retirement of the Government from the field of litigation limited the contest to the grounds of dispute between the Raja and the ghatwals.

In the course of litigation between the zemindar and the ghatwali tenure-holders of Bhagulpore, it was, at one time, gravely doubted whether these ghatwalis were ordinarily descendible in the regular line of succession. The late Sudder Court[^1] was inclined to hold that they were not, though the Birbhoom ghatwalis were so, and were declared so to be by the Legislature. It was

also thought that the zemindar had the right to resume the lands, whenever the services were not required. In 1857, the Sudder Court stated, "When the service ceases or is no longer required to be performed, the title of the ghatwals ceases also, and the zemindar has the right to resume possession of them." In 1866, a Division Bench of the High Court at Calcutta expressed the same opinion, saying that, notwithstanding possession for a long period and payment of quit-rent, a ghatwal, not holding under a sanad conveying a hereditary indefeasible right, would not be entitled to retain possession, after the performance of the duties imposed upon him was no longer required, as he had been allowed to enjoy the profits of the land in lieu of wages only. The tenures, it was said, lapsed when the services were no longer required and could not be rendered. But in a previous case, another Division Bench of that Court had taken a different view, the learned Judges being of opinion that the ghatwals of Kharakpore held a perpetual hereditary tenure, at a fixed jumma, payable in money and service, and could not be evicted by the zemindar except for misconduct.  

The question came before a Full Bench of the High Court at Calcutta in Koolodeep Narain Singh v. Mahadeo Singh and others, and the learned Chief Justice, Sir Barnes Peacock, in an elaborate judgment, which was affirmed by the Privy Council, discussed fully the law as regards service-tenures of the character of the ancient ghatwals, which had, as held by the Privy Council in the case to which I have already referred, existed from before the Decennial Settlement. These tenures were held to be hereditary from long possession,
from their descent from ancestor to heir without objection for several generations, and from the recognition on the part of the legislature of the hereditary nature of similar tenures in Birbhoorn, notwithstanding that the sanads did not contain words of inheritance. The Full Bench case and the judgment of the Judicial Committee¹ above referred to, further decided that the zemindar was incompetent to resume the lands at his option and put an end to the ghatwalis. Neither had the zemindar the power to put an end to the tenures on the ground that the services were no longer required. The learned Chief Justice is reported to have said—

"Some cases were cited to show that, even assuming these lands to be subject to a ghatwali tenure, the zemindar has a right, whenever he pleases, to dispense with the ghatwali services and to take back the lands. Now, I must say, that this is the first time I have ever heard such a contention as that a landlord can dispense with the services upon which lands are held, whenever he pleases, and take back the estates. It is not because the services are released or dispensed with, or become unnecessary, that the estate can be resumed. If a grantor release the services or a portion of the services, upon which lands are holden, the tenant may hold the land free from the services; but the landlord cannot put an end to the tenure and resume the lands. Many services, upon which very valuable estates are held, are of little value now. The estates may be very valuable and the services almost valueless. But some large landed proprietors would be somewhat astonished if they were told that the services have been dispensed with, and their estates are liable to be resumed. It might as well be contended that, if lands were granted at a small quit-rent, the landlord might relinquish or dispense with the payment of the rent and take back the lands." His lordship added,—"Clearly the zemin-

¹ 6 W. R. 199, sc., 14 M. I. A. 247.
dar had no right to dispense with those services, which had been reserved by the former Government for the benefit of the public. Suppose the former Government had granted land for services of a religious nature to be performed. The British government would not require those services, but that would be no reason for determining the tenure of the person who held the land upon these services, as long as he is willing to perform them. The tenure is not to be determined merely at the will or caprice of the landlord, when the land has become valuable, probably by the exertions and the expenditure of capital by the tenant."

These principles of universal application enunciated by the Full Bench of the Calcutta High Court, were affirmed by the Privy Council in the case of *Forbes v. Meer Mahomed Taki*, decided in 1870. That was a case from the District of Purnea, for the resumption, not of ghatwali lands, but of lands granted by a rent-free sanad, in 1775, to keep off wild elephants, and to maintain a body of men for the purpose of protecting the raiyats and cultivating the lands. The necessity of supporting a body of men for keeping off wild elephants having long ceased to exist, the zemindar instituted a suit to resume the lands. The Judicial Committee expressed their concurrence in the principles laid down by Sir Barnes Peacock in *Baboo Kooladip Narain Sing v. Mohadeo Sing*. The judgment in the latter case came up before the Privy Council in the following year (1871) and was affirmed with a remark by their Lordships, that it was entirely consistent with the well-recognised principles of justice and equity. The cases of the Kharakpore ghatwals, in which Raja Lilanand Sing was the plaintiff, and which were suits for resumption of ghatwali lands on the ground that the services were no longer required and that

13 M. I. A. 438.
the Government had not only dispensed with them, but had itself undertaken to perform them, receiving from the Raja an additional sum of Rs. 10,000, were heard by the Judicial Committee of the Privy Council in the year 1873. Their Lordships said, that the sanads, under which the ghatwals held, did not merely give certain lands in lieu of wages to hired servants, but were grants of land upon the condition of certain services. The zemindar had not the power to dismiss them, merely because he did not require their services, but he had the power to dismiss them for incompetence or for not performing the services required of them.\(^1\) It is now settled law that neither the Government nor the zemindar has the right to disturb these ghatwals in their respective possessions.

Some expressions in the judgment of the Privy Council in *Rajah Lilanaund Sing Bahadur and others v. Thakar Monoranjan Sing and others\(^2\) led to another litigation for the enhancement of rent of certain ghatwali tenures. The Privy Council, in the case just mentioned, had expressed a doubt as to whether the zemindar was entitled to enhance the rent, supposing the tenures had been created subsequent to the Permanent Settlement. All the other Kharakpore ghatwali cases had been compromised. In this case, the High Court at Calcutta held, that the grants had been made, prior to the Decennial Settlement, at fixed rent, and that as long as the ghatwals were able and willing to perform the services for which the grants had been made, the zemindar had no right to enforce payment of enhanced rent, on the ground that the services were no longer required. Neither by the general law, nor by any custom of the district, nor by any terms of the

\(^1\) Kooldeep Narain Singh *v.* The Government and others, 14 M. I. A. 247, sc., 11 B. L. R. 71.

defendant's tenures, could there be any enhancement of rent.

Ghatwali tenures in Kharakpore are not transferable, either by voluntary sale, or in execution of decrees against the ghatwals. But if such alienation is assented to by the zemindar, the transferee may have a good title. The assent of the zemindar may be presumed from circumstances, such as acquiescence for more than twelve years. In this and in other respects, such as impartibility, and the succession of the eldest son to the exclusion of his brothers, the Bhagulpore ghatwals resemble the ghatwals of Bissenpur and Birbhoom. Having regard to the origin and nature of the ghatwali tenures, they cannot be governed by the ordinary rules of the Hindu law of inheritance.

In the case of an apportionment of compensation-money, payable on an acquisition of the ghatwali land for public purposes, it has been held that neither the zemindar nor the under-tenants of the ghatwal can claim any share, and that the compensation-money carrying with it all the incidents of the original ghatwali tenure, the ghatwal, for the time being, is entitled alone to the interest accruing therefrom during his life-time. This was a Birbhoom case, and the ghatwal was considered to be a life tenant, without power of alienation, and the zemindar was held to have suffered nothing by the acquisition. A different view, however, had been taken in another Birbhoom case, in which the zemindar had been allowed one-fourth of the compensation-money.

After what has been said of the service-tenures created for the performance of police duties, the consideration of service-tenures of other kinds cannot detain us long. Section 41 of Regulation VIII of 1793 included

2 Ram v. Raja, 14 B. L. R. App. 7.
these latter tenures in the assessment of estates for
the purposes of the Settlement, whether the services
were of a public or private nature. The State was in-
terested only in the preservation of peace and protec-
tion of the life, liberty and property of the subject, and
it did not interest itself in the performance of other
public duties. The introduction of the zemindar and the
vesting of absolute proprietary right in him, in all the
villages in his estate, made all services for which lands
had been granted or held, other than police services,
private, in the sense that they were to be rendered to
the zemindar himself or other landholders and farmers
who claimed under assignment from him. The village
headman, patel, mokuddum or mandal, became, in
many instances, the person chiefly responsible to the
zemindar for rents realisable from the raiyats, and he
became also their representative in their disputes with
the zemindar. The village accountant (karnam or pat-
warı) became the servant of the landholder and began
to keep the accounts for him. The post of patwarı
was attempted by various Regulations to be kept up
by the Government, in the interest of the tenantry, but
in Bengal proper, the village patwarıs had long ceased
to exist as village accountants. In Behar, where they
still exist as a class, they have not, in many districts,
service-lands, and where they have, they enjoy the
lands at the will and pleasure of the landholders, and
the Collectors seldom interfere with their work.
Revenue-free lands, held by Kanungos in the prov-
ience of Behar in virtue of their office, were directed
to be resumed under Regulation II of 1816, and the
office of Kanungo was abolished. In 1825 the Govern-
ment directed, by Regulation XIII of that year, that the
lands held by Kanungos should be settled at half the
rent with their possessors, the Kanungos or their repre-

1 Reg. VIII of 1793; Reg. XII of 1817; Reg. I of 1819.
sentatives, who were called Kanungo Minhaidars. The service-tenures held by them have thus ceased to exist.

The village priests or astrologers and other Brahmins who have or had to perform religious duties for village corporations hold lakhiraj lands, and they are now entitled to hold them irrespective of the services for which the lands are supposed to have been originally granted. These services are no longer enforceable by process of law. Such is also the case with barbers and other village functionaries.

The grant of land, burdened with any service, is distinguishable from the grant of an office, the performance of the duties annexed to which are re-

munerated by the use of land. In the former case, the grant is made to the grantee, upon the condition of his performing certain services as a burden. In the latter case there is no grant of land, properly so called, but the produce of the land is used as wages. A grant of the former kind may be so expressed as to make the continued performance of the service a condition to the continuance of the tenure, so that, the service ceas-

ing, the tenure may determine. Again the grants of land, partly as reward for past services and partly for the performance of future service, pro servitiis impensis et impendendis, are not uncommon. The instances we have given of ghatwali tenures fall under either the first or the third class; and whether the services are performable for the benefit of private individuals, or for the public or for both, the services cannot be dispensed with, at the option of the grantor or his heirs. In most cases of grants for private services, made

CONCLUSION.

many years ago, written instruments are not available, and occupation of land and performance of services from generation to generation are often the only material from which we have to infer an original grant for particular purposes. The presumption, in such cases, is in favour of the continuity of possession in future, and the grants would naturally be supposed to come under the first or the third head and should not be taken to be grants in lieu of wages for hiring servants. It is to the interest of the receiver of the services to bring the original grant within the second head. The receiver of the services may, in such a case, determine the tenure at any time by notice—the notice being reasonable. The holding of land for service, though the service may be called rent in the broad sense of the word, creates no right of occupancy or any other statutory right recognised by the law. The Bengal Tenancy Act expressly declares—"Nothing in this Act shall affect any incident of ghatwali or other service-tenure, or in particular, shall confer a right to transfer or bequeath a service-tenure, which before the passing of this Act was not capable of being transferred or bequeathed." If the services are no longer required or have necessarily ceased, the land is resumable at the option of the grantor, and the grantee has not the law in his side to resist the resumption. The grantee may also, after due notice, surrender the land declining to serve in future. The grantor cannot insist upon the performance of the services; non-performance of services only works forfeiture.

2 Hurro gobind v. Ramrutno, I. L. R. 4 Cal. 67
3 Act VIII of 1885, Sec. 181.
5 Hurro gobind v. Ramrutno, I. L. R. 4 Cal. 67.
Lands granted in lieu of wages are incapable of being assigned or alienated, the grant being for personal services, and assignment being inconsistent with its nature. Vicarious performance may, however, be allowed. The beneficial interest of the grantees may, by custom or usage, be alienated or sold in execution of decrees. But the grantor having always the power to put an end to the services, the purchaser or alienee is left to his mercy. When a small rent is reserved, a service-tenure may, however, be sold in execution for its own arrears.

---

1 Shib v. Moorad, 9 W. R. 127.
LECTURE IX.

RAIYATS.

The enquiries made and the discussions evoked on the proposal to make the Decennial Settlement permanent are highly interesting, and they afford materials for defining, with sufficient accuracy, the rights and liabilities of all classes of the Indian people at the time, either as owners or occupiers of land. The interest of the dumb millions who cultivated the land, and whose labour without capital was in truth the proverbial gold of India, was uppermost in the mind of the generous and truly noble Marquis, the Governor-General. His Lordship, while recommending concession of proprietary right to the zemindars, thus expressed his views in a Minute:—"The privilege which the raiyats in many parts of Bengal enjoy, of holding possession of the spots of land which they cultivate, so long as they pay the revenue assessed upon them, is not by any means incompatible with the proprietary rights of the zemindars. Whoever cultivates the land, the zemindar can receive no more than the established rent, which, in most places, is fully equal to what the cultivator can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving the land to another, would be vesting him with a power to commit a wanton act of oppression, from which he could derive no benefit."1 His Lordship added:—"With the fixity of the demand of the Government a spirit of improvement

1 Appendix to the Fifth Report, No. 5.
would be diffused throughout the country and the raiyats would find further security;" and he hoped that "without any further and detailed rules of law regulating the rights and obligations of the parties, the relations between the zemindars and the actual occupiers of land would be smooth and that things would adjust themselves as of necessity with the fixity of Government demand."

Sir John Shore, with greater experience of Indian thoughts and habits, was of a different opinion and he expressed himself strongly against the Governor-General's views. He observed:—"The rules by which the rents are demanded from the raiyats are numerous, arbitrary, and indefinite; that the officers of Government, possessing local control, are imperfectly acquainted with them, whilst their superiors, further removed from the detail, have still less information: that the rights of the taluqdars dependent on the zemindars, as well as of the raiyats, are imperfectly understood and defined; that, in common cases, we often want sufficient data and experience, to enable us to decide, with justice and policy, upon claims to exemption from taxes; and that a decision erroneously made may be followed by one or other of these consequences: a diminution of the revenues of Government or a confirmation of oppressive exactions. The necessity of some interposition, between the zemindars and their tenants is absolute; and Government interferes by establishing regulations for the conduct of the zemindars, which they are to execute; and by delegating authority to the Collectors to enforce their execution. If the assessment of the zemindaries were unalterably fixed, and the proprietors were left to make their own arrangements with the raiyats, without any restrictions, injunctions or limitations, which indeed is a result of the fundamental principle, the present confusion would never be adjusted. This interference, though so much modified,
is in fact an invasion of proprietary right, and an assumption of the character of landlord, which belongs to the zemindar; for it is equally a contradiction in terms, to say that the property in the soil is vested in the zemindar, and that we have a right to regulate the terms by which he is to let his lands to the raiyats, as it is to connect that avowal with discretionary and arbitrary claims. If the land is the zemindar's, it will only be partially his property, whilst we prescribe the quantities which he is to collect, or the mode by which the adjustment of it is to take place between the parties concerned. The most cursory observation shows the situation of things in this country to be singularly confused. The relation of a zemindar to Government, and of a raiyat to a zemindar, is neither that of a proprietor, nor a vassal, but a compound of both. The former performs acts of authority, unconnected with proprietary right; the latter has rights, without real property; and property of the one, and rights of the other, are in a great measure held at discretion. Such was the system which we found, and which we have been under the necessity of adopting. Much time will, I fear, lapse before we can establish a system, perfectly consistent in all its parts, and before we can reduce the compound relation of a zemindar to Government, and of a raiyat to a zemindar to the simple principles of landlord and tenant.”

The opinion of the Governor-General, as you have already seen, prevailed with the Court of Directors of the East India Company. In the Proclamation announcing the Permanent Settlement and in section 8 of Regulation I of 1793 which reproduced the words of Art. VII of the Proclamation, the Governor-General in Council declared: “It being the duty of the ruling

---

power to protect all classes of people and more particularly those who, from their situation, are 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 taluqdar, raiyats and other cultivators of the soil."

Regulation VIII of 1793 imposed restrictions on the levying of any new abwab or mathot, i.e. illegal cesses, from the raiyats, and laid down that every exaction of this nature should be punished by a penalty equal to three times the amount imposed. This Regulation also made provisions for the enforcement of pottas or leases obtained bona-fide from landlord, and directed that they should not be cancelled except upon general measurement of the Perganah for the purpose of equalising and correcting the assessment, or upon proof that the pottas had been obtained in collusion, or that the rents paid within the last three years had been reduced below the rate of the nirikbund of the perganah (perganah rate.)

But beyond these vague and general rules, there was nothing laid down to regulate the relation between the zemindar and the raiyat. The adoption of the theory of the existence in the Sovereign of proprietary right in land and its transfer to the zemindars, and the strict measures adopted by the Government for the realization of its own dues, acted most prejudicially on the actual cultivators. The English Governors of the country and the judges who administered the law, being unable to find out any distinct rules for the protection of the interest of the poor tenantry, attempted to introduce, in India, the theory of rent which prevailed in England,—the only theory with which they were familiar. In England customary rent had long been superseded by

---

1 Reg. VIII of 1793, Sec. 55 and Sec. 60, cl. 2.
competition rent. To use the words of a learned author—
"From the peculiar course of progress in England, and
from that state of affairs under which the absolute
ownership of the land was, from the close of the seven-
teenth century, in the hands, not of the cultivators, but
of a limited class of proprietors, who were all powerful
in the Legislature to regulate its measures with a view
to their own interests above all others, there has been
evolved a theory of Rent, which, although it may be
scientifically correct with reference to the peculiar cir-
cumstances of England, is not equally correct when
applied, and is, in many instances, not at all applicable,
to other countries and other communities whose past
history and present condition are in many respects, if
not altogether, different. The basis of this theory is the
application of Capital to land. It postulates the remu-
neration of the cultivator at no higher rate than the bare
wages of unskilled labour. The Capital employed must
yield the ordinary rate of profit, not less than the aver-
age rate of profit derived from capital employed in other
investments. The labourers who do the work of culti-
vation are paid the ordinary rate of wages, not more
than the rate to which an overcrowded labour market
renders it possible to reduce them, and this, too, often
means but the very barest sustenance. All the profit
which the land yields after discharging these two items
is Rent."1 This theory of rent was practically accepted
as law in India by the judges who administered it,
until Act X of 1859 was passed. The late Sudder
Court, so late as the year 1849, held—"The connection
between landlord and tenant in this country commences
on a similar understanding, the under-tenant in Bengal,
whether holding by a Pottah, or as a tenant-at-will,
occupies land with the consent of the Zemindar, and the

1 Field's Landholding and the Relation of Landlord and Tenant,
pp. 41-42.
rent, however, determinable is only a consequence of
the arrangement.”¹ Even after the passing of the Act
of 1859, the question as to the principle of the assess-
ment of rent, was discussed by able advocates, and Sir
Barnes Peacock, the then Chief Justice, referring to the
definition of Rent, as given by Malthus in his Principles
of Political Economy, applied it, in the well-known
case of Ishur Ghosh v. James Hills,² to the state of
things in this country. Later on, the learned Chief
Justice expressed the same opinion in the case of Tha-
kooranee Dossee v. Bisheshur Mukherjee,³ and referred
to the case of Queen v. The Grand Junction Railway
Co.,⁴ in support of his view of the law. The truth is
that as long as the country did not recover from the
shocks of the deadly visitation of 1770, and as long as
land was plenty and raiyats had to be induced to
cultivate the land, no question arose, but legislation
was urgently needed before the middle of the present
century.

The Regulations of the Bengal Code dealt with only
two classes of raiyats, the khodkast and the paikast. The
infinite varieties of soil in Bengal and the different uses
to which they are put, the variations in value from local
circumstances, and the difference in periods of occupa-
tions, creating difference in the status of tenants, made the
framing of comprehensive rules as to their rights and
liabilities almost impracticable. The Hindu system was
extremely simple, and not only was it not well-known
and well understood at the time of the Permanent
Settlement, but it would afford little help to a modern
legislator dealing with an extremely complex state of
things. The conversion of rent in kind into one in
specie was in itself a cause of great complexity. The

⁴ 4 Q. B. p. 18.
sage Manu had to deal with payments by delivery of shares of the actual produce, which varied according to specified circumstances. All that the landlord had in those early days to insist upon was cultivation, which would be beneficial to the king’s treasury, to the community, by the clearance of forests, and to the cultivator himself, by affording means of easy livelihood. The sage said—“If land be injured, by the fault of the farmer himself, as if he fails to sow it in proper time, he shall be fined ten times the king’s share of the crop that might otherwise have been raised; but only five times as much, if it was the fault of his servants without his knowledge.”

Vyasa also lays down—“If a person after taking a field with the object of cultivating the same fails to do so either himself or through the agency of others, he should be made to pay to the owner a certain portion of the produce which the field would yield if it were cultivated and a fine to the king equal to that portion.” The fiscal system introduced by the Mahomedan rulers was never fully enforced in Bengal and, as we have already seen, Todar Mal’s scheme was never completely carried out, and it was also impracticable to revert to the Hindu system. But further changes were needed with the progress of time and the altered state of things. The Permanent Settlement and the rigidity of the rules for the realisation of Government dues were prolific of consequences which were sufficient to disturb the equilibrium of existing state of things.

The khodkast raiyat, of the Regulation laws, was the cultivator who held lands as an agriculturist in the village in which he had his fixed residence. Authorities of great eminence have differed as to the origin of these raiyats, but the most approved interpretation seems to be

1 Manu, Ch. VIII 243.
2 Vyasa, quoted in the Vivada-ratnakara. The same directions have been given by other sages.
3 The word khodkast comes from khud=own and kast=cultivation.
be that he was a member of the community composing
the group called the village, cultivating the land of the
village, having his homestead in it and yielding obedi-
ence to the rules and mandates of the body of elders
i.e., the village mandals or pradhans. It mattered
little whether he was holding for a short period or from
time immemorial. The rate of rent payable by him
might vary according to the period of occupation. The
status was acquired from residence and recognition by
the community, and not from length of possession,
though length of possession might be an element lead-
ing to recognition. He was not necessarily a hereditary
cultivator, as he has generally been thought to be.¹

The pahikast or paikast² raiyat, on the other hand
was a tenant who held land in one village residing in

¹ From Khūd=own, and Kāshît=cultivation, sometimes erroneously
interpreted “cultivating their own land,” and so leading to the mistaken
notion that they had hereditary proprietary rights.—See Elphinstone's
History of India, p. 248; Mr. Shore's Minute of 18th June 1789 § 225;
Mr. Holt Mackenzie's Minute of 1st July 1819, §§ 328, 399, 431, &c.;
and Carnegy's Land Tenures, p. 40, on this and other points connected
with their status. They are also called chhapparbān raiyats, from
which and the antithesis of Paikast, the meaning is plain. At 252
and following pages of Selections from the Revenue Records of the
North-West Provinces published in 1866, will be found a number of
opinions on this point. The best authorities are pretty well agreed that
these tenants could not transfer their rights, i.e., sell their land—this
privilege belonging to the zemindar class alone. The Khodkast
raiyat's interest or the right of occupancy, into which modern legisla-
tion has turned it, has of late years become not uncommonly saleable
in the Lower Provinces. The Courts indeed hold that it is not saleable
as of right, though it may become so by custom. The evidence offered
in disputed cases very often consists of instances in which the landlord
has brought the raiyats' interests to sale in execution of a decree for
rent. This is a mode of obtaining through the intervention of the
Courts a fine which goes in payment of the arrears of rent due from
the late tenant. That the raiyat's interest finds purchasers is an indica-
tion of a change having for its ultimate result the substitution of compe-
tition for customary rents.—Field's Regulations, Introduction, pp. 24-25.
² From pahi=near and kast=cultivation.
another. He had no political status in the village in which he held the land and was considered to be a foreigner. He generally held lands which the people of the village could not conveniently hold. In the days of zemindars' influence, he might occupy lands as a rival of the permanent or khodkast cultivators. The Regulation laws did not attempt to afford protection to these tenants, though their number must have been very large in 1793. They thus became tenants liable to be ejected at the end of any agricultural year. The determination of tenancy by service of notice to quit was unknown, until very recently; and as a matter of fact, suits for ejectment were unnecessary; and these poor holders of land were at the mercy of the landlords.¹

The earlier sale-laws for arrears of Government revenue following the spirit of the second clause of section 60 of Regulation VIII of 1793 exempted all bonafide engagements of khodkast raiyats from liability to cancellation on sale for arrears,² and Regulation VIII of 1819, also laid down in distinct terms the non-liability of khodkast raiyats or resident hereditary cultivators from ejectment or cancellation of bonafide engagements made with such tenants by the late incumbent or his representative.³ But paikast raiyats had no protection from eviction until Act X of 1859 made certain necessary provisions as to the status of the vast agricultural population of the Bengal Provinces.

Act X of 1859 practically abolished the distinction between the status of khodkast and paikast raiyats, a distinction based upon circumstances no longer applicable to the altered state of things brought on by peace.

¹ From Pai (Corruption of Pahi from Pah-Pas) near, "living near."
³ Regulation XI of 1822; Act XII of 1841 and Act I of 1845.
⁴ Reg. VIII of 1819, Sec. 11, cl. 3.
good government and improvements in commerce. The interest of the zemindars and the intermediate landholders would be best served, if the number of protected raiyats was minimised and the number of unprotected raiyats increased; and every effort was made in this direction. But the Government was bound to afford protection to those, who, though not khodkast, had long been cultivating the same pieces of land, who got an attachment for them and who improved them by their labour, if not by their capital, as they had none. Legislation was urgently needed. This Act introduced a new classification of the agricultural population of the Bengal Provinces i.e., into three classes—(1) raiyats holding at fixed rent from the time of the Permanent Settlement, (2) raiyats holding lands for periods exceeding twelve years, whether rent was paid at uniform rate or not, and (3) raiyats holding for periods of less than twelve years, raiyats holding under raiyats of the first two classes and raiyats holding the private lands of the landlord. The khodkast raiyats fell within either the first or the second class indicated above, but a few who might acquire such a status in recent years would not get the benefit of it until after the lapse of twelve years, while the paikast raiyats were most of them considerably raised in status.

Act X of 1859 was in force throughout the Bengal Provinces and with the modifications made by Act VI (B.C.) of 1862 and Act VIII (B.C.) of 1865 continued to be in force until Bengal Act VIII of 1869 was passed. This latter Act was merely, as I have said, a Procedure Act, the substantive law laid down in Act X of 1859 having been reproduced almost verbatim. But the Non-Regulation Provinces and Assam except Sylhet were not affected by it. The Bengal Tenancy Act (VIII of 1885), however, made material alterations in the law, especially in favour of the rights of the third
class of raiyats who were overlooked by Act X of 1859.
I now propose to deal with raiyats at fixed rates.

The word raiyat was not defined in Act X of 1859 and Bengal Act VIII of 1869. The High Court at Calcutta, however, had in several cases to define the status of a raiyat and distinguish it from those of a tenure-holder and of a middleman, as the incidents of an ordinary raiyati tenure under the law differed in several material respects from those of the other classes of tenants. In Baboo Dhunput Singh v. Baboo Gooman Singh,¹ Seton-Karr and Jackson, JJ., said: "It is very difficult to lay down any general interpretation of the word raiyats. As a general rule, they are the cultivating tenants, but they may not be cultivators at all themselves; they may cultivate their land by hired labour or by under-tenants. In this case, the amount of land included in the tenure is, we think, sufficient evidence that the tenants are not raiyats." It was held that raiyat was not necessarily a cultivator but no middleman could be a raiyat.² He must hold land under cultivation either by himself or others who must take from him under his supervision as a superior cultivator.³ Mere subletting does not take away the character of a raiyat.⁴ He might not till the soil himself, but still he would be a bonafide raiyat if he derived the profits directly.⁵ The origin of the tenancy and the purposes for which the land was taken regulate to a considerable extent the status of the tenant.⁶ If the land was taken for the purpose of cultivation and clearance of jungles, notwithstanding that part of the land was cleared and cultivated by the tenant himself and the rest by raiyats settled

⁵ Kalee v. Ameerooddeen, 9 W. R. 579.
thereon or the terms of a lease, if any, and, if that is silent, the circumstances attending its grant—these would generally show the original purposes, for which the land was acquired. The raiyat would not lose his status or become a middleman merely by converting the land to a different use sometime after the acquisition.

In this state of the judicial decisions as to the status of a raiyat, the framers of the Bengal Tenancy Act thought it proper to classify tenants under three broad heads namely, tenure-holders, raiyats, and under raiyats, and introduced sub-divisions defining the status of each. The case law as to the status of a raiyat was crystallised in the definition given in section 5, sub-section 2 of the Bengal Tenancy Act, which defines a raiyat to be "primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right." The explanation to the sub-section adds that the right to bring land under cultivation is to be looked to, notwithstanding the land is used for the purpose of gathering the produce of it or of grazing cattle on it. The explanation itself however is not exhaustive; it only illustrates the principle laid down in the cases already cited. Sub-section 4 still further defines a raiyat by laying down that in determining whether a tenant is a tenure-holder or a raiyat, the Court shall have regard to local custom and the purpose for which the right of tenancy was originally acquired. Ordinarily a raiyat or cultivator in Bengal holds no more than a few acres of land, and the Bengal Tenancy Act has, therefore, laid down,

2 Act VIII of 1885, Sec. 4.
as a rebuttable presumption of law, that a tenant holding more than one hundred bighas of the standard measure of land shall be presumed to be a tenure-holder and not a raiyat. We have now very little difficulty in determining the status of any tenant, a tenure holder or a raiyat. An indigo-planter or a tea-planter holding land for the purpose of causing the cultivation of indigo or tea, whatever the quantity of land may be, is a raiyat. A partner of an indigo concern is as much in the eye of law a person capable of enjoying the statutory rights in land as any other individual.

The superior class of raiyats are those who have held land from the date of the Permanent Settlement of 1793, at an unchanged rate of rent. The several Rent Acts have given them a status of permanency, fixity of rent, heritability and transferability, and as it is difficult to give direct evidence of the existence of the holding and uniform payment of rent since 1793, the Legislature has provided for a rebuttable presumption arising from proof of occupation and uniform payment of rent for twenty years next preceding the institution of the suit. With respect to succession and transfer either inter vivos or by will, the incidents of these holdings agree with those of permanent tenures, existing from the date of the Permanent Settlement. Sales for arrears of revenue or rent cannot affect them. Section 37 of Act XI of 1859 expressly provides that the purchaser of an entire estate, notwithstanding his power to avoid and annul all under-tenures and eject all under-tenants, is not entitled to "eject any raiyat

1 Act VIII of 1885, Sec. 5, Sub-sec. 5.
3 Act X of 1859, Sec. 3; Act VIII (B. C.) of 1869, Sec. 3, and Act VIII of 1885, Sec. 18.
4 Act X of 1859, Sec 4; Act VIII (B. C.) of 1869, Sec. 4 and Act VIII of 1885, Sec. 50.
having a right of occupancy at a fixed rent or at a rent assessable according to fixed rules under the laws in force." Regulation VIII of 1819 (Section 11, cl. 3) and the various Rent Acts also lay down that a purchaser at a sale under that Regulation shall not be entitled "to eject any khodkast raiyat or resident hereditary cultivator." The Bengal Tenancy Act calls the interest of such raiyats "protected"; and under no circumstances except on the breach of an express covenant can such raiyats be ejected. But in one respect they have superiority to permanent tenures, namely, persons holding lands under the holders of such lands cannot acquire rights of occupancy; they are merely under-raiylats.

Ejectment of permanent raiyats is almost unknown. Their right is statutory, and, seldom if ever, they hold under written leases. The conditions of holding land are simple in their character and breach thereof can rarely occur. Any express condition for ejectment on breach of a covenant, if there be a written lease, must always be consistent with the provisions of the law relating to landlord and tenant. If there be no written contract, there can be little likelihood of the existence of any express condition for re-entry on a breach of covenant; at all events such covenants are very difficult to prove. Further the covenants must be consistent with the provisions of the Bengal Tenancy Act, if the contract of lease be one entered into after the passing of that Act. Suits on the ground of breach of contract under the Bengal Tenancy Act must be brought within one year of the breach. Under the old Acts, such suits could be brought within twelve years of the breach.

1 Act VIII of 1885, Sec. 160.  
2 Ibid, Sec. 4.  
3 Ibid, Sec. 16.  
4 Ibid, Sec. 18.  
5 Ibid, Sch. III, Art 1.
Who are tenants at fixed rates of rent? The words "at fixed rates of rent" used in section 3 of the older acts and the words, "rent, or rate of rent, fixed in perpetuity" used in section 18 of Act VIII of 1885 mean substantially the same thing. In Thakoorance Dossee v. Bisheshur Mookerjee, Peacock, C. J., said—
"By the term, fixed rates of rent, I understand not merely fixed and definite sums payable as rent, but also rates regulated by certain fixed principles—such, for instance, as a certain proportion of the gross or of the net produce of every bigha, or such a sum as would give to the raiyat any fixed rate of profit after payment of all expenses of cultivation. *Id certum est quod certum reddi potest is a maxim of law.*" This wide interpretation of the words of the law, including, as it does, the cases of payment of rent by fixed shares of the gross produce, such as a half, or by bhaoli or battai, was followed in some cases. But in Mahomed Yacoob Hossein v. Sheik Chowdhry Wahed Ali, Trevor and E. Jackson, JJ., held "that no rate of bhaoli rent varying yearly in amount with the varying amount of the gross produce of the land, though fixed as to the proportion which it is to bear to such produce, is a fixed unchangeable rent of the nature alluded to in section 4 of Act X of 1859." Bayley, J., dissented from Trevor and Jackson, JJ., and was of opinion "that a contract to pay half in kind did not involve a varying rate." Thus the weight of authority seems to be

---

3. 4 W. R., Act X, 23, sc.; 1 Ind Jur 29.
in favour of the views expressed by the late Chief Justice. There cannot be any reasonable doubt that no court ought to allow the landlord to enhance the rate of rent of a tenant paying a fixed share of the produce from the time of the Permanent Settlement. If a raiyat has been paying a half of the gross produce of his land as rent since the Permanent Settlement, he cannot be called upon to pay a higher share of the produce, e.g., a five-eighths or even nine-sixteenths, notwithstanding that he is an ordinary occupancy raiyat. No principle except that of competition-rent, can be invoked to entitle the landlord to demand a higher share of the produce. Notwithstanding that such tenants should have the status of permanency both as to time and rate of rent, it has been doubted whether their holdings have all the incidents of permanent raiyati ones. The question is one of great difficulty, as, in practice, the holders of such bhaoli or bhagdari holdings are considered to be much inferior in position to those paying uniform money-rent from the time of the Permanent Settlement. The Select Committee dealing with the bill about Bengal Tenancies took the view entertained by Trevor and E. Jackson, JJ., in Mahomed Yacoob Hossien v. Sheik Chowdhry Wahed Ali. One of the rules for the interpretation of statutes is that the judges in interpreting and administering law should not have recourse to the discussions in the Legislative Council or the statement of the object and reasons of an Act of Legislature. But we may refer to the observations of the Select Committee to discover the true intention of the framers of sections 18 and 50 of Act VIII of 1885.

Changes in rent or rate of rent, sufficient to take

---

1 4 W. R. (Act X) 23.
away permanency, must be substantial. Change from Sicca Rupees into Company's Rupees (in accordance to the provisions of Act XII of 1836) is not an alteration of rent—it is merely a difference in currency. Slight and occasional differences in rent have been ascribed to inadvertence or mistake and not to intentional variation such as to prevent the operation of the statute. The payment of abwabs or illegal cesses to the landlord are payments in addition to rent and cannot be construed into a variation of it. Abwabs are levied and paid with the express object of keeping the jumma intact. Abatement of rent on the ground of diluvion, the rate of rent remaining the same throughout, falls within the words of the Act and entitles the tenant to plead uniformity of the rate.

In order to give the status of complete permanency, the raiyat must have paid at a fixed rate since the Permanent Settlement. The Bengal Tenancy Act defines Permanent Settlement to mean "the Permanent Settlement of Bengal, Behar and Orissa made in the year 1793." In the old Rent Acts, the words were not defined, but they evidently meant that well-known date.

The presumption of fixity of rent, arising from uniform payment for twenty years, is the same as that in the case of intermediate tenure-holders. The plead-
ings must sufficiently raise the question, and the proof of payment must be strict. But alterations arising from division¹ or consolidation² of holdings, or on taking away a part of the land³, would not deprive the tenant of the right conferred on him by the Legislature.

The presumption may be rebutted by proof of substantial variation of rent at any time before twenty years, or by proof of the tenancy having originated subsequent to the Permanent Settlement.⁴ A break in the holding also rebuts the presumption, but not if the tenant be illegally evicted.⁵ In Lutteefunnissa Bebee v. Poolin Beharee Sein⁶, the High Court remarked:—"Eviction, though it would put an end to the raiyat's possession; would not destroy his holding, if that holding would not have ceased to exist but for the eviction."⁷ Eviction by the landlord, even if partial, causes suspension of rent⁸, and even if the tenant did not pay rent during the period of dispossession, he would be entitled to count the period and the landlord would not be entitled to plead non-payment of rent as a bar to the presumption of the continuity of the tenancy.

Notwithstanding fixity, the rent of a raiyat holding at a fixed rate of rent may be enhanced on the ground of increase in area of the holding; there may also be abatement for decrease in area. Alteration of rent on altera-

³ Kena v. Ram, 2 W. R. (Act X) 17; Soodha v. Ram, 20 W. R. 419; See also Act VIII of 1885, Sec. 88.
⁴ Act X of 1859, Sec. 4.
⁷ See also Mahomed v. Noor, 24 W. R. 324; Radha v. Rakhal, 1. L. R. 12 Cal. 82.
⁸ Ante p. 217.
tion of area is provided for in section 52 of the Bengal Tenancy Act,—additional rent for land found by measurement to be in excess of the area for which rent has been previously paid, and reduction of rent for deficiency in the area. Sections 17 and 18 of Act X of 1859 corresponding with sections 18 and 19 of the Bengal Act VIII of 1869 made provisions for enhancement or abatement of the rent of raiyats having right of occupancy. The Bengal Tenancy Act deals with all classes of raiyats. The rate of rent being once determined, the area can be found out easily by measurement.

The area of the holding of a permanent raiyat may increase by accretion, or by the tenant encroaching on the adjoining land of his landlord or the adjoining land belonging to a third person. It may decrease by diluvion or encroachment by a neighbouring holder. Cases of increase or decrease in area by alluvion or diluvion were formerly dealt with under the Bengal Regulation XI of 1825, Sec. 4, cl. 1, and in the absence of express rules,¹ the principles of equity and good conscience were applied. Section 52 of Act VIII of 1885, has now laid down detailed rules on the subject.

Encroachment on the adjoining land belonging to the landlord does not make the tenant a trespasser with respect to such land, and the tenant cannot set up an adverse right with respect to it against the landlord.² In Rashum v. Bissonath,³ Peacock, C. J., held that no suit for enhancement could lie with respect to such lands, and the raiyat must be treated as a trespasser. In Decourcy v. Meghnath,⁴ Mitter, J., held that the raiyat could not be sued for enhancement for the excess land thus brought under his possession. This view, however, is not in

¹ Zuheeroodeen v. Campbell, 4 W R 57.
² Ante p. 221.
³ 6 W. R. (Act X) 57.
⁴ 15 W. R. 157. See also Prankissen v. Monmohinee, 17 W.R. 33.
accordance with the English law, and the weight of Indian authorities is in favour of the proposition that the landlord is entitled to treat the encroachment either as a trespass and sue for khas possession, or he may treat the raiyat as a tenant with respect to the encroachment, and demand additional rent. In Gooroo Doss Roy v. Issur Chunder Bose, Markby, J., said—"We think the true presumption as to encroachments made by a tenant during his tenancy upon the adjoining lands of his landlord is that the lands so encroached upon are added to the tenure and form part thereof for the benefit of the tenant so long as the original holding continues, and afterwards for the benefit of his landlord, unless it clearly appeared by some act done at the time that the tenant made the encroachment for his own benefit. This is the clear rule of English law, and it is a rule which is supported by reason and principle. In India, where there is a great deal of waste land, and where quantities and boundaries are very often ill-defined, there are very strong reasons for the application of such a rule. And the principle upon which the rule is founded is one of general application, namely, that if an act is capable of being treated as either rightful or wrongful, it shall be treated as rightful. Now in the case put, the act of the tenant in taking possession of more land than was let to him, though it may possibly have been a trespass and wrongful, may in most cases equally well have been done with the assent, express or implied, of the landlord, and so have been rightful, and in the absence of any proof to the contrary, it is treated as the latter. We know of no case in which the principle has been expressly recognized by judicial decision.

in India, but it is in accordance with the principle laid down by section 4 of Regulation XI of 1825 as to the increase of land by alluvion. In practice also encroachments made by the tenant are not considered as held by him absolutely for his own benefit against his landlord. If it were so, the tenant would in twelve years necessarily gain an absolute title under the statute of limitations; but we do not know of any case in which a title has been thus established."

With respect to encroachments made upon the land of a third person by a tenant, he is considered to have made the encroachment, not for his own benefit, but that of his landlord, and a title acquired by the tenant by adverse possession against such third person inures to the benefit of the landlord. The tenant cannot treat the land as his own apart from the holding. It would seem that a suit for additional rent would lie for excess land thus brought into the raiyat’s occupation.

Decrease in area due to diluvion has always been held to be a good ground for abatement of rent. It would be inequitable and unjust to make the raiyat pay rent for the land which is lost by the action of a river. Abatement was also allowed for land taken for public purposes.

Decrease of area on encroachment or dispossession by a title paramount always entitles the tenant to an abatement of rent pro tanto, but if a person without title dispossesses the tenant, it is the tenant’s duty to

---

1 22 W. R. 246.
2 Nuddyar v. Meajan, I. L. R. 10 Cal. 820.
3 Ante p. 222.
protect himself. It would seem that no abatement could be allowed in such a case.\(^1\)

Registration of transfers and successions was not compulsory under the old laws, and section 27 of Act X of 1859 and section 26 of Act VIII (B. C.) of 1869 did not apply to these raiyati holdings. The interest of these raiyats is not "intermediate between the zemin-dar and the cultivator." So that no such raiyati holding would pass to an auction-purchaser on sale for arrears of rent merely because the decree is against the registered tenant. Section 18 of the Bengal Tenancy Act lays down that such a raiyat shall be "subject to the same provisions with respect to the transfer of, and succession to, his holding, as the holder of a permanent tenure." This seems to imply that the provisions of sections 12, 13, 14, 15 and 16 of the Act apply to these holdings.

A raiyat, though settled later than the Permanent Settlement, may acquire permanency and fixity of rent by contract with the landlord, subject to the provisions of the law. The incidents are regulated by the contract. The protection, which the sale-laws for arrears of revenue and rent afford to a raiyat who has acquired a statutory right, is not available to the fullest extent to a raiyat who holds under a contract of fixity; but he acquires as against the purchaser on such a sale, the right of occupancy or the right of a non-occupancy raiyat, as the case may be, which the statutes afford to raiyats occupying and paying rent, and he cannot be ejected.

---

LECTURE X.

RAIYATS

(OCCUPANCY AND NON-OCCUPANCY).

Section 6 of Act X of 1859 laid down—"Every raiyat, who shall have cultivated or held land for a period of twelve years, shall have a right of occupancy in the land so cultivated or held by him, * * * * so long as he pays the rent payable on account of the same." There were certain exceptions to this rule, to which I shall presently draw your attention. The expression 'right of occupancy' was used for the first time by the Legislature in 1859, and instead of the classification of raiyats into the khodkast and the paikast, a new one was introduced, less complex in character and with incidents more favourable to the cultivating classes. Possession and cultivation of land and payment of rent were all that were necessary to confer on the raiyat this right of occupancy. Residence in the village in which he held land or his recognition as a member of the so-called political unit—the village community, would not improve or affect this statutory right in relation to the landholder, except perhaps in matters of enhancement or abatement of rent. A non-resident raiyat or an alien to the community of the village might thus have, in the eye of the law as laid down in 1859, almost the same privileges and immunities as the khodkast raiyats. He might still be a paikast raiyat, but if he could fulfil the conditions

1 See also Act VIII (B. C.) of 1869, Sec. 6.

L (1)
laid down in section 6 of the Act, he would cease to be a tenant holding land at the pleasure of the landlord, liable to be ejected at the end of any agricultural year, and he would not be bound to pay rent at the rate which the landlord might dictate. The same levelling hand of the Legislature that had brought down at the Permanent Settlement the ancient rajas, and had elevated the farmers of revenue to the position of zemindars, created, in the year 1859, a right for the mass of the agricultural population, which raised them from the position to which they had been reduced on account of the want of any definite rules for the guidance of Courts of justice and the consequent introduction of rules of law with which English lawyers were familiar. On the other hand, many raiyats who could be called khodkast were deprived of some of their privileges.

The Bengal Tenancy Act of 1885 has made no material alteration in the law as laid down in section 6 of Act X of 1859. It has, however, partially revived and brought under definite rules the rights of khodkast raiyats. The "settled raiyat," has enlarged means of acquiring occupancy-right, while at the same time there has been a curtailment in cases of holdings in churs or dearah lands and lands held under the utbandi system.

The privileges attached to this 'right of occupancy' are considerably inferior to those of owners of property. It is heritable, according to the ordinary rules of inheritance to which the raiyat is subject,—Hindu, or Mahomedan or any other personal law, as the case may be. But in default of heirs the right is extinguished, and the landlord is then entitled to possession and to settle the land with other raiyats. The crown is not the ultimate heir and cannot claim to have possession of the land as

---

1 Act VIII of 1885, Sec. 20
2 Act VIII of 1885, Sec. 180.
4 Act VIII of 1885, Sec. 26. See Jateeram v. Mungloo, 8 W. R. 60.
the ultimate heir of the deceased holder of a right of occupancy. Ordinarily, the right is not capable of being bequeathed by will, but local usage or custom may give the raiyat the power to do so.\(^1\)

This right acquired by a raiyat, in so far as it is merely statutory, is not transferable.\(^2\) The raiyat cannot transfer it by mortgage, sale, gift, or exchange,\(^3\) nor is the right saleable in execution of a decree\(^4\) for money against him. The transferee acquires no title by the transfer,\(^5\) and if he succeeds in obtaining possession, he is liable to be evicted as a trespasser\(^6\) by the landlord, who is not bound to recognise him\(^7\) as his tenant. On assignment by the voluntary action of the raiyat, he is considered to have abandoned the land\(^8\) and forfeited his right, the landlord being entitled to immediate possession.\(^9\) But custom or local usage may make the right transferable,\(^10\) and when it is so, the transfer may take place by the voluntary action of the

---

\(^1\) A\(f\) VIII of 1885, Sec. 178, Sub Sec. (3), cl. (d).


\(^3\) Dwarka v. Hurrish, I. L. R. 4 Cal. 925, sc., 4 C. L. R. 130.

\(^4\) Kripa v. Dyal, 22 W. R. 169; Bhiram v. Gopi, I L.R. 24 Cal. 355

\(^5\) Doorga v. Brindabun, 2 B. L. R., App., 37, sc., 11 W. R. 162.


See the cases cited above.

\(^7\) Joy Kishen v. Raj Kishen, 5 W. R. 147; Suddy v. Boistub, 15 W. R. 261, sc., 12 B.L.R. 84.

\(^8\) Hureehur v. Jodoo, 7 W. R. 114; Nurendro v. Ishan, 13 B.L.R 274.

Kalli v. Upendra, I. L. R. 24 Cal. 212.


raiyat, or may be effected by the various modes of involuntary alienation. The onus of proof of the usage or custom of transferability is on the raiyat or his assignee, even if he is a defendant in a suit for ejectment. But wherever the custom or usage of transferability is proved to exist, the landlord is bound to recognise the transferee on his obtaining possession, and, wherever the Bengal Tenancy Act prevails, as soon as notice of the transfer is given to the landlord. The transfer must, of course, be effected according to the means prescribed by the Transfer of Property Act, but it should be remembered that registration in the landlord's office is not necessary in the same way as in the case of transferable intermediate tenures, nor are the same penalties prescribed for non-registration. The landlord's recognition of the sale must follow the alienation and consequent possession, without the payment of any 'fee' or any other action on the part of the raiyat or his alinee, except an application for service of a notice under section 73 of the Bengal Tenancy Act.

The raiyat may use the land in any manner which does not materially impair the value of the land, or render it unfit for the purposes of the tenancy. If the tenancy has been created for ordinary agricultural purposes, e.g., for cultivating paddy or other crops, the raiyat will not be allowed to convert the land or any part of it into a tank or to erect substantial structures on

---

2 Act VIII of 1885, Sec. 73. Ambika v. Chowdhry, I.L.R. 24 Cal. 642.
3 Act IV of 1882, Sec. 54.
5 Act VIII of 1885, Sec. 23; Sec. 178, Sub-Sec. 3 (6).
It. Neither will he be allowed to dig earth for making bricks. It would seem from the decided cases that the conversion of paddy land into a garden for horticultural purposes is a misuse of the land. In cases of such improper use of the land, the landlord is entitled to ask for an injunction for restraining the conversion and also for damages to the extent of the actual loss sustained by him, provided he has not acquiesced in such use of the land by the tenant, and the conditions necessary for the issuing of a perpetual injunction or for awarding damages are present. It is inequitable and unjust to compel the raiyat to fill up the tank or remove the structures or the fruit trees he might have planted. It is also inequitable to award as damages an amount that may be necessary for filling up the tank or other excavation. The measure of damages should be regulated by a calculation of the probable loss that may in future be sustained by the landlord. Estimate the letting value of the raiyati land before the conversion and that subsequent to it, and the actual loss of the landlord will be so many years' purchase of the annual loss. Under the Bengal Tenancy Act, however, the tenant may make the improvements specified in chapter IX.

Under Act X of 1859, the raiyat had not the right to cut down trees, except those planted by himself. But he could prove custom or usage to the contrary. Ordinarily, the custom of paying chout or a fourth part of the price of trees so cut down, even if planted by the raiyat himself, prevails in many districts. The Bengal Tenancy Act

4 Nyamutoollah v. Gobind, 6 W. R. (A& X) 40. Specific Relief Act, Sec 54.
has, in this respect, improved the status of occupancy-raiyats by laying down,—"He shall not be entitled to cut down trees in contravention of any local custom."1 The words of the law seem to imply that there is a presumption in favour of the raiyat as to the existence of the right of cutting down trees, whether the trees have been planted by him or not. Custom or local usage to the contrary may be invoked by the landlord to take away the right of the raiyat.2 Neither can the raiyat, by any contract with the landlord, deprive himself of the right. Section 178 of the Act, sub-sec. 3, cl. (b), makes such a contract nugatory, if it be not consonant with established usage or custom.

The rent payable by an occupancy raiyat is to be at a fair and equitable rate.3 The landlord is not entitled to claim more,4 and the tenant is not entitled to tender less than what is payable at such a rate. Ordinarily the raiyat is bound to pay at the customary or pergahan rate for the quantity of land actually held by him,5 but in the absence of any evidence as to any other rate being fair and proper, there is a presumption as to the fairness of the rate at which rent has been previously paid.6

Immunity from ejectment by the landlord, except under very peculiar circumstances, is the greatest boon conferred on occupancy raiyats by the Rent Acts of 1859 and 18697 and the Bengal Tenancy Act of 1885. Ejectment was unknown in olden days, but as demand for land increased, ejectment or forcible ouster became

---

1 Act VIII of 1885, Sec. 23.
3 Act X of 1859, Sec. 9; Act VIII of 1885, Sec. 24.
6 Act VIII of 1885, Sec. 27. Compare Acts X of 1859 (Sec. 5) and VIII (B.C.) of 1869.
7 Act X of 1859, Sec. 21. See also Sections 22 and 23 of Act VIII (B.C.) of 1869.
common. Act X of 1859 put an end to the landlord's right to eject occupancy-raiyats, except for non-payment of rent\(^1\) and breach of any condition in the contract or for misuse of the land. Ejectment could be enforced only under a decree of Court.\(^2\) On non-payment of rent, the landlord had the right to get a decree for ejectment on default of payment of the amount of the decree within fifteen days from the date of the decree. If the tenure was transferable by custom or local usage, the landlord could not get a decree for ejectment;\(^3\) he could only put up to sale the tenant's interest. Section 78 of Act X of 1859 and section 52 of Act VIII (B. C.) of 1869 afforded an equitable relief, even if the lease stipulated for immediate ejectment for non-payment of arrears. The Court might extend the period of fifteen days on reasonable grounds. The Bengal Tenancy Act has, however, taken away from the landlord this right to eject a raiyat for non-payment of rent. Whether the occupancy-right is transferable by custom or not, the tenant is not liable to ejectment for arrears of rent, but his holding is liable to be sold in execution of a decree for the rent thereof, and the rent is a first charge thereon.\(^4\) The landlord has now the right of selling the land as property belonging to the raiyat, or if he does not choose to do so, he can follow in execution of his decree any other property of the raiyat, moveable or immovable,\(^5\) but he cannot eject him from his holding. The Act of 1859 recognised only a right to hold and cultivate, the Act of 1885 has recognised, in addition, a limited proprietary right in the raiyat.

---

\(^1\) Act VIII (B. C.) of 1869, Sec. 52; Act X of 1859, Sec. 78.
\(^4\) Act VIII of 1885, Sec. 65.
Ejectment for misuse of land or for breach of any express covenant in the contract of lease, for which liability to ejectment is expressly provided, is an ordinary incident of a lease of immovable property, even if the lease is permanent. But all civilized systems of jurisprudence have safeguarded the rights of lessees by rules necessary for the protection of the weak and the imprudent. The period of limitation for a suit for ejectment for breach of an express covenant is only one year from the date of the breach, if the contract expressly provide that ejectment shall be the penalty for such a breach.

The purchaser under a sale for arrears of revenue under the Sale Laws or under a sale for arrears of rent, when he acquires a title free of incumbrances, cannot evict a raiyat with a right of occupancy, even though he may hold under a lease granted by the defaulting proprietor or tenure-holder. The right of such a raiyat being statutory, he is expressly protected notwithstanding that his occupation was originally based on a grant by the defaulter. Section 37 of Act XI of 1859, in its proviso states—"A purchaser shall not be entitled to eject any raiyat 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 raiyat, otherwise than in the manner prescribed by the laws in force therefor or otherwise than the former proprietor may have been entitled to do." Section 14 of Act VII (B. C.) of 1868 reproduces the law as laid down in section 37 of Act XI of 1859.

1 Act VIII of 1885, Sec. 25.
2 Act VIII of 1885, Secs 155, 156; 44 & 45 Vict. cap. 41, Sec. 14.
3 Act VIII of 1885, Schedule iii, Art 1.
4 Act XI of 1859, Sec. 37; Act VIII of 1885, Secs. 159 and 160.
The Putni-Sale Law\(^1\) also protects from ejectment "\(khodkast\) raiyats or resident hereditary cultivators." I need not remind you that in the year 1819 the expression "right of occupancy" was not used in the language of the Legislature, and the words used in the Putni Regulation ought now to apply to occupancy-raiyats as well, especially as under the Bengal Tenancy Act, settled raiyats necessarily acquire occupancy-right in all lands held by them in the same village, and there is not much difference between settled and \(khodkast\) raiyats. The language used in the Regulation—"resident and hereditary cultivators"—requires, however, to be modified, as all occupancy-raiyats are not necessarily resident and hereditary. If the words are strictly construed, a good many occupancy-raiyats may suffer. Section 16 of Act VIII (B. C.) of 1865, re-enacted in section 66 of Act VIII (B. C.) of 1869, contains a similar proviso, though apparently by an oversight the Local Legislature, instead of adopting the language of the Revenue Sale Laws, retained the time-honoured expression used in Regulation VIII of 1819. Section 160 of the Bengal Tenancy Act includes, in the category of "protected interests" any right of occupancy, and any right conferred on an occupancy raiyat to hold at a rent which was fair and reasonable at the time the right was conferred. Section 159 of the Act lays down that a purchaser on a sale for an arrear of rent shall always take subject to "protected interests."

The right to sublet is an important incident of occupancy-holdings and requires special attention. In one sense, the right is inconsistent with the original purpose of cultivation which, as we have seen, lies at the inception of occupancy-right. The Legislature, however, has very wisely provided for the raiyat occasionally letting out his land or portions of it

\(^1\) Regulation VIII of 1819, Sec. 11, cl. 3.
to under-raiyats. A raiyat with a right of occupancy may, for various reasons, be prevented from cultivating all his lands, and it would be extremely hard, if the privilege of subletting be denied to him. The Bengal Tenancy Act devotes a small chapter on under-raiyats, and section 178, sub-section 3, cl. (e) makes any contract between the landlord and his raiyat, which takes away his right to sub-let subject to and in accordance with the provisions of the Act, null and void. This right to sub-let, which is very frequently exercised by raiyats, occasionally causes difficulties in distinguishing an occupancy-raiyat from an under-raiyat. The position of a raiyat with a right of occupancy becomes to all appearance that of a middleman or a tenure-holder, if he ceases to cultivate and is satisfied with receiving rent from the under-raiyat. If, in addition, his interest is transferable by custom, and if, for a long time, he has held land through under-raiyats only, he becomes, in fact, a middleman, though in the eye of law, he continues to be an occupancy-raiyat, the under-raiyat not being allowed, except under very peculiar circumstances, to acquire the status of an occupancy-raiyat. I have already drawn your attention to the observations of the Calcutta High Court in Baboo Dhunput Singh v. Gooman Singh. Acquisition of land for the purpose of cultivation is all that is required to make a lessee a raiyat. It has been held that 'whatever may be the true definition of the word raiyat, it is by no means necessary that he should

4 Act VIII of 1885, Sec. 5, Sub-Sec. 2, Explanation. Ram v. Lukhee, 1 W. R. 71; Uma v. Uma, 8 W. R. 181; Kalee v. Ameer, 9 W. R. 579.
be an actual cultivator. Section 6 of Act X of 1859 says distinctly that a raiyat, who has held land for twelve years consecutively, is entitled to have a right of occupancy in the same way as a raiyat who has cultivated land for the same period. But though an under-raiyat is admitted to the occupation of land for the purpose of cultivation, his holding under a raiyat and not a tenure-holder is generally a bar to his acquisition of the same right which his lessor has under the law. A raiyat does not become a middleman, simply because, instead of cultivating the land, he erects shops on it, lets them out, and receives profits from the shop-keepers.

The right to surrender the holding is another incident of occupancy-right. We have already seen that permanent tenure-holders cannot relinquish their tenures without the permission of the superior holder. But the law has especially protected the right of an occupancy raiyat, to surrender his holding, and any contract, taking away the right is invalid in law. If, however, a raiyat is bound by a lease or other agreement for a fixed period, he is not entitled to relinquish his holding before the expiry of such period. There cannot be a surrender of a part of a holding nor can a sharer surrender his share. Abandonment by the tenant may in some cases amount to surrender.

I propose now to deal with the following matters with respect to occupancy-right—(1) Who may acquire

---

2 Act VIII (B.C.) of 1869, Sec. 20; Act VIII of 1885, Sec. 86.
4 Act VIII of 1885, Sec. 178, Sub-Sec. 3, cl. (c). Gopal v. Tarinee, 9 W. R. 89.
the right? (2) With respect to what class of land may the right be acquired? (3) How may the right be acquired? (4) What are the respective duties and liabilities of the landlord and the tenant during the period of the existence of the right in the tenant? (5) How may the right be lost or determined?

Under section 6 of Act X of 1859 and Bengal Act VIII of 1869, as well as under sections 19 and 21 of the Bengal Tenancy Act, a raiyat only may acquire occupancy right. But all raiyats are not entitled to have the privilege, which the Regulation code of 1793 practically took away from the cultivators of the soil and which the Act of 1859 restored to them, though partially, after the lapse of nearly sixty years. Broadly speaking—

"Every raiyat may have a right of occupancy in the land cultivated or held by him"; but there are the exceptions which we have to note. As regards the actual cultivators, the Rent Acts of 1859 and 1869 made an exception as to persons holding or cultivating land under sub leases from raiyats having rights of occupancy, if they held for fixed periods only or from year to year. These sub-lessees are known by various local names in different parts of the country, such as kofadars, durjotedars, &c., and are called under raiyats in the Bengal Tenancy Act. An under-raiyat could, under the old law, acquire a right of occupancy in lands sub-let to him, otherwise than for a term or from year to year; but ordinarily he could not acquire the right, as he generally held for a term from year to year. But cases might occur in which the terms of their sub leases would entitle the under-raiyats to acquire the same sort of statutory right as the superior holders themselves. The Bengal Tenancy

2 Act X of 1859, Sec. 6.
Act, however, does not favour the acquisition of the right by under-riayats, as it manifestly tends to take away from the raiyat with a right of occupancy his power of cultivating his lands himself or by hired labourers. The existence of the same sort of right in two persons, holding the same piece of land, one claiming under the other, is in itself an anomaly, and whatever conflict of opinions there might be under Act X of 1859, it may safely be said that under the Bengal Tenancy Act an under-riayat cannot acquire a right of occupancy, unless custom or usage favours him.

A "settled raiyat" acquires, under the Bengal Tenancy Act, a right of occupancy in all lands held by him for the time being as a raiyat. The idea of the right of a settled-riayat owes its origin to the right which was known to belong to khodkast raiyats who were creatures of custom; but a khodkast raiyat might acquire his peculiar status by residence in a village for a much shorter period than twelve years, though he is not necessarily, a "settled raiyat" by holding land for a period of twelve years or longer. Recognition by the village political unit was all that was needed to make a new comer into the village a khodkast raiyat, the period of residence being perfectly immaterial; but residence in the village was absolutely necessary to give the status. The nearest cognate relation of a village mandal, unless he happened to be the heir-at-law, would not be a member of the political unit, if he happened to be a non-resident, even though he might hold land in it for a long period. He would still be a paikast raiyat, having none of the burdens and the privileges of a khodkast cultivator. The "settled raiyat" is a creature of the Legislature and not of custom or customary law. The Bengal Tenancy

---

1 Act VIII of 1885, Sec. 183, Illustration 2. For the incidents of an under-riayat's holding, see Act VIII of 1885, Ch. VII.
2 Act VIII of 1885, Sec. 21, cl. i.
3 Ante p. 280.
1 Ante p. 281.
Act, in section 20, makes every raiyat having a right of occupancy, *i.e.*, holding land as raiyat continuously for more than twelve years in any village, a settled raiyat of that village. Whether the raiyat be *khodkast* or *paikast*, whether he be recognized by the residents of the village as a member of their body or not, he becomes a *settled raiyat* as soon as he has acquired a right of occupancy in any land in the village. The acquisition of the right is dependent upon codified law and not upon the voice of the peasantry in a village. Again a person is a *settled raiyat* of a village, within the meaning of the Bengal Tenancy Act, if he has continuously held land in a village, though the particular land may be different at different times.  

A person is deemed to have held as a raiyat land held by his predecessor, and lands held by co-sharers as a raiyat-holding are regarded as held by each separately. A person is also considered to be a *settled raiyat* of a village, so long as he holds any land as a raiyat in that village and for one year thereafter. If a raiyat recovers possession of his holding under section 87 of the Act, he continues to be a *settled raiyat* of the village, notwithstanding the previous dispossession.  

There is a considerable difference between the right of occupancy under the Rent Acts of 1859 and 1869 and the right of a *settled raiyat* under the Bengal Tenancy Act. A *settled raiyat* acquires a right of occupancy in any land he holds, however short the period of occupation may be, not by occupation of, and payment of, rent for, the same piece of land for a continuous period of twelve years.

Tenants holding land under the *bhagdari* or *bhonli* system may acquire the right in the same
way as raiyats paying rent in specie. The law makes no distinction between rent in kind and rent in specie. Thousands of raiyats, specially in the province of Behar, hold land under the system known as the bhaoli, battai, or bhagdari, and many of them have done so for generations.

It was at one time doubted whether an indigo concern or a firm, which has no corporate or legal existence as an individual or individuals, could acquire a right of occupancy. It was contended, on the one hand, that the right could be acquired only by raiyats, and that members of an indigo concern could not come within the ordinary meaning given to that word; and that an association of persons constituting a firm, who had a large capital and who devoted their energy to the improvement of the soil for the benefit of the country as also for their own benefit, could not be said to be a raiyat. On the other hand, it was contended that there was nothing in the law to prevent the acquisition of the right by such an association. There was, in fact, no reason why a firm, cultivating indigo or tea by hired labourers, should not have the privileges of raiyats in the sense the word has been used in the Tenancy Acts. No doubt the word raiyat ordinarily carries with it the idea of poverty, ragged clothes, and miserable hovels; but I suppose the law never intended that the privileges of occupancy-right should be attached only to want and destitution, and not to wealth and palatial buildings. If a firm cultivating indigo or tea continues to have the same members and to occupy the same piece or pieces of land or hold land in the same village for more than twelve years, it should have the right which the law has created for the benefit of cultivators. The Bengal Tenancy Act, in section 5, read along

---

with section 2 of the General Clauses Act (I of 1868), clearly indicates that an association of persons or a firm is as much capable of acquiring the right as the poorest cultivator of the soil.

The landlord himself cannot, by cultivating his own land, even if he were to use the name of a stranger as holding the land, acquire a right of occupancy in the land so cultivated by him.\(^1\) The system of holding land in this country *benami* in the names of servants and relations, is common, though no presumption ought to be made in every case in favour of *benami* holding. Evidence may be given to show that the landlord himself has been cultivating and taking the profits of the land, and such evidence may be sufficient to prove the *benami* character of the holding. Cases about *benami* holding occasionally arise, especially when the landlord's interest is sold, and he, the outgoing landlord, attempts to resist the purchaser by putting forward nominal holders under him.

A co-sharer out of a body of landlords cannot acquire the right by holding and cultivating land and paying a proportionate share of the rent to the other co-sharers. Neither can he do so by holding land with the permission of the other joint owners, the latter holding other lands by arrangement.\(^2\) It is wrong in principle to allow a landlord to have the benefits of the right, which the law intended to confer only upon raiyats, and if a co-sharer landlord were entitled to acquire the right of a raiyat, opportunities of committing fraud upon strangers and diminishing the actual quantity of *raiyyati* land in a village would be great. At one time it was doubted by the High Court at Calcutta whether such a co-sharer could acquire the right, and in one case\(^3\) it was

---

1 Reed v. Sreekishen, 15 W. R. 430; Radha v. Rakhal, I. L. R. 12 Cal, 82.
3 Per Jackson, J., in Kalee v. Shah, 12 W. R. 413.
thrown out that the question was one of fact and not of law. It was held that the conduct of the co-sharers might be evidence for proving the existence of a right of occupancy in any one of them. But the Legislature has, in section 22 of the Bengal Tenancy Act, indicated that such an acquisition of the right cannot be recognized. The union of two inconsistent rights—of the landlord and an occupancy-holder, has been deemed improper and against the policy of law, and as soon as they unite in the same person, the inferior right is extinguished.\(^1\)

A lessee, such as an *ijaradar* or farmer of rent whether he is known as a *ticidar*, *katkinadar* or *mostajir*, cannot acquire the right in any land comprised in his *ijara* or farm.\(^2\) A man cannot occupy the double character of a landlord and a raiyat and acquire a statutory right on the pretence of paying rent to himself.\(^3\) If a person is already in occupation of land as a raiyat and obtains a lease of the landlord's right before the completion of the period of twelve years of his possession as a raiyat, his possession of the land during the period of the lease cannot be counted as that of a raiyat, and the acquisition of the

\(^1\) But see Sitanath \(v\). Pelaram, I. L. R. 21 Cal. 869 and Jawadul \(v\). Ram, I. L. R. 24 Cal. 143. In this latter case, a division Bench of the High Court, consisting of five Judges, held—"The effect of a purchase, by one co-owner of land, of an occupancy right is not that the holding ceases to exist, but only the occupancy right, which is an incident of the holding, is extinguished." The result is that the purchasing co-sharer becomes a raiyat. What is his status? If he becomes a non-occupancy raiyat, he will be entitled to acquire the status of an occupancy raiyat by twelve years' occupation. He cannot be an under-raiyat. The land being raiyati, the incidents of a landlord's private land cannot attach to it. Such a tenancy will certainly be of an anomalous character and one not recognized in the Act.

\(^2\) Act VIII of 1885, Sec. 22, Sub-Sec. 3. Lalla \(v\). Bhaka, 17 W.R. 242; Wooma \(v\). Koondun, 19 W.R. 177; Ramsarun \(v\). Veryag, 25 W. R. 554; Thomas \(v\). Punchanun, 25 W. R. 503; Lal \(v\). Solano, I. L. R. 10 Cal. 45.

\(^3\) The unreported case Kishen \(v\). Rajah Radha, cited in Lal \(v\). Solano, I. L. R. 10 Cal. 45, sc., 12 C.L.R. 559. But see Jawadul \(v\). Ram, I. L. R. 24 Cal. 143.
right remains in abeyance during this period. If the right was already perfected before the beginning of the lease, the right would not be lost. To use the words of Mitter J., in Lal Bahadur Sing v. E. Solano:

"During the time of the ijara, the raiyat remains in possession of the land in a double capacity, and the operation of the acquisition of the right of tenancy remains in abeyance."

A person possessing or cultivating land as a trespasser cannot acquire a right of occupancy. If he declined to have the position of a raiyat paying rent, and held the land either stealthily or by setting the landlord at defiance, his wrongful possession would give him no right as a raiyat. If he set up a lakhiraj title, he would not be permitted to claim the benefit, which only a raiyat paying rent is entitled to have. The setting up of a title hostile to the landlord amounts to a disclaimer, which prevents the acquisition of the right.

Permissive possession, or possession by a servant as such, is not that of a raiyat, and cannot confer the right.

I may here add that the acquisition of the right does not depend upon holding under, and payment of rent to, the rightful owner. The right is not acquired by the raiyat by virtue of any grant, but it grows from the mere circumstance of his holding and cultivating land and paying the rent due in respect

---

thereof. If a raiyat has been induced into the land by one of several co-owners or the holder of a life-estate or a mortgagee in possession or even by a trespasser, he is entitled to claim a right of occupancy in the same way, as if he has come into possession at the instance of the absolute and rightful owner. It is quite immaterial as to whose tenant he has been, provided he has held the land bona fide as a raiyat and has paid rent therefor.

Land must be taken or used for agricultural or horticultural purposes, otherwise no right of occupancy can be acquired. In *Kalee Kishen Biswas v. Sreemutty Jankee and others*, Phear J., is reported to have said—"The occupation intended to be protected by this section (section 6, Act X of 1859 is occupation of land considered as the subject of agricultural or horticultural cultivation and used for the purposes incidental thereto, such as for the site of the homestead, the raiyat or the *mali's* dwelling house and so on. I do not think that it includes occupation, the main object of which is the dwelling house itself, and where the cultivation of the soil, if any there be, is entirely subordinate to that. I had occasion in the case of *Khellut Chunder v. Umirto*, reported in the first volume of the Indian Jurist, New Series, 426, to consider the matter very fully, and I see no reason now to alter the opinion which I then expressed." The late Justice Dwarkanath Mitter, however, was of a different opinion. His view of the law was the same as that expressed in some of the older cases, but it has been held in almost all the later cases on the subject, that there can be no right of occupancy in land used mainly

---

1 Zoollfun v. Radhica, 1. L. R. 3 Cal. 560, sc., 1 C. L. R. 388.
2 Pandit Sheo v. Ram, 8 B. L. R. 165; Zoollfun v. Radhica, 1. L. R. 3 Cal. 560.
4 8 W. R. 250.
for any but agricultural or horticultural purposes. In *Mohesh Chunder Gungopadhyya v. Bisho Nath Doss*\(^1\), the question was discussed by Markby J., and he came to the conclusion that it was settled law that the provisions of section 6 of the Rent Acts\(^2\) could apply only to lands used for agricultural or horticultural purposes.

No right of occupancy can be acquired in land used for building purposes.\(^3\) Neither can the right be acquired in land used for the erection of a school or a church,\(^4\) and no suit for enhancement of rent or even for the recovery of arrears of rent of such lands could be maintained in the Collector's Court under the Rent Act of 1859. Similarly, land used for arhats, ghats, bazars, indigo-factories or manufactories cannot come within the purview of the Rent Acts. But if a piece of land has been used by a cultivator for his own habitation, and it is a part of an entire agricultural holding, he acquires a right of occupancy in it with the rest of the land in the holding.\(^5\) If a raiyat holds his homestead land otherwise than as a part of his agricultural holding, the incidents of his tenancy of the homestead land are regulated by local custom or usage, and subject to such local custom or usage, the raiyat may, under the provisions of the Bengal Tenancy Act,\(^6\) acquire a right of occupancy in it. It seems that if a raiyat holding land for agricultural purposes holds his homestead land as a different holding in the same village, and not as a part of his agricultural holding, he has ordinarily the same sort of right in the homestead

---

\(^1\) *24 W. R.* 402.

\(^2\) *Act X* of 1859; *Act VIII (B. C.)* of 1869


\(^6\) *Act VIII* of 1885, Sec. 182.
land as in the agricultural holding. 1 The two holdings, in such a case, are inseparably connected with each other. The mere fact of the tenant holding his homestead land and his agricultural holding as separate jummas, though under the same landlord, can be no reason for applying different rules of law to them. In a good many districts in Bengal, tenants are allowed to hold homestead land without payment of any rent, as in these districts it is a privilege of the cultivating classes to have land rent-free for habitation. In other districts, local custom or usage entitles the raiyat to pay merely a nominal sum as rent for his bastoo and udbastoo lands. Section 182 of the Bengal Tenancy Act intends to protect the raiyats who hold such homestead lands, but the rule laid down therein has nothing to do with other kinds of homestead lands. Under the Hindu system, and, it would seem, even under the Muhammadan system, no rent was levied with respect to the homestead lands of the agricultural population, when they were held as inseparable appurtenances to agricultural holdings.

In some of the districts in Bengal, it is necessary to keep land fallow for a year or two, in order that fertility may be restored. Cultivation for successive years takes away the productive power of the land to such an extent that the raiyat is obliged to have recourse to other pieces of land. Manuring is unknown or is disproportionately costly. In the district of Nadia such lands are known as utbandi or nucksan. 2 In Dwarkanath Misree v. Noboo Sirdar 3, an utbandi tenure is defined to be one "by which the raiyat holds a certain area of land, but for which he pays rent according to the quantity of that land which year by year he cultivates. The rent varies according to

---

3 14 W. R. 193.
the cultivated area." Under the Acts of 1859 and 1859, if the raiyat paid rent for the period he could cultivate, and did not pay when he could not cultivate, or paid only for as much land as he could cultivate in any year, the holding and cultivation for more than twelve years, though discontinuous, gave him a right of occupancy.  

Section 180 of the Bengal Tenancy Act has made a material alteration in the status of utbandi raiyats. No occupancy right is now capable of being acquired in utbandi lands, unless the same piece of land has been held for twelve continuous years.  

Section 19 of the Act, however, makes an exception in favour of rights acquired before the commencement of the Act, by operation of any enactment, custom or otherwise. The right cannot be acquired in julkars or tanks, when such julkars or tanks are not appurtenant to land acquired or held for cultivation.  

If a raiyat holds a tank as a part of an agricultural holding, the water of the tank being used for domestic purposes or for irrigation or preparation of jute or similar other crops, he acquires a right of occupancy in it. But he cannot acquire the right in a tank used only for the rearing and preservation of fish, when it is not a part of an agricultural holding.  

Pasture land has been held to come within the purview of section 6 of the Rent Acts. The right may be acquired in land used for grazing horses. But a tenant cannot acquire a right of occupancy merely by the user

of pasture land of his landlord, if he does not pay rent for the same, though he may acquire a right in the nature of an easement.

The right cannot ordinarily be acquired in land held by the proprietor of an estate or a tenure-holder as his private land, known in Bengal as khamar, nij or nij-jot, and in Behar as zirat, nij, sir or kamat. The distinction between tenemental lands and the lord's domain is well-known. The lord's domain of feudal Europe resembles in many respects the lands known as nij-jot &c., in the Bengal Provinces. In ancient times, the chiefs in India as elsewhere, had lands held and cultivated by themselves, by members of their families or hired labourers, and at the same time, they collected a share of the produce of ordinary raiyati lands as land-tax. In course of time, the chiefs ceased to cultivate the lands themselves or through members of their families; but cultivation by means of hired labour, principally through the aid of the sudras, continued for a long time. When the Mahomedan government reduced the native chiefs to the position of zemindars, it allowed the lands which they held as nij-jot or khamar to remain in their possession, but did not exact any land tax for them. The land-tax that was levied through the zemindars was for lands held by raiyats, artisans and persons following trades and professions. The quantity of land held by each zemindar as nij-jot or khamar was limited, and the fiscal authorities very seldom permitted him to extend it. The farmers of revenue, who ultimately acquired the rank of zemindars, were also allowed to hold lands of a similar description. The extension of the quantity of nij-jot or khamar land was, however, not unfrequent, but there is every reason to believe

1 Act X of 1859, Sec. 6; Act VIII (B. C.) of 1869, Sec. 6; Act VIII of 1885, Sec 116; Gour v. Beharee, 12 W. R. 277; Bhugwan v. Jug Mohun, 20 W. R. 308; Hurish v. Gunga, 25 W. R. 181; Obhoy v. Kanye, 1 C. L. R. 394.
that such extension was surreptitious. Encroachments on waste lands and occupation of lands abandoned by raiyats, were the principal means adopted by zemindars for increasing the quantity of private lands.

The proprietary right of the Government in waste lands is a matter of controversy, and high authorities have said that waste lands in India theoretically belonged to the various village communities, and were capable of being brought under cultivation as soon as there were opportunities for it. There were waste lands and virgin forests, lying at a distance from inhabited villages, and these would not come within the definition of the common mark. In ancient times, temporarily uncultivated lands used to form parts of village-domains, but they would, sometime or other, be cultivated and thus merge in the arable mark. Encroachments on such waste lands by the landlord himself would decrease the quantity of land available for the use of raiyats, and prevent an increase in the land-tax which should have come into the imperial exchequer. The raiyats themselves would, for obvious reasons, resent such encroachments. The Mahomedan government necessarily disowned the extension of zemindar’s private lands by means of gradual inclusion of parts of the uncultivated waste lands which were reserved by the common law of the country for the use of the peasantry and the increase of revenue. The Bengal Tenancy Act, though it lays down rules for the determination of the character of any land, as raiyati or private, distinctly contemplates that there should be no extension of the quantity of proprietor’s private lands in any village. It excludes uncultivated or waste lands, which, according to the established usage of the country, have always been reserved for supplying the necessaries of life of an ever-growing

---

1 Mayne’s Village Communities, p. 162, (1st Edition).
population. It makes rules for the record of proprietor's private lands, and such records will effectually prevent land-owners from extending them.¹

When a tenant abandoned his holding or was compelled to abandon by the tyranny of the landlord, the land thus left vacant might be cultivated by the landlord himself for his own profit, until another tenant would come in and occupy it. In theory, the land, notwithstanding cultivation by the landlord himself, would not be a part of his private lands, but would continue to be a part of the raiyati lands of the village. It was the duty of the landlord to let out the land to a tenant as soon as one was to be had, and he would commit fraud on the state if he did not do so. As I have already said, surreptitious occupation must have been common, but the land-law and the fiscal system of the country required that such lands should be let out at the first opportunity. They could not in olden days, and cannot now be nij-jot or sir.

The private lands of the zemindars and persons having a similar relation to the peasantry were thus limited in extent, and theoretically incapable of extension. They were not always cultivated or caused to be cultivated by the land-owner himself; they were let out occasionally on rent in specie, but more generally at half the produce or even a smaller share. The letting out, in fact, did not, according to ancient theory, create the relationship of landlord and tenant between the owner of the land and the cultivator, neither did it create in favour of the cultivator any interest in the land so let out. It was really cultivation by hired labour, a share of the produce being taken by the labourer as remuneration or wages. Vrihaspati, as quoted in Parásuramádhava, says—“The cultivator is entitled to a third or a fifth share of the

¹ Act VIII of 1885, Secs. 117-120.
produce." The text occurs in the chapter on *Wages* in *Parásaramádhava*, and the commentator explains that "a fifth share is due to the cultivator, if he receives food and raiment from the owner of the land, a third if he does not." In later days, the share became generally a half instead of a third, and hence these cultivators used to be called *ārdhasiri*. Half the produce was deliverable to the land-owner by the cultivator not as *rent*, but the land-owner who was entitled to cultivate the land himself or by hired labour allowed him to retain a half as the price of his labour. The theory of law, at the present day, is that payment to the landlord in kind is as much *rent* as payment in specie; but the prevalent notion amongst the people and the general practice with reference to *nij-jot* lands are more in harmony with the rule laid down by the sage *Vrihaspati*. Wherever the Rent Acts have not made much impression, a cultivator holding land on terms of payment in kind, has not, in practice, that amount of stability as an occupancy-raiyat ought to have, but is liable to be ejected at the end of any agricultural year. The principle that underlies the rules laid down in the Acts of 1859, 1869 and 1885 is that the proprietor is entitled to hold and cultivate *nij-jot, sir*, or *zirat* land by hired labour in any year he pleases. The mere occupation for a number of years by a raiyat does not make the land *raiyati*, and deprive the landlord of the right of re-entry at the end of any agricultural year. The raiyat cannot acquire a right of occupancy or even the status of a non-occupancy-raiyat simply by occupation and

---


payment of rent, as he may with respect to ordinary raiyati lands.¹

But notwithstanding that a piece of land was originally the private land of the proprietor, he may by his conduct waive his right to hold it as non-raiyati and may make it raiyati. The Settlement Regulation² included in the assessment of land-revenue the profits of nankar, khamar, nij-jot and other private lands as of ordinary malgoozari or raiyati lands. This Regulation did not lay down any rules as to the rights of the landlord with respect to these lands in relation to the raiyats. The words of the Regulation, however, are clear, as indicating a distinction between malgoozari or raiyati lands and non-malgoozari or non-raiyati lands. The Rent Acts provide that if any land, being nij-jot, khamar or sir, has been held under a lease for a term of years or under a lease from year to year, the raiyat does not acquire therein a right of occupancy or the right of a non-occupancy raiyat.³ But if the holding of the land by the tenant be for other than for a term of years or from year to year, it is impressed with the character of ordinary raiyati land, and the tenant may acquire a right of occupancy therein.⁴

Questions of difficulty frequently arise in determining whether any particular piece of land in a village is raiyati or non-raiyati. It is always to the benefit of the raiyats that it should be declared to be a part of the raiyati lands of the village, while the proprietor would have as much non-raiyati land as is possible. The burden of proof is on the landlord, the presumption of law being that no land is khamar, sir or nij-jot, until the contrary is proved.⁵ It is

¹ Aft VIII of 1885, Sec. 116. ² Reg. VIII of 1793, Sec. 39. ³ Aft X of 1859, Sec. 6; Aft VIII (B. C.) of 1869; Aft VIII of 1885, Sec. 116. See Bhugwan v. Jugmohun, 20 W. R. 308; Shaikh Ashruf v. Ram, 23 W. R. 288. ⁴ Gour v. Beharee, 12 W. R. 277. ⁵ Aft VIII of 1885, Sec. 120, Sub-Sec. 2.
not easy, however, to give evidence as to the character the land had at the date of the Permanent Settlement; and the Bengal Tenancy Act has accordingly laid down, in section 120, rules for determining what lands should be considered to be private. Under that section, cultivation by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of the Act, if cultivated as *khamar* &c., is sufficient evidence for proving any piece of land to be private. Recognition by village usage, even if the land is ordinarily let out to tenants, is also sufficient to make any piece of cultivated land *khamar, nijjot*, or *sir*. Local custom or village usage is undoubtedly very good evidence as to the character of any land, in the absence of other direct and reliable evidence.

The Bengal Tenancy Act, you will notice, speaks only of the private lands of *proprietors*, i.e., persons owning an estate or part of an estate. The Rent Acts of 1859 and 1869 spoke of "the proprietor of an estate or *tenure*," and they evidently meant tenure-holders who succeeded in obtaining leases of entire villages including *raiyati* as well as *non-raiyati* lands. The character of any piece of land should not change by the mere transfer by the proprietor of his right by way of a *putni* or leases of a similar nature. An *ijaradar* or a *thiccadar* holding a village, would, by virtue of his lease, have the same sort of right in the private land of the proprietor as the proprietor himself. By the expression, "proprietor's private lands," used in the Bengal Tenancy Act, we are not to understand that only persons who are *proprietors* within the meaning of the Act are capable of having *private* lands; the expression refers only to the origin, i.e., the nature of the land as held at the time of the Permanent Settlement,—

---

1 Act VIII of 1885, Sec. 3, cl. (2).
The Bengal Tenancy Act has also made an exception to the acquisition, in the ordinary mode, of occupancy right in *chur* and *dearah* lands. *Chur or dearah* is a piece of new-formed land by the action of the sea or a river. The Bengal rivers frequently shift their courses, and the formation of islands in the midst of rivers is not unfrequent. Under the provisions of Regulation XI of 1825 and Act IX of 1847, the Government officers are required to survey and measure these new-formed lands to enable them to ascertain what rights the Government has in them, and to assess them when necessary. Such surveys are technically known as *dearah*. These lands are under the frequent risk of being diluviated, and they are also temporarily unculturable by reason of their being low or sandy. The Legislature has, therefore, provided that the mere fact of occupation of such lands as a raiyat by a *settled raiyat* is not sufficient to create any right of occupancy in them. *Chur or dearah* lands may, however, in due course of time be so permanent in character that the Collector of a district may deem it proper to declare that they have ceased to be *chur* or *dearah*, and then a cultivator may acquire a right of occupancy in them in the same way as in any other land.

Under section 6 of Act X of 1859 and Act VIII(B.C.) of 1869, the acquisition of the right depended upon possession for a period of at least twelve years and payment of rent, the material words used being—"in the land so cultivated or held." The right could be acquired only in the particular piece or pieces of land held and cultivated by a raiyat for the required number of years. The Bengal Tenancy Act has made a material addition as to the means of the acquisition of the right,

---

1 Aft VIII of 1885, Sec. 180.
2 Aft VIII of 1885, Sec. 180, Sub-Sec. 3.
except as to uthandi, chur or dearah lands. A settled raiyat may now acquire the right in any land held by him in the village in which he is such a raiyat, even if the period of occupation be much shorter than twelve years. For him, occupation for twelve years is not necessary. As soon as he touches a piece of land as a raiyat, he acquires an occupancy-right in it.

Section 6 of Act X of 1859 and Act VIII (B.C.) of 1869 laid down that a raiyat could acquire a right of occupancy, by twelve years' occupation, whether he held under a pottah or not, and section 7 made an exception that the provisions of section 6 of the said Acts would not affect 'the terms of any written contract for the cultivation of land when it contains any express stipulation contrary thereto.' The question as to the effect of occupation under successive written leases for terms of years aggregating to more than twelve years, or under a single lease for a period of more than twelve years was raised in several cases, and there were conflicting judgments. The matter ultimately came before a Full Bench of the Calcutta High Court in Pundit Sheo Prokash v. Ram Sahoy Singh. "The whole question," said Couch, C.J., "turns upon what is the meaning of an express stipulation, contrary to the raiyat acquiring the right of occupancy. Now where there is a pottah for a fixed term, no doubt at the expiration of that term, the landlord has a right of re-entry upon the land; and if the raiyat does not give up possession, the landlord may recover the land from him. The landlord need not re-enter upon the land, if he does not think fit; he may and often does allow the tenant to remain in possession of the land. I cannot consider that the right of re-entry which arises by reason of the expiration of the term named in the pottah can be re-

2 17 W. R. F. B., 62, sc., 8 B. L. R. 165.
HOW ACQUIRED?

garded as an express stipulation that the raiyat shall not, if he occupies the land for more than twelve years, acquire the right of occupancy given by section 6. The law, as interpreted in this decision and the other decisions\(^1\) that follow it, seems to be, that whether a raiyat held under a single lease or under different leases following one after the other, he acquired a right of occupancy in the land so held by him, provided the entire period of occupation exceeded twelve years, and provided there was no express covenant for re-entry by the landlord at the expiration of any one of them. An implied covenant for re-entry was not sufficient to defeat the statutory right which could be acquired by a raiyat by twelve years' occupation. An express covenant for re-entry, however, entitled the landlord to eject the raiyat at the end of the term, but if the landlord allowed the raiyat to hold on after the expiration of the term of the lease, he was entitled to add the period of his occupation under the lease to the subsequent period, and if the total period exceeded twelve years, the raiyat acquired a right of occupancy.\(^2\) Where the landlord showed, by his acts and conduct and specially by receipt of rent for any period subsequent to the expiry of the lease, an intention to allow the raiyat to hold over, the tenancy became one from year to year, and as regards raiyati lands, this was enough to give him the status of an occupancy- raiyat, as soon as possession for the statutory period of twelve years was completed. But if the landlord showed by some overt act his intention of taking possession on the expiry of the written lease, and merely delayed in bringing his suit for ejectment, and did not accept rent from him for any subsequent period, the landlord's right to re-enter was not gone, and he could bring his suit with-

in twelve years of the date of the termination of the tenancy, when his cause of action arose.\(^1\) The Bengal Tenancy Act has, however, laid down that a raiyat acquires the right by occupation for twelve years, whether he holds "under a lease or otherwise." So that he acquires the status of a settled raiyat after the continuous holding of land in a village for the period of twelve years, whether there is a covenant for re-entry or not. He may hold one piece of land for five years, another for four and a third for three, and he then becomes a settled raiyat, and has a right of occupancy in any piece or pieces of land so held by him either at the end of or subsequent to the twelve years. As we have seen, the Legislature has imported the idea of a khod-kast raiyat, and has given his status to any person holding any land in the village for a continuous period of twelve years, notwithstanding that the particular pieces of land held by him have been different at different times. Section 178 of the Bengal Tenancy Act, sub-section 1, clauses (a) and (b), has laid down a rigid rule as to contracts made before or after the passing of the Act, and occupation, as provided for in sections 20 and 21, creates a right of occupancy, and nothing in any contract shall bar the acquisition of, or take away, the right. A covenant for re-entry will not entitle the landlord to eject a tenant from the land held by him, and there is no provision in the Act for the ejectment of a settled raiyat on the expiry of the term of his lease, the law limiting the grounds of ejectment to those contained in section 25 of the Act only. Such a covenant for re-entry is now invalid and is not enforceable. A tenant acquires the status of a non-occupancy raiyat as soon as he is admitted to the occupation of any piece of land, and a right of re-entry is not easily enforceable by the landlord.

\(^1\) Kabeel v. Radha, 16 W. R. 146.
In *Thakooranee Dossee v. Bisheshur Mookerjee*¹ the High Court held that the holding of land for twelve years, whether wholly before or wholly after, or partly before and partly after the passing of Act X of 1859, entitled a raiyat to a right of occupancy, and the Bengal Tenancy Act has expressly laid down the same rule of law in the words, "wholly or partly before or after the commencement of this Act."² A raiyat is also entitled to the benefit of the occupation by his father or other person from whom he has inherited. "A person shall be deemed to have held as a raiyat any land held as a raiyat by a person whose heir he is."³

The continuity of a raiyat's occupation may, however, be broken by wrongful action on the part of the landlord, such as forcible ouster. In such a case the landlord, after the tenant has recovered possession by a suit or otherwise, ought not to be allowed to take advantage of his own wrongfull act, and say that the continuity has been broken and no right of occupancy has been acquired.⁴ So, also, if the landlord enters into the land after alleged abandonment by the tenant, and the tenant afterwards succeeds in recovering possession by a suit under section 87 of the Bengal Tenancy Act, the latter shall not lose his right of pleading continuity of possession, notwithstanding that he has intermediately been out of possession for more than a year.

When land is held by two or more co-sharers as a raiyati holding, each of them holds as a raiyat and

2 Act VIII of 1885, Sec. 20, Sub-Sec. 1.
acquires a right of occupancy.\(^1\) The mere fact of joint-holding by a number of persons does not prevent the right as to the entire land growing in any one of the joint tenants or tenants in common. The decisions under Acts X of 1859 and VIII (B. C.) of 1869, however, are not uniform, as indeed they do not expressly lay down any rule as to the right of one out of a number of tenants holding jointly.\(^2\)

As regards the private lands of proprietors when held by raiyats, the acquisition of the right does not depend merely upon occupation and payment of rent for twelve years as in the case of ordinary raiyati lands. The right cannot be acquired, when such lands are held "under a lease for a term of years or under a lease from year to year."\(^3\)

It would seem, specially having regard to the provisions of section 178 of the Bengal Tenancy Act, that the Legislature has not thought proper to impose any restrictions on contracts of leases of non-raiyati lands. A lease for a term of years, whether there is any express covenant for re-entry or not, entitles the landlord to re-enter his private lands; and whether the raiyat holds under one lease or successive leases, possession for twelve years gives him no right to hold on. No right of occupancy accrues, if the holding is under leases renewed year after year, whether they are verbal or written.\(^4\)

Non-payment of rent does not bar the acquisition of the right,\(^5\) neither does it involve the forfeiture of the right when once acquired.\(^6\) Under Act X of 1859,

---

1. Aft VIII of 1885, Sec. 20, cl. 4
the High Court held that when a tenant had held for a period of twelve years as a raiyat, non-payment of rent for some years did not extinguish the right. In *Narain Roy v. Opnit Misser*¹, it was held that for the acquisition of a right of occupancy, only two conditions were necessary—(1) the cultivation or holding of land for a period of twelve years, and (2) that the person holding or cultivating land should be a raiyat. Non-payment of rent might be a valid ground for holding that the land was held not by a raiyat but by a trespasser. The maintenance of the right is dependent upon payment of rent but not the acquisition of it. But the failure of a tenant to pay rent only entitled the landlord to re-enter by ejectment under the provisions of section 78 of Act X of 1859 and section 52 of the Bengal Act VIII of 1869, the tenant having under them the right to protect himself by the payment of the arrears and costs within fifteen days of the date of the decree. Non-payment of rent before suit did not by itself cause a forfeiture of the right of occupancy already acquired by a raiyat.

During the continuance of the relationship of landlord and tenant, the main duty of an occupancy-raiyat is to pay his rent regularly, as indeed it is the primary duty of all tenants to their landlords. The rate of rent is generally determined by contract, and in the absence of a written contract, oral evidence is always admitted. If a written lease exists, it is provable in the ordinary way. Unless the contract has been entered into, subsequent to the passing of the Bengal Tenancy Act, rent is payable at the contract rate, if the contract is otherwise valid. But if the contract is one executed after the Bengal Tenancy Act came into force, and, in districts where that Act prevails, the contract rate must be evidenced by a written instrument duly registered by the tenant, if the rent payable is higher than that paid before. The enhanced rate must not also ex-

ceed the rent previously payable by more than two annas in the rupee, i.e., one-eighth. No rent at enhanced rate is also allowable for fifteen years from the date of the previous enhancement.1 A contract in contravention of any of the special provisions as to occupancy-raiyats is invalid in law, and a suit for rent on such a contract is liable to be dismissed, except as to the rent previously payable. But any arrangement in settlement of a dispute as to the amount and character of the rent is not rendered invalid by the operation of the Act,2 nor is the landlord debarred from recovering rent at an enhanced rate, when it has been actually paid for a continuous period of not less than three years immediately preceding the period for which rent is claimed by the landlord.3 The contract is not also invalid, if the enhanced rent is payable on account of an improvement effected at the expense of the landlord, and the improvement exists and substantially produces its estimated effect.4 If the productive power of any piece of land has been increased by any work carried out under the provisions of the Bengal Drainage Act of 18805 the landlord is entitled to enhanced rent in accordance with the valuation under the Act, and the restriction imposed by the Bengal Tenancy Act does not apply. It is valid, when the land has been held at a specially low rate of rent, in consideration of the cultivation of any particular crop, such as indigo, for the convenience of the landlord.6 These provisions in the Bengal Tenancy Act restraining the right of free contract are intended for the wisest purpose—the protection of the weak and the unlettered from the strong hand of the landlord.

1 Act VIII of 1885, Sec. 29, cls. (b) and (c).
2 Sheo v. Ram, I. L. R. 18 Cal. 333.
3 Act VIII of 1885, Sec. 29, proviso (1).
4 Ibid, proviso (2).
5 Act VI (B.C.) of 1880, Sec. 42 (a).
6 Act VIII of 1885, Sec. 29, proviso (3).
If no written contract exists, the amount of the tenant’s annual rent payable in any particular year is generally the rent paid in the last preceding agricultural year. Oral evidence of enhancement of rent, even when it is admissible, is seldom believed. The landlord generally attempts to prove that rent has been in previous years paid at the rate claimed. Oral evidence is usually supplemented by zemindari papers known under various names:—jummbandis, jummasilos, thokas, karchas, shehas, &c., and now-a-days, check counterfoils. The question of the admissibility of these papers, their use as corroborative evidence and the mode of proving them properly fall within the scope of the Law of Evidence.

Rent is usually payable in instalments, though payment in one lump sum at the harvest time or at the end of the agricultural year is not uncommon. The instalments are regulated by agreement or established usage. An agreement as to instalments need not be evidenced by a written instrument. Where no agreement is proved or is provable, established usage of the perganah or the local area in which the holding lies, and not the practice of payment by the raiyat for a long series of years in proof of local usage, may be proved. If there be an agreement or local usage for payment in monthly instalments, rent is recoverable monthly, notwithstanding that the practice with reference to a long period or any particular person has been different. The Bengal Tenancy Act has made rent payable in quarterly instalments with reference to the agricultural year, if

2 Act X of 1859, Sec. 20; Act VIII (B.C.) of 1869, Sec. 21 and Act VIII of 1885, Sec. 53.
there be no proof of an agreement or established usage. A decree for rent at any previous period, in which the question of instalments as based upon an agreement or established usage was decided, is very good evidence, and may be used between the parties, but if the decree directed payment at the end of the year without any finding as to intermediate instalment based on any agreement or established usage, it is not sufficient evidence to override the law as laid down in the Bengal Tenancy Act. Under the Acts of 1859 and 1869, rent, in the absence of any contract or established usage to the contrary, was payable annually at the end of the agricultural year.

Rent becomes due at the last moment of the time which is allowed to the tenant for payment, which is the sunset of the day on which an instalment falls due. It is ordinarily the duty of the tenant to tender payment at the malcutchery or village office of the landlord. If no payment is made at or before the time, the amount payable becomes an arrear of rent.

Interest is payable on arrears of rent. The rate of interest is generally regulated by contract which may be either written or verbal. If there be no contract, evidence may be given of local usage or the practice for a long series of years. But wherever the Bengal Tenancy Act prevails, no contract, entered into subsequent to the passing of the Act (14th March 1885), for payment of simple interest at a rate higher than twelve per centum per annum is valid. If the contract was entered into before that date, interest is payable according

1 Act VIII of 1885, Sec. 53; Hemanta Kumari v. Jagadindra, I. L. R. 6 Cal. 214.
2 Act VIII of 1885, Sec. 53.
3 Kashi v. Rohini, I. L. R. 6 Cal. 325.
4 Act VIII of 1885, Sec. 54 (2).
5 Act VIII of 1885, Sec. 54 (3).
6 Act VIII of 1885, Sec. 178, Sub-Sec. 3, cl. (h).
to the contract. In the absence of evidence as to contract or local usage, interest at twelve per centum per annum was payable under Act X of 1859, though it was discretionary with the Court in any case to allow it or not.¹ The Bengal Tenancy Act has taken away the discretion, and interest at twelve per centum per annum is always leviable, if there is no contract or local usage to the contrary. If no contract or local usage be proved, interest is payable from the expiration of each quarter of the agricultural year in which the instalment falls due.² But the rule is subject to the proviso to section 53 of the Bengal Tenancy Act.

The Court may, in substitution of interest, award damages not exceeding twenty-five per centum on the amount of the principal rent decreed. But there can be no decree for both interest and damages.³

The rent and interest or damages are payable to the landlord, but the question frequently arises—Who is the landlord? You have already seen that a tenant, holding even under a trespasser, acquires a right of occupancy, and the true owner of the land cannot eject him, but he is entitled only to rent.⁴ Succession and transfer, and devolution of interest in the various ways recognised by law are frequent; forcible ouster of the true landlord is also not unfrequent. Boundary disputes between adjoining landlords are also very common. Thus the difficulty of finding out the true landlord is sometimes very great. You will frequently meet with cases, especially of chur lands, in which you will find the raiyats choosing their own landlords and changing them as often as they please.

² Act VIII of 1885, Sec. 67.
³ Act VI (B.C.) of 1862, Secs. 2 and 3; Act VIII (B. C.) of 1869, Secs. 44 and 45; Act VIII of 1885, Sec. 68. Nobo v. Baroda, 1 W. R. 100.
Where the holding of a raiyat is directly under a proprietor (as the word is defined in the Bengal Tenancy Act), and is a part of an estate, rent is payable to the person whose name is registered under the Land Registration Act of 1876. Not only is an unregistered proprietor not entitled to sue for rent, but the Bengal Tenancy Act lays down that a person liable for the rent is not entitled to plead, in defence to a claim by the person so registered, that the rent is due to any third person. The raiyat has only to go to the Collectorate of the district and enquire who the person is whose name is registered in the Collector's Register, and he is bound to pay him rent, and is by such payment fully indemnified against the claim of any other person. No question of title can, therefore, arise in a rent suit by a registered proprietor. Registration under Act VII (B.C.) of 1876 was not sufficient to give a title to claim or recover rent under the Act of 1859. It was necessary to prove the relationship of landlord and tenant by other evidence.

Intermediate tenure-holders are not under any disability with respect to the realization of rent from raiyats, on account of the non-registration of their names in the books of their superior landlords. But in districts in which the Bengal Tenancy Act has operation, and the person suing for rent is an heir of the last recorded permanent intermediate holder or a transferee from him, registration in the landlord's office is necessary. The person succeeding to a permanent tenure is not entitled to recover rent by suit or any other proceeding under the Act, until the Collector of the District has received the notice and fees prescribed in it. But the rule does not apply when the succession opened out before the Act came into force.

1 Act VII (B.C.) of 1876, Sec. 78. 2 Act VIII of 1885, Sec. 60.
4 Act VIII of 1885, Secs. 15 and 16.
5 Profullah v. Samiruddin, I. L. R. 22 Cal. 337.
As the law at present stands, the following rules may be laid down for determining whether the relationship of landlord and tenant exists:—

(a) If the raiyat holds under a duly registered lease, or a written lease admissible without registration, the lease itself, *prima-facie*, proves the relationship, and the raiyat is bound to pay rent to the lessor. On the death of the lessor, his legal representative is entitled to the rent, as soon as his name is registered in the superior landlord’s office under the provisions of sections 15 and 16 of the Bengal Tenancy Act. In a case of transfer, voluntary or involuntary, or sub-lease by the tenure-holder, proof of transfer or sub-lease entitles the transferee or the lessee to receive rent. But the raiyat, if he has not been induced into the land by the lessor mentioned in the written contract, is always entitled to show that the lessor had no title at the date of the execution of the lease and that another person is entitled to realise rent. A raiyat claiming a right of occupancy, even if he has been induced into the land by the lessor, is entitled to show that he took the lease from a wrong person, and that the rent is really payable to another. He is not estopped by the provisions of section 116 of the Indian Evidence Act. The burden of proof, however, in such a case is upon the raiyat.

(b) Where there is no written lease and no direct evidence of a verbal contract of lease, proof of payment of rent in previous years and the conduct of parties may afford very good evidence of the existence of the relationship of landlord and tenant. Payment of rent is the most cogent evidence of an admission of the relationship of landlord and tenant. But the raiyat is always


2 Lodai Mollah v. Kally, I. L. R. 8 Cal. 238.
entitled to show that he has been paying the rent of his holding to a wrong person. Payment of rent is generally proved by the production and proof of zemindari papers, such as *jumma-wasil-baki papers, thokas, kurchas, shehas* and counterfoils of *dakhilas—check moories*. As to the probative force of these papers, which are the private papers of the landlord, opinions vary.

(c) The relationship may also be proved by proof of title, as the true owner is entitled to rent unless he is out of possession. A raiyat setting up the title of a third person and depositing the rent of his holding in Court is in the position of a plaintiff in an interpleader suit, though no tenant is himself entitled to bring such a suit.\(^1\) In the case of a deposit after suit, the Bengal Tenancy Act has provided that a notice should be served upon the person who is represented to be the true landlord,\(^2\) and a title suit between the plaintiff in the rent suit and such third person decides who is the true rent-receiver.\(^3\) If there is no deposit of rent by the raiyat, the third person whose title is set up by him, receives no notice, and the rent suit has to be fought out between the plaintiff and the raiyat. Proof of title is some evidence of the relationship of landlord and tenant. But such proof alone is not sufficient to entitle a plaintiff to get a decree for rent.

(d) It has sometimes been said that proof of present possession is sufficient to entitle a plaintiff to realise rent. This to me is unintelligible, unless present possession and previous receipt of rent are in law synonymous expressions. General evidence of possession by receipt of rent from other raiyats is not relevant in an enquiry as to the relationship of landlord and tenant.

During the existence of the relationship of landlord and tenant, the tenant is entitled to make such use of

---

\(^1\) *Cf* A\(\text{\textsection} 474.*  
\(^2\) A\(\text{\textsection} 149.*  
the land as is consistent with the original purpose of the

1. He is not entitled to change the character of the

land, so as to make it unfit for the purpose for which

the tenancy was created. But he is entitled to make

improvements under the rules laid down in the Bengal

Tenancy Act, Chapter IX. 2

Rent may be realized by distraint or by suit instituted

under Chapter XIII of the Bengal Tenancy Act. The

provisions about distraint are applicable only to arrears

of the current year. 3 A suit for rent is entertain-

able for the arrears of the current year and those of back

years, the rule of limitation being three years from the last
day of the Bengali year in which the arrear falls due where

that year prevails, and the last day of the month of Jeyt

of the Amli or Fasli year in which the arrear falls due,

where either of these latter years prevails. 4

Under the Rent Acts of 1859 and 1869, the right of an

occupancy-riayat could be determined for non-payment

of rent, for the breach of any condition of the contract

of lease express or implied, by denial of the landlord’s

title, by surrender, by abandonment and by merger.

I have already dealt with cases of non-payment of

rent and breaches of conditions, as well as disclaimer. 5

Surrender and abandonment are extremely rare. To

avoid the difficulties which frequently arise on pleas

of relinquishment and abandonment by tenant, the

Bengal Tenancy Act has made special provisions in

sections 86 and 87. 6

The transfer by a raiyat of a non-transferable right

of occupancy is not only invalid, but it extinguishes the

right itself. The transferor is supposed to have aban-
doned the holding, and the transferee acquires no right

under the void contract of sale and is considered to be a
trespasser. Sir Richard Couch observed in the Full

1 Cf. Act VIII of 1885, Sec. 23.  2 Vide pp. 300—301.

2 Act VIII of 1885, Sec. 121.  3 Act VIII of 1885, Schedule III, Art. 2.  4 Vide p. 307.
Bench case of *Narendro Narain Roy v. Ishan Chunder Sen*—"If a raiyat having a right of occupancy endeavours to transfer it to another person, and, in fact, quits his occupation, and ceases himself to cultivate or hold the land, it appears to me that he may be rightly considered to have abandoned his right, and that nothing is left in him which would prevent the zemindar from recovering the possession from the person who claims under the transfer. And not only may he be considered to have abandoned it, but if the right which is given by the law is one which exists only so long as he holds or cultivates the land, when he ceases to do that by selling his supposed right and putting another in his place, his right is gone and cannot stand in the way of the landlord's recovering possession. If it were not so, the law would become nugatory. The position of things would be that the transfer by the raiyat is invalid, and gives the transferee no right to the possession, but the raiyat could not recover possession from the transferee as he would be bound by his act of transfer; nor could the landlord recover possession because the outstanding right in the raiyat would be in his way. The result would be that although the transfer is invalid, the transferee would be able to keep possession and to set the landlord at defiance."¹ This was a case under the Act of 1869, but it has been followed in cases under the Bengal Tenancy Act, notwithstanding that under the latter Act an occupancy-raiyat has not merely the right to hold and cultivate but has a higher right—freedom from ejectment for non-payment of rent and a right to the surplus sale-proceeds on a sale for arrears of rent. Even if the transferor continues to hold the land but as a lessee under the transferee—as an under-raiyat, there is an extinguishment of the right of occupancy.

The transfer, however, of a portion of a holding does not extinguish the right of the transferor to the whole or even the part of the holding thus transferred. Such an act on the part of the tenant is not deemed to be an abandonment, so as to entitle the landlord to re-enter.¹

Where a transfer without the landlord's consent is valid according to custom or local usage, the registration in the landlord's office of the name of the transferee is necessary for the benefit of all parties concerned. The landlord ought to know who is the person in actual occupation as raiyat; the raiyat who has sold his holding ought to be freed from liability for rent after the cessation of his interest, and the transferee should have the advantage of having notices of suits for arrears of rent. The Rent Acts of 1859 and 1869 required the registration of the names of intermediate holders between the zemindar and the raiyat, but not of raiyats,² though it was held in some cases that the registration of the names of raiyats was necessary. The law as to tenure holders was frequently misapplied to the cases of raiyati holdings. The Bengal Tenancy Act has now provided—"When an occupancy-raiyat transfers his holding without the consent of the landlord, the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent accruing due after the transfer, unless and until notice of the transfer is given to the landlord in the prescribed manner."³

The notice of transfer is thus essentially necessary to relieve the outgoing tenant, and it would seem that, until such notice is served in accordance with the rules

³ Act VIII of 1885, Sec. 73.
prescribed by the Local Government in that behalf, the landlord is not bound to recognise the purchaser as his tenant, and any action against the original tenant will bind the purchaser notwithstanding that he is not a party to it. The due service of notice on the landlord operates as registration in the landlord's office, and no suit for registration is, therefore, necessary.

Extinguishment of the right of occupancy by merger is provided for in section 22 of the Bengal Tenancy Act. Under the Rent Acts of 1859 and 1869, there was no legal bar to the two rights, the right of a tenure-holder and occupancy-right—being in the same individual. But section 22 of the Bengal Tenancy Act provides that when the immediate landlord of an occupancy holding is a proprietor or permanent tenure-holder, and the entire interests of the landlord and the raiyat in the holding become united in the same person by transfer, succession or otherwise, the occupancy-right shall cease to exist. If the right is transferred to a person jointly interested as proprietor or permanent tenure-holder, it shall also cease to exist. An ijaradar or farmer of rents shall also not acquire a right of occupancy in any land comprised in his ijara or farm.

Under the law, unaffected by the provisions contained in the Bengal Tenancy Act, raiyats holding lands at unchanged rates of rent from the time of the Permanent Settlement, enjoy the privileges of fixity of rent and freedom from liability to ejectment, and raiyats having rights of occupancy are entitled to hold on from generation to generation as long as they pay rent at fair and equitable rates; but those who have cultivated or held lands for periods shorter than twelve years are liable to be ejected at the end of any agricultural year, on proper and reasonable notice to quit, unless they are

1 But see Ambika v. Chowdhry, I. I. R. 24 Cal. 642.
protected by express conditions contained in their leases. Under the Bengal Tenancy Act, however, every raiyat, whatever the class to which he belongs, enjoys protection from eviction, except under certain specified conditions, as soon as he is admitted to the occupation of *raiyati* land in any village; and even when he holds for a term of years under a contract in writing duly registered, he cannot, under any circumstances, be ejected at the end of the term, unless notice to quit has been served on him not less than six months before the expiration of the term and unless a suit for ejectment is instituted within six months from the expiration of the term. If he has held for a shorter period than twelve years, the Bengal Tenancy Act calls him "a non-occupancy raiyat," and he is defined to be—"a raiyat not having a right of occupancy in the land held by him." Neither is the expression "non-occupancy raiyat a happy one, nor is the definition strictly logical. As I understand the expression, it means and includes that large class of raiyats holding *raiyati* lands, who neither hold at fixed rates from the time of the Permanent Settlement nor are occupancy-raiyats. The Act has not defined the incidents of such a tenancy, except as to protection from eviction by the landlord and the rate at which rent is payable. It should, however, be remembered that the Act does not pretend to define exhaustively all the incidents of the various kinds of tenancies known in this country. Questions must and do frequently arise, which cannot be answered from the text of the Bengal Tenancy Act, and lawyers and judges are obliged to have recourse to well-known customs or local usages or customary laws and rules of equity and good conscience. Section 183 of the Act saves the operation of "any custom, usage or cus-

---

\[1\] Act VIII of 1885, Sec. 44  \[2\] Act VIII of 1885, Sec. 45.  
\[3\] Act VIII of 1885, Sec. 4, Sub-sec. 3, cl. (c).
tomary right not inconsistent with or not expressly or by necessary implication modified or abolished by its provisions." The rules of law prevalent in other countries, especially when they have been adopted in cognate Acts by the Indian Legislature and the earlier decisions of our Superior Courts, very often supply omissions in codified laws.

The right of a non-occupancy-raiyat is heritable, i.e., it descends in the same manner as other immovable property, subject to any custom or local usage to the contrary. But there is a well-recognised rule that if a raiyat dies without any heirs except the Crown, the landlord takes possession. Tenancies-at-will are very rare in this country, though they are not unknown, and the customary law or the "common law" of the country (if I may borrow the expression) makes all other classes of tenancies heritable. The Transfer of Property Act, though it does not apply to agricultural holdings in Bengal, recognises the heritability of the interest of tenants, when there is no contract or local usage to the contrary. There is nothing in the Bengal Tenancy Act which takes away heritability from the status of a non-occupancy raiyat.

We have already seen that an occupancy-raiyat cannot, in the absence of custom or usage, transfer his right inter-vivos or bequeath it by a testamentary instrument. It is only reasonable to hold that the right of a non-occupancy raiyat is not also transferable, and I believe the general custom of the country is also to that effect. But local usage may be proved to show that the right of a non-occupancy raiyat is transferable. Section 178, sub-section 3, cl. (d) uses the word

---

1 Act IV of 1882, Sec. 117. 2 Ibid, Sec. 108. 3 But see Karim v. Sundar, I. L. R. 24 Cal. 207—With the greatest deference to the learned judges who decided the case, it seems to me that the judgment is not in accordance with the spirit of the Bengal Tenancy Act. 4 Ante p. 299.
"raiyat" and not "occupancy raiyat," indicating thereby that the right to transfer may exist in all classes of raiyats.

A non-occupancy raiyat is liable to be ejected on the ground "that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with the Bengal Tenancy Act and on breach of which he is, under the terms of the contract between himself and his landlord, liable to be ejected."¹ This is also the law as regards occupancy-raiyats.² The only material difference that seems to exist is that by section 178, sub-section 3, cl. (e), an occupancy-raiyat cannot contract himself out of his right to sublet according to the provisions of Chapter VII of the Act, but such a contract of a non-occupancy raiyat with his landlord is not invalid. It seems to me that a non-occupancy raiyat has the right to sublet, subject to the restrictions contained in section 85, but he may be restricted from doing so by the contract of lease.

The right of a non-occupancy raiyat is not "protected" on a sale for arrears of revenue of an entire estate under Act XI of 1859 or Act VII (B. C.) of 1868. It is an encumbrance within the meaning of these Acts and the purchaser may avoid it.³ Neither is it a "protected interest" on a sale under Regulation VIII of 1819⁴ or the Rent Acts of 1859 and 1869. But the Bengal Tenancy Act, of which it is a creation, calls "the right of a non-occupancy raiyat to hold for five years at a rent fixed under Chapter VI by a Court, or under Chapter X by a Revenue-officer"⁵ a "protected interest" not liable to be avoided on a sale for arrears of rent. The right is statutory and does not depend

¹ Act VIII of 1885, Sec. 44, cl. (b).
² Ante p. 304. Act VIII of 1885, Sec. 25.
³ Act XI of 1859, Sec. 37; Act VII (B. C.) of 1868, Sec. 14.
⁴ Regulation VIII of 1819, Sec. 11, cl. 3.
⁵ Act VIII of 1885, Sec. 160, cl (e)
upon a grant by the rent-receiver, and like the right of occupancy it may be acquired by holding under a trespasser, and the true owner cannot eject the raiyat on the ground that he has been induced into the land by a wrong-doer.¹

As regards the right to *surrender*, the rule is the same as that applicable to occupancy raiyats. He cannot, of course, surrender during the term specified in a duly written and registered contract of lease.²

A non-occupancy-raiyat can be ejected "on the ground that he has failed to pay an arrear of rent."³ The law applicable is nearly the same as that laid down in Act X of 1859⁴ and Act VIII (B.C.) of 1869⁵ as regards occupancy-raiyats. Under section 65 of the Bengal Tenancy Act, an occupancy-raiyat is not liable to ejectment for arrears of rent, but his holding is liable to sale in execution of a decree for such arrears.⁶ But under section 66 and section 44, cl. (a) of the Act, the landlord is entitled to a decree for the ejectment of a non-occupancy raiyat for an arrear of rent that remains unpaid at the end of any agricultural year, if the amount of the decree including costs and subsequent interest is not paid within fifteen days from the date of the decree, or when the court is closed on the fifteenth day, on the day on which the court re-opens.

The expiry of the term of a registered lease may be a ground for the ejectment of a non-occupancy raiyat, provided he has been served with a proper notice to quit not less than six months before the expiration of the term⁷ and provided his occupation of the land began under the particular lease.⁸

² Ante p. 307. Act VIII of 1885, Sec. 178, Sub-Sec. 3, cl. (e).
³ Act VIII of 1885, Sec. 44, cl. (a).
⁴ Act X of 1859, Sec. 78
⁵ Act VIII (B.C.) of 1869, Sec. 52.
⁶ Ante p. 303
⁷ Aft VIII of 1885, Sec. 45.
⁸ Ibid, Sec. 47.
NON-OCCUPANCY.

In any case the suit must be instituted within six months from the expiration of the term.\(^1\) If, however, the raiyat was on the land from before the execution of a registered lease, the expiration of the term mentioned therein does not entitle the landlord to re-enter the land, whether the right to re-enter is expressly reserved or not. If the landlord delays in bringing a suit and allows six months to expire from the end of the term, there is an absolute bar to the institution of a suit for ejectment. Thus you see, the grounds of ejectment of a non-occupancy raiyat are extremely limited, and unless the landlord is always wide awake and there is a scrambling for land, so that he may change the raiyat after the expiration of the term of a registered lease under which the tenant holds, non-occupancy raiyats have always fair chances of acquiring the status of occupancy-raiyats.

Refusal to agree to pay a fair and equitable rent may also be a ground for the ejectment of a non-occupancy raiyat. When he first enters into the land, he is bound to pay rent at the rate agreed upon between himself and his landlord.\(^2\) But if at the end of the term of the first lease, the landlord, instead of determining the right of the raiyat according to the provisions of the Act, chooses to retain him as a tenant and asks the court to compel the tenant to enter into an agreement to pay rent at a higher rate, the court ought not to enforce the payment of any rates but such as are just and equitable. He is not entitled to the full market-rate or the highest rack-rent. Whatever the initial rent might have been, the court has a right to interfere on a fresh settlement. In *Bokronath Mundul v. Binodh Ram Sein*,\(^3\) a Full Bench of the Calcutta High Court held—A landlord cannot recover rent at an enhanced rate from a raiyat who has not a right of occupancy, unless he proves the existence

---

\(^1\) Act VIII of 1855, Sec 45.

\(^2\) Act VIII of 1855, Sec. 42; Act X of 1859, Sec. 8. Sheik v. Roheem, 2 Hay 433; Sree v. Lalla, Marsh 325; Syed v. Aghori, 2 B.L.R.S.N. 15.

\(^3\) 10 W. R., F. B., 33; sc., 1 B L. R., F. B., 25.
and the reasonableness of the grounds stated in his notice served under section 13 of Act X of 1859. Section 13 is applicable not merely to raiyats having a right of occupancy, but to all under-tenants and raiyats." Peacock, C.J., observed in the same case—"It was contended in argument that the landlord may enhance the rent of a raiyat not having a right of occupancy to any amount he pleases, and may specify any grounds that he pleases, for such enhancement, and that he is not bound to prove that any of such grounds exist, and that it is for the raiyat to prove that no such ground exists. If such an argument were tenable, a landlord might give notice that he intends to enhance to some exorbitant amount, upon the ground that he is a grasping oppressive landlord, having no regard for justice or fair dealing or for the interests of any one except himself. It might be difficult, if not impossible, in many cases for a raiyat to disprove the grounds alleged, by showing that the landlord was not a person of that description. This shows that the grounds must be reasonable and such as to justify the enhancement claimed. The onus of proving the existence of the grounds alleged is upon the landlord. It appears to me that the judges who referred this case came to a right conclusion that a landlord cannot enhance the rent unless he states the grounds on which he seeks to enhance, and that if those grounds are disputed, it will be for the court to determine whether they exist, and whether they are such as to justify the enhancement." The Bengal Tenancy Act has amplified the rule and has prescribed further rules for determining what is fair and equitable rent and the procedure which should be observed. I propose to deal with the question of the settlement of rent in the next lecture.
LECTURE XI.

RAIYATS

(RATE OF RENT).

In dealing with occupancy right in the last lecture, I omitted to deal with an important matter as to the rate of rent—its enhancement and abatement. The question of the rate of rent is one of vital importance. The first problem is—how was money-rent originally fixed? Rent in India was never competitive; it was customary. The origin of any custom is always difficult to trace, but in this particular instance we have some data to go upon. There can be no doubt that the essence of customary rent was the price of a definite share of the produce,—an average of the quantity of the produce and its average selling value. An average of ten years' produce was the basis of Raja Todar Mal's settlement. Similar bases were also adopted in later times, whenever the Mahomedan government attempted directly to enhance the rent of raiyats in any locality,—a silla or a perganah—whenever it desired to have a permanent increase in land-revenue and wished to avoid the indirect method—the levying of abwabs. Each given locality or a perganah had thus its average rates for the various kinds of lands, and every new settlement, whether of abandoned land or waste land brought under cultivation, was based upon the customary rates of assessment. There was another principle underlying the assessment of rent, which caused differences in rates amongst the different classes of raiyats. There were the village elders,
the Mandals; there were the ordinary khodkast or resident hereditary cultivators, and there were the pahi or non-resident cultivators. There was a fourth class too,—those who had not, until very recently, much importance as cultivators,—the lowest sub-castes amongst the Sudras themselves, who generally worked as labourers, but occasionally held land as raiyats, though more generally as under-raiyats. Each of these different classes of raiyats paid at varying rates of rent, the elders paying less than the other classes and the labouring Sudras paying at the highest rate. The Sudra labourers as raiyats seem to have occupied the least productive lands, and paid as rent the entire value of the crop, less the cost of labour and the value of the seed. These were the leading principles that underlay customary rent in India—principles which are—and ought to be the bases of enhancement or abatement of rent at the present day. In India, more than in any other country, every thing has a tendency to unchangeableness, and when once the rates in any locality are fixed on these principles, they become customary or perganah rates. Rent of land is, over the greater portion of the world, controlled by custom, and, even in England, where land is held by tenants at competitive rent, custom is not entirely overlooked.¹

Ricardo's theory of rent is well-known. According to him the rent of any particular piece of land is the estimated difference between the amount which it produces and the amount of produce raised from the worst land in cultivation. The nett produce is that which remains after every expense connected with the farm has been paid, and after an adequate remuneration has been given as the price of labour employed and the use of capital. A rise in the rate of profit or in the rate of wages, unless accompanied by some counteracting circumstances, causes the rate of rent to decline. This

¹ J. D. Hewell's Fragmentary Tracts on Political Economy.
theory of rent may be true when there is free competition for land and when there is no interference by law or custom causing disturbance to free competition. Increase of population and consequent demand for land and the rise in the value of produce and decrease in the wages of labourers may increase the rate of rent in other countries, but in India custom controls the theories of Ricardo and Malthus and the political economists who have followed them.

According to J. S. Mill, the principle of competition gives to the theories of rent, as enunciated by Ricardo and Malthus, a scientific character, but competition has never been the exclusive regulator in any country—the causes of aberration being various and indefinite. In fact, competition never exercised unlimited sway in any country, until a comparatively modern period. He says—"The farther we look back into history, the more we see all transactions and engagements under the influence of fixed custom. The reason is evident. Custom is the most powerful protector of the weak against the strong, or their sole protector where there are no laws, no government adequate to the purpose, though the law of the strongest decides. It is not the intention, or in general, the practice of the strongest to strain the law to the utmost; and every relaxation of it has a tendency to become a custom, and every custom to become a right. Rights, thus originating, and not competition in any shape, determine the share of the produce enjoyed by those who produce it. The relation, more specially between the landholder and the cultivator, and the payment made by the latter to the former, are in all states of society but the most modern, determined by the usage of the country. Never, until late times, has the condition of the occupancy of land been, as a general rule, an affair of competition. The occupier for the time has, very commonly, been considered to have a right to
retain his holding, whilst he fulfils the customary requirements, and has thus become in a certain sense a co-proprietor in the soil."

The majority of the judges in the case of Thakoo ranee Dossee v. Bisheshur Mookerjee accepted Mill's view of rent in India, and agreed in holding that whatever the theory of rent applicable to England might be, the customary or perganah rate should be the true basis of ascertainment of rent in India. "The custom of the country, and not the theory of English political economists, should be applied to this country. All that is not comprehended in the wages of labour and profit of the raiyat's stock is not the landholder's rent."

An analysis of the idea of customary rent in India resolves it into the following elements:—

1. Quantity of land.
2. Productive power of land.
3. The average value of the produce in or near the locality.
4. The class to which the raiyat belongs.

The rent of any piece of land is ordinarily fixed on a consideration of these elements, and the tenant is bound to pay the same as fair and equitable. Thus the contract-rate and the customary rate should coincide.

The customary or perganah rate having originally been based on these elements, variations due to accidental causes may entitle the rent-receiver to demand rent at a higher rate or the rent-payer to ask for an abatement. But according to another well-established custom, variation could not be attempted with respect to any particular raiyat or any particular holding, but could only be attempted with respect to a local area—an entire village or a perganah. In particular instances, the rate of rent might, for some cause or other, have

---

1 Principles of Political Economy, Bk. II, Ch. IV. 2.
been lower than that at which rent was paid by the majority of raiyats, and in such cases the landlord might increase the rent to the ordinary customary rate of the locality. Such instances were, however, rare, and unless there was a wholesale enhancement, no raiyat could be compelled to pay at a higher rate.

When Act X of 1859 was passed, it was provided by section 17 of the Act\(^1\)—"No raiyat having a right of occupancy shall be liable to an enhancement of the rent previously paid by him except on some one of the following grounds, namely:—

(a) That the rate of rent paid by such raiyat is below the prevailing rate payable by the same class of raiyats for land of a similar description and with similar advantages in the places adjacent.

(b) That the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the raiyat.

(c) That the quantity of land held by the raiyat has been proved by measurement to be greater than the quantity for which rent has been previously paid by him."

The section did not expressly refer to customary or perganah rates, neither did the Act lay down any especial procedure for enhancement of rent of all the raiyats in any local area. The Pottali Regulations in the Bengal Code contemplated equalization and fair and equitable rent of raiyats in a local area, but the provisions made were imperfect, and no effectual steps were ever taken to properly enforce them. The first ground of enhancement,—that the rate at which rent is paid by the raiyat is below that prevailing in adjacent places,—relates to the perganah or customary rate. It assumes that the

\(^1\) See Act VIII (B. C.) of 1869, Sec. 18.
rate of rent paid by the majority of raiyats in any locality is fair and equitable, and that, if there are no special causes affecting any particular raiyat which entitle him to pay at a lower rate, his rate of rent should be equalised to that of his neighbours. The Act does not provide for reduction of rent, if the raiyat has been paying at a higher rate than his neighbours, the assumption apparently being that the rate of rent previously paid by him is, for some especial cause, fair and equitable. Section 30, clause (a), of the Bengal Tenancy Act covers almost the same ground as the first clause of section 17 of Act X of 1859. Section 38 of the Bengal Tenancy Act, while laying down rules about reduction of rent, does not contemplate reduction on the ground that the rate at which rent is paid by a particular raiyat is higher than the prevailing rate.

The prevailing rate of rent paid for lands of a similar description with similar advantages in the places adjacent is, in the present state of things, extremely difficult to determine. Various causes, the principal of which are the landlord's caprice or tyranny and the tenant's weakness, have in many localities nearly destroyed what one would call "the customary rate." The raiyats generally pay at varying rates, varying with the power of resistance which each of them possesses. In many instances colourable kabuliats at rates higher than the really prevailing rates come forward in abundance in support of the landlord's cause, and courts of law feel the greatest difficulty in finding out the truth, even if there be a prevailing rate. The determination of the question as to what is the prevailing rate has necessarily induced rulings not quite consistent with each other. In one of the leading cases on the subject, the late Justice Dwarkanath Mitter observed—"Prevailing rate means the rate paid by the majority of the raiyats in the

---

1 Shadhow Singh v. Ramanoograha Lall, 9 W R. 83.
neighbourhood." It must be paid generally and not by a number of witnesses only. In *Priag Lall v. Brockman*, the evidence of three *patwaries*, who put in their *jummabandies* showing the rates payable by almost all the raiyats, was held sufficient to prove the prevailing rate. The duty of a judge, when dealing with a case based on this ground of enhancement, is not to determine the fair or equitable rate, nor to strike an average and thereby determine the prevailing rate, but to find out strictly the rate which has adjusted itself and is actually paid as *nirik* or *rate* by a very large majority of raiyats. But though the customary and perganah rate is generally the prevailing rate, it is not always so. The established rate might have been changed with respect to many raiyats, and the customary rate might have ceased to be the prevailing rate at the date of the institution of a suit for enhancement.

The Bengal Tenancy Act has provided that, in determining the prevailing rate, the rates generally paid for not less than three years before the institution of the suit should be taken into consideration, and for ascertaining the rates satisfactorily, such revenue-officer as the Local Government may authorize on that behalf may be appointed a commissioner under section 392 of the Civil Procedure Code.

Under Act X of 1859, the prevailing rate for the purposes of enhancement must be payable by the same class of raiyats. There was a conflict of cases as to the meaning of the expression—"same class." It was

1 13 W. R. 346.


4 *Act VIII of 1885*, Sec. 31.
held that the words referred exclusively to occupancy raiyats; but there might be separate classes in the general body of occupancy-raiyats. Amongst the occupancy-raiyats in the same village, there are jeyt raiyats or mandals who generally pay at a lower rate, and then there are the khodkast and pahi raiyats. The Bengal Tenancy Act has attempted to clear the difficulty by laying down that 'whenever it is found that by local custom any description of raiyats holds at a favourable rate of rent, the rate shall be determined in accordance with such custom.' But ordinarily the rate paid by occupancy-raiyats without reference to caste or class should be taken into consideration.

"Places adjacent" include in its range a very wide circle and not merely a village or a perganah. The perganah rate of the Mahomedan times has, however, long ceased to exist, and each village under a zamindar or a subordinate tenure-holder has its customary or local rate. Lands lying in a different village or in a different perganah may yield better harvest than lands in the village in which enhancement is claimed by the landlord. Raiyats in one village under one landlord may hold lands at more favourable rates than raiyats holding lands in a neighbouring village under another landlord. To apply the prevailing rate in one village to another would in many instances be unfair and inequitable. The Bengal Tenancy Act has laid down that in determining the prevailing rate, only the village in which the land lies should be taken into consideration.

2 Aft VIII of 1885, Sec. 31.
4 Aft VIII of 1885, Sec. 30, cl. (a).
"Description of land" includes the productive power as well as the nature of the crop capable of being produced on it. In most of the Bengal districts, lands in agricultural holdings are divided into various classes, of which the principal are the following:

1. Sali or jal or dhanhar, i.e., lands producing aman (winter) paddy. These lands are generally low, and are divided into four sub-classes according to their productive powers, viz., awal (first), doem (second), syem (third) and chaharam (fourth).

2. Suna or bhit producing two crops—the autumn paddy or jute or crops known as bhadoi, and the winter crops—potato, seeds, wheat, barley and others known as rabi. Sugar-cane is also produced on such lands. These also are divided into four classes as above.

3. Bastu or homestead lands and udbastu or land near the homestead used by the raiyat for his cattle.

4. Land covered by water.

These last two kinds of land, when they appertain to a tenant's agricultural holding must come within the purview of section 17 of Act X of 1859 and section 30 of the Bengal Tenancy Act.

5. Garden land being horticultural also comes within the purview of the Rent Acts.

6. Pasture ghaskar) lands and kharkar lands which yield thatching grasses.

The value of land producing grains depends, in any village, upon proximity to tanks or water-courses which afford means of irrigation. In this country, distance from the nearest market or place of sale is seldom taken into consideration, unless it leads to a material difference in the market value of the produce. Villages are generally not very large, and the transit of goods costs almost the same amount, the distances of the fields from one another and the market being inappreciable. The rent of lands no doubt varies considerably according to their distances from
a town, or a railway station, or a trade-centre, or a navigable river; but such variations affect only the lands of one village as compared with those of another at a distance. The advantages of one piece of land over another in the same village, if it is not grain-producing, consist not only in its proximity to reservoirs of water and streams, but also in easy access from the homes of the village people who generally live close to one another in clusters of huts. There may also be an advantage of one piece of land over another by its distance from homestead lands and fields appertaining to other villages.

The second ground of enhancement is the increase in the value of the produce or the productive power of land. Clauses (b), (c), and (d) of section 30, of the Bengal Tenancy Act, cover almost the same ground as clause (b) of section 17 of Act X of 1859. This ground involves quantities not easy to determine and requires solution of problems of great difficulty.

The vagueness of the expression "the value of the produce" in section 17 of Act X of 1859 has been attempted to be avoided in the Bengal Tenancy Act, by the words "rise in the average local prices of staple food crops" and sections 32, 33, and 34 of the latter Act have laid down certain rules with reference to this ground of enhancement of rent; but still the difficulty in ascertaining the exact rise in the prices of staple food crops is as great as ever.

Increased demand of staple food crops from an increase of the non-agricultural population of a country and of its commercial industry leading to larger exports into foreign countries, necessarily brings about a general rise in the value of produce, if there is no proportional increase in the area of agricultural lands. Decrease in the value of money as a medium of exchange also leads to a general rise in the value of food crops. The landlords begin to demand rent at enhanced rates, and the rise in the value of grains naturally
accommodates itself to the landlords' demand. The raiyats gradually pay at a fair rate of rent; but if as a class they decline to do so, it becomes necessary to determine, for the purposes of enhancement, the average rise in local prices of staple food crops and to find out what the proportionate increase in the rate of rent should be. In *Thakooranee Dossee v. Bisheshur Mookerjee* the majority of the Judges held—"In all cases in which an adjustment of rent is requisite in consequence of a rise in the value of the produce caused simply by a rise of price, the method of proportion should be adopted—the former rent should bear to the enhanced rent the same proportion as the former value of the produce of the soil, calculated on an average of three or five years next before the date of the alleged rise in value, bears to its present value." If the landlord was originally entitled only to a share of the produce, and the money-rent paid in modern days is roughly an equivalent of the money-value of that share at the time when rent in kind was commuted into rent in specie, this rule of proportion may work out the fair and equitable rent which an occupancy-raiyat ought to pay. Increase in the value of labour and increase in the cost of living of the raiyat and his family consequent upon an increase in the price of grains and the other necessaries of life are disturbing elements, but are not sufficiently important to vary such a rule of proportion unless the increase is abnormally high. The increase, as a ground of enhancement of rent, must, however, be in the price of staple food crops and not of particular crops grown by raiyats in recent years at considerable cost in manuring and hired labour. Jute, indigo, tobacco, opium and ganja are particular crops which ought not to be taken into consideration.

But after all, the rule of proportion is not very easy of application to actual facts. The terms necessary

---

2 Bhagruth v. Mohasoop, 6 W. R. (A&f X) 34.
to work out a proportion are difficult to find out. The value of staple food crops at the time of the previous settlement of rent is in most cases impossible to find out.\(^1\) Price lists may now be of use, but they were not generally prepared in former days. The causes of aberration are also many, and the very simplicity of the rule of proportion makes it inapplicable to a complex state of facts.

The rule of proportion laid down in *Thakoorani Dosse*’s case is inapplicable where in particular instances fair and equitable rent may be determined by the prevailing perganah rate.\(^2\) It would seem from the provisions of the Bengal Tenancy Act as to enhancement and settlement of rent that the rule of proportion is applicable only when enhancement is sought for in any local area involving the holdings of a large number of tenants. Re-adjustment of rent ought only to be allowed when a change of customary rent is necessary on account of the altered state of things in a large area. Macpherson J., in his judgment in the Full Bench case above referred to, observed “In my opinion, the rule of proportion,—as the old value of produce is to the old rent, so is the present value of produce to the rent which ought now to be paid—is the rule which should be adopted in the absence of any recently adjusted perganah or customary rates. In so ascertaining the rate, we shall be ascertaining it on a principle similar to that on which the old perganah or customary rates were fixed. We shall be doing what was deemed fair and equitable in the case of raiyats having a right of occupancy prior to Act X, and what is not less fair and equitable in the case of raiyats having a right of occupancy under that Act. Let the zemindar seeking to enhance the rent go back to any year he chooses, and let him prove that

\(^1\) *jadub v. Ebury*, 3 W.R. (Aed X) 160.

\(^2\) *Sreesh v. Assimonissa*, 7 W.R. 234.
the proportion was then more favourable to him than it has subsequently become. Either party should be at liberty, in each case, to prove any special circumstances tending to show that the application of the rule of proportion to that particular case would work injustice."

The increase in the price of staple food-crops must be in its natural and usual course in ordinary years. In Bhagruth Doss and others v. Mohasoop Roy and another, the High Court observed that accidental or exceptional high prices in any particular year or even successively for two or three years ought not to be taken as a measure for adjustment of rent. Various causes might affect the value of the produce for a year or two, but that would be no ground for enhancement. The Bengal Tenancy Act requires the calculation of average prices during a decennial period. The proportion is to be worked out with reference to average prices during two decennial periods, the one immediately preceding the institution of the suit and the other any decennial period as may appear equitable and practicable to be taken for comparison. In order to avoid the hardship that may arise from an average of high prices in the later period, the Act has also provided that the average prices during the later period should be reduced by one third of their excess over the average prices during the earlier period. To make enhancement on this ground practicable, it has also given the court discretion to substitute any shorter periods instead of decennial periods.

Reduction of rent may be had on the ground that there has been a fall in prices not due to any temporary cause. The same rule of proportion, as in a case of enhancement of rent, has to be worked out. The court

---

1 6 W. R. (Aft X) 34. 
2 Aft VIII of 1885, Sec. 32, cl. (a). 
3 Ibid, Sec. 32, cl. (a). 
4 Aft VIII of 1885, Sec. 32, cl. (b). 
5 Aft VIII of 1885, Sec. 32, cl. (c). 
6 Aft X of 1859, Sec. 18; Aft VIII of 1885, Sec. 38, Sub-Sec. 1, cl. (b).
may, in any case, direct such reduction of rent as it thinks fair and equitable. But suits for abatement of rent are very rare, as a steady rise in prices has been the normal state of things under the British rule in India.

The rule of proportion does not apply, where the increase or decrease in the price of staple food-crops is accompanied by either a decrease or an increase in the productive power of land or in the cost of cultivation. Land is liable to deterioration by crops being raised successively for many years. The deterioration can only be checked by a judicious system of manuring which, as a matter of fact, is little understood in this country. Manuring implies an increase in the cost of cultivation. Rise in the price of staple food-crops and increase in the demand of labourers lead to a rise in the price of labour, and when hired labour is necessary for the purposes of cultivation, an additional cause of aberration disturbs the operation of the rule of proportion. The rule in such a case requires to be modified, and as there is a steady rise in the price of labour, a deduction of something like one-third, as is contemplated by the Bengal Tenancy Act, is necessary to be made,—a deduction which prevents also any mischief that may arise from exceptionally high prices in the later period.¹ In Showdaminee Dassee v. Shookool Mahomed² Trevor J. thus stated the terms of the proportion—"The average value of the produce before the decrease in the productive powers of the land, will be to the average value of the present decreased produce, minus the increased cost of production, as the rent previously paid will be to that which the land ought now to pay."

Increase in the productive power of land, otherwise than through the agency or at the expense of the raiyat, can take place only on account of an improvement ef-

¹ Ante p. 361. ² 7 W. R. 94.
ected by or at the expense of the landlord or by fluvial action. Land has a tendency to deteriorate from want of conservation of plant-food, but improved means of irrigation, embankments preventing inundations or flow of salt water, and improved methods of drainage, may and actually do increase the productive power of land. Silt deposits in the deltaic provinces are frequent, and a piece of sandy land this year may, by the action of a river, become very fine arable land in the following year. The drainage schemes have improved considerable areas in Bengal. The zamindar who has to pay a large portion of the cost of improvement may very well demand increased rent. The Bengal Drainage Act expressly empowers him to do so.

Instances of improvements made by raiyats themselves are not uncommon in this country, and in every suit for enhancement of rent on the ground of an increase in the productive power of the land held by the raiyat, the burden is on the landlord to show that it is not due to the agency of the raiyat. Under the Bengal Tenancy Act, the burden is decidedly on the landlord. If the raiyat converts at his own cost and labour arable land into a garden, which yields a larger income, or if he improves ordinary arable land by manuring, thereby making it yield crops like tobacco or potato, the landlord is entitled only to the rent of the land as it existed before the improvement. When a raiyat brings waste land into cultivation, he is liable, after the russadi period is over, to pay at the full perganah rate for the cultivated land. But if the land which he originally obtained required special cost to make it cultivable, and the raiyat had to spend more than ordinary labour and

---

1 Act X of 1859, Sec. 17; Act VIII of 1885, Secs. 30 and 34.
2 Act VI (B.C.) of 1880, Secs. 42 and 43.
3 Poolin v. Watson, 9 W. R. 190.
capital to make it good arable land, the landlord is not entitled to any benefit from the improvement. If the raiyat has impressed upon the land a character it would not naturally have, the landlord is not entitled to ask for enhancement. Where a raiyat has dug a tank, planted an orchard at his cost or erected a distillery, it is the raiyat's agency and not the landlord's that has improved the land.¹

But in Obhoy Chunder Sirdar v. Radhabullubh Sen,² Garth C. J. observed—"It is, in point of fact, untrue that the increased productiveness of an orchard, by reason of the growth of fruit trees, is due to the agency of the person who planted them. After the first expense of preparing the land, and planting and nurturing the young trees has been incurred, the increase in the productiveness of an orchard depends probably far less upon the labour and outlay of the tenant than land used for the ordinary purposes of agriculture. The trees may require a certain amount of care and attention for time to time, but their growth and productiveness depend far more upon the quality of the soil, and the fertilizing influence of the seasons, than upon the labour of man. It is quite right of course that, in settling the rent of land which is let for the purposes of an orchard, a due allowance should be made to the tenant to cover the cost of his original outlay in the way both of labour and capital; but after such allowance has been made, there is no reason why the rent of the lands used for orchards should not be liable to enhancement or abatement from time to time, in the same way as lands used for other kinds of culture." With the greatest deference to the opinion of the learned Chief Justice, it seems to me that it is questionable in any case in which arable land is taken by the

² 1 C. L. R. 549.
tenant at the usual rate of rent, and improvement is afterwards effected by the tenant planting fruit trees.

The Bengal Tenancy Act has a rigid rule that only improvements effected by or at the expense of the landlord may be the basis of enhancement. Section 33 of the Act requires the registration of an improvement under the provisions of the Act as a necessary preliminary to a suit for enhancement on this ground; and sections 80 and 81 lay down rules for the registration of improvements.

Improvement by fluvial action must not merely be temporary or casual. It must last or is likely to last for a considerable time. An enhancement of rent on this ground should always be fair and equitable, but not so as to give the landlord more than one half of the value of the net increase in the produce of the land.  

Reduction of rent may be claimed on the ground that the productive power of the land held by the raiyat has decreased for any cause beyond his control. Permanent deterioration by deposit of sand or such other specific causes, sudden or gradual, entitles the tenant to ask for abatement. Principles of natural justice and equity require that, if during the period of the raiyat’s occupation, permanent deterioration takes place of any portion of the land held by him by the act of God, and not through the fault of the raiyat, he should not be made to pay the same rent as before.  

Under the Acts of 1859 and 1869, the tenant might either sue for abatement or claim abatement as a set off in a suit for rent brought by the landlord. But in either case

---

1 Act VIII of 1885, Sec. 34, cl. (a). Kristo v. Huree, 7 W. R. 235.
2 Act VIII of 1885, Sec. 34, cl. (b.)
3 Act X of 1859, Sec. 18; Act VIII of 1885, Sec. 38; Sheik Enayutoollah v. Sheik Elahee, W. R., 1864, (Act X) 42; Munsoor Ali v. Harvey, 11 W. R. 291.
the burden of proof is upon the tenant.\(^1\) The Bengal Tenancy Act contemplates abatement by a suit, and the court may direct in such a suit such a reduction of rent as it thinks fair and equitable.

Alteration of rent on alteration of area is an important incident of tenancy in this country. It is not confined to occupancy holdings only. The rent of a permanent tenure or a permanent agricultural holding may be altered on alteration of the quantity of land in the tenure or holding.\(^2\) We have seen\(^3\) that the law, as it stood before, the Bengal Tenancy Act came into force, enabled every tenant to claim an abatement of rent for diminution of the area of the land held by him, caused by circumstances beyond his control, unless there is a clear stipulation to the contrary. The question of the increase of rent in respect of any additional land gained by fluvial action in a permanent tenure was, however, more difficult to answer. If abatement was allowed at any time on the ground of a diminution of area by diluvion, enhancement must be allowed on accretion or reformation. But if abatement was never claimed and allowed, the landlord was entitled to assess only accretions, if he could show that he was entitled to do so by established usage or agreement.\(^4\)

In *Juggut Chunder Dutt and others v. Panioti and others*, which came before the High Court three times in appeal and once on review, it was held that the zemindar was precluded from assessing accretions.

---

\(^1\) Act VIII of 1885, Sec. 38. Savi v. Obhoy, 2 W. R. (Act X) 28.


\(^3\) Ante pp. 184, 295.

\(^4\) Ramnidhee v. Parbutty, 1 L. R. 5 Cal. 823; Brojendra v. Woopendra, 1 L. R. 8 Cal. 706; Golam v. Kali, 8 C. L. R. 517; Hurro v. Gopee, 10 C. L. R. 559.
though there were considerable differences in the opinions of the judges.\(^1\)

The law as regards raiyati holdings was, however, well settled. Section 17 of Act X of 1859\(^2\) provided for assessment of additional rent for additional land found by measurement in the raiyat’s holding, and section 18 provided for abatement of rent, if the quantity of land held by the raiyat could be proved by measurement to be less than the quantity for which rent was payable by the raiyat. The Act made no provision for any class of tenants excepting raiyats with rights of occupancy. I need hardly add that either as regards enhancement or abatement of rent on alteration of area, the rate per bigha must be taken to be fixed.

The Bengal Tenancy Act applies the provisions of sections 17 and 18 of Act X of 1859 to all classes of tenants.\(^3\) If the increase in area is due to the action of a river, and if there was no previous diluvion reducing the area of the tenant’s original holding, or if abatement was allowed on diluvion, the tenant is bound to pay additional rent for excess land. So also abatement is allowed on diluvion.

The present area of a tenure or holding may easily be determined by measurement, but the difficulty in finding out the original quantity of land and the rate per unit of measurement is, however, great. Dismissal of suits for enhancement or abatement of rent on account of increase or decrease in area is mainly due to this difficulty. The length of the measure used at the time of the origin of the tenancy, \(i.e.,\) the standard pole of measurement, is also very often disputed and is not easy to find out.\(^4\)

\(^1\) 6 W. R. (Act X) 427, 8 W. R. 427, and 9 W. R. 379.
\(^2\) Act VIII (B. C.) of 1869, Sec. 18.
\(^3\) Act VIII of 1885, Sec. 52, cls. (a) and (b.)
\(^4\) Gouri v. Reily, 1 L. R. 20 Cal. 579.
As we have said before,¹ increase in area may take place,—(a) by the tenant’s encroaching on the adjacent land of his landlord, and (b) on the adjacent land of a third person and used by the tenant as a part of his holding, and (c) by accretion. Reformation in situ only makes up the land lost and may, at present, be left out of consideration.²

On increase by alluvion, the tenant has the right to continue in occupation of the land and is only liable to pay additional rent, though at one time the law was supposed to be that no raiyat was entitled to possession of land added to his holding by accretion.³ Under the Bengal Tenancy Act, no doubt can arise, and it seems to me that section 17 of Act X also contemplated additional rent for land gained by accretion.

Decrease in area may take place,—(a) on account of encroachment by a neighbouring holder, (b) encroachment by the landlord himself, (c) by diluvion, and (d) by acquisition of land by Government for public purposes.

Encroachment by a neighbouring holder ought not to be a ground of abatement of rent, if the encroachment be due to an act of trespass. The tenant can resist such encroachment, and if he does not do so, he is guilty of laches and ought not to be allowed to make the landlord suffer for his negligence. But if the encroachment be under a title paramount, the rent ought to abate proportionately.⁴

Encroachment by the landlord himself on any part of a raiyat’s holding causes a suspension of the entire rent.⁵ But as a matter of fact, the raiyat seldom claims suspension of rent; he is contented with abatement. He thinks

¹ Ante pp. 292-296.
² For the law as to landlord’s right on encroachment by tenant, see pp. 221-222.
⁵ Ante pp. 218-9.
himself fortunate, if he is allowed to hold the rest of the land in his original holding submitting to the encroachment by the landlord, and can get an abatement pro tanto. I have already said that the rule of English law as to suspension of the entire rent can not be applied in this country except under very peculiar circumstances.

In cases of diluvion, section 18 of Act X of 1859, section 19 of Act VIII (B. C.) of 1869 and section 52 of Act VIII of 1885 leave no room for doubt as to the right of an occupancy-raiyat. Section 178 of the Act of 1885 makes any contract taking away the right of a raiyat to apply for a reduction of rent under section 52 of the Act invalid, if it is entered into after the passing of the Act. This provision of the Act is applicable to all classes of raiyats, and not merely to raiyats with rights of occupancy. An express agreement not to claim abatement entered into before the passing of the Act, is good. Section 179 of the Act declares the validity of such a contract between a proprietor or a holder of a permanent tenure in a permanently settled area and a holder of a permanent mukurrari lease.

Acquisition of land for public purposes necessarily causes abatement of rent in respect of the land acquired. The raiyat may, however, at the time of the acquisition, take such a portion of the compensation as may disentitle him to claim abatement.

The standard pole of measurement generally varies in the different localities of the Bengal provinces. Section 41 of Act VIII (B.C.) of 1869, which repealed section 11 of Bengal Act VI of 1862, provided that all measurement should be made according to the standard pole of the perganah in which the land was situated. The Collector was competent to determine the standard.¹ In one case

¹ Act VIII of 1885, Sec. 178, Sub-Sec. 3, cl. (f).
² Srimati Mannohini v Premchand, 6 B. L. R., F. B., 1., sc., 14 W. R., F. B., 5.
it was observed that it was exclusively within the province of the Collector, as the depository of the standard pole of each perganah, to declare what the measure of the pole used was in each perganah in his district.\(^1\) There existed considerable difference of opinion as to the value of any measurement-paper, if the measurement was not made according to the standard pole. The correctness of the measurement itself could be called in question.\(^2\) An appeal lay as regards the standard pole.\(^3\) The Bengal Tenancy Act,\(^4\) however, requires every measurement to be made by the acre, unless the court or revenue-officer ordering it specially directs that it shall be made by any other specified standard.\(^5\) But the rights of the parties are regulated by the conversion of the acre into the local measure. The Local Government is also empowered to make rules declaring the standard or standards of measurement locally in use in any local area; and every declaration so made shall be presumed to be correct, until the contrary is shewn.\(^6\) At the present day, the landlord generally claims the standard to be eighteen inches a \textit{hath} or cubit, while the tenant claims 20 inches or more. In some localities, the standard used is the \textit{elahigaj}.\(^7\)

Act VI (B. C.) of 1862\(^8\) gave the landlord the right of making, at any time, a general survey or measurement of the lands comprised in his estate or tenure or any part thereof, unless restrained from doing so by any express engagement with the occupants of the lands. The

---

\(^1\) Tarucknath \textit{v.} Meydee, 5 W. R. (\textit{Aft X}) 17.
\(^3\) Bhuggobutty \textit{v.} Tameeruddoon, 1 W. R. 224; Nund \textit{v.} Tara, 2 W. R. (\textit{Aft X}) 13; Surbanund \textit{v.} Ruchia, 4 W. R. (\textit{Aft X}) 32.
\(^4\) \textit{Aft VIII} of 1885, Sec. 92.
\(^5\) Ibid, Sec. 92, Sub-Sec. 1.
\(^6\) Ibid, Sec. 92, Sub-Sec. 3.
\(^7\) Gujilahi \(=\) 33 inches (Land-measure of N.-W. Provinces.)
\(^8\) \textit{Aft VI} (B. C.) of 1862, Sec 9.
power could be exercised with respect to any land in the occupation of an under-tenant or raiyat. If any opposition was made, the landlord could seek the assistance of the Collector, who might order the tenant to attend and point out the boundaries of the land held by him. Sections 25 and 37 of Bengal Act VIII of 1869 and sections 90 and 91 of the Bengal Tenancy Act have conferred the same power on landlords. But under the latter Act the right cannot be exercised more than once in ten years except under the circumstances specified in section 90. This right to measure is a necessary incident of proprietary right, as it enables the landlord to ascertain the boundaries and the area of any tenure or holding and whether there has been any encroachment or increase by alluvion and consequent alteration in area, and then if necessary to demand an increase of rent on the ground of an increase in area.

The right to measure, like the right to enhance rent can be exercised only by a proprietor in possession and actual receipt of rent. A proprietor who is not in possession is not entitled to measure any land within the ambit of his estate. If any question arises as to the right to measure, the dispute being raised on the ground of possession by a third person as proprietor or tenure-holder, the Court has only to look to actual possession by receipt of rent. Under Act VIII of 1885 (Sec. 60) a proprietor whose name is registered under Act VII (B.C.) of 1876 is presumed to be in possession, having the right to receive rent; and so he also is entitled to measure. His right is not affected by the lands having been let out on permanent leases.


A part proprietor of an estate or tenure cannot apply for measurement.¹ Section 188 of the Bengal Tenancy Act prevents any one or more of the co-sharers, unless all of them join, from asking the assistance of a Court to enable him or them to measure the lands. Notice of an intended measurement must also be given by all the joint proprietors. A part proprietor of an estate, however, was held to be competent to apply for measurement under section 38 of Act VIII (B.C.) of 1869, (Bengal Act VI. of 1862, Sec. 10), if he made his co-proprietors parties to the proceeding.² It seems to me, however, to be doubtful whether the legislature ever intended to give a co-proprietor such a power.

Under the Acts of 1862 and 1869, a question was raised as to the right of a proprietor or tenure holder to measure lakhiraj lands. The word lakhiraj means, in ordinary parlance, lands revenue-free as well as rent-free. The zemindar's right to have a measurement made, it was held, extended only to lands actually rent-paying and not to rent-free or revenue-free lands.³ The Bengal Tenancy Act makes the holders of rent-free lands, claiming under titles created since the Permanent Settlement, tenants within the meaning of section 3, sub-section 3; and it is only reasonable that a landlord should have the right to enter on and measure all lands comprised in his estate or tenure, other than lands exempt from payment of revenue. Holders of revenue-free lands are proprietors, and such lands, though lying within the ambit of a rev-

² Abdool v. Lall, I. L. R. 10 Cal. 36.
enue-paying estate, can not be measured by the holder of the latter. 1

If a tenant, on being called upon to attend and point out his land and the boundaries thereof, refused or neglected to do so, it was not competent for him to contest the correctness of the measurement made in his absence, provided the Court acting under section 9 of Act VI (B.C.) of 1862 or section 37 of Act VIII (B.C.) of 1869, had local as well as pecuniary jurisdiction, and the person making the application had the right to do so. 2 If the person applying to the Court for measurement was only a part-owner or was not in possession, a measurement made at his instance in the absence of the tenant would not be binding. So also, if the tenant had no notice of the measurement, he would not be bound by it. 3 The Bengal Tenancy Act, however, lays down that if the tenant refuses or neglects to attend, in accordance with an order duly made and served under section 91, sub-section 1, the measurement made in his absence shall be presumed to be correct, until the contrary is shewn. 4

Regulation V of 1812 made the issue of a notice a necessary preliminary to the institution of a suit for an increase of rent. This provision was re-enacted in section 13 of Act X of 1859 and section 14 of Act VIII (B.C.) of 1869. A large percentage of enhancement-suits failed for defects in the form of notices or their non-service. In most instances, the suits were dismissed; in others decrees were made declaring the right of the landlords to enhance, the prayers for decrees at enhanced rates being dismissed. A notice of enhancement was required to be served in districts or parts of districts, where the Fusli year prevailed, in or before the

1 Prosunnomoyee v. Chundernath, 10 W. R. 361, sc., 2 B. L. R., S. N., 5.
2 Jadub v. Etwari, Marsh 498.
3 See Alimuddi v. Kali Krishna, I. L. R. 10 Cal. 895.
4 Act VIII of 1885, Sec. 91, Sub-Sec. 2.
month of Jeyt, and in districts or parts of districts where the Bengali year prevailed, in or before the month of Pous. Under the Bengal Tenancy Act, the landlord is empowered to institute a suit for enhancement, without the previous service of any notice, and the decree in such a suit should contain a direction as to time when it is to take effect. Section 154 of the Bengal Tenancy Act provides that a decree for enhancement of rent, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the next agricultural year, and in a suit instituted in the last four months of an agricultural year, on the commencement of the agricultural year next but one following. But the Court may for special reasons fix a later date for the operation of any decree for enhanced rent.

Under the Bengal Tenancy Act, enhancement of rent may be directed to be gradual for any number of years not exceeding five. No suit for enhancement on the ground that the rate of rent paid is below the prevailing rate or on the ground of a rise in prices is maintainable, if within the fifteen years next preceding its institution the rent has been enhanced by contract made after the 2nd March 1883 or commuted under section 40 or if a decree enhancing the rent has been passed on either of the grounds aforesaid or a suit for enhancement dismissed on its merits.

A suit for reduction of rent is, as we have seen, the only means by which a tenant may under Act VIII of 1885 claim an abatement. But the Bengal Tenancy Act has made no provision as to the form of a decree in such a suit and the time of its operation. It is obviously left to the discretion of the Court.

---

1 Act VIII of 1885, Sec. 36.  
2 Ibid, Sec. 37, Sub.-Sec. (1).
If any dispute arises as to the terms and conditions under which a tenant holds or as to other incidents of the tenancy, the Court having jurisdiction may decide it. In the districts where Act X of 1859 is still in force, the incidents are determined by the Collector’s courts. Sections 8 and 9 of the Act corresponding with sections 9 and 10 of Act VIII (B.C.) of 1869 prescribed a rough procedure for the delivery of pottahs and kabuliats. Section 2 of these Acts, following the old Regulations as to the delivery of pottahs to tenants, declared the right of every raiyat to receive a pottah. The instrument had to specify the quantity of land, with boundaries, the amount of annual rent, the instalments of rent and any special conditions of the lease. The intention of the Legislature was that there should be a written record of the exact terms and incidents of the tenancy, so that future disputes might be avoided. If the tenant desired to have a pottah he could institute a suit for the purpose, and the Court was to take evidence and determine the questions as to which the parties differed.

A raiyat with a right of occupancy was entitled, when there were disputes and differences between the parties and the terms of the contract were difficult to ascertain, to a pottah on such terms as to the Court might seem fair and equitable under the circumstances of the case. Raiyats with rights of occupancy were the only class of persons who were interested in suing for pottahs. But no suit could be entertained, unless the relationship of landlord and tenant existed, and the tenant was in possession of the land. Questions of title or the right of the tenant to hold the land could not be determined in suits for pottahs.¹

When the landlord desired to have a *kabuliat* or a counter-part engagement from a raiyat, he was bound to tender a pottah to the raiyat, such as the raiyat was entitled to get, and he was not entitled to a kabuliat by a suit, if he had not, previous to its institution, tendered to the raiyat a pottah specifying the terms and incidents of the tenancy. Suits for kabuliats became generally unsuccessful for non-tender of pottahs or erroneous statements therein. A suit for a kabuliat was not intended to be a suit for enhancement. Its principal object was to record the incidents of the tenancy. Neither could a landlord convert a suit for a kabuliat into one for establishing the relationship of landlord and tenant, or indirectly get the trial of the question of the validity of a lease already granted or any question as to title to land. It is unnecessary to add that one of a number of co-proprietors could not under the Acts of 1859 and 1869 sue a tenant for a kabuliat for a proportionate part of a holding, nor could he sue a tenant for a separate kabuliat for his own share of the rent.

The provision made in section 158 of the Bengal Tenancy Act is simpler and easier to work out. Either the landlord or the tenant, whether he is an occupancy-raiyat or not, may sue for the determination of the incidents of the tenancy *i.e.*, the terms and conditions thereof and all or any of the matters specified in the section. The Court having jurisdiction to determine a suit for possession of the land has power to entertain an application under the section, and an order passed thereon has the effect of a decree, and is subject to the like appeal as a decree. But an application under the section cannot be converted into a suit to determine rights to land or the existence of the relationship of landlord and tenant. In *Bhupendro Narayan v. Asmut*, 10 W. R. (F. B.) 14; *Gogon v. Kashishwary*, I. L. R. 3 Cal. 498.

Dutt and others v. Nemye Chand Mondul,¹ the High Court held that a Court acting under the section was bound to go into and decide the question of the validity of the lease under which the defendant held. This ruling was not in accordance with the rulings under the sections of the Acts of 1859 and 1869, dealing with pottahs and kabuliats. The question was referred to a Full Bench,² and the decision in Bhupendro Narayan Dutt v. Nemye Chand Mondul was practically overruled, and it was held that a Court dealing with a case under section 158 of the Bengal Tenancy Act had the same limited powers as the Collector under sections 8 and 9 of Act X of 1859.

Chapter X of the Bengal Tenancy Act contains rules of procedure for the record-of-rights and settlement of rents of tenants in an estate or tenure or any other local area. The law as to enhancement or abatement of rent and the determination of the incidents of tenancy, applicable to an individual tenure-holder or raiyat, is also applicable in proceedings under chapter X.³ The cadastral survey under the Act deals with a large and cultivated tract, inhabited by a number of raiyats, the main objects of a proceeding before a revenue-officer being to obtain uniformity in the rate of rent and adjustment of disputes between landlords and tenants. If rent is settled, the enhancement or abatement, as the case may be, is intended to be uniform throughout, the equalisation of rent being disturbed only where a raiyat or a class of raiyats is entitled to hold for some special causes at favourable rates.

What the delivery of a pottah and the taking of a kabuliat or the determination of the incidents of the tenancy is to an individual raiyat or a particular holding, the record-of-rights is to all the raiyats in a local area. A revenue-officer, acting under chapter X of the Bengal Tenancy Act and preparing merely a record-of-rights,

---

¹ I.L.R. 15 Cal. 627  
² Debendro v. Bhupendro, I.L.R. 19 Cal. 182.  
has to find out the existing state of things, and his duties are similar to those of a Collector or a Court under section 10 of Act VI (B.C.) of 1862 and section 38 of Act VIII (B.C.) of 1869. Under the Acts of 1862 and 1869, the powers of a Collector or a Court were limited to recording what was, and not what ought to have been. The duties of a revenue officer are prescribed in sections 102 and 103 of the Act of 1885 and in the rules made by the Local Government as to cadastral surveys. A revenue officer has the same powers as a Civil Court in determining the particulars given in section 102. But though he must find out the name of the landlord of a tenant, it has been held that he cannot determine questions involving boundary disputes or the validity of a revenue-free grant set up by a person in actual occupation of any piece of land. If the proprietor of a neighbouring estate claims to be in possession of any piece of land as a part of his own estate, the revenue officer has no jurisdiction to try whether the land appertains to his estate or the estate which is being surveyed. At most, he may, under the Survey Act of 1875, summarily determine the question of present possession. So, if a third person sets up a claim to possession under a title to hold the land revenue-free, based on a grant made before the Permanent Settlement, the revenue officer, it has been held, should withhold his hands and refer the parties to a Civil Court. The claim, however, must be a bona fide one, and not intended to frustrate the survey or record of rights. If, on the other hand, a person in actual occupation sets up a rent-free title acquired subsequent to the Permanent Settlement, he becomes a tenant within the meaning of the Bengal Tenancy Act, and the jurisdiction of the revenue officer is not ousted. The sections of the Act deal-

2 Secretary v. Nitye, I. L. R. 21 Cal. 38; Karmi v. Brojo, I. L. R. 22 Cal. 244.
3 Act V (B. C.) of 1875, Sec 42.
ing with the powers and duties of a revenue-officer, and the powers of Special Judges appointed under the Act and of the High Court on second appeal are not free from ambiguity, and the rulings thereon are consequently not quite in harmony. The jurisdiction of the ordinary Civil Courts to modify the awards of a revenue-officer in matters, which come within his powers and duties, is also very doubtful.

The revenue-officers entrusted with the duties of recording the rights of the tenantry in large areas and revising their rents may be excellent executive officers, but are not generally persons who have proper judicial training. The procedure adopted by them is practically summary, and the people have not much confidence in their decisions. The circumstances, which induced the Government of Bengal to repeal Act X of 1859 in the Regulation districts and to transfer in 1869 the jurisdiction in the trial of cases between landlord and tenant to the ordinary Civil Courts, exist even at the present day, and although in theory the Collectors of districts and their subordinates may be supposed to be more conversant with questions about land—its produce and productive power—in any particular locality than the local Moonsiffs and Subordinate Judges, the truth seems to be that they are far inferior to the latter in judicial power and acumen. All that can be said in favour of the executive officers is that they have a rough and ready way of cutting gordian knots. However that may be, Chapter X of the Bengal Tenancy Act requires considerable modifications. The experience of ten years since the passing of the Act should be utilised without any bias for either the executive or the judicial officers of the Crown. All necessary powers for the satisfactory and final adjustment of the various kinds of disputes that may and do frequently arise in recording or settling rents and determining the relationship of landlord and tenant,—in finally determining all the particulars noted in
section 102,—should be given to competent officers, and appeals to the highest tribunal in the country should be allowed on all questions of vital importance, so that there may be complete finality and no conflict of jurisdictions after trial by one set of judges. Summary decisions based on present possession and references to or revision by Civil Courts leading to suspension of proceedings are anomalous and productive of mischief.

After making the necessary enquiries by survey and measurement and taking evidence as to rates of rent &c., a revenue-officer is required by section 105 of Act VIII of 1885 to publish locally a draft record called the khasra.\(^1\) If objections are made as to particular entries, he should decide them,\(^2\) and an appeal lies against his order as to any particular entry to the Special Judge appointed by the Local Government under section 108. The decision of the Special Judge may be revised by the High Court in second appeal, if there is merely a record of rights and not a settlement of rent.\(^3\) The decision thus arrived at after a dispute as to any particular entry seems to be final and conclusive.\(^4\) As regards undisputed entries, there is a presumption as to their correctness until the contrary is proved.\(^5\)

Rent may be settled under section 104 on the application of either the landlord or the tenants. The rules of law that should guide a revenue-officer in settling rents are not given in chapter X of the Act, but he is apparently bound by the same rules as a Civil Court in particular cases of enhancement or abatement of rent.\(^6\) In a proceeding under section 104, rent may be enhanced or reduced and the rates of rent may be

---

1. Rules framed by the Local Government Nos. 20 to 34.
2. Act VIII of 1885, Sec. 106.
3. Ibid, Sec. 108.
4. Ibid, Sec. 107.
5. Ibid, Sec. 109.
equalised with respect to the raiyats as a mass. Either the landlord or the raiyats or any of them may contest the enhancement or abatement of rent, as the case may be, and the Special Judge appointed by the Local Government may hear appeals against the orders of a revenue officer on such objections.¹ No second appeal, however, lies to the High Court in a case of settlement of rent, the decision of the Special Judge being final.²

When rent is settled under chapter X, it takes effect from the beginning of the agricultural year next after the final publication of the record by the revenue-officer.³ Except on the ground of landlord's improvement or subsequent alteration in the area of a tenure or holding, the rent so settled is not liable to any alteration for a period of fifteen years from the date of the final publication of the record in the case of an occupancy-raiyat or five years in the case of a non-occupancy-raiyat.

The agrarian disturbances in the district of Pabna and parts of the districts adjoining it had induced the Government of Bengal to pass a short Act⁴ known as the Agrarian Disputes Act of 1876. The special procedure laid down in that Act was applicable only in exceptional cases, where the relation between the landlord and the tenants as a class was very much straitened. Section 112 of the Bengal Tenancy Act has conferred upon the Local Government the same powers as the Agrarian Disputes Act. These powers have not been exercised in recent years. The Local Government may exercise its powers only with the previous sanction of the Governor-General in Council.

¹ Act VIII of 1885, Sec. 108.
³ Act VIII of 1885, Sec. 110.
⁴ Act VI (B.C.) of 1876.
The rent of a non-occupancy-raiyat may be enhanced under the procedure laid down in section 46 of the Bengal Tenancy Act. The Court is required to find out what rent is fair and equitable, which, in the words of the Bengal Tenancy Act, should be determined by reference to rents generally paid by raiyats for lands of similar description and with like advantages in the same village. If the raiyat agrees to pay the rent so determined, he is entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement. But on the expiration of that term, his rent may be again varied, and he may be called upon to pay what the Court may consider fair and equitable at the time. The rules as to enhancement of rent are necessarily much the same as those with respect to occupancy-raiyats, though non-occupancy raiyats have not many of the privileges of occupancy-raiyats. A revenue-officer may in a proceeding under chapter X settle the rents payable by non-occupancy-raiyats in any local area in accordance with the rules laid down in section 46, and the rent of a holding so settled cannot also be varied within five years, except for alteration of area or improvement by landlord.
NON-AGRICULTURAL LANDS.

In ancient times, the three principal sources of a king's revenue in India were his share in the produce of agricultural lands (vali), taxes levied upon homestead lands either in villages or towns (kara) and taxes realised from persons carrying on trades and industries (sulka). The great lawgiver says—"The king, who receiving vali, kara and sulka does not afford protection to his subjects, goes into hell."\(^1\)

Of these three sources of royal revenue, the most important was vali, and reference was frequently made to it by the text-writers.\(^2\) The Anglo-Indian Government has, like the Mahomedan Government, devoted its best attention to this important branch of royal revenue and to the protection of the agricultural population by whom it is payable.

In ancient days and throughout the Hindu period, the word kara was used for money-rent payable for land, as distinguished from a share of the produce of agricultural lands. The money-rent payable for homestead lands by artisans, tradesmen and labourers, quit-rent paid by persons who were favoured by the king and who held under royal grants, and all other taxes paid for the use and occupation of land or water came within this branch of revenue. In agricultural villages, a shop-keeper supplying articles to the agricultural population was required to pay the

---

1 येदिर्भयम् बलिमादाति कर्म युक्तं पार्ध्यम्।
प्रतिभाग्य दृष्टथ स सत्तीनांक ब्रजे। — Manu, Chap. VIII, 307.
2 Ante p. 8
tax known as *kara* for his homestead land. The income from this source, however, was small, and very little importance was attached to it, though the freak of language has transmitted the word to the present day, and it has now a much wider significance, and the word *vali* has dropped down in the course of time.

*Sulka* (duties) which included various items of income, such as market-dues, duties on articles imported and exported and the fees realised from mechanics and artisans, became more and more an increasing source of income with the progress of society. In the later Hindu period and during the Mahomedan period, it played a very important part in the finances of the Indian government.

The homestead lands occupied by the higher classes of people in Indian society were generally revenue-free, the exemption being due to causes which I have already attempted to explain.\(^1\) The homestead lands of the agricultural population and their *udbastu* *i.e.*, lands outside the homestead but necessary for other than agricultural purposes, went along with their arable fields, and even when rent was separately payable for them, the incidents were generally the same as those of arable lands.\(^2\) If a raiyat holds a piece of land as a part of an agricultural holding, all the incidents of occupancy-right attach to it, as to the rest of the lands in the holding. If it is not a part of an agricultural holding, but is land in the same village, held under the same landlord and necessary for the habitation of the raiyat and his family, local custom and usage regulate its incidents; and, subject to such local custom or usage, the provisions of the Bengal Tenancy Act are applicable.\(^3\) But as regards homestead lands of a character different from either of the above, the Rent Acts of 1859 and

---

\(^1\) Ante p. 315  
1869 and the Bengal Tenancy Act have no application to them. If a raiyat holds agricultural land under one landlord and homestead-land under another, he cannot acquire a right of occupancy in the latter. A person who has acquired a piece of land for residence and not for cultivation is not a raiyat with respect to it, if it is not a part of an agricultural holding. The holding of agricultural land in one village does not entitle a person to be a "settled raiyat" with respect to homestead-land held in another village or under a different landlord. The mere fact that a person cultivates land himself or by hired labour does not make him a raiyat with respect to land held by him for a shop in an adjoining town. An indigo planter, who has acquired a right of occupancy with respect to indigo lands, may have his residence in the civil station of the district in which he has his factory, or a tea planter may have similar residence within the municipal limits of the town of Darjeeling, but he is not entitled to claim a right of occupancy with respect to the land held by him for such residence.

There are no legislative provisions as to non-agricultural lands, except such as are contained in the Transfer of Property Act, the Indian Contract Act and stray sections in the Revenue and Rent laws. Act X of 1859 and Act VIII (B.C.) of 1869, as I have said, did not touch the question of the rights and liabilities of tenants of homestead and other non-agricultural lands, though the ever-increasing population, agricultural as well as non-agricultural, demanded legislation. When Act VIII of 1885 was in course of preparation, an unsuccessful attempt was made to have a comprehensive code for lands agricultural as well as non agricultural. The rules of justice, equity

---

and good conscience are not always easy of access, and mistakes are common. Custom and local usage are generally difficult to prove. The invocation of the principles of the law of landlord and tenant, as it prevails in England, without reference to the instincts and conditions of life of the people of this country, is occasionally a source of great mischief. Trained in England, trained in thoughts peculiar to the English people, many of the judges and lawyers in this country believe the English rules of land-law to be the most equitable and just, and they are tempted to apply them to tenancy in this country, whenever they have to decide cases according to justice, equity and good conscience. Even the Legislature is not entirely free from this vice of adopting exotic principles, without regard to the customs and habits of thought of the people to be governed by them. To a nation which has the most sacred regard for the land where its ancestors lived, to persons who have extraordinarily deep affection for ancestral homesteads—dearer than heaven itself, the idea that no right can be acquired in homestead-land, however long the period of occupation may be, is repugnant in the extreme. People have generally a notion that the holder of a piece of homestead-land acquires by long occupation the right to continue in possession of it, and the legal profession and the judges have very frequently to undeceive them. The hardship of the law, as it is at present administered, is well known. An abortive attempt was made to remedy the evil by legislative enactment, but the opposition was strong. There is now no chance of the legislature interfering in the matter, at least for some time to come.

The chapter on Leases in the Transfer of Property Act is short, and the interpretation of the few sections is not always easy. For the sake of convenience, however, I shall adopt the arrangement given in the Act. Much of what has already been said as
to the incidents of temporary leases applies to leases of non-agricultural lands. The relationship between the landlord and tenant may, however, be complicated by substantial structures being raised on the land. But it is doubtful how far the rules laid down in the Transfer of Property Act may regulate the incidents of tenancies created before it came into operation. Substantive laws do not, unless retrospective effect be clearly intended to be given, affect the vested rights of parties, and the Transfer of Property Act has also expressly provided in section 2 that "nothing contained in the Act shall be deemed to affect any right or liability arising out of a legal relation constituted before the Act came into force, or any relief in respect of any such right or liability." If, according to the law, as understood before the passing of the Act, a tenant of homestead-land, who had been allowed by the landlord to erect buildings on it, had the right to erect further buildings, for the accommodation of himself and his family, section 108, cl. (p) ought not to affect that right. The Act itself is not exhaustive. It defines and amends certain parts only of the law relating to voluntary transfers *inter vivos,* and does not affect the terms of any contract not inconsistent with the provisions of the Act.

As in the case of agricultural lands, the notion that now underlies all tenancies of homestead-lands as also other non-agricultural lands is that the absolute proprietary right is in the landlord. He may, by creating a subordinate tenure, have his right curtailed to the extent indicated by the contract, but the tenant in actual occupation has ordinarily no other right than what is given expressly or by necessary implication by it. Custom and local usage may

---

1 Maxwell on the Interpretation of Statutes, 2nd Ed., p 257
2 Act IV of 1882, Preamble.
import rights and liabilities not inconsistent with the express covenants in the contract. In the absence of any unambiguous condition as to the duration of a lease, a tenant holds from month to month or from year to year, and is liable to be ejected after the service of a proper notice to quit. The tenant acquires no right by mere occupation. He has no statutory right as his agricultural neighbours have. Rent may be enhanced at the option of the landlord after the expiration of the term of the lease, and ordinarily the law places no limit to his demand.

Regulation XLIV of 1793, the first law passed for the sale of estates for arrears of revenue, encouraged the erection of buildings or dwelling houses by enacting that a purchaser on a sale for arrears was not entitled to eject tenants who had erected dwelling houses on the lands leased to them by the defaulter.1 This provision was repeated in the Sale Laws passed from time to time, and has still a place in the existing laws for the sales for arrears of revenue2 or rent3. This protection from eviction extends to leases of land whereon manufactories and other permanent buildings4 have been erected and lands whereon tanks, permanent gardens, plantations, canals, places of worship and burning and burial grounds have been made. A sale free of encumbrances vests in the purchaser the right to cancel all perpetual leases granted by the defaulter; but though a permanent lease at fixed rent of land made for the erection of buildings or manufactories may be cancelled on a sale for arrears, the tenant must be allowed to remain on the land on payment of fair and equitable rent,

1 Reg. XLIV of 1793, Sec. 9.
2 Act XI of 1859, Sec. 37, cl. (4); Act VII (B. C.) of 1868, Sec 12, cl. (4)
3 Act VIII of 1885, Sec. 160, cl. (c).
4 Act XI of 1859, Sec. 37; Act VIII of 1885, Sec 160, cl. (c). Bhago v. Ram, I. L. R. 3 Cal. 293; Ajgur v. Asmut, I. L. R. 8 Cal. 110
the land being liable to be assessed at a higher or prevailing rate, without reference to the original contract. Ejectment does not necessarily follow the cancellation of a lease.

A suit for the enhancement of rent of non-agricultural land, when the law does not allow the ejectment of the tenant on the expiry or cancellation of his lease, is maintainable in the ordinary Civil Courts.¹ There were many instances of enhancement of rent through the medium of the Revenue Courts, when Act X of 1859 was in force and the Act was supposed to apply to all kinds of tenancies, but according to the view taken by most of the judges of the High Court,² the Revenue Courts had no jurisdiction to entertain suits with respect to homestead-lands, and the decrees passed by them were ultra vires. If a tenant, however, has paid at the enhanced rate according to any decree passed by a Revenue Court, that fact will go against the permanency of the tenure, but the judgment and decree are inadmissible for any other purpose, having been passed by an incompetent court. There is no codified law for a suit for enhancement of rent of non-agricultural lands. Section 11 of the Code of Civil Procedure (Act XIV of 1882) empowers the Civil Courts to entertain and try all suits of a civil nature; and in trying a suit for the enhancement of rent of non-agricultural land, a Court must act according to principles of justice, equity and good conscience.

It has been held that a proper notice of enhancement is a necessary preliminary to a suit for the enhancement of rent of non-agricultural land, just as it was in suits for enhancement under Act X of 1859 and Bengal Act VIII of 1869.³ But with the repeal of the procedure laid down in those Acts and the

³ Ante pp. 373-4.
substitution of the procedure in Act VIII of 1885 dispensing with the previous service of any notice, the procedure in suits for enhancement of rent of non-agricultural lands ought to be changed as an unnecessary preamble. I think no notice will now be deemed necessary, and our Courts must determine what rent is fair and equitable, whenever rent is enhanceable by suit and the landlord wants an increase. A decree for enhancement may be directed to come into operation at a reasonable time subsequent to the institution of the suit.

Tenants holding permanent gardens and plantations are protected, if the occupation of the tenant has been long enough for the acquisition of occupancy-right; but the protection afforded by the Sale Laws extends to all leases without reference to the period of occupation by the tenant. The general incidents of the tenancy of land used for purposes other than agricultural are the same in all cases. Fulkars or fisheries as also lands used for hats, bazars and shops come within the same category.

A lease is a transfer of the leasehold premises to be held by the lessee under the covenants and conditions expressed in the contract or implied by law, and the lessor may create any interest in the lessee, sanctioned by the policy of law, within the limit of his own interest in the property. A full owner in possession may demise land on any terms and conditions, consistent with the policy of law. A contract of lease binds the heirs, representatives and assigns, of the lessor as well as the lessee with respect to covenants that run with the lands. Even if the lessor is not in possession and has merely a right to possession, he may grant a lease which is to come into operation as soon as he is entitled to actual possession. A mere right of entry, whether immediate or future, may be

1 Gobind v. Joy, I L. R. 12 Cal. 327
2 Act IV of 1882, Secs. 105 and 108, cl. (j.)
DURATION OF LEASES.

391

demised by a lease; but a lessor who has a right to re-enter only on a breach of condition by a lessee cannot give the right to a new lessee to sue upon the breach of the condition.\(^1\) Neither can a person, entitled to the possession of immovable property on the death of a Hindu female, bind himself by a lease executed by him during the lifetime of such a female, his right being a mere possibility; but he may give a valid title to a lessee, which may enure after her death, by assenting to the lease. The holder of an estate for life or a person holding an estate for a term of years may grant leases, but they cannot enure beyond the life or the term of the lease of the grantor himself. On the determination of the lease, the true owner is entitled to the possession of the land in the same state in which it was at the date of the demise.

In the absence of a contract or distinct proof of custom or local usage, a tenancy for manufacturing purposes is deemed, according to the Transfer of Property Act, to be a lease from year to year, and a tenancy of ordinary homestead-land to be a lease from month to month.\(^2\) Leases of land in the mofussil are, however, with rare exceptions, \textit{annual}, the rent being payable according to the Bengali Calendar, where the Bengali year prevails, or the Fusli or Wilait Calendar. In Bengal proper, a year of tenancy generally ends on the last day of Chaitra, and in Behar and Orissa on the last day of the lunar month of Bhadra. Notwithstanding what is contained in section 106 of the Transfer of Property Act, the vast majority of leases of non-agricultural lands are thus from year to year, terminable only at the end of the year. Tenancies from month to month are only found to exist in very populous cities and within municipal limits. In fact, having re-

\(^1\) Hunt \textit{v.} Bishop, 22 L. J. Ex. 337; Hunt \textit{v.} Remnant, 23 L. J. Ex. 135.

\(^2\) Act IV of 1882, Sec. 106.
gard to the well-known practice in the mofussil of the country, leases of immovable property ought to be held, from very slight evidence, to be from year to year, in the absence of well-proved contract or local custom or usage to the contrary, notwithstanding that the Transfer of Property Act has laid down a contrary rule.¹ A Tenancy from year to year can be determined only by a six-months' notice to end with the last day of the year.²

These leases are transferable absolutely or by way of mortgage, though, notwithstanding the transfer, the original lessee does not cease to be subject to any of the liabilities attaching to the lease. The transferee of such interest may again transfer it.³ But the express terms of a contract or any local usage, which must be distinctly proved in each case, may make a lease of non-agricultural land non-transferable. The fact that in an ordinary lease of agricultural land, the right of an occupancy or non-occupancy raiyat is not transferable by law, leads people to think that leases of homestead-lands are also non-transferable. Before the Transfer of Property Act came into force, the law was supposed to be that without an express contract and in the absence of local usage, tenures of non-agricultural land were not transferable.⁴ In Noraindra Narain Rai v. Ishan Chandra Sen,⁵ it was held that on the transfer of a right of occupancy, the transferee, in the absence of custom or established local usage, became a trespasser; and the same rule was applied to leases of non-agricultural lands. But in Benimadhab Banerjee v. Jaikrishna Mukerjee,⁶ Peacock C. J., said,—"Speaking for myself, I should say that if one man grants a tenure to another

³ Act IV of 1882, Sec. 108, cl. (f).
⁴ Kripa v. Durga, I. L. R. 15 Cal. 89.
⁵ 13 B. L. R. 274, sc., 22 W. R. 22. See ante pp. 299-300.
⁶ 7 B. L. R. 152, sc., 12 W. R. 495.
for the purpose of living upon the land, that tenure, in the absence of any evidence to the contrary, would be assignable. I know of no law which prohibits a man who gets land for the purpose of building from assigning his interest in it to another. By assigning his interest, he does not necessarily get rid of his liability to pay the rent reserved. A tenant who assigns his interest does not, in my opinion, commit such forfeiture of his rights as to entitle the lessor to treat such rights as altogether non-existent, and to turn him out of possession."

In the absence of a contract or local usage to the contrary, the right of a lessee is heritable and is capable of being bequeathed according to the laws of testamentary and intestate succession.

During the continuance of the lease, the lessee is bound to use the land as a person of ordinary prudence would do. He must not use or permit another to use it for a purpose other than that for which the lease has been granted. Land let out for use as homestead ought not to be used for digging a tank, nor has the tenant the right to dig earth for the purpose of making bricks. Such a use of the land is opposed to the original purpose of the tenancy and is supposed to deteriorate its value.

In the absence of an express contract, a temporary lessee is also not entitled to work mines or quarries, not open when the lease was granted, or to commit any other act which is permanently injurious to the land demised. But I think a person, holding under a perma-

1 Act VIII of 1885, Sec. 108, cl. (o); Ramanadhan v. Zamindar of Ramnad, I.L.R. 16 Mad. 407. See also Meux v. Cobley, 2 Ch. (1892) 253.
permanent lease in which there is no reversion to the landlord, has the right to open mines, and if he does so, his act, unless there is an express covenant to the contrary, does not amount to legal waste. When the lease is granted by a proprietor not for any specified purpose, and he reserves only the right to receive quit-rent in perpetuity, such a use of the land cannot affect him. Permanent leases are practically conveyances of land, and it seems to me that the lessees have full right to use the lands demised as they please, provided there is ample security for the proprietors' dues. *Prima facie*, the owner of the surface is entitled *ex jure naturæ* to every thing beneath or within it.\(^1\) The working of mines does not, as a rule, permanently injure the land or destroy it to the detriment of the landlord's interest. The same thing may be said as to the working of quarries. The evident intention of the framers of the Transfer of Property Act, in inserting clause (o) in section 108, is to prevent temporary lessees from doing such acts as may affect the value of the demised premises, and to secure, on the termination of a lease, the restoration of the property, in as good a condition as it was at the time when the tenant was first put into possession. In cases of permanent leases, their termination is never in the contemplation of the parties. It is no doubt the duty of a tenant to keep the property, as much as possible, in the same condition as it was at the beginning of the lease, but the duty is imperative only where the landlord has any thing to lose by a change inconsistent with the original purposes of the tenancy. A lessee or a tenant for life or for years has, as between himself and his lessor or the reversioner, the right to work open mines and quarries.\(^2\) But he is not entitled, it seems, to open or work a new

---

\(^1\) Smith *v.* Darby, L. R. 7 Q. B. 716 (722); Newcomen *v.* Coulson, 5 Ch. D. 133 (142); Egremont *v.* Egremont, 14 Ch. D. 158 (162).

mine or quarry. Such an act on his part amounts to legal waste.¹ The words of section 108, cl. (o.) are, however, very broad, and apparently includes leases of all kinds, irrespective of their duration and nature. You should remember that the law does not import any distinction between the surface and the underground, when the contract of lease does not convey it in express terms.

According to the law as laid down by the great law-giver of ancient India, the king is entitled to a half share of hidden treasures underneath the earth and of minerals, as his share for the protection afforded by him to his subjects.² Medhatithi, in commenting on the word mineral (dhatu), includes in it gold, silver, iron, vermillion, collyrium and all other minerals to be worked out of the earth or found in hills and other places.³ He adds that the king's share is not necessarily a half, the word 'half' (ardha) being illustrative only, the king being entitled to a sixth or any other share according to custom. The text and the gloss, however, refer to a state of things quite different from what we have at the present day. The Anglo-Indian Government has, by the Permanent Settlement, accepted fixed sums as revenue in lieu of all the rights it had either as proprietor of the soil or as the protector of its subjects. It reserved no right whatsoever, except as to treasures under the Treasure Trove Act.*

¹ Act IV. of 1882, Sec. 108, cl. (o.). The law as to mines is in a doubtful state in Bengal. As regards Ghatwali lands see p. 263. See also Gordon Stuart & Co. v. Tikaitnee, W. R. (1864) 370.

² निधीनां तु पुराणानां धातुनामित्र च चित्ति ।
ब्रह्मायचायाना भूमिरचिन्तिति सः॥
Manu, Chap. VIII., v 39.

³ सुवर्णशाल्यादिति बिसिन्दुकालाकाण्डाय धातवः। सुवर्णाशाल्याकान्ते मन् ।
खण्डित यथा पर्वतादिपु गैरिकादिकादिति तुनुप्रजीवति * * * अर्धमागिति
वर्षाणी० शम्भवचनः—Medhatithi's Commentary. See also Nandan's
Commentary.—धातुनां इमस्यादिति कान्यनां धनिकादिश्चित्तिः।

⁴ Act VI of 1878.
Minerals must necessarily pass with the right to the surface. The present theory of the proprietary right of the Government is not consistent with the Hindu theory of the king's right to a share of the produce or of hidden treasures and minerals, and the Anglo-Indian Government, having accepted and acted upon the theory of the proprietorship of the soil, cannot now claim a share of the minerals on the latter theory. The transfer to permanent tenure-holders of the right which the zemindars derived from the government necessarily conveys the right to the minerals underneath.

The lessee must not, without the lessor's consent, erect on the property any permanent structures. If land is let out for use as homestead by raising structures, such as are ordinarily used in this country—the structures being easily removable,—the erection by the tenant of brick houses not easily removable is an use of the land to which the landlord may object. If, however, the landlord, instead of objecting to the erection of a brick-house, remains passive and allows it to be built, knowing that his security for rent would be enormously increased by it, he should not afterwards be allowed to sue the tenant for misuse of the land. The landlord may restrain his tenant from erecting without his consent substantial buildings by getting an injunction issued in time; but it is contrary to all principles of equity and good conscience to allow him to insist upon the removal of a building at the termination of the lease. It is, therefore, an obligation in the tenant not to erect such building as would throw obstacles to the landlord's undoubted right of re-entry at the termination of the lease. The right of the tenant to remove, during the continuance of the lease, all

---

1 Act IV. of 1882, Sec. 108, cl. (p).
2 Noyga v. Rupikut, I. L. R. 9 Cal. 609
3 Jaggaunath v. Prosonno, 9 C. L. R. 221.
things he has attached to the earth\(^1\) is one for his own benefit, which he may or may not avail himself of. If he wishes to continue on the land having without objection raised during the term of the lease substantial structures, the landlord cannot eject him. No Court will permit a man knowingly though passively to encourage another to lay out money in improving his property, and then to assert his legal right against him, without, at least, making him pay full compensation for the money that has been expended. Equity intervenes and prevents the landlord from turning out a tenant who has erected substantial structures on the land,\(^2\) to his knowledge or with his consent, which may be presumed from his previous non-action. If he waits till the building is completed, and then asks a Court of justice to eject the tenant or have the building removed during the pendency of the lease, a mandatory injunction will not generally be granted. It is always in the discretion of the Court to grant injunctions or not. But Courts of law are always reluctant to help a man, though he may have an undoubted right, if he is guilty of laches.\(^3\) The circumstances of each case must be taken into consideration, and if the injured man comes into Court at the first opportunity after the building has been commenced, an injunction may be granted. But if the plaintiff has not brought his suit or applied for an injunction at the earliest opportunity, but waited till the building has been finished, and then asks the Court to have it

---

\(^1\) Act IV of 1882, Sec. 108, cl. (k).

\(^3\) The Shamnugger Jute Factory v. Ram Narain Chatterjee, I. L. R. 14 Cal. 189
removed, a mandatory injunction will not generally be granted. A mere notice not to continue the erection of a building, when not followed by legal proceedings, is not a sufficiently special circumstance for granting such a relief.¹ It has, however, been held in some cases that a tenant's bona fides should be taken into consideration, and if he knowingly did an act to the prejudice of his landlord, equity would not help him.²

You have seen that under the law, as is now administered, occupation of homestead-land, whatever the period may be, does not create in the tenant any right to continue on the land after the determination of the lease, which may be effected by a legal notice to quit.³ A presumption of permanency may, however, arise from long occupation at uniform rent, if the original grant is lost and is not provable. The conduct of the parties may raise an inference that the lost grant created a permanent tenure. It has been held that where land is let out for the tenant's residence, and he has, with the knowledge of the landlord, laid out large sums upon the land in buildings or other substantial improvements, that fact coupled with long continued enjoyment of the property may justify the presumption of a permanent grant, if the original conditions of the tenancy are incapable of being ascertained.⁴ If a tenant, holding under a temporary lease, of which the origin is known or is easily provable, erects buildings on his land, it may be said, that he does it at his own risk.

¹ Benode v Sondaminey, I. L. R. 16 Cal. 252 and the cases therein cited
² Furzund v Aka, 3 C. L. R. 194.
and as held in some cases, the tenant may not be entitled to plead the landlord's acquiescence in a suit for ejectment. A Court of Justice may also in such a case require the landlord to pay compensation to the tenant before granting a decree for ejectment, or may direct a removal of the buildings. But if the origin of the tenancy is unknown, and the exact terms are difficult to ascertain on account of unavoidable loss of evidence, and the tenant's occupation is not sufficiently long, the landlord should have no other right than to obtain fair and equitable rent, there being a presumption of the existence of a covenant between the parties that there should be no ejectment of the tenant, though the rent may be enhanced.

In the absence of any contract express or implied, a lessee holding non-agricultural land either for a term of years, or year by year, may transfer by way of sub-lease the whole or any part of his interest in the property. But the sub-lessee can have no right higher than that of the lessee, and is liable to be evicted on the determination of the lessee's interest, except in cases of surrender by the lessee.\(^1\)

Instances of leases for building purposes granted by Hindu widows are frequent in this country. Such a lease is good during the life-time of the widow; and in cases of proved legal necessity, the after-taker may also be bound by the conditions of the lease. But supposing the after-taker, on the death of a Hindu widow, is not so bound, a question has arisen as to the right of the lessee to the buildings or substantial structures erected on the land demised to him. Is he entitled to remove materials of the buildings? There can be no question as to unsubstantial structures erected by a tenant,—structures easily removable. *Narada* speaking of the right of a tenant holding under a terminable lease says—"If a man builds a hut on land

---

1 Act IV of 1882, Sec. 108, cl. (j) and Sec. 115. *Ante* p. 241.
belonging to another and pays rent for it, he should be permitted to take with him the materials such as grass, wood, and bricks when leaving the land." But a reservation was made by the sage, if the person in occupation by erecting structures was paying no rent for the land; and in such a case he should not be permitted to take away the materials, and on his leaving the land they became the property of the land-owner. Jagannatha, commenting on the above texts, would extend the rule to all classes of tenants. It would seem from the texts of Narada and the comments by Jagannatha, that if a tenant quitted his homestead-land, whatever his status was, after paying all that was due to the land-owner for rent, he was entitled to take away the materials, but he was not entitled to do so, until he discharged the landlord's dues. The materials of the tenant's structures became the landowner's property, the price of the same, on the tenant's abandonment, being set off against unpaid rent. Thus according to the ancient sages and the Hindu law as understood at the early period of the British rule in India, the technical rule of English law _quidquid plantatur solo cedit_ was not applicable. The Hidayah also says:—"If a person hire unoccupied land for the purpose of building or planting, it is incumbent on the lessee to remove the buildings or trees, &c."
No distinction was made between substantial and unsubstantial structures. The question arose early, as to the applicability in India of the English law as to fixtures, and the Sudder Dewani Adawlut held that it did not prevail in this country. The custom and usages of the country and the law as laid down by the sages were given effect to, even where the relationship of landlord and tenant did not exist between the parties.\(^1\) In the matter of the petition of Thakoor Chunder Paramanick and others,\(^2\) the question raised was whether an assignee from a Hindu widow, whose title terminated with her death, was entitled to remove the buildings erected by him during her life-time with her consent. Sir Barnes Peacock, C. J., in delivering the judgment of the Full Bench said:—"We think it clear that according to the usages and customs of the country, buildings and other improvements made on land, do not by the mere accident of their attachment to the soil, become the property of the owner of the soil, and we think it should be laid down as a general rule that if he who makes the improvement is not a mere trespasser, but is in possession under any bona fide title or claim of title, he is entitled either to remove the materials, restoring the land to the state in which it was before the improvement was made or to obtain compensation for the value of the building, if it is allowed to remain for the benefit of the owner of the soil—the option of taking the building or allowing the removal of the materials, remaining with the owner of the land, in those cases in which the building is not taken down by the builder, during the continuance of any estate he may possess."\(^3\)

\(^1\) W. G. Nicose Pogose \emph{v.} Niyamatula, S. D. A. (1851) 1517; Jankee Singh \emph{v.} Bukhooree, S. D. A. (1856) 761; Kalee Pershad \emph{v.} Gouree Pershad, 5 W. R. 108.

\(^2\) B. L. R. (F.B.) 595, sc., 6 W. R. 228. \emph{Ante} pp. 34-5.

\(^3\) See also Shib \emph{v.} Baman, 8 B. L. R. 237, sc., 15 W. R. 360; Russick \emph{v.} Lokenath, I. L. R. 5 Cal. 688; Juggut \emph{v.} Dwarka, I. L. R. 8 Cal. 582.
The inapplicability in India of the technical rule as to fixtures is further illustrated by the practice in all the large towns, where tenants are allowed to remove not only the materials of huts, but substantial structures and buildings. In the Presidency towns, as you have seen, materials of huts erected on the lands held by tenants are saleable as movable property, and the Small Cause Courts have jurisdiction to cause such sales. Where there is an express contract as to substantial structures erected by the tenant, the parties are bound by it, but the general law in India does not impose any disability on the tenant to remove, at or before the termination of the tenancy, the materials of buildings erected by him. The Transfer of Property Act lays down—"The lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth, provided he leaves the property in the state in which he received it." But doubts have been thrown as to the justness of the rule and its applicability.

The profits derivable from land covered with water are from fish and plants and fruits which grow in it. The right is incorporeal. No right of occupancy can be acquired by a tenant from long occupation of a fishery. If a tank used for the preservation and rearing of fish forms a part of an agricultural holding, it goes with the rest of the land. But the incidents of tenancies in other tanks and fisheries are the same as those of immovable properties other than agricultural. It has, however, been held that long

2 ante p. 35.
3 Act IV of 1882, Sec. 108, cl. (h)  
4 ante pp. 35, 36.
occupation of a tank on payment of uniform rent, coupled with occasional transfers of the tenant-right not objected to by the landlord, may raise a presumption of the fixity of the tenure, notwithstanding that no right of occupancy can be acquired by the tenant by occupation for more than twelve years. The doctrine—*optimus\ interpres rerum usus*—has been applied in these cases as in other cases of lost or ambiguous grants.

The word *julkar* is occasionally used in the sense of land covered with water, as long as there is water on it and it is capable of being used for rearing and catching fish.\(^1\) A settlement of a *julkar*, however, does not necessarily involve a right to the soil. Evidence of facts and circumstances may, however, be given to show that the settlement of a *julkar* includes the right to the soil underneath the water, the word being used in a double-sense.\(^2\) Road-cess and Public-works-cess are not levied on *julkars*.\(^3\) The income derived from *julkars* in the mofussil are taxed under the Income-Tax Act. The rent of a fishery is recoverable under the procedure laid down in the Bengal Tenancy Act.\(^4\)

The lease-hold right in a fishery may be determined in the same way as other leases of non-agricultural lands, and the right of a tenant necessarily ceases on the water drying up. Unless the lease covers also the land on which the water lay, the land, as soon as it ceases to be covered with water, comes into the possession of its owner, discharged of any right which the tenant might have to the fish and the plants and fruits that grew in water.\(^5\) There are

\(^1\) Radha \textit{v.} Neel, 24 W.R. 200; David \textit{v.} Grish, I. L. R 9 Cal 183.

\(^2\) Rakhal \textit{v.} Watson, I. L. R. 10 Cal. 50.

\(^3\) David \textit{v.} Grish, I. L. R. 9 Cal. 183.

\(^4\) Act VIII of 1855, Sec. 193; Act X of 1859 Sec. 23, cl. (4).

numerous instances of land belonging to one person and the right to fish to another.¹

Pasturage, burning-grounds, burial-grounds and places of public worship are, in the large majority of cases in this country, public, in the sense that they belong to or are capable of being used by a community or classes of individuals in a village. Such rights are necessary for the preservation of society. In the Permanent Settlement of 1793, these public or customary rights were not sufficiently protected, though their existence must be traced to a very early stage of civilization. Customary rights belong to no individual in particular, but may be enjoyed by any person who for the time being inhabits the locality to which these rights are appurtenant, or who belongs to the particular class entitled to their benefit.² Any resident of the locality may assert the right in a Court of law. In order to give validity to these customary rights, all that is required is that they should be reasonable and certain.³ The proprietor of an estate or the holder of a subordinate tenure under him may claim to have proprietary right with respect to the lands which are subject to such customary rights, but the use is in the inhabitants of the locality or a particular section of it.

To an agricultural population, pasture-land is of the utmost importance, and there is seldom a village in Bengal which has not a large piece of land attached to it for the grazing of cattle belonging to its inhabitants. *Manu* speaks of such pasture-lands

CUSTOMARY RIGHTS.

in chapter VIII, verse 237—"On all sides of a village or small town, let a space be left for pasture, in breadth either four hundred cubits, or three casts of a large stick; and thrice that space round a city or considerable town." Yajnavalkya also says—"There shall be set aside in every village a piece of pasture-land, the quantity of the land to be set aside being determined by the villagers themselves (where the land to be set aside is of small area), or by the king (where a large tract of land is intended to be set aside). A Brahmin has the right to collect grass (for his cows), twigs (for homa) and flowers (for worship), wherever and whenever he finds them.”

The custom as to the use by the community of such pasture-lands is also reasonable, and there is nothing uncertain in it. Pasture-lands in the occupation of particular individuals or families, rent being paid for the same, have the same incidents as other agricultural lands. Suits for the recovery of the rents of pasture-lands are cognizable by the same tribunals as other ordinary rent-suits for agricultural lands.

There is also nothing unreasonable or uncertain in the custom of the members of a community in a village using, as of right, portions of land in it, for burning or burying the dead. The Hindu population urgently require burning places. The Mahomedan population require burial grounds. If these particular classes have used certain pieces of land

---

1. धृतपात सबीरीहारी गामक घातु समनतत्र: 
   श्रमणास्त्यावांपि विमणी नगरस्य तु॥
   Manu, Chap. VIII., v. 237.

2. गीत्रवांशी राजवेदमवा।
   धिन्वाण्वः पुत्राणि सर्वंत: सर्वदा हरितु॥
   Yajnavalkya-Smriti, Vyavaharadhyaya, Sloka 166.


4. Act X of 1859, Sec. 23, cl. 4; Act VIII of 1885, Sec. 193.
for a good number of years, for the purposes of burning or burying the dead, they acquire rights in them which ought not to be easily defeated. On the abandonment of the use, the landlord may take possession of such lands.

The right to take wood from a forest adjoining a village is also claimed in some localities, specially in the Non-regulation Provinces. But such a custom will hardly find support from Courts of justice at the present day. With the increase of population and demand of wood, forest-lands would be denuded, and as held in the case of Luchmiput Singh v. Sadatulla Nusso, such a custom would be deemed uncertain and unreasonable. If a forest is reserved, the taking of wood without permission is punishable.

---

1 12 C. L. R. 382.
2 Ante p. 54.
ORISSA AND THE SCHEDULED DISTRICTS.

The peculiarities of the incidents of landed properties in the different localities of the Lower Provinces of Bengal, involving, as they do, peculiarities in their modes of devolution and disposition, cannot make the same set of rules of law, especially as to procedure, suitable to all of them. This is due partly to the varieties in physical features and partly to differences in the habits and customs of the peoples and in their stages of civilization. The law of landlord and tenant, suitable to the people inhabiting the rich deltaic plains, cannot be suitable to the aboriginal inhabitants of Santhalia or the Jungle Mahals, or to the leaf-wearers of the Hill Tracts of Orissa. What are good laws for the permanently settled area of the Lower Provinces are not necessarily so for the khas mahals or the temporarily settled districts. Strict adherence to the laws of procedure conduces to the good government of the major part of these vast provinces, while the rigidity of those rules would be a source of unmitigated evil in tracts inhabited by peoples who are yet in the lowest stages of civilization.

It has thus happened that Act X of 1859 with its amendments and Act VIII (B.C.) of 1869 are still retained in some parts of the country, notwithstanding their repeal by Act VIII of 1885 in the major part of the Bengal Provinces. Act X of 1859 and the amending Acts VI (B.C.) of 1862, VIII (B.C.) of 1865, and IV (B.C.) of 1867 and the portions of the Regulations of the Bengal Rent Acts in force in the different districts.
Code repealed by the Bengal Tenancy Act are still in operation in the division of Orissa and in Manbhoom and Jalpaiguri. Only certain parts of the Bengal Tenancy Act have been extended to Orissa. Bengal Act VIII of 1869 remains unrepealed in Sylhet, which was once a part of the Regulation Provinces and is now included within the Chief Commissionership of Assam. The other Assam districts have their own special rules. The Chotanagpur division, at one time known as the Jungle Mahals, has, excepting Manbhoom, "the Chotanagpur Landlord and Tenant Procedure Act," while Santhalia has its own Regulations. The rest of the Scheduled Districts in Bengal are of very little importance.

The present Orissa division includes a large tract of country, but except on the level plains on the sea-shore the people are either still in a very rude state or are just emerging from barbarism. At the date of the grant of the Diwani in 1765 and until the year 1803, Orissa included only the district of Midnapur and a part of Hughli,—the tract of country between the Suvarnarekha and the Rupnarayana. Orissa proper was a part of the territory of the Bhonsla family who had their capital at Nagpur in Central India. By the treaty of Deogaum, signed on the 17th December 1803, the province of Cuttack including the port and district of Balasore and all the territories west of the river Warda and south of the Suvarnarekha were ceded to the East India Company. The tract consisting of Balasore, Cuttack and Puri and the hilly country known as the Tributary Mahals (Rajwara), held by the Chiefs called khandaitis, was Orissa proper, and has since 1804 been named Orissa, while Midnapur, now included within

---

1. Act VIII. of 1885, Appendix, Schedule I.
2. Assam Land Revenue Regulation I of 1886.
4. Regulations III. of 1872 and II. of 1886.
5. Darjeeling, the Hill Tracts of Chittagong and the Mahal of Angul (Act XIV. of 1874.)
the Commissionership of Burdwan, became a part of Bengal proper.

Under the Maharattas, the khandaits used to pay for their territories (killas) fixed quit-rent or tribute called tanki. Of these, the killadars in the inland and hilly tracts continued to pay fixed tribute to the East India Company as semi-independent chiefs, under the Commissioner of the Orissa division. The territory of Mayurbhunj is one of the killas which are now known as the tributary mahals. In Hursee Mahapatro v. Dinkubundo Patro, these tributary mahals of Orissa were held to be within the limits of British India, but were excluded from the operation of all the laws in force in British India not specially extended to them. The question came before a Full Bench of the Calcutta High Court in Empress v. Keshub Mohajan and others and Empress v. Udit Prasad, and the majority of the Judges held—'

"The Maharattas probably exacted only tribute from these estates, and the East India Company could under the cession gain no higher rights," and that no direct civil jurisdiction having ever been exercised in the territory of Mayurbhunj by the Executive Government of India, this territory was not within the limits of British India. Prinsep and Mitter J. J., however, were of a different opinion. For all practical purposes, however, the tributary mahals, may, in the present course of lectures, be considered as not included within British India. The killas nearer the level country became per-

1 I. L. R. 7 Cal. 523, se., 9 C. L. R. 93.
3 Regulation XII of 1805 mentions in sections XXXVI and XXXVII, Neelgery, Bankey, Joormoo, Nirsingpore, Augole, Toalcherry, Attgurh, Kunjur, Kindeapara, Neahgurh, Rampore, Hindole, Teegereah, Burremboh, Deckenaul and Mohurbourne. The jungle mahals are not under the Regulation laws. Of these Bankey and Augole came subsequently within direct British rule and Bankey is now a part of the Regulation District of Pooree. These semi-independent tributary mahals are also Pes-Kash mahals.—Hunter's Statistical Reporter, Orissa.
manently settled estates and are governed by the same rules as permanently settled estates in other districts. Regulation XII of 1805, which incorporated the Proclamation relative to the settlement of land-revenue in the Moghul-bundi territory of Cuttack, and which was published on the 15th September 1804 by the Board of Commissioners, legalized the previous settlement of the province. The rules laid down in this Regulation and Regulation VII of 1822 have been the bases of all the subsequent settlements.

Sections 4 to 7 of Regulation XII of 1805 dealt with the remainder of the province, which was not permanently settled. A series of ten short temporary settlements followed, the last of which expired in 1837. In 1838, thirty years' settlement was concluded under the provisions of Regulation VII of 1822, and that settlement expiring in 1867 was renewed without any alteration, on account of the famine, which had impoverished the province in 1865, for a further period of thirty years and is, therefore, now in force. The proceedings for the settlement that will take effect from the year 1897 are now in progress.

By the Government notification of the 10th September 1891, chapter X and sections 3 to 5, 19 to 26, 41 to 49, 53 to 75 and 191 of the Bengal

---

1 List of estates of which the jumma was declared to be fixed in perpetuity: Secs. XXXIII, XXXIV and XXXV of Reg. XII of 1805, (1) Durpum, (2) Sookindah, (3) Maddoopore, (4) Jaigir of Malood (5) Aull, (6) Cojeng, (7) Putra, (8) Humishpore, (9) Miritchpore (10) Bishenpore, and (11) Kundra. The estate Khurda became a khas mahal in 1804, having been forfeited for rebellion. These estates are altogether fifty in number.

2 Orissa was conquered by the Moghuls about the year 1580, and from that time the long strip of cultivated land which lies between the western mountain tracts and the sea-board marshes and from which the conquerors derived their revenue, became known as the Moghul-bundi.

3 Act X of 1867.
Tenancy Act have been extended to Orissa, and by the notification of the 27th June 1892, sections 27 to 38 and section 80 of the Act, have also been extended. In other respects, the provisions of Act X of 1859 and its amending Acts are in force in the province and regulate the relationship of landlord and tenant. The powers of Settlement-officers are regulated by the Bengal Tenancy Act, the Government dealing with the raiyats of the temporarily settled estates as a proprietor is entitled to do under the Bengal Tenancy Act. The holders of the estates are entitled to re-settlement under the provisions of Regulation VII of 1792.

Leaving out of our consideration the military fiefs or the tributary estates, which had evidently been granted like Mayurbhunj, Neelgiri and Keunyjhar for the protection of the level country from the inroads and ravages of the aboriginal tribes who dwelt further in the interior, the level country which is the more valuable portion of the Orissa division—Balasore, Cuttack, and Puri, may be called the Crown-Land, being directly under British administration. As in Bengal proper, the holders of land may be broadly classified into—(1) zemindars paying revenue direct to Government; (2) intermediate tenure-holders paying revenue through the zemindars; (3) holders of resumed revenue-free tenures; (4) tenure-holders paying quit-rent, and (5) the last and the most important—the raiyats.

I do not propose to tire you with the various names, according to the various shades of difference, in origin and status, of the estates paying revenue direct to Government. These names are numerous and should find a place in a glossary. The differences in meaning are not always easy to catch. Sreechandan (mild as white sandalwood), harichandan (sweet as yellow sandal wood), sudhakar (receptacle of nectar), with the numerous other names given by the Gajapati
kings and names derived from kanungoes and chowduries have attractions for the lower orders of people in these provinces, but to a student of law they must be very dry.

The patna and the kharija estates being held by bhuiyas or owners of the land deserve particular mention, in as much as they are instances of the recognition, by the older governments of the country, of the proprietorship of the soil being vested in the actual occupiers. The word bhuiya itself implies property in the soil as distinguished from mere right to collect rent.

The names of the intermediate tenures are almost as numerous as those of the estates, but only two of these deserve particular mention—mukuddami and sarbarkari tenures. The mukuddams have no proprietary right in the lands composing their villages, but they have the entire management and control of them including waste lands. The zemindar only receives a fixed percentage, though the revenue is paid through him. The tenure is hereditary, and the mukuddam can alienate it or any portion of it at will. Babu Rangalal Banerji, who was a Deputy-Collector in these provinces and who is better known to many of you as a Bengali poet, remarks—"They had formerly powers for the apprehension of offenders, the settlement of village lands, and the management of village expenses. They were the heads of villages, the zemindar receiving rent through their intervention." At the settlement of Orissa in 1804, they were considered to be intermediate tenure-holders.

The sarbarakari tenures have their origin in the village accountants. From being managers of revenue affairs, remunerated by a percentage on the collections from the raiyats, they are now recognised as subordinate tenure-holders, either hereditary or non-hereditary. It has been held that the sarbarakari tenure is a recognised under-tenure in Cuttack, that the sarbarakar
has almost the same sort of right as the *mukuddam*, that in a case of the existence of several joint *sarbarakars*, the Collector has the power to select one or more of the body to be the recorded manager of the *sarbarakari*, and that ordinarily the tenure is not heritable or divisible. Neither hereditary nor non hereditary *sarbarakars* had any power of alienation or right to partition without the consent of the zemindar, and both classes of tenures are liable to cancelment or resumption by the zemindar on their falling into arrears. *Sarbarakari* sanads are almost exactly the same in their terms and conditions as those creating the *mukuddami* tenures. Temporary *sarbarakars*, however, have now disappeared. Some of the *maurusi sarbarakars* are still recognised.

At the time of the settlement of this province, considerable portions of land were claimed as lakhiraj, but were resumed under the Resumption Regulations, and assessed with revenue. *Nankars* and *jaigirs* were very numerous, but they were almost all resumed and assessed at half rates. Most of them pay revenue through the zemindars. Only the holders of more than seventy-five bighas of lakhiraj resumed lands were raised to the rank of zemindars.

Quit-rent tenures consist of *ayma* and *tanki* estates. *Ayma* lands are those granted by the Moghul governors to learned or pious Musalmans, for religious or charitable uses in connection with Mahomedanism, subject, as in Bengal proper, to the payment of small quit-rent. The British Government has recognised these *ayma* grants as hereditary and transferable. *Tanki* land is held at quit-rent, being one of the perquisites attached to the office of *sudder kanungo* during the Moghul period. There are various other kinds of similar quit-rent-tenures which do not deserve particular mention.

The raiyats of the Cuttack provinces were divided into two classes—the *thani* or resident, and the *pahi* or non-
resident. The fixed cultivator has lived in the village and cultivated its lands from time immemorial. His homestead land is rent-free, and he pays at customary rates rent for the rest of his holding. Occasionally he has to pay for his homestead land, but the rate of rent is very low. He has a right-of-occupancy, but it is not transferable. The rent though levied according to well-established rates is, however, higher than that paid by pahi or migratory husbandmen. He has a home of his own where his ancestors dwelt for ages; he sits under the shade of the trees which they planted; he has a local habitation and a name, and a degree of credit which pahi cultivators do not possess. But this strong love of home enabled the superior holders to exact higher rents from the thani or resident cultivators besides abiwabs and extra-collections. During the settlement of 1835, many of these thani raiyats obtained palm-leave leases (talpottahs) at lower rates, and these talpottahs gave them a position of importance which the pressure of increasing population has since enhanced.

The pahi raiyat who was free to pick and choose and to abandon the land whenever he liked, having neither the privileges nor the burdens of the thani raiyat, used to hold his arable lands at a sensibly lower rate of rent. He had no position in the village. He was not subjected to the payment of abiwabs, as the superior holders were afraid that such impositions would lead them to go over to other villages.

There is a third class of raiyats who live in the villages but do not cultivate rice-lands like the thani raiyats, nor have they any other lands besides the homesteads on which rent could be assessed. The industrial population, artisans and tradesmen belonging to the lower castes have only homestead lands, for which they pay rent. They are known as chadnia raiyats, but their number is not considerable. Act X of 1859 had nothing to do with chadnia raiyats, but the Act gave
the pahi or husbandmen, who were mere tenants at will, the status of occupancy-raiyats.

The zemindars of the Chotanagpur division go by the names of rajas, tekaets, thakurs &c., and their law of succession, as in some other ancient zemindar families in the Regulation districts, is the law of principalities—primogeniture. The Government recognized in Regulation X of 1800 their impartibility and the exceptional rule of succession to the eldest son only. The other sons of the last proprietor are entitled to maintenance only, for which grants of land are generally made by the eldest son after the succession to him opens out. These grants are known as khorposh or babuana. Thus, the laws relating to partition of estates and separation of shares have practically no application in this division. It has also been held that the kulachar or rule of succession is generally lineal, females being excluded, and until an elder line is exhausted, none in the next line is entitled to succeed, notwithstanding proximity of sapinda-relationship and superiority in age. Such a rule of succession is not in conformity with either the old patriarchal system which made the eldest male member of a family its chief or head, or the text of Manu.—"To the nearest sapinda the inheritance belongs," which is the basis of Hindu law in all the schools. The question has not, however, been finally decided by the Privy Council, and the custom must be proved in the case of each family by cogent evidence.

2 Periag v. Madhu, A. O. D. Nos. 84 and 97 of 1887, decided 25th June 1889.
3 अभिरुचि सुकल्यः साधारणः श्वेतव व ||
    अनलज्जः सुकल्यः साधारणः श्वेतव व ||

Manu, Ch. IX, V. 187.
Notwithstanding the impartibility of these estates, most of them are highly encumbered, and were it not for the very beneficial intervention of the Government under the Chotanagpur Encumbered Estates Act—VI (B.C.) of 1876, many of them would, by this time, have been swallowed up by money-lenders. The application of the Act to any estate deprives the proprietor of his power of management and of disposing of his estate and the Civil Courts also lose their power to pass decrees for debts and realise them by execution. The Act has been extended to the Deo Estate in the District of Gya (IX of 1886.)

The impartibility of these estates is no bar to an alienation by a holder, if such alienation be otherwise valid. The holders may also create subordinate tenures such as putn’s and mukurraris, and the next-taker has no right to question their validity on the ground of impartibility. In Anund Lal Sing Deo v. Dheeraj Gurrood Narayan Deo, the Privy Council left the question open, but in Uddoy Aditty Deb v. Jadub Lal Deb the validity of alienations either by way of sales or leases has been expressly recognized. As a necessary corollary, limitation which bars a holder of an estate will also bar the next-taker.

There is an important class of tenures in the Chotanagpur division—the maintenance (khorposh) tenures. Grants of land made for the maintenance of the junior members of a zemindar-family governed by the law of primogeniture are generally rent-free, but occasionally quit-rents are payable. Their incidents are various, depending upon the custom and usage of each family and the terms of the written grants. But it seems that no grant is valid, if the grantor encroaches on the power of the next-taker by making one not authorized by

1 5 M. I. A. 82.
2 I. L. R. 5. Cal. 113; affirmed by the Privy Council in I. L. R. 8 Cal. 199.
family custom or usage. A grant may be a simple assignment of rent revokable at the will of the grantor. In other cases, it may be valid during the life-time of the grantor, being resumable by the next-taker of the parent estate. A grant in perpetuity for the maintenance of the grantee and his heirs has been held in the Pachete Estate to be invalid. Again a grant for maintenance may enure to the benefit of the grantee only, being resumable on his death. In some families, grants have been held to be good as regards the grantees and their heirs male, and the khorposh tenures do not revert to and merge in the parent estates as long as there are male heirs of the grantees.

In the districts comprising Chotanagpur division, with the exception of Manbhoom and the Tributary Mahals, the Rent-Law in force is Bengal Act I of 1879—the Chotanagpur Landlord and Tenant Procedure Act. This is a Procedure Act, the modifications in the portion dealing with substantive law being very slight. The law as to landlord and tenant as laid down in Act X of 1859 has been practically retained, except as to certain peculiar kinds of tenure-holders. Section 19 of the Act deals with bhuinhari and khudkati tenures, and lays down that no tenant of such lands shall be liable to the enhancement of rent previously paid by him for such lands, unless it be shewn that the tenure has been created within twenty years before the institution of the suit to enhance the rent of such lands. The section further provides that where the enhancement of rent of such tenures is decreed, the rent assessed shall not exceed one-half of the rent paid by an ordinary raiyat with a right of occupancy on the same class of land with similar advantages.

1 Anund v. Dheeraj Gurrood, 5 M. I. A. 82.
3 Lohardagga, Palamau, Hazaribag, Singbhum.

A (2)
The bhuiharis are an important class of tenure-holders in these districts, and they are supposed to be the descendants of those who originally settled and were the first tillers of the soil in the villages. The mundas of Chotanagpur claim to be the original settlers, but as a matter of fact we scarcely find any munda or bhuihar in this district. The truth seems to be that the bhuiharis are the descendants of men who were in the villages when Hindu authority was first asserted. The Hindu landlords put down the influence of the mundas, if they had any at that time, and extorted services from the settled inhabitants. These services were originally feudal, such as attendance at marriages, following the chiefs in war &c.; but gradually half rent was imposed. For causes well known in the history of civilization, the bhuiharis became gradually reduced in number. The Hindu Rajas of the Nag-family, who claimed to be the descendants of the Solar-kshetriyas, and their friends and relations gradually absorbed the bhuihari lands. Shortly before 1869, Christian missionaries, specially the Lutherans, were making converts of the Non-Hindu tribes. The Christian bhuiharis learned of secular things more than the sacerdotal, and waking from a long sleep of apathy and submission, they took forcible possession of large quantities of land, to which they had not the remotest title. Riots followed, and the Chotanagpur Tenures Act II (B.C.) of 1869 was passed for the settlement of the district. Sir William Hunter in his Statistical Accounts of the Lohardagga district thus sums up the characteristic provisions of the Chotanagpur Tenures Act:—"Bhuinhari, as defined in the Act, includes the four cognate privileged tenures known as bhutkheta, dalikatari, pahni and mahtoai; while manjhas or manjhihas includes bhutkheta. The jurisdiction of the regular courts is barred: and Special Commissioners are appointed to demarcate and register the tenures
which come under the Act, subject to appeal to the Commissioner of the Division. Pleaders (vakils) and law agents (mukhtars) are not allowed to be heard without special permission. The term of limitation is fixed at twenty years, and the service conditions of the bhuihari tenures are allowed to be commuted for a money payment. At the same time, no date is fixed within which such claims to hold land on a privileged tenure must be put in. In consequence of this omission, and the impossibility of commencing the work of demarcation in all parts of the District at once, it is feared, that when some of the more remote perganahs are visited by the Special Commissioners, serious difficulties may arise.”

The Bhuinhari Act, instead of improving the condition of the bhuihari population, had the effect of eliminating them. Section 19 of the Act of 1879 placed the bhuihars in a securer position on favourable terms. Section 20 of the Act of 1879 provides that no tenant of lands known as korkor, baibala, khandwat, sajhwat, jalsasan and ariet, shall be liable to any enhancement of rent except under the terms of written contracts, or in accordance with the general custom prevailing with respect to such lands in the village in which they are situated.

There is an important class of tenures in the Chotanagpur Division—jaigirs and chakerans. The holders render services of various kinds to the rajas and the village communities and pay either no rent or nominal rent. Considering the altered state of things under the British Government, commutation of service into rent is very necessary.

The Tributary estates¹ in this division have their chiefs as the Tributary mahals in Orissa, and the laws in force in British India have no application to them.

Manbhoom, one of the districts included within the Chotanagpur division, and Jalpaiguri are within the per-

¹ Bonai, Jaspur, Udoypur, Kharsoa, Charbabar, Korca, Ganghen.
manently settled area of the Bengal Provinces and are to a considerable extent inhabited and cultivated by people who have migrated from the adjoining settled districts. There are, however, masses of non-aryan population, who have not yet fully adopted the habits, customs and languages of their aryan neighbours. There are Mundas, Uraos, Coles and Santhals in Manbhoom and Koches and other non-aryan tribes in Jalpaiguri. The Privy Council has declared them to be non-aryan and non-Hindu.\(^1\) Act X of 1859 is in force in these districts.

The raiyati tenures peculiar to Manbhoom are the jalsasan and the noabad. The physical features of this part of the country have enhanced the value and utility of tanks (bandhs). Large pieces of land are granted for the excavation of tanks, on the condition that water should be allowed to be used for purposes of drinking and irrigation of the neighbouring lands of other raiyats, and the grantees should have the right of holding the lands by the sides of tanks either at small quit-rents or variable rents, portions of the lands being held rent-free, and permanent remissions being allowed as remuneration for labour and expenditure incurred by the tenants.

Noabad grants are made for the clearance of jungles and for cultivation, generally six annas-share of the lands being allowed to be held rent-free, the remainder being assessable at progressive rates and liable to enhancement under the provisions of Act X of 1859. These are jungleburi holdings.

The Raja or Raikut of Baikunthpur and the Maharaja of the Kuch Behar State own large parts of Jalpaiguri as zemindars. The Government itself is the zemindar in the Western Doars. The tenure-holders directly under the zemindars are known as jot-dars. These jotes are generally permanent and are transferable by custom.

The first jot-dars were apparently occupiers of the soil, cultivators and peasant proprietors, as the word jote implies. But in course of time, subletting became common. Usufructuary mortgages of the jotes are frequent. On failure of heirs and on abandonment, the jotes revert to the parent estates.

Chukanidars or mulanidars are an important class of subordinate-holders in Jalpaiguri. They are temporary lessees or under-raiyats under the zemindars or jot-dars. They hold for terms of years, and their rights are not transferable by custom. The dar-chukanidars or darmulanidars are sub-lessees with still inferior rights. The raiyats (prajas) hold from year to year only.

The trial of Rent cases under Act X of 1859 is in the hands of the executive officers of the Crown, the Collectors, and Deputy Collectors, with the right of appeal to the District Judges and Collectors, and in some cases second appeal to the High Court. In suits of the value of over Rs. 5000, an appeal lies directly to the High Court. In some instances, the Collectors and Commissioners of Revenue have powers of revision. In the Regulation Districts of Bengal proper and Behar, this was found inconvenient, and within ten years of the passing of Act X of 1859, the jurisdiction in rent suits was taken away from the executive officers and was given to the regular civil courts. But the conflict of jurisdiction, which was pre-eminently a source of litigation, still exists in these districts. The people, however, are simple and litigations are few.

In suits for the enhancement of rent of raiyats, the main peculiarity, as you have seen, is the necessity of the previous service of notice.¹ No suit for enhancement of rent can succeed under Act X of 1859, unless a notice

¹ Ante p. 373.
in proper form has been previously served on the raiyat through the proper channel.

The sections of Act II (B.C.) of 1862 about measurement through the Collectors were replaced in Act VIII (B.C.) of 1869 by sections 37 and 38. They are with slight modification incorporated in sections 90, 91, and 92 of the Bengal Tenancy Act. Act II (B.C.) of 1862 with its imperfect provisions as to record-of-rights has been retained in these provinces. I have already dealt with these and the other provisions of the Act of 1859 and 1869 and the Acts modifying them.

It seems that the provisions of Act X of 1859 were originally applied in the Santhal Perganahs in questions between landlord and tenant. Regulation III of 1872 (Santhal Perganahs Settlement Regulation) and Regulation II of 1886 (Santhal Perganahs Rent Regulation) made Act X of 1859 inapplicable. The manjhis or village headmen were selected as farmers of the villages, specially in the Damanikoh, and thus mostajir and manjhi have become convertible terms. Regulation III of 1872 laid down rules as to record-of-rights and the adjustment of rents by Settlement-officers. The District officers are vested with the power of deciding disputes as to record-of-rights. An appeal lies in some instances to the Deputy Commissioner and in others to the Commissioner of the Bhagulpore division. The proceedings are generally simple in their character, litigations being confined to the permanently-settled estates outside the Damanikoh. The right-of-occupancy of the raiyats is much of the same nature as in the Regulation districts, the power of re-settling rents by the Settlement officers being wider,—agricultural skill and habits of life of tenants being taken into consideration. A raiyat may acquire an occupancy-right not only by occupation for more than 12 years, but he may have an equitable claim to occupancy under section 18 of Regu-
lation III of 1872. Exchanges of land between raiyats do not affect the acquisition of the right. A raiyat, whether possessing a right-of-occupancy or not, cannot be ejected from his holding otherwise than in execution of an order of the Deputy Commissioner.\(^1\)

\(^1\) Reg. II of 1886, Sec. 25.
ABANDONMENT—
penalties for, in ancient India, 13.
occupancy raiyat transferring holding against custom to be considered as having abandoned it, 296, 339, 340.
may amount to surrender when, 307.
on abandonment of the use of burning and burial grounds landlord may take possession of them, 406.
See Act VIII of 1885 Sec. 87; Forfeiture; Notice; Limitation.

ABATEMENT—
of revenue on acquisition of land, 125.
procedure if proprietor declines to accept, on land-acquisition, 125.
of rent for diluvion does not affect presumption of uniformity of rent, 178, 179.
when putnidar entitled to, 184.
not allowed if person without title dispossess tenant, 295, 296.
of rent of occupancy raiyat for fall in prices, 361, 362.
for deterioration of land, 365.
of rent for diluvion, 295, 369.
contract against right of, invalid, 369.
of rent for acquisition of land for public purpose, 369.
suits for reduction of rent, 374.
See Alteration of rent.

ABWAB—
See Illegal Cess.

ACCRETIONS—(Continued)
accreted lands numbered as separate estates, 51.
cause of alteration of rent, 293, 366—368.
See Alteration of rent; Act IX of 1847; Act XXXI of 1858.

ACTS—(Bengal Council)
VI of 1862 (to amend Act X of 1859), pp. 284, 422.
s. 9, pp. 375, 376.
" 10, pp. 372, 378.
" 11, p. 369.
VII of 1862 (Jurisdiction in Resumption Suits), p. 7.
VIII of 1862 (Zamindari Dawks), p. 82.
Preamble, p. 96.
s. 4, p. 97.
" 9, p. 97.
" 12, p. 97.
VIII of 1865 (Sale of tenures for arrears of rent), pp. 144, 201, 284, 407.
s. 3, pp. 145, 149.
" 4, pp. 196, 197.
" 5, p. 196.
" 13, p. 152.
" 16, pp. 198, 305.
162, p. 196.
IV of 1867 (to amend Act VI of 1862), p. 407.
X of 1867 (Settlement of land revenue in Kuttack &c.), p. 410.
VII of 1868 (Recovery of arrears of revenue), pp. 40, 54, 102, 256.
s. 1, p. 108.
" 2, p. 108.
" 3, p. 106.
" 7, p. 107.

ACCRETIONS—
alluvial accretions to an estate, 50.
when Govt. has right to assess such lands with additional revenue, 50.
held Khas only when proprietor declines settlement, 50.
but even then proprietor is entitled to malikana, 50.
GENERAL INDEX.

ACTS—(Bengal Council)—
VII of 1868 (Continued)
  " 8, pp. 109, 110.
  12, pp. 79, 84, 137, 161, 388.
  14, pp. 394, 345.
II of 1869 (Tenures in Chutia Nagpur), p. 418.
   s. 3, p. 287, 289.
   4, pp. 287.
   9, p. 375.
   10, p. 375.
   14, p. 373.
   15, p. 48.
   17, p. 166.
   18, p. 293, 353, 367.
   19, pp. 293, 369.
   20, p. 307.
   21, p. 333.
   22, p. 302.
   23, p. 302.
   25, p. 271.
   26, pp. 159, 188, 190, 203, 206, 341.
   37, pp. 371, 373, 422.
   38, pp. 372, 378, 422.
   41, p. 269.
   44, p. 335.
   45, p. 335.
   57, p. 195.
   59, pp. 196, 197.
   60, p. 196.
   62, p. 201.
   66, pp. 198, 305.
   106, p. 138.
VI of 1870 (Village Chaukidars), p. 256.
   s. 35, p. 256.
   48, p. 256.
   50, p. 256.
   58, p. 257.
   60, p. 257.
   61, p. 257.
I of 1871 (Village Chaukidars), p. 256.
   s. 1, p. 257.
X of 1871 (Road Cess), p. 97.
V of 1875 (Survey Act).
   s. 42, p. 378.
VI of 1876 (Agrarian Disputes), p. p. 381, 416.

ACTS—(Bengal Council)—
VII of 1876 (Land Registration), pp. 112, 114, 146.
   s. 4, p. 80.
   8, p. 113.
   9, p. 80.
   17, p. 81.
   38, pp. 81, 113.
   42, pp. 81, 113.
   78, pp. 113, 336.
VIII of 1876 (Partition of estates), pp. 118, 119, 203.
   s. 4, p. 82.
   10, p. 116.
   11, p. 116.
   12, p. 115.
   13, p. 116.
   26, p. 117.
   29, pp. 115, 117.
   33, p. 120.
   35, p. 120.
   36, p. 120.
   101, p. 115.
   105, p. 115.
Part IX, p. 120.
   s. 125, p. 120.
   132, p. 120.
II of 1877 (Public Works Cess), p. 97.
III of 1878 (Settlement Act), p. 47.
I of 1879 (Chutia Nagpur Landlord and Tenant), pp. 408, 417.
   s. 19, p. 419.
   20, p. 419.
VIII of 1879 (Settlement Officer’s Powers), pp. 47, 49, 52.
   s. 9, p. 47.
   10, p. 47.
   15, p. 47.
IX of 1879 (Court of Wards), p. 122.
   s. 5, p. 123.
   18, p. 212.
   23 cl. 1, p. 122.
   23 cl. 2, p. 122.
   23 A, p. 122.
   24, p. 123.
   25, p. 123.
VI of 1880 (Bengal Drainage Act).
   s. 42, pp. 332, 363.
   43, p. 363.
VII of 1882 (Public Demands Recovery), pp. 40, 56, 57, 98.
   s. 5, p. 56.
ACTS—(Bengal Council)—
VII of 1880, (Continued).
" 7, p. 56.
" 10, pp. 56, 108.
" 11, p. 56.
" 18, p. 56.
" 19, p. 56.
IX of 1880 (Cess Act), p. 97.
s. 3, p. 82.
" 14 to 29, p. 98.
" 41, pp. 82, 98, 162.
" 42 cl. 1, pp. 82, 99.
" 47, p. 163.
III of 1881 (Court of Wards Amending Act), p. 122.
s. 4, p. 122.

ACTS—(India Council).

VIII of 1835 (Jurisdiction in summary sales for rent), p. 144.

XVII of 1835 (To regulate the silver and gold coinage), p. 96.

XIII of 1836 (For the withdrawal of the Calcutta Sicca Rupee and the Benares and Furrucakbad Pice from circulation), p. 291.

XII of 1841 (Sales of land for arrears of revenue), p. 101.
I of 1845 (Sales of land for arrears of revenue), p. 101.
s. 9, pp. 101, 102.

IX of 1847 (Assessment of alluvial lands), p. 50, 51.
s. 7, p. 50.
I of 1850 (For conferring the title to lands in Calcutta), p. 55.

XXIII of 1850 (For securing the land revenue of Calcutta), p. 32.
s. 2, p. 33.
" 6, p. 33.
" 7, p. 33.
" 12, p. 33.

XXV of 1850 (Forfeiture of deposits on incomplete sales under Reg. VIII of 1819 and Act IV of 1846), p. 144.
s. 1, p. 151.
" 2, p. 151.

VI of 1855 (Relating to summary suits for arrears of rent, to sales of Putnee Taluqs, and other saleable tenures, and to sales of land for summary decrees for rent), p. 144.
s. 1, p. 149.

ACTS—(India Council)—
VI of 1853. (Continued)
" 9, p. 149.
XXXVII of 1855 (To remove from the operation of the general Laws and Regulations certain districts inhabited by Southals), p. 43.

XVIII of 1856 (Relating to the administration of public revenues in Calcutta), p. 32.

VI of 1857 (Land Acquisition Act), pp. 55, 204.

X of 1857 (Act to amend Act XXXVII of 1855), p. 43.

XXXI of 1858 (Settlement of land gained by alluvion), p. 51.

XL of 1858 (For making better provision for the care of persons and property of minors), p. 212.
s. 18, p. 212.

V of 1859 (To empower Ghatwals of Beerbhoon to grant leases beyond the period of their possession), p. 264.
s. 1, p. 263.

VIII of 1859 (Code of Civil Procedure)—
s. 260, p. 111.

X of 1859 (Rent law of Bengal)—
s. 3, pp. 287, 289.
" 4, pp. 289, 292.
" 5, p. 302.
" 7, p. 326.
" 8, pp. 317, 375, 377.
" 9, pp. 302, 375, 377.
" 10, pp. 240, 348, 373.
" 15, pp. 137, 139, 165, 176, 206.
" 16, p. 139.
" 17, pp. 293, 353, 354, 358, 363, 367, 368.
" 18, pp. 293, 361, 365, 367, 369.
" 20, p. 335.
" 21, p. 302.
" 23, pp. 403, 406.
" 27, pp. 159, 188, 190 203, 296.
" 28, pp. 76, 78.
" 78, pp. 303, 331, 346.
GENERAL INDEX.

ACTS—(India Council)—
XI of 1859 (Sale for arrears of revenue), pp. 40, 54, 101, 102, 104.
  s. 2, p. 100.
  " 3, p. 105.
  " 4, p. 293.
  " 5, p. 108.
  " 6, pp. 105, 106, 109, 110.
  " 7, pp. 107, 111.
  " 8, p. 106.
  " 9, pp. 102, 128.
  " 14, p. 115.
  " 15, p. 106.
  " 16, p. 139.
  " 17, pp. 122, 123.
  " 18, p. 105.
  " 26, pp. 106, 108.
  " 28, p. 110.
  " 30, p. 111.
  " 31, p. 111.
  " 33, p. 109.
  " 36, p. 111.
  " 37, pp. 77, 79, 84, 137, 161, 162, 165, 168, 287, 304, 345, 388.
  " 41, p. 161.
  " 42, p. 161.
  " 53, pp. 111, 115, 162.
  " 54, p. 162.
  " 55, p. 256.
  " 58, pp. 49, 79.
  Sch. A, p. 110.

XIV of 1859 (Limitation).
  s. 1 cl. (14) p. 78
XXII of 1860 (To remove certain tracts of Chittagong from the jurisdiction of ordinary tribunals), p. 42.
XLV of 1860 (Indian Penal Code).
  s. 154, p. 124.

XVI of 1864 (Registration Act), p. 208.
I of 1868 (General Clauses Act), p. 36.

VII of 1870 (Court Fees Act), pp. 54, 55.
X 1870 (Land Acquisition)—
  s. 59, pp. 124, 125.
IX of 1871 (Limitation)—
  Sch. II, Art. 130, p. 78.
  "  Art. 132, p. 127.
I of 1872 (Evidence Act)—
  s. 35, p. 113.
  " 74, pp. 45, 113.
  " 91, p. 208.
  " 114, p. 175.
  " 116, p. 233.

ACTS—(India Council)—
IX of 1872 (Contract Act), p. 34.
  s. 35, 207, 385.
  " 69, pp. 127, 224.
  " 70, p. 127.
  " 226, p. 211
XII of 1873 (Repealing Act). p. 96, 131.

XIV of 1874 (Scheduled Districts Act) p. 48, 49, 408.

XV of 1874 (Laws Local Extent) p. 96.

IX of 1875 (Majority Act)—
  s. 3, p. 122.

III of 1877 (Registration Act)—
  " 18, p. 208.
  " 48, p. 208.

XV of 1877 (Limitation Act)—
  Sch. II Art. 12, p. 152.
  "  Art. 12 cl. (c) p. 109.
  "  Art. 120, p. 112.
  "  Art. 121, pp. 84, 162, 201.
  "  Art. 130, p. 127.
  "  Art. 139, p. 233.

VII of 1878 (Forests), p. 54.
I of 1879 (Stamp Act)—

IV of 1882 (Transfer of Property), pp. 190, 209, 240, 386.

Preamble p. 387.
  s. 2, p. 387.
  " 11, p. 183.
  " 15, p. 397.
  " 36, p. 224.
  " 50, p. 224.
  " 54, p. 300.
  " 72, p. 128.
  " 73, pp. 111, 128.
  " 93, p. 158.

  s. 105, pp. 219, 390.
  " 106, pp. 230, 391.
  " 107, pp. 188, 208.
  " 109, pp. 224, 225.
  " 110, p. 227.
  " 111, pp. 182, 228, 229, 230, 233, 238.
  " 112, pp. 182, 234.
  " 113, p. 238.
ACTS—(India Council)—

IV of 1882, (Continued)

s. 114, pp. 191, 235, 236.
" 115, p. 399.
" 116, p. 238.
" 117, p. 344.
X of 1882 (Criminal Procedure)
s. 45, p. 124.

IV of 1882 (Civil Procedure)

s. 11, p. 380.
" 265, p. 115.
" 290, p. 197.
" 317, p. 111.
" 392, p. 355.
" 396, p. 115.
" 474, p. 339.
" 622, p. 129.

XV of 1882 (Presidency Small Cause Courts).
s. 28, p. 36.

s. 1, p. 48.
" 4, pp. 286, 288, 343, 410.
s. 6, pp. 133, 136, 140, 141.
" 8, p. 167.
" 9, p. 167.
" 11, pp. 183, 187.
" 12, pp. 159, 160, 188, 192, 296.
" 13, pp. 159, 160, 188, 193, 296.
" 14, pp. 159, 160, 188, 296.
" 15, pp. 160, 188, 192, 296, 336, 337.
" 16, pp. 160, 188, 193, 296, 336, 337.
" 18, pp. 233, 287, 290.
" 19, pp. 308, 318, 410.
" 20, pp. 298, 310, 326, 328, 330, 410.
" 21, pp. 308, 309, 326, 328, 410.
" 22, pp. 222, 243, 313, 342, 410.

ACTS—(India Council)—

VIII of 1885, (Continued)

" 23, pp. 300, 302, 339, 410.
" 24, pp. 302, 410.
" 25, pp. 231, 233, 304, 328, 345, 410.
" 26, pp. 298, 410.
" 27, pp. 48, 302.
" 27 to 38, p. 411.
" 29, p. 332.
" 31, pp. 355, 356.
" 32, pp. 358, 361.
" 33, pp. 358, 365.
" 34, pp. 358, 363, 365.
" 36, p. 374.
" 37, p. 374.
" 38, pp. 354, 361, 365, 366.
" 40, p. 374.
" 41 to 49, p. 410.
" 42, p. 347.
" 44, pp. 343, 345, 346.
" 45, pp. 238, 343, 346, 347.
" 46, p. 382.
" 47, p. 346.
s. 49, p. 238.
" 50, pp. 139, 165, 179, 287, 290, 292.
" 51, p. 333.
" 52, pp. 139, 140, 179, 293, 367, 369.
" 53, pp. 333, 334, 335.
" 53 to 75, p. 410.
" 54, p. 334.
" 56, pp. 336, 371.
" 65, pp. 172, 181, 236, 303.
" 66, pp. 236, 237, 345.
" 67, p. 335.
" 68, p. 335.
" 72, p. 224.
" 73, pp. 300, 341.
Chap IX., p. 301.
" 80, p. 411.
" 86, p. 307, 339.
" 87, pp. 307, 310, 329, 339.
" 88, pp. 165, 193, 203, 292.
" 89, p. 181.
" 90, p. 371, 422.
" 91, pp. 371, 373, 422.
" 92, pp. 370, 422.
" 93 to 96 p. 129.
" 99, p. 129.
" 102, pp. 378, 380.
" 103, p. 378.
" 104, p. 380.
" 105, p. 380.
ACTS—(India Council)—
VIII of 1885, (Continued).
  " 106. p. 380.
  " 107. pp. 380, 393, 397.
  " 108. pp. 380, 381.
  " 110. p. 381.
  " 112. p. 381.
  " 117. to 120. p. 321.
  " 120. pp. 323, 324.
  " 121. p. 339.
  " 149. p. 338.
  " 154. pp. 141, 374.
  " 156. p. 304.
  " 158. pp. 376, 377.
  " 159. pp. 394, 395.
  " 305, 345, 388.
  " 161. p. 199.
  " 163. pp. 197, 199.
  " 165. p. 200.
  " 171. pp. 128, 201.
  " 172. p. 201.
  " 176. p. 199.
  " 307, 328, 330, 334, 344—
  " 346, 369.
  " 180. pp. 208, 318, 325.
  " 183. pp. 309, 343.
  " 188. pp. 191, 202, 372.
  " 189. p. 52.
  " 193. pp. 318, 403, 405.
  " 195. pp. 40, 48, 144, 159.
Sch. I. pp. 140, 188.
Sch. III. pp. 182, 234, 288, 304.
    329.
IX of 1887 (Moffusil small cause
Court).
Sch. II. cl. 8, p. 36.
XII of 1887
s. 37, cl. 2, p. 207.
VIII of 1890 (Guardian and
  s. 29, p. 212.
  1 of 1894 (Land Acquisition), pp.
    55, 124.
  s. 55, p. 125.

ADVERSE POSSESSION—
acquisition of right by, in ancient
India, 18, 19.

ADVERSE POSSESSION—
(Continued)
period necessary to create title by, 10, 20, 21.
different periods after which adverse
possession ripened into ownership;
Asmártakála, 20; time im-
memorial, 21; thirty years, 23;
twenty years 21.
Raghunandan's reconciliation of
texts giving different periods for
acquisition of title by, 21.
tenant encroaching on landlord's land
cannot set up, 221, 222, 293-295
See Encroachment; Limitation.

ALIENATION—
land amongst Aryans not at first
alienable, 21.
right of alienation was afterwards
slowly and partially recognized,
21, 22.
Jimutavahana fully recognised it, 22.
in Mahomedan time cultivator had
right to alienate his land, 24.
covenants in permanent tenures
restricting, 183.

ALTERATION OF RENT—
on alteration of area, 139, 140, 179,
184.
in such a case presumption of uni-
formity of rent unaffected, 179.
of permanent tenures, 183, 184.
of raiyats on alteration of area,
292, 296, 366—369.
increase by accretion, 293,
366—368.
increase by encroachment on
landlord's land, 293, 294.
increase by encroachment on
stranger's land, 295.
decrease by diluvion, 295,
368.
decrease by dispossess
under a title paramount,
295, 368.
decrease by dispossess
by person without title,
295, 296, 368.
See Enhancement of rent.

APPEAL—
grounds for setting aside revenue
sale by civil suit must be taken
in appeal to Commissioner, 109.
if there is illegality or no arrears
appeal to Commissioner not neces-
sary, 109.
APPEAL—Continued.
against order of District Judge appointing common manager does not lie, 129.
but High Court has power of Revision, 129.
See Limitation.

APPORTIONMENT—
Zamindar not bound to apportion rent on partition of taluqs, 165.
of rent on partition does not affect uniformity of rent, 178.
of compensation between proprietor and tenure-holder on land acquisition, 203, 204.
of compensation in case of acquisition of Ghatwali land, 270.

ARYANS—
were essentially agriculturists, 4, 11.
subletting originally unknown amongst, 11.
but afterwards became common, 12.
intermediate tenures unknown in earlier days amongst, but are of later creation, 12.
cultivation of land insisted on, 12.
Vyasa, 12.
Narada, 13.
Yajnavalkya, 13.
village communities 13118.
For details see under this heading.
acquisition of right by adverse possession amongst, 18, 19.
estoppel by conduct under ancient Hindoo law, 19.
period necessary amongst, in ancient times to create title by adverse possession, 20, 21.
extinguishment of right by limitation amongst, 21.
land was at first not alienable but heritable, 21.
right of alienation was afterwards slowly and partially recognized
21, 22.
Jimutavahana fully recognized it, 22.
sources of revenue in ancient India amongst, 383, 384.
right to minerals, 395.

ASSAM—Continued.
the whole forms a scheduled district and statute 33, Vic. Cap. 3 applies to it, 49.
a part of the country is permanently settled, 49.
rest Government property, 49.

ASSAM—Continued.
Settlement Regulations of the Bengal Code supplemented by rules framed by Government are in force in, 49.

ASSESSMENT OF RENT—
on resumed lakhraj land under the Settlement Regulations binding unless set aside, 46.
raiyat however not bound unless they assent or the law as to enhancement of rent complied with, 46.
principles of, under the Settlement Regulations, 46, 47.
principles of, in the case of island Churs and accreted land, 50.
See Settlement Regulations.

ASSESSMENT OF REVENUE—
made on principles laid down in Reg. VII of 1822 and the Regulations and Acts modifying it, 50.
creted lands formed into separate estates, 50.
Reg. VIII of 1793 contains principles of settlement and mode of assessment, 93, 94.
rules of, laid down in Reg. VIII were the basis of Permanent Settlement and continued in force till 1822, 95.

ASSIGNEE—
of recorded proprietor not entitled to draw surplus proceeds of revenue sale, 111, 112.

ATTACHMENT—
Collector may attach for arrears of revenue in what cases, 122.
estates under, or management by Revenue Officer exempt from sale for arrears of revenue, 123.
Sec. 17 of Act XI of 1859, 123.
but the issue of certificate of attachment is not attachment by Collector, 123.

AUCTION-PURCHASER—
Sale certificate to be conclusive in favor of, 110.
title of, at a sale for arrears of revenue of a permanently-settled estate dates from when, 110.
liable for instalments that have fallen due since the default of kist on which sale has taken place, 111.
AUCTION-PURCHASER—Continued.
at putni sale to pay purchase-money when, 151.
at putni sale entitled to avoid incumbrances, 154-156.
must avoid within 12 years, 155.
registration of name of, at putni sale, 59, 160.
right of, to avoid incumbrances, 200.
See Incumbrances; Putni-Sale; Limitation; Sale for Arrears of Revenue.

BADSHAHI GRANTS—
what are, 69, 70.
burden of proof of the genuineness and validity of, 70.
effect, in the absence of any grants, of uninterrupted possession exempt from assessment, 70.
Regulation XXXVII of 1793, 71.
See Non-Badshahi grants.

BASTU LAND—See Homestead.

BENAMI.
provision against benami purchase in sales for arrears of revenue, 111.
purchase at revenue-sale by defaulter does not avoid incumbrances, 162.
landlord holding land in the of another person cannot acquire occupancy right, 312.

BHAGDARI RAIYATS—
may acquire occupancy right, 310, 311.

BHAOILI RAIYAT—See Bhagdari raiyat.

BOARD OF REVENUE—
to determine dates for payment of arrears of revenue, 105.
revisional power of, regarding partition of estates, 120.
is the Court of Wards, 123.

BREACH OF COVENANT—
See Ejectment; Forfeiture; Limitation.

BUILDING—See Ejectment.

BUILDING LEASE—See Homestead.

BURDEN OF PROOF—
as to the genuineness and validity of Badshahi grants, 70.
in suits in which question is whether land is mal or lakhiraj, 83-86.
finding should be based upon weight of evidence, 86.
in suits for enhancement of rent of dependent taluqs, 135.
on Zamindar regarding due publication of sale notices under Reg. VIII and due observance of formalities, 148.
regarding avoidance of incumbrance by purchaser at putni sale, 156.
on tenant to prove custom of transferibility of occupancy right, 300.
on landlord to prove that land is proprietor's private land, 323.
when raiyat pleads that rent is due to another person, 337.
in cases of enhancement for improvement, 363, 364.
in cases of reduction for deterioration, 365, 366.

BURNING AND BURIAL GROUNDS—
the members of the community have customary right to use, 404, 405.
but the landlord may take possession on abandonment of the use, 406.
See Sales for Arrears of Revenue.

CALCUTTA—
is a khas mahal, 32.
was originally the purchased taluk of the East India Company, 32.
its revenue system, 33.
there are many revenue-free tenures in, 33.
rate of assessment, 33.
no proprietary right of Govt. in the revenue-paying estates in Calcutta, 33.

Sutanuty,
incidents of tenancy in, 34.
law of landlord and tenant in, 34-37.
jurisdiction of the Presidency Small Cause Court, in suits between landlord and tenant in, 36, 37.
CALCUTTA—Continued.
the several Tenancy Acts have no
application in the part within the
Original Jurisdiction of H. C., 34;
but the Contract Act and the Trans-
fer of Property Act regulate the
incidents of tenancy in, 34.
law applicable in the absence of
contract and of any provision in
the Contract or the Transfer of
Property Acts, 34, 35.
huts, 36.

CERTIFICATE PROCEDURE

CESS—
Road Cess payable by Govt. for khas
mahals, 56.
but not Public Works Cess, 56.
result of extension of the Cess Act
to lakhirajdars, 57.
payable for revenue-free lands, 82.
but Dawk Cess not payable, 82.
Dawk Cess when imposed, 96.
    payable by Zamindars, 96.
    how and when payable, 96, 97.
    but not recoverable from
    tenants, 97.
realizable by Certificate
Procedure, 97.
is an additional impost on
the revenue, 97.
    old Cess Acts, 97.
the Cess Act of 1880, 97, 98.
tenants bound to pay Road and Pub-
lic Works Cesses, 98.
is a personal debt of proprie-
tor, 98.
recoverable by Certificate Procedure, 98.
how assessed, 98.
the share to be paid by each class
interested in land, 98, 99, 162, 163.
how and when payable, 99.
sale for arrears of, where no arrears,
105 note.
payable by taluqdar, 162, 163.
unless there is contract to the con-
trary, 163.
recoverable in the same way as rent
but is no charge and has not the
same effect on incumbrances, 163.

CHAKRAN LANDS—
See Service tenure.

CHOWKIDARI CHAKRAN
LANDS—
See Service tenures;
Act VI (B. C.) of 1870;
Act I (B. C.) of 1871.

CHARGE—
Govt. revenue is a first charge on
land, 99.
unpaid arrears a first charge on sale
proceeds of estate sold for any
cause while under management
of the Court of Wards, 122.
co-sharer paying Govt. revenue has
no charge, 127, 128.
under the Bengal Tenancy Act co-
sharer paying rent has, 128.
under-tenure-holder paying arrears
to save putni from sale entitled to
a charge, 153.
rent a first charge, 171, 172.

CHITAS—
evidentiary value of, prepared by
Settlement Officers, 45, 46.

CHITTAGONG—
cultivated portions of, when acquir-
ed, 37.
afterwards permanently settled, 37.
noabad lands and taluqs in, 41.
absolute right of Government
to, 41.
surveyed between 1841 and
1848, whether held by squ-
atters or tarafdars, 41, 42.
estates formed in 1793 were
defined and separated and
noabad lands were made
separate taluqs, 42.
also large numbers held khas.
42.
oabad taluqdar are tenure
holders holding under terms
of their leases, 42.
settlement in 1848 was for
fifty years of lands fully
cultivated and for 25 years
for other lands, 42.
generally cultivated by hired
labor, 42.
where there are raiyats
settlement does not affect
their rights, 42.
contains large numbers of
estates, taluqs and holdings
under jungleburi grants,
42.
CHITTAGONG—Continued.
great complications in consequence, 42.
tarafdars, generally hold khas, 42.
where there are raiyats resumption and settlement do not affect their right, 42.
Hill tracts of, removed from the operation of the general Regulation and Acts by Act XXII of 1860 and IV (B.C.) of 1863, 42.
large part reserved forest, 42.
a portion settled permanently but a large part is khas mahal, 42, 43.

CHOTANAGPUR—
there are Govt. estates in, 43.
Palamow subdivision is khas mahal temporarily settled, 43.
Govt. claims absolute proprietary right, 43.
lands never sold for arrears of revenue, 43.
all sales and mortgages require sanction of Commissioner, 43, 44.
primogeniture in, 415.
Encumbered Estates Act, 416.
derunder-tenures, 416.
maintenance grants, 416, 417.
Act I (B.C.) of 1879, 417.
bhuinhrs, 418, 419.
Service tenures, 419.
tributary mahals, 419.
Manbhoom, 419, 420.
Jalsasan tenures, 420.
Noabad tenures, 420.

CHUR—
right of occupancy in, 298, 325, 326.
island churs the property of Govt., 50.
some temporarily settled, 50.
See Khas mahals; Occupancy right.

CIVIL COURT—
jurisdiction of, in resumption cases, 76.
if no arrear revenue sale may be set aside by, 105.
its jurisdiction to set aside revenue sale is of an extremely limited character, 109.
where objection is made in proceedings for separation of account of revenue parties to go to the, 114.

CIVIL COURT—Continued.
can only pass decree for partition after ascertainment of share, 115.
jurisdiction of, when partition is claimed by Hindu widow, 116.
may decree partition when revenue is below the prescribed limit though apportionment of revenue will not be binding on Collector, 116.
jurisdiction of, in matters relating to partition, 117.
conflict of cases about jurisdiction, 117, 118.
no jurisdiction of, regarding registration under Act XI, 161.

COLLECTOR—
may exempt estate from revenue sale, when, 105.
may open separate account of revenue where no objection, 114.
actual partition of estates to be made by, 115.
private partition not binding on Govt. unless special sanction of Collector is obtained, 115.
cannot disturb private partition at the instance of one of the parties, 115.
in what cases of private partition Collector's jurisdiction is ousted and when not, 115, 116.
what estates not partible by, 116.
remarks on the jurisdiction of, in partition of estates, 118, 119.
minor's estate of which due notice has been given to, not liable to sale for arrears of revenue, 121.
if there be arrears when minor's estate ceases to be under Court, Collector may attach, 122.
procedure to be followed by, for ascertainment of revenue on acquisition of land, 124.
to grant remission of revenue on acquisition of land, 125.
procedure if proprietor declines to accept statement of revenue granted, 125.
jurisdiction of, regarding registration under Act XI, 161.

COMMISSIONER—
may exempt estate from revenue sale, when, 105.
power of, to set aside revenue sale in case of hardship, 107, 108.
grounds for setting aside revenue
CONTRIBUTION—Continued.
quasi contracts arising out of payment of Govt. revenue and similar other dues for the protection of the estate, 127. Contract Act ss. 69 and 70, 127. co-sharer paying Govt. revenue has no charge, 127, 128. under the Bengal Tenancy Act co-sharer paying rent has charge, 128.

CO-SHARER—
effect of payment of revenue by, 115. contribution amongst co-owners of estate, 127, 128. quasi contract arising out of payment of Govt. revenue and similar other dues for the protection of the estate, 127. Contract Act ss. 69 and 70, 127. paying Govt. Revenue has no charge, 127, 128. this is unjust, 128. under the Bengal Tenancy Act co-sharer paying rent has charge, 128. Reg. V of 1812 provided for the appointment of common manager in case of dispute amongst, 128. District Judge having jurisdiction to make the appointment, 128. Regulation V of 1827, 128. appointment of, under the Bengal Tenancy Act, 129. order of the District Judge appointing, not appealable but High Court has power of revision, 129.

CO-SHARER—
effect of payment of revenue by, 115. contribution amongst co-owners of estate, 127, 128. quasi contract arising out of payment of Govt. revenue and similar other dues for the protection of the estate, 127. Contract Act ss. 69 and 70, 127. paying Govt. Revenue has no charge, 127, 128. this is unjust, 128. under the Bengal Tenancy Act co-sharer paying rent has charge, 128. Reg. V of 1812 provided for the appointment of common manager in case of dispute amongst, 128. District Judge having jurisdiction to make the appointment, 128. Regulation V of 1827, 128. appointment of common manager under the Bengal Tenancy Act, 129. order of District Judge appointing manager not appealable but High Court has power of revision, 129. right of, to deal separately with his interest how far restricted, 104. suit for arrears of rent by one of joint landlords, 202. co-sharer landlord cannot acquire occupancy right, 312, 313. purchasing occupancy right loses it, but the holding does not cease to exist, 313 note.

COURT OF WARDS.—
no estate liable to be sold for arrears of revenue when under the management of the, 121. unpaid arrears a first charge on sale proceeds of estate sold for any cause while under the, 122. if arrear remain due when estate is released by the, Collector may attach, 122. Board of Revenue is the, 123.

CONTRIBUTION—Continued.

COMMON MANAGER—
Reg. V of 1812 provided for the appointment of, in case of dispute amongst co-owners, 128. District Judge having jurisdiction to make the appointment, 128. Regulation V of 1827, 128. appointment of, under the Bengal Tenancy Act, 129. order of the District Judge appointing, not appealable but High Court has power of revision, 129.

COMMUTATION—
of khiraj in Mahomedan time into money rent, 23, 24.

COMPENSATION—
See Damages; Apportionment; Land Acquisition.

CONTRACT—
policy of legislature in restricting, between landlord and tenant, 179, 180. compensation for breach of covenant in, 182. restricting alienation how far enforceable, 183. not enforceable in case of involuntary alienation, 183. ejectment for breach of covenant, 288. by occupancy raiyat against right to cut down trees invalid, 302. against right to sub-let by occupancy raiyat invalid, 306. against right of surrender of occupancy raiyat invalid, 307. against acquisition of occupancy right invalid, 328. taking away occupancy right invalid, 328. providing for ejectment of occupancy raiyat, 328. by occupancy raiyat regarding rent and enhancement of rent, 332. to pay a different rate of interest invalid and when valid, 334, 335. against right to claim reduction of rent for diluvion invalid, 369.

CONTRIBUTION—
amongst co-owners of estates, 127, 128.
CULTIVATOR—amongst Non-Aryan races in India the idea prevails that land belongs to the people, the king only being entitled to rent, 6. Ownership of subject to land recognized by early Hindu Kings, 6. King was simply the protector of the people, 10. Cultivation insisted on in Ancient India, 12. Penalties for non-cultivation imposed on, 13. Imposition of the khiraj in Mahomedan time did not take away the proprietary right of the cultivator, 24. In Mahomedan-time cultivator had right to alienate his land, 24.

CUSTOM—occupancy right not bequeathable except under, 299. Occupancy right not transferable except under, 299, 300, 341. Onus on tenant to prove custom of transferability, 300. If there is, occupancy right may be acquired in homestead land, 316. Validates transfer of non-occupancy holding, 344, 345. As to any class of raiyat paying at favorable rate, 356. Regulates incidents of homestead lands, 316, 384.

DAMAGES—to be paid by Zamindar if patni sale is set aside, 153. When under-tenureholder suffering loss at patni sale is entitled to, 157. Measure of, for breach of covenant, 182. For misuse of land by occupancy raiyat, 301. In lieu of interest on arrears, 335.

DAWK CESS—See Cess

DEPENDENT TALUQS—owners of, entitled to resume and assess lands comprised within their taluqs granted after 1st Dec. 1790, 72.

DEPENDENT TALUQS—Continued. Lands held under invalid grants formed into taluqs when, 74. Includes malguzar aymas for clearing waste lands and also jungle-buni tenures, 94. What are, 132. Classes of, existing at the time of the Decennial Settlement, 132. Regulation VIII of 1793 classifies taluqs into two classes, those of which rent can be enhanced and those of which rent is not enhanceable, 133. Rent could not be enhanced if grant was for perpetuity at fixed rent, and payment of rent for 12 years had been made, 133. If grantee held on payment of rent for less than 12 years rent could be enhanced, 133. Presumption in favor of taluqdar as soon as it is proved that the taluq had existed from before the Decennial Settlement, 133. Enhancement of rent of, 133, 134. The effect of the provisions of the Regulations relating to, summarized by Privy Council, 134, 135. Evidence to prove the existence of a Taluq at the Decennial Settlement, 135. Onus probandi in suits for enhancement of rent of, 135. Right to enhance could be exercised only after notice, 135. Requisites of such notice, 135. Grounds of enhancement of rent of, 136, 137. See Taluqs

DEFAULTER—notice under Sec. 7 Act XI to prohibit payment to, after he has made default, 111. May purchase but such sale does not avoid incumbrances, 111.

DANHAR LAND—See p. 357.

DIARAH—See Chur

DIHI PANCHANNAGRAM—holdings in, 38. See Khâs mahâls

DISCLAIMER—Forfeiture of lease by, 231, 232.
DISCLAIMER—Continued.
what constitutes, 232.
of the title of assignee of landlord, 232, 233.
under Bengal Tenancy Act who can not be ejected for, 233.

DISQUALIFIED PROPRIETOR
no estate liable to be sold for arrears of revenue while under the Court of Wards, 121.
unpaid arrears a first charge on sale proceeds of estate sold for any cause while under the Court of Wards, 122.
if arrears remain unpaid when estate is released by the Court of Wards Collector may attach, 122.

DISTRICT JUDGE—
has jurisdiction to appoint common manager, 128, 129.
order of, appointing common manager not appealable but High Court has power of revision, 129.

DIWANI—
recognition of the Company's title, 29.
influence of the Mahomedan fiscal system under the, 29.
confusion during the first few years, 29, 30.
revenue-free grants made after Company's accession to the, 66, 72.
the Directors adopted plans to check further alienations, 67.
what to become of revenue-free grants made after accession to the, 71-75.

DURPATNI-DAR—
compensation to, on sale of Putni Taluq for arrears, 157.
See Putni sale.

DOUBLE GOVERNMENT—
what it was, 30.

EARTH—Continued.
could not be given away, 5.
occupier of portion of, not owner according to Savara, 5.

EAST INDIA COMPANY—
sovereignty of the, 29.
the Diwani, 29.
influence of the Mahomedan fiscal system under the Diwani, 29.
confusion during the first few years, 29, 30.
started the theory of the proprietary right of the Government, 30.
proprietary right was transferred to Zamindars with this theory in view, 30.
policy of the, as to revenue-free lands, 58.

EJECTMENT—
taluqs held from the Permanent Settlement not liable to, 165.
not allowed of permanent tenure for non-payment of rent, 180.
conditions for, upon breach of covenant in leases of permanent tenures looked on with disfavour, 181.
of lessee by title paramount, 217
from a part, 218.
from the wrongful action of lessee, 219, 220.
notice to quit under Bengal Tenancy and Transfer of Property Acts, 238, 239.
otice must be proper, 239.
six months' notice, 240.
suit is not sufficient notice, 240, 241.
form of notice, 241.
raiyat at fixed rates not liable to, except on breach of an express covenant in contract, 288.
of occupancy raiyat, 302-304.
of non-occupancy raiyat, 340-348.
protection from ejectment from dwelling houses, manufactories and other permanent building on sale for arrears of revenue, 311.
See Mahomedan Fiscal Govt.; Notice; Disclaimer.

ENCROACHMENTS—
in Sunderbuns, 52.
by tenant on landlord's land, 221, 293, 294.
no limitation against landlord in case of, by tenant, 221, 222, 294.
by tenant on stranger's land, 222, 295.
ENCROACHMENTS—Continued.
suit for additional rent would lie for encroached land, 295.
by third person, 368.
by landlord, 368, 369.

ENHANCEMENT OF RENT
Act III (B.C.) of 1878 defines and limits the powers of Settlement
Officers in khâs mahals regarding,
by Settlement Officer in khâs mahals binding unless raiyat proves that
it is not in accordance with the Act,
of dependent taluqs, 133-139.
of taluqs, 138, 139, 166, 167.
of tenures, 176-178.
invalid contracts regarding, of
occupancy raiyat, 331, 332.
cannot be made within fifteen years
after the previous enhancement,
but any arrangement in settlement
of dispute is not enhancement,
landlord not debarred from recovering
rent at enhanced rate when paid
for three years, 332.
contract of enhancement not invalid
if it is on account of landlord's
improvement, 332.
landlord entitled to enhance if
productive power is increased
by drainage, 332.
contract to enhance not invalid
when the land has been held
at a specially low rate in con-
sideration of cultivation of any
particular crop for convenience
of landlord, 332.
of occupancy raiyat, 353-365
grounds of, under Act X of 1859
and Act VIII (B.C) of 1869,
353, 355
prevailing rate, 354, 355.
same class of raiyats, 355, 356.
places adjacent, 356.
description of land, 357.
similar advantages, 357, 358.
value of produce and productive
power of land, 358.
rise in average prices, 358, 361.
rule of proportion how and when
to be applied for, 358, 361.
average prices to be determined
from rates during a decennial
period, 361.
deduction of one-third, 362.

ENHANCEMENT OF RENT
increase in the productive power
of land, 362-364.
orchards, 364.
of improvement by fluvial action,
notice formerly necessary, 373, 421.
now not necessary, 374.
decree for, when to take effect, 374.
gradaul enhancement, 374.
restriction on frequent enhancements,
of non-occupancy raiyat, 382.
See Burden of proof.

ESTATE—
as defined in Bengal Tenancy Act
includes revenue-free lands, 81.
also as defined in Bengal Cess Act,
but not as defined in the Partition
Act, 82.
ordinary law of succession of the
owner applicable to, 112.
alienable in part or whole, 112.
protection from sale of share for de-
fault of a co-sharer, 113.
registration of names of proprietors,
113, 114.
separation of shares of, 114.
who is entitled to have se-
parate account opened, 114.
owners of specific portions
also entitled to separation
of account, 114.
Collector may open separate
account where no objection,
on objection parties to go
to the Civil Court, 114.
Sales of separated shares, 114, 115.
rules for, 114.
in case of deficient sale pro-
ceeds entire estate to be
sold when, 115.
effect of payment of revenue
by sharer, 115.
Partition of estates 115-120.
For details see under this
heading.
what estates exempted from sale for
arrears of revenue, 120-123.
contribution amongst co-owners of
estate, 127, 128.
other dues for the protection of
the, 127.
ESTATE—Continued.
co-sharer paying Govt. revenue has no charge, 127, 128.
independent taluq is an, 130.
separately recognized as such, when, 130, 131.
share of, sold at revenue sale in-cumbrance not avoided, 162.

ESTOPPEL—
by conduct in ancient Hindu law, 19.
tenant induced into land by a person without title not estopped from denying such lessor’s title, 337.

EVIDENCE—
evidentiary value of chittas, jum-mabandis and maps prepared by officers of Govt. under the Settlement Regulations, 45, 46.
evidentiary value of taividads, 80.
copies of registers under the Land Registration Act admissible in, 114.
to prove the existence of a taluq at the Decennial Settlement, 135.
express recognition of taluq in the Settlement proceedings may be evidence of the right to hold exempt from enhancement, 139.
value of amaldastaks or amalnamas, as 209.
of payment of rent at uniform rate to establish fixity of rent must be strict, 291, 292.
See Presumption.

EVICION—
See Ejectment.

EXEMPTION—
Collector and Commissioner may exempt estate from revenue sale, when, 105.
express order of exemption necessary, 105.
what estates are exempted from sale for arrears of revenue, 120, 121.
estates under attachment or management by Revenue Officers exempt from sale for arrears of revenue, 123.
See. 17 Act XI of 1859, 123.
but the issue of certificate of attachment is not attachment by Collector, 123.

FARMER OF RENT—
See Ijaradar.

FISHERIES—
See Jalkar.

FIXTURES—
See Leases;
Non-agricultural lands.

FORESTS—
laws as to, 54.
Settlement Officers of, vested with the powers of a Collector under the Land Acquisition Act, 54.
rules for the protection of, 54.
income of Govt. from, under three heads, 54.

FORFEITURE—
for breach of covenant in lease, 181, 288, 303, 304.
determination of lease by, 230, 231.
by disclaimer, 231.
relief against forfeiture, 235, 236.
waiver of, 234, 235.
effect of, on subleases and incumbrances, 242.
on abandonment of occupancy holding, 299.

FRACTIONAL PROPRIETOR—
See Co-sharer.

FRACTIONAL SHAREHOLDER—
See Co-sharer.

GHASKAR LANDS—
See p. 357.

GHATWALI TENURES—
Ghatwals, 246, 257.
contest between Govt., Zamindar and Ghatwals, 257, 258.
of Burdwan, 258.
of Chotanagpur, 258.
of Hazaribagh, 258.
of Lohardagga, 259.
of Manbhoom, 259.
of Monghyr, 259, 260.
of Bankura, 260, 261.
of Beerbhum, 262–264.
of Khurukpur, 264–270.
apportionment of compensation in case of acquisition of Ghatwali land, 270.

GOVERNMENT—
is landlord as defined in the Bengal Tenancy Act in khās mahals, 51.
Road Cess payable by, for khās mahals, 56.
GOVERNMENT—Continued.  
but not Public Works Cess, 56.  
Govt. dues from khas Cess are realizable by certificate procedure, 56.  
private partition not binding on, unless special sanction of Collector is obtained, 115.

GRAZING GROUND—  
See Pasture.

HIGH COURT—  
order of District Judge appointing common manager under Bengal Tenancy Act not appealable, 129.  
High Court has however power of revision, 129.

HINDU JURISPRUDENCE—  
assimilation of Hindu and Mahomedan systems of fiscal administration, 25.  
See Mahomedan Fiscal Government.  
glosses and commentaries were published under the influence of Hindu Rajas and Zamindars in Mahomedan time, 26.  
See Aryans.

HOMESTEAD LAND—  
when occupancy right cannot be acquired in, 316.  
when may be acquired, 316, 317.  
in many districts raiyats hold homestead land without payment of rent, 317, 384.  
object of sec. 182 Bengal Tenancy Act, 317.  
custom or usage regulates incidents of, 316, 384.  
when rent law applies to, 384, 385.  
effect of revenue sale on, 388.  
enhancement of rent of, 389.  
erection of permanent structures, 396.  
aquiescence by landlord, 396.  
injunction to restrain erection, 396, 397.

HUTS—  
in the Presidency towns removable at the termination of tenancy are moveable property, 36.  
are saleable in execution of decrees of Presidency Small Cause Courts, 36.

IJARADAR—  
cannot acquire occupancy right, 313.  
on raiyat afterwards becoming acquisition of the right to remain in abeyance, 313, 314.  
but if right already perfected it would not be lost, 314.  
See Lease.

ILLEGAL CESS—  
Dawk Cess is a legalised abwab, 97.  
but is not realizable as rent, 97.  
Regulation VIII imposed restrictions on levying, 278.

ILLEGALITY—  
if there is illegality in revenue sale no appeal to Commissioner necessary, 109.  
whether non-compliance of the provisions of sec. 6 was, 110.

IMPROVEMENT—  
validity of enhancement of rent on account of improvement by landlord, effect of, 332, 365.  
registration of, by landlord, a necessary preliminary to suits for enhancement of rent, 365.  
by fluvial action, 365.

INCOME TAX—  
not payable by Zamindars, 99.  
but payable in respect of estates within municipality, 99.

INCUMBRANCE—  
defaulter purchasing at revenue sale not entitled to avoid, 111, 162.  
the zamindar may resort to the ordinary procedure for sale for arrears and the effect of such sale is the same regarding avoidance of, as sales under Reg. VIII, 144.  
right of purchaser at putni sale to avoid, 154-156.  
adverse possession of any part of the lands is an, 155.  
protected at revenue sale when registered under act XI, 161.  
ot not avoided by revenue sale of share of estate, 162.  
also not by benami purchase by defaulter, 162.  
avoidance of, at sale for arrears of rent, 200.  
remedies of incumbrancer paying arrears to stop sale, 201.
INCUMBRANCE—Continued.
effect of determination of lease on, 241, 212.
surrender does not avoid, 241, 242.
effect of forfeiture on, 242.

INDEPENDENT TALUQS—
invalid lakhiraj lands exceeding
hundred bighas resumed and
assessed become, 73.
who are independent taluqdar and
who are not, 94.
which of the Malguzari Aymas are
independent taluqs, 94.
are estates, 130.
separately recognized as such when,
130, 131.

INDIGO PLANTER—
may be raiyat, 287.
indigo concern may acquire
occupancy right, 311, 312.

INJUNCTION—
for misuse of land by occupancy-
raiyat, 301.
See Lease.

INSTALMENTS—
of revenue and payment thereof,
104, 105.
auction purchaser liable for instal-
ments that have fallen due since
the default, of kist on which sale
has taken place, 111.
of rent regulated by agreement or
established usage, 333, 334.
agreement as to, need not be evi-
denced by written instruments,
333.

INTEREST—
payable on arrears of rent, 334, 335.
rates of, where the Bengal Tenancy
Act does not prevail regulated by
local usage or practice, 334.
contracts as to, where the Act
prevails, 334, 335.

INVALID LAKHIRAJ—
holder of, in khās mahal is bound by
the rent assessed under the
Settlement Regulations, 46.
raiyats however are not bound
unless they assent or the law as to
enhancement of rent is complied
with, 46.
by operation of the Resumption
Regulations large quantities of
lands within the ambit of per-
manently settled estates came into
the direct possession of Govt., 49.
what revenue free grants are invalid
71-75.

INVALID CONTRACT—
See Contract.

IRREGULARITY—
whether non-compliance of the
provisions of Sale Law was a
mere irregularity, 110.

ISLAND CHURS—
See Churs.

JAIGIRS—
these were grants to military offi-
cers and servants of the State, 64.
ordinarily life-tenures, 64.
occasionally held as hereditary and
alienable grants, 64.
of two kinds, conditional and un-
conditional, 64.
not grants of land but merely in-
dicate interception of the khiraj,
they are not strictly lakhiraj, 65.
were declared heritable and per-
manent, 245.

JAL LAND—
See p. 357.

JALKAR—
right of occupancy in, 318, 402.
enhancement of rent of, when allow-
ed, 357.
incident of tenancy in, 402, 403.
determination of leases of, 403.

JALPAI LANDS—
what they are, 55, 56.
are khās mahals, 56.
claim to, by the zemindar of
Midnapur disallowed by the
Privy Council, 56.

JOTEDARS—
are occupants of land in Bhutan
Doars, 44.
hold lands in Darjiling, 44.

JUMMABANDIS—
Settlement Officer preparing chittas
and jummabandis under Reg.
VII of 1822 to give notice to
raiyat, 45.
JUMMABANDIS—Continued.
are final until altered after full
investigation in a regular suit,
evidentiary value of, prepared by
officer of Govt. under the Settle-
ment Regulations, 45, 46.

JUNGLEBURI GRANTS—
Chittagong contains large numbers
of estates, taluqs and holdings
under, 42.
Jungleburi leases in Sunderbuns, 53.
these tenures are heritable and
transferable, 54.
Jungleburi taluq is a dependent
taluq, 132.
oabad lands in Manbhoom, 420.

JURISDICTION—
of Calcutta Small Cause Court in
suit between landlord and tenant
in Calcutta, 36, 37.
in resumption cases, 75, 76.
if no arrear revenue sale can be set
aside by the Civil Court, 105.
of Civil Courts to set aside revenue
sale is limited, 109.
of Collector to open separate ac-
count of revenue where no objec-
tion, 114.
on objection Civil Court to decide,
114.
of Collector to make actual parti-
tion of estate, 115.
Civil Courts can only pass decree
for partition after ascertainment
of share, 115.
of Collector ousted in what cases
of private partition, 115, 116.
Civil Court may exercise discretion
in suit for partition by Hindu
widow, 116.
what estates not partible by Col-
lector, 116.
Civil Court may decree partition
even when revenue below pre-
scribed limit, 116.
of Civil Courts in matters relating
to partition, 117.
conflict of cases about, 117, 118.
of Collector in partition of estates,
remarks on, 118, 119.
of District Judge to appoint com-
mon manager, 128.
of Collector regarding registration
of tenure under Act XI, 161.
of Civil Court regarding registration
of tenure under Act XI, 161.

JURISDICTION—Continued.
of Civil Court to partition taluqs,
165.
of Civil Court in suit for enhance-
ment of rent of homestead land,
389.
in suit to recover rent of pastures,
405.
of Collector and Commissioner in
non-regulation districts, 421.
conflict of, in non-regulation dis-
tricts, 421.

KHAMAR—
See Proprietor's private land.

KHA'S—
See Proprietor's private land.

KHA'S MAHALS—
See Lecture II, 32-57.
definition of, 32.
Calcutta, 32-37.
For details see under this heading.
the Twenty-four Perganahs, 37.
Burdwan, Midnapur and Chitta-
gong were permanently settled,
37.
holdings in, 38, 39.
Chinsurah, 39.
Serampur, 40.
Baranagar, 40.
holdings in the above three khas
mahals are permanent, hereditary
and transferable, 40.
other classes of, 40.
Resumption Regulations, 40.
Chittagong, 41.
For details see under this heading.
hill lands of Bhagulpur, 43.
mosty inhabited by Santhals, 43.
Santhal Perganahs, 43.
See under this heading.
Chotanaugpur, 43.
See under this heading.

Bhutan Doars, 44.
are parts of Jalpaiguri and were
acquired in 1870, 44.
settled for ten years in 1870, 44.
settlements were with jotedars, 44.
jotes saleable for arrears of
revenue, 44.
jotedars are occupants of lands
in, 44.
Darjiling, 44.
large tracts waste land, 44.
some portion settled with jote-
dars, 44.
Govt. has appropriated portion
for Cinchona cultivation, 44.
portion held by mahaldars, 44.
KHA'S MAHALS—Continued.

some held in fee simple or revenue free, 44.

Angul, 44.
former a Tributary State, 44.
confiscated in 1847, 44.
settlement directly with raiyats, 44.

Khurda, 44.
comprises half of Puri district, 44.
until 1837 settled mahalwari with sarbarakars, 44.
raiyatwari settlement in 1837, 44.
rent collected through sarbarakars, 44.
settlement and adjustment of rent in, 44-48.
See Settlement Regulations.

Assam, 49.
the whole a scheduled district under Act XIV of 1874 and statute 33 Vic. Cap. 3 applies to it, 49.
a part of the country permanently settled, 49.
rest Govt. property, 49.
Settlement Regulations of the Bengal Code supplemented by rules framed by Govt. are in force, 49.
by operation of the Resumption Regulations large quantities of lands within the ambit of permanently settled estates came into direct possession of Govt., 49.
purchased and escheated estates, 49, 50.

island churs, the property of Govt., 50.
some temporarily settled, 50.
alluvial accretions to an estate, 50.
the Govt. has right to assess such lands with additional revenue, when, 50.
held khas only when proprietor declines settlement, 50.
but even then proprietor entitled to malikana, 50.
Regulation XI of 1825, 50.
Act IX of 1847, 50.
assessment of revenue, 50.
made on principles laid down in Reg. VII of 1822 and Regulations and Acts modifying it, 50.
accreted lands formed into separate estates, 50.

KHA'S MAHALS—Continued.
old policy of Govt. was to settle lands permanently after assessment under the Settlement Regulations, 50.
since 1861 the policy of selling estates outright was also adopted, 51.
since 1871 temporary settlement only allowed, 51.
in 1875 Govt. ruled that there should be khas management whenever practicable, 51.
rules of settlement, 51.
Govt. is landlord as defined in the Bengal Tenancy Act, 51.
amount payable to Government is rent, 51.
but proprietary interest of the State merges in the paramount title and rent is called revenue, 51.
the right to settle the revenue is regulated by Chap. X of Bengal Tenancy Act where that Act applies, 51.
same rule applicable to temporarily settled estates, 51.

Orissa, 52.
although Reg. VII of 1822, IX of 1825, and IX of 1833 and Act VIII (B.C.) of 1879 apply the procedure for fresh settlement is that laid down in Chap. X of Bengal Tenancy Act, 52.

Sunderbuns, 52-54.
For details see under this heading.

forests, 54.
forest laws, Act VII of 1865 and Act VII of 1878, 54.
forest Settlement Officers were vested with the powers of a Collector under the Land Acquisition Act, 54.
rules for the protection of forests, 54.
income of Govt. from forests may be classed under three heads, 54.
acquisition of land by Govt., 55.
salt land, 55, 56.
or jalpai land, 55, 56.
Govt. paid khali rent for, 55.
settled as khas mahal, 56.
Govt. absolute right to salt land, 56.
Road Cess payable by Govt. for, 56.
but not Public Works Cess, 56.
Govt. due realizable by certificate procedure, 56.
some provisions of the Public Demands Recovery Act, 56.
KHA'S MAHALS—Continued.
remarks on certificate procedure, 57.
if grantee of invalid lakhiraj ex-
ceeding one hundred bighas
made prior to 1st Dec. 1790
refuses settlement the land to be
held khás, 73.
See Invalid lakhiraj.

KHARKAR LANDS—
See p. 357.

KHIRAJ—
defined, 23.
never formally levied in India, 24.
when levied it was soon commuted
to money rent, 23, 24.
the imposition of, did not take away
the proprietorship of the cul-
tivator, 24.
no serious effort made for collect-
tion of, from cultivators till the
reign of Akbar, 25.
effect of the imposition of wasifa
khiraj, 24.
See Mahomedan Fiscal Government.

KHODKAST RAIYAT—
See Raiyat.

KHURDA—
until 1837 settled mahalwari with
sarbarakars, 44.
raiyatwari settlement in 1837, 44.
rent collected through sarbarakars,
44.

KING—
amongst non-Aryan races in India
the idea prevails that land be-
ongs to the people, king only
entitled to rent, 6.
ownership of the subject to land
recognized by early Hindu Kings,
6.
sovereign entitled only to a share
of the produce, 7.
Rig Veda, tenth Mandāl, 8.
Nārada's comment on the text of
Rig Veda, 8.
Manu and other texts, 8, 9.
Baudhayana, 9.
Parasara, 9.
authorities however not unanimous
about the extent of the king's
share, 10.
general opinion that king's share
is the sixth, 10.

KING—Continued.
but smaller shares eighth, tenth
and even twelfth considered
proper by some, 10.
Jaimini's Mimansa Aphorism, 10.
Savara's and Sayana's commentaries
thereon, 10.
was simply the protector of the
people, 10.
the word king is used as synonym-
ous with the expression 'the
appropriator of the sixth
share,' 11.
Srikrishna Tarkalankar says king
only entitled to taxes, 11.
in Mahomedan time the sovereign
became entitled only to a share
of the produce, 24.
zemindars had to perform the func-
tions of a sovereign, 26.
the English started the theory of the
propriety right of the ruler, 30.
with this theory in view proprietary
right was transferred to zem-
indars, 30.

LAKHIRAJ LAND—
result of extension of the Cess Act
tо, 57.
person claiming under a lakhiraj
title cannot acquire occupancy
right, 314.
See Presumption ;
Resumption law.

LAND ACQUISITION—
forest Settlement Officers were
vested with the powers of a Col-
lector under Act X of 1870, 51.
land acquired by Govt, held khás,
55.
successive laws for acquisition of land,
55.
compensation for acquisition of
land for public purposes, 124.
how calculated, 124.
procedure to be followed by Col-
lector in determining the
amount of compensation on, 124,
125.
rules under Sec. 59 of Act X of
1870, 124.
rules framed under Sec. 55 of Act I
of 1894, 124, 125.
procedure where proprietor declines
to accept abatement of revenue
on, 125.
date when abatement or remission
of revenue has effect, 125.
LAND ACQUISITION—Continued.

principles under which compensation is to be apportioned between proprietor and tenure holder, 203, 204.
apportionment of compensation in case of acquisition of Ghatwali land, 270.

LANDHOLDER—
liability of, under Reg. XI of 1806, and VI of 1806 to supply provision &c. to the army, 123, 124.
penalty for default, 124.
fails to give information of certain offences, 124.
their officers also liable, 124.
sec. 154 of Act XLV of 1860, 124.
sec. 45 of Act X of 1882, 124.

LANDLORD—
in khās mahals, Govt. is the landlord as defined in the Bengal Tenancy Act, 51.
but the proprietary interest of Govt. merges in the paramount title, 51.
holding land in benami of another cannot acquire occupancy right, 312.

LANDLORD AND TENANT—
law of, in Calcutta, 34-37.
jurisdiction of Calcutta Small Cause Court in suits between landlord and tenant in Calcutta, 36-37.
interpretation of deeds in determining the real character and incidents of lease, 184, 185.
law of England when applied, 186.
effect of fraud in transactions between, 191.
suit for arrears of rent by one of joint landlords, 202.
such a suit must be treated as a suit on an ordinary contract, 202.
execution of decree by a co-sharer is an execution under the Civil Procedure Code and not one under Chapter XIV of the Bengal Tenancy Act, 202.
encroachment by tenant on lessor’s land 221, 222.
encroachment by tenant on stranger’s land is for landlord’s benefit, 222.
rules for the determination of relationship of, 337, 339.
suit for delivery of pottas and kabulyats, 375, 376.

LANDLORD AND TENANT—Continued.
pottas were to be at fair and equitable rates, 375.
determination of the incidents of tenancy, 376, 377.
what the court to decide in application under Sec. 158 of Bengal Tenancy Act, 376, 377.
Agrarian Disputes Act and Sec. 112 Bengal Tenancy Act, 381.
different laws in different districts, 407, 408.
See Lease.

LAND REGISTRATION ACT—
registers of lakhiraj land prior to, 79, 80.
registers of lakhiraj land under the, 80, 81.
sec. 60 of Act VII (B.C.) of 1876 applies to revenue-free lands, 81.
the Act does not deal with lands which have not been admitted to be revenue-free by proceedings under the Resumption Laws, 81.
old Land Registration laws, 113.
Bengal Act VII of 1876, 113, 114.
registers, 113.
copies of register admissible in evidence, 113, 114.
no one bound to pay rent to any person whose name is not registered under the, 81.
suits for rent not maintainable unless claimant’s name is registered under the, 81.
See Evidence.

LAND SYSTEM AMONGST ARYANS—
See Aryans.

LEASE—
terms of, regulate relation between lessor and lessee, 173.
interpretation of written contracts of, 173, 174, 214.
permanent mukurrari may be granted on what terms, 180.
breach of covenant of, 181, 182.
interpretation of deeds, 184, 185, 214.
law of England occasionally applied, 186.

sources of law regarding, 207.
Transfer of Property Act, 207.
how created, 208.
void leases and possession thereunder, 209.
amaldastak or amalnama, 209.
LEASE— Continued.

agreement to lease, 210.
who may grant, 210, 211, 392, 391.
power of manager of joint family, 211.
sevact and mutwallis, 211, 212.
guardians of infants, 212, 213.
Hindu widows, 213, 399.
mortgagor to grant, 212.
when begins to operate, 214, 215.
present possession not necessary to validate, 215, 216.
covenant to grant new lease on expiration of old, 216, 227.
delivery of possession by lessor, 216.
when lessee absolved from liability to pay rent, 216.
effect of not mentioning rate of rent in covenant of, 216.
eviction of lessee by title paramount, 217, 218.
eviction from a part, 218.
eviction from wrongful action of lessee, 219, 220.
disturbance of lessee's possession, 220.
encroachment by tenant on lessor's land, 221.
lessee cannot acquire any right against lessor during lease, 222.
limitation against landlord, 223.
payments made by lessee for lessor's benefit, 224.
assignment of lessor's right, 224.
lessee's power of transfer, 225, 392, 393.
lessee's liability when continues after transfer, 225.
assignee's liability when begins, 225.
assignee bound only by covenants running with the land, 226.
what covenants run with the land, 226.
duration of, 227.
option determining, 227.
determination of, 228.
doctrine of merger, 228—230.
determination by forfeiture, 230, 231.
forfeiture by denial of landlord's title, 231.
no notice of ejectment on forfeiture for disclaimer, 231, 232.
what constitutes disclaimer, 232.
disclaimer of the title of assignee of landlord, 232, 233.
under Bengal Tenancy Act permanent tenure-holder, raiyat at fixed rate and occupancy raiyat cannot be ejected for disclaimer, 233.

LEASE— Continued.
waiver of forfeiture, 234, 235.
relief against forfeiture, 235—237.
result of holding over, 238.
determination of, also determines sub-leases and interests created by lessee, 241.
surrender does not avoid incumbrances, 242.
on expiration of, what becomes of rights acquired by lessee, 242, 243.
merger not applicable when, 242, 243.
occupancy right not affected by determination of lease, 243.
tenancies from year to year, 391, 392.
eritability, 393.
misuse of land, 393.
working mines or quarries, 393, 394.
errection of permanent structures, 396.
aequiescence of landlord, 396, 397.
injunction to restrain erection, 397, 398.
presumption of permanency from long occupation, 398.
fixtures, 399—402.
subleases, 399.
see Ijaradar, Jungleburi Leases.

LESSEE—
see Lease; Ijaradar.

LIEN—
of under-tenure holder paying into court money to protect superior tenure, 201.

LIFE-ESTATE—
holder of, not entitled to partition of estate, 116.
but Hindu widow is entitled, 116.

LIMITATION—
extinguishment of right in ancient India by, 21.
in suits by raiyat to set aside jumma-bandis prepared by Settlement Officers, 47.
in resumption cases, 78, 79.
in suit to set aside revenue sale, 109.
in suit for payment of surplus proceeds of revenue sale, 112.
in suit for malikana, 126.
in suit to set side putni sale, 152.
in suit for arrears of putni rent when putni sale is set aside, 154.
LIMITATION—Continued.
in suit to avoid incumbrance, 162, 200.
no limitation against landlord in
case of encroachment by tenant,
221, 223.
in suit to eject tenant on determina-
tion of lease, 233.
against tenureholder and raiyat for
breach of condition of lease, 233,
234.
in suit for ejectment of occupancy
raiyat for breach of covenant, 304.
in suit for arrears of rent, 339.

MAHALDARS—
hold lands in Darjiling, 44.

MAHOMEDAN FISCAL SYSTEM—
Mahomedans did not interfere with
Brahminical ideas about fiscal
system, 11.
their system was of recent
date, 22.
their rules applicable to infidels not
applied to India, 23.
they levied khiraj which was soon
commuted to money rent, 23, 24.
imposition of the khiraj did not
take away the proprietorship of
the cultivator, 24.
cultivator had right to alienate his
land, 24.
the sovereign became entitled only
to a share of the produce, 24.
Mahomedan fiscal system practically
agreed with the Hindu system, 25.
assemblage of the Hindu and Maho-
medan systems, 25.
no serious effort made for collection
of khiraj from cultivators till the
reign of Akbar, 25.
in Mahomedan times zemindars were
theoretically mere collectors of
revenue, 26.
but they had to perform the function
of a sovereign, 26.
in fiscal matters their authority was
supreme, 26.
revenue settlements under Mahome-
dan rulers, 27.
Allauddin Khilij, 27.
Sher Shah, 27.
Selim Shah, 27.
Akbar, 27.
Todar Mal's reform, 27, 28.

MAHOMEDAN FISCAL SYSTEM—Continued.
he entirely ignored the distinction
between oosher and khiraj
between Mahomedans and Hind-
us, 27.
instead of the sixth the rate was
increased to a fourth and occa-
sonally to a third, 27.
rights of cultivators, 28.
ejectment unknown except for non-
cultivation or continuous nonpay-
ment of rent, 28.
the influence of the Mahomedan
system after the Diwani, 29.
English ideas as to property in land
same as the Mahomedan, 30.

MALGUZARI AYMAS—
which of them are dependent taluqs
and which are independent, 94.

MAL LANDS—
See Burden of proof.

MALIKANA—
proprietor declining settlement of
accruals to his estate is entitled
to receive, 50.
what is, 125.
rate of, 125, 126.
how paid, 125.
grants rare in Bengal but common
in Behar, 126.
not rent, 126.
but is a distinct proprietary right
and an interest in land, 126.
suit for, is money charged upon im-
moveable property, 126.
limitation in suits for, 126, 127.
suit for recovery of, tenable, 127.

MAPS—
evidentiary value of, prepared by
Settlement Officers, 45, 46.

MATHOT—
See Illegal cess.

MEASUREMENT—
standard pole, 369, 370.
landlord's right to measure, 370, 371.
part proprietor cannot apply for
measurement, 372.
rent-free lands may be measured,
372.
but not revenue-free lands, 372.
procedure for measurement, 373.
in non-regulation districts, 422.
MERGER—
how far there is, when zemindar purchases putni taluq at putni sale, 156.
of leases, 228—230.
not applicable when temporary lessee acquires any subordinate right, 242, 243.
of occupancy right, 342.

MINORS—
See Disqualified Proprietors.
minor's estate of which due notice has been given to Collector not liable to sale for arrears of revenue, 121.

MISUSE—
of land by occupancy raiyat, 300, 301.

MOOSTAGIR—
See Ijaradar; Lease.

MORTGAGEE—
has right to recover his money from surplus proceeds of revenue sale, 111.

NIJ JOTE—
See Proprietor's private land.

NIRIK—
See p. 355.

NISF JUMMA—
Govt. had right to, in what cases, 73, 74.

NON-AGRICULTURAL LANDS—
Transfer of Property Act how far applicable, 385.
no right acquired by mere occupation, 387, 388.
rent may be enhanced, 388.
notice of enhancement, 389, 390.
plantations and gardens, 390.
incidents of leases, 390, 391.
tenancies from year to year, 391, 392.
transferability, 392.
heritability, 393.
misuse of land, 393.
working mines or quarries, 393, 394.
right to minerals, 395, 396.
erection of permanent structures, 396.

NON - AGRICULTURAL LANDS—Continued.
acquiescence of landlord, 396, 397.
injunction to restrain erection, 397, 399.
presumption of permanency from long occupation, 398.
fixtures in temporary lease-holds, 398, 399.
subleases, 399.
leases by Hindu widows, 399.
fixtures in lease-holds given by Hindu widows, 399—402.
public or customary rights, 404.
burning grounds and burial places, 405, 406.
right to take wood from jungles, 406.
See Homestead land; Pastures.

NON-BADSHAHI GRANTS—
three classes according to quantity, 71.
also three classes according to time, 71, 72.
all revenue free grants made since Diwani declared invalid, 72.
Grants exceeding one hundred bighas, resumable and assessable by Govt, 72.
if grant posterior to the 1st Dec. 1720 the right to resume and assess was in the proprietors of estates or dependent taluqs, 72.
putnidars and owners of similar permanent tenures entitled to resume and assess, 72.
but notwithstanding the grant of putni or otherwise the proprietor could resume and assess, 72.
when land exceeding one hundred bighas is held by lakhirajdar the presumption is that it is held under one grant, 73.
how presumption is rebutted, 73.
grants made previous to 12th April, 1771 in Bengal and 26th Sep. 1771 in Behar or Orissa, Govt. had right to nisf jumma, 73.
progressive jumma fixed when, 73.
if grant be subsequent to the aforesaid dates, ordinary jumma to be fixed, 73.
taluqs thus formed were independent taluqs, 73.
if grantee refused to accept settlement the estate held as khas mahal, 73.
grants subsequent to 1st December 1790 invalid, and lands to be
NON-BADSHAHI GRANTS—  
Continued.
considered soon lands of the estate  
within which it lies whatever the  
quantity, 73, 74.
Grants exceeding ten bighas but less  
than one hundred.
land covered by such grants to  
form part of the estate or taluq  
within which the land was  
situated, 74.
if grantee held under sanad dated  
between 12th Aug. 1765 and  
12th April 1771 in Bengal and  
26th Sep. 1771 in Behar or  
Orissa, he was entitled to hold  
the land as dependent taluq  
with rent fixed by Collector in  
perpetuity, 74.
the amount to be assessed was  
nisf, 74.
if grant was between 1771 and 1st  
December 1790, the full jumma  
was assessable, 74.
Grants of land not exceeding ten  
bighas.
such land not to be subjected to  
the payment of revenue if sanad  
bore date between Diwani and  
1771, 75.
lands held under grants subse- 
quent to these dates, assessable  
how, 75.
in the absence of grants, bona fide  
possessed could be relied on as  
evidence of title, 75.
sec. 3 Reg. XIV. of 1825 was  
held applicable, 75.

NON-OCCUPANCY RAIYAT—  
who is, 342, 343.
incidents of the right of, 343, 344. 
transferability, 344, 345.
ejection of, 345–348.
right of subletting by, how far affect- 
ed by sec. 178 of Bengal Tenancy  
Act, 345.
right of, how far a protected inter- 
est, 345, 346.
surrender by, 346.
ejection of, for non-payment of  
rent, 346.
ejection of, on expiration of term  
of lease, 346.
previous notice of six months to  
eject on this ground necessary,  
346.

NON-OCCUPANCY RAIYAT—  
Continued.
limitation in suit for ejectment on 
expiration of lease, 347.
liable to ejectment on refusal to pay 
fair and equitable rent, 347.
in suits for enhancement of rent  
of, the court is to determine  
whether grounds for enhancement  
exist and whether they are such  
as to justify the enhancement,  
347, 348, 382.
enhancement of rent of, 382.
rent settled by Revenue-officer  
ot to be varied within five years,  
382.

NON-REGULATION PROVINCES— 
Act VIII. (B. C.) of 1869 not  
applicable to, 284.

NOTICE— 
was necessary for enhancement of  
rent of dependent taluqs, 135.
requisites of such notice, 136.
of ejectment for breach of covenant,  
181.
to quit under Bengal Tenancy and  
Transfer of Property Acts, 238,  
239.
how to be served, 239.
must be proper, 239.
presumption as to due service of,  
sent through the post office, 239.
six months' notice, 240.
suit not sufficient notice, 240, 241.
form of, 241.
of transfer of occupancy-right, 300,  
341.
due service of notice of transfer on  
landlord operates as registration  
of transferee's name in landlord's  
office, 342, 343.
of enhancement formerly necessary  
but not under the Bengal Tenancy  
Act, 373, 374.

NOTIFICATIONS— 
of sale for arrears of revenue, 106,  
107.

NUCKSAN LAND—  
See p. 317.

OCCUPANCY-RAIYAT— 
person holding under raiyat at fixed  
rate cannot acquire right of  
occupancy, 288.
OCCUPANCY-RAIYAT— Continued.

statutory right created by Act X, 297, 298.
distinction between khodkast and psikast no longer observed, 297.
under the Bengal Tenancy Act settled raiyat has enlarged means of acquisition of right, 298.
but right curtailed in case of chur and uthandi lands, 298.
Incidents of right of occupancy.
it is heritable, 298.
but on default of heirs right is extinguished crown does not succeed, 298.
not bequeathable by will except under custom or usage, 299.
nor transferable except under custom, 299.
transferee acquires no right, 299, 339, 340.
he is liable to be evicted as trespasser, 299, 339, 340.
when raiyat to be considered to have abandoned the land, 299, 339, 340.
onus on raiyat to prove transferability, 300.
transfer must be effected by means prescribed by the Bengal Tenancy Act, 300.
when landlord not bound to recognise transfer, 300, 341, 342.
unless notice of transfer given transferor and transferee jointly liable, 300.
mode of using land, 300.
misuse of land, 301.
remedies of landlord for misuse, 301.
may make improvements, 301.
right to cut down trees, 301, 302.
any contract against this right invalid, 302.
bound to pay fair and equitable rent, 302.
rent previously paid presumed to be fair, 302.
not liable ordinarily to be ejected, 302.
grounds of ejectment, 302—304.
safe-guards provided, 304.
limitations in suits for ejectment for breach of covenant, 304.
protected on sale for arrears of Govt. revenue, 304.
also on sale under putni law, 305.
occupancy holding is a protected interest, 304, 305.

OCCUPANCY-RAIYAT— Continued.

cannot surrender before expiry of period, 307.
no surrender of part or share, 307.
abandonment may amount to surrender, 307.
Who may acquire occupancy right.
occupancy right acquired by raiyat alone, 308.
under-raiyat cannot acquire it, 307, 309.
settled raiyats acquire it, 309.
tenants holding under bhagdari or bhaoli system may acquire it, 310, 311.
indigo concern may acquire it, 311.
landlord holding land in the benami of another cannot acquire, 312.
co-sharer cannot acquire, 312, 313.
co-sharer purchasing occupancy right loses it but the holding does not cease to exist, 313 note.
ijjaradar or farmer cannot acquire, 313.
on raiyat becoming a farmer of rent acquisition of the right kept in abeyance, 313, 314.
but if right already perfected would not be lost, 314.
trespasser cannot acquire, 314.
person claiming lakhira] title cannot acquire, 314.
permissive possession cannot confer it, 314.
possess even under trespasser sufficient for the acquisition, 314, 315.
the right is not acquired by virtue of any grant but it grows from possession as raiyat, 314, 315.
In what land occupancy right can be acquired.
can be acquired only in agricultural and horticultural lands, 315, 316.
but not in building land, 316.
or in land used for arhats, ghats, bazars, indigo factories and manufactories, 316.
may be acquired in homestead lands when, 316, 317.
OCCUPANCY RAIYAT—Continued.
how acquired in utbandi lands, 317, 318.
cannot in general be acquired in fisheries, 318.
but may be acquired in a tank when, 318.
may be acquired in pasture lands, 318.
cannot ordinarily be acquired in
proprietor’s private land, 319, 330.
may be acquired in such land
when, 323, 327.
may be acquired in chur land
when, 325.

How acquired.
under the old law, 325.
under the Bengal Tenancy Act, 325, 326.

Pandit Sheo Prakas v. Ram Sahay Sing, 326.
may be acquired by different leases when, 326, 327.
contracts against acquisition invalid, 328.
contracts taking away occupancy right invalid, 328.
contracts providing for ejectment of occupancy raiyat invalid, 328.
right of occupancy even if land is
held partly before and partly
after the passing of the Rent
Act, 329.
dispossession by landlord does not
break continuity of possession, 329.
raiyat holding jointly may acquire
the right, 329, 330.
non-payment of rent does not bar
acquisition of right, 330.
nor forfeit the right when acquired, 331.
condition necessary for acquisition of the right, 331.
his main duty is to pay rent, 331.
how rate of rent is to be determined, 331.
invalid contracts by, 332.

OCCUPANCY RIGHT—See Occupancy Raiyat.

OCCUPATION—creates right both according to
Manu and the Roman Jurists, 2.
may create right in communal prop-
erty, 6.

OFFENCES—information of certain offences to
be given by zemindars and the
native officers of land holders, 124.
sec. 154 of Act XLV of 1860, 124.
sec. 45 of Act X of 1882, 124.

ONUS PROBANDI—See Burden of Proof.

OOSHER—defined, 23.
distinction between oosher and
khiraj not recognized by Raja Todor Mal, 27.

ORISSA—Beng. Act VIII of 1879 repealed in the
Regulation Provinces except, 48.
chap. X of Bengal Tenancy Act
extended by notification to, 48.
although Reg. VII of 1822, IX of
1825 and IX of 1833 and Act
VIII (B.C.) of 1879 apply the
procedure for fresh settlement is
that laid down in Chap. X of
Bengal Tenancy Act, 52.
at the time of the Permanent Set-
tlement contained only a portion of
Hughli and Midnapur, 92, 93.
Orissa proper conquered from the
Mahrattas is subject to tempo-
rary settlement, 93.
Orissa Division, 408, 409.
Tributary mahals, 409.
Moghalbundi, 409, 410, 410 note.
Regulation XII of 1805, 410.
Rent Acts in force in, 410, 411.
classification of landed interests,
411.
revenue-paying estates, 411, 412.
Mukuddumi tenures, 412.
Sarbarakari tenures, 412, 413.
Nankars and Jaigirs, 413.
ayma and tanki estates, 413.
thani raiyat, 413, 414.
pahi raiyat, 414.
chadnka raiyats, 414, 415.

PARTITION—zemindar not bound to apportion
rent on division of tenure, 165.
of taluqs by civil courts, 165.
of tenure and apportionment of rent
do not affect uniformity of rent,
178, 179.
of permanent tenures by civil
court does not bind the land-
lord, 203.
PARTITION—Continued.
but on partition amongst landlords the tenure is split up and converted into a number of separate tenures and such partition is binding on tenants, 203.
See Partition of Estates.

PARTITION OF ESTATES— revenue-free lands not partible under the Act but by civil court, 82.
each share of estate on partition becomes an estate, 115.
actual partition to be made by Collector, 115.
civil courts can only pass decree for partition after ascertainment of share, 115.
private partition not binding on Govt. unless special sanction of Collector is obtained, 115.
but binding on the parties, 115.
and Collector cannot disturb private partition at the instance of one of the parties, 115.
in what cases of private partition Collector's jurisdiction is ousted and where not, 115, 116.
presumption of private partition arises from long possession, 116.
how such presumption is rebutted, 116.
holder of life-estate not entitled to partition, 116.
but a Hindu widow is entitled, 116.
powers of Collector and civil court in case of partition by Hindu widows, 116.
estates not partible by Collector, 116.
civil court may decree partition when the revenue is below prescribed limit though apportionment of revenue will not be binding on Collector, 116.
jurisdiction of civil court in matters relating to, 117.
conflict of cases about jurisdiction, 117, 118.
remarks on the jurisdiction of Collectors in partition of estates, 118, 119.
procedure as to partition of estates, 120.

PASTURES—Continued.
in ancient village community, 17, 404, 405.
occupancy right may be acquired in, 318.
one of several descriptions of land, 357.
suit for recovery of rent of, 405.

PERMANENT SETTLEMENT
no resumption suit to lie if invalid lakhiraj formed part of a permanently settled estate and held rent free from the time of the, 78, 79.
discussion as to the propriety of, 87, 88.
what zamindars were said to have been before, 87.
Pitt's India Act, 88.
the necessity of the measure, 88, 89.
zamindars were the only class to whom Govt. could then look for punctual realization of State dues, 89.
errors of the, 90, 91.
made with haste and based on insufficient materials, 91, 92.
caused great ruin and effected a revolution in the constitution and ownership of estates, 91.
opinion of financiers on the, 92.
Regulation I of 1793, 92, 93.
Orissa at the time of the, contained only a portion of Hughli and Midnapur, 92, 93.
Regulation VIII of 1793, 93, 94.
contains principles of settlement and mode of assessment, 93, 94.
also rules as to sayer compensation, 95.
and rules as to zamindari private chakeran lands, 95.
rules of assessment laid down in, were the basis of permanent settlement and continued in force till 1822 when they were modified, 95.
continued to be made until about the year 1871, 95.
extends over what districts, 95.
changes have been made now and then in the rules of settlement since 1793, 95, 96.
revenue formerly payable in Sicca rupees was converted into company's rupees when, 96.
PERMANENT SETTLEMENT
Continued.
this caused an apparent but not actual alteration of the amount of revenue, 96.
dawk cess payable by zamindars, 96 it is an additional impost to the revenue, 97.
ot recoverable from under-tenants and raiyats, 97.
road and public works cesses are payable by all persons interested in land, 97.
this is also an addition to revenue, 98.
Cess Act of 1880, 98.
they are personal debts of proprietors, 98.
recoverable by certificate procedure, 98.
how assessed, 98.
the share to be paid by each class interested in land, 98.
how and when payable, 99.
definition of, 139.

PERMANENT TENURE—
See Tenure; Taluq.

POSSSESSION—
as a factor in the acquisition of right in land, 2, 18.
derunder-tenue holder paying arrears to save putni from sale is entitled to, till satisfaction, 153, 154.
permissive possession does not operate to create occupancy right, 314.
See Adverse Possession.

PRESCRIPTIVE RIGHT—
See Adverse Possession.

PRESIDENCY SMALL CAUSE COURT—
its jurisdiction in suits between landlord and tenant in Calcutta, 36, 37.

PRESCRIPTION—
under act III (B.C.) 1878 in khas mahals there is no presumption that rent previously paid was fair and equitable, 47.
when land exceeding one hundred bighas was admittedly held by lakhirajdar the presumption was

PRESCRIPTION—Continued.
that it was held under one grant and that it was resumable by Govt. 73.
how this presumption is rebutted, 73.
of private partition arises from long possession, 116.
how it is rebutted, 116.
in favour of rent of taluq not being enhanceable as soon as it is proved that taluq exists from before the Decennial Settlement, 133.
no presumption of fixity of rent where taluq is situated within temporarily settled area, 139.
in suit to set aside putni sale on the ground of non-observance of formalities there is no presumption in favour of zamindar of due service of notice, 143.
mere declaration in decree as to the right of enhancement does not do away with, under sec. 15 of Act X or sec. 50 Bengal Tenancy Act, 165.
of permanency of tenure when, 174.
of fixity of rent when, 175, 176, 287, 288, 291.
proof necessary for such, 177, 178.
how rebutted, 178, 292, 293.
not affected by abatement or increase when, 178, 179.
in favour of delivery of letters properly addressed and posted, 230.
of person holding more than 100 bighas being tenurholder, 287.
of fixity of rent of raiyat when, 287, 288, 291.
how rebutted 292, 293.
rent, previously paid by occupancy raiyat to be presumed fair and equitable, 302, 354.
and also to be presumed to be the rent payable, 332.

PRIMOGENITURE—
law of principalities, 89.

PRIVATE PARTITION—
not binding on Govt. unless special sanction of Collector is obtained, 115.
presumption of, arises from long possession, 116.

PROPERTY IN LAND—
archaic notions in India about, 2.
arises from first occupation, 2—4.
PROPERTY IN LAND—

Continued.

according to Manu, 2.
according to later Roman jurists, 2.
but modern jurists hold this opinion to be without foundation, 2.

Illustration in the Digest however the same as in Manu, 2.
Mahomedan jurists except Abu Haneefah are of the same opinion, 2, 3.
Blackstone's theory, 3.
Sir Henry Main's view of the origin of proprietary right, 3.
Von Savigny's view, 3.
this notion firmly established in India at the time of Bharavi, 4.
Indian sages and law-givers made no distinction about mode of acquiring right in immoveable and moveable property, 2, 4, 5.
right of the first occupant recognised by Calcutta and Madras High Courts, 6, 7.
earth res communis according to ancient Indian authorities, 4.
they made no distinction between res nullius and res communis, 4.
Jaimini, 4, 5.
Sayana's commentary, 5.
Res nullius and res communis according to Roman jurists, 5, 6.
amongst non-Aryan races in India the idea prevails that land belongs to the people king only entitled to rent, 6.

ownership of the subject to land recognised by early Hindu kings, 6.

sovereign entitled only to a share of the produce, 7.
he not proprietor of soil, 7.

Rig Veda, tenth Mandal, 8.
Narada's comment on the text of Rig Veda, 8.
Manu and other texts, 8, 9.
Baudhaya, 9.
Parasara, 9.

authorities however not unanimous about the extent of king's share, 10.

general opinion that king's share is the sixth, 10.
but smaller share—eighth, tenth and even twelfth—considered proper by some, 10.

Jaimini's Mimansa Aphorism, 10.

PROPERTY IN LAND—

Continued.

Savara's and Sayana's commentaries thereon, 10.
he was simply the protector of the people, 10.
the word king is used as synonymous with the expression "appropriator of the sixth share", 11.
Srikrishna Tarkalankar says—king only entitled to taxes, 11.
Mahomedans did not interfere with Brahmanical ideas about fiscal system, 11.
amongst ancient Hindus there was no communal idea or idea of common or joint ownership amongst the members of any village community, 15, 16.

except in certain common property, 16.
grazing ground was and agricultural land was not common property of the community, 17, 18.

acquisition of right by adverse possession in ancient India, 18.
estoppel by conduct in Hindu law, 19.

period necessary amongst Aryans to create title by adverse possession, 20, 21.

extinguishment of right by limitation amongst Aryans, 21.
non alienable in ancient India at first but heritable, 21.
right of alienation was afterwards slowly and partially recognised, 21, 22.

Jimutavahana fully recognised right of alienation, 22.
in Mahomedan time imposition of khiraj did not take away proprietary right of cultivator, 24.
in Mahomedan time the sovereign became entitled only to a share of the produce, 24.

English notions as to, 30.
how came to be vested in the zamindars, 30.
observations of the Privy Council as to, in respect of holding in Dhibi Panchannagram in the 24-erganalas, 38, 39.

PROPRIETOR—
of estates had right to resume and assess lands granted revenue-free posterior to 1st December 1790, 72.
<table>
<thead>
<tr>
<th>PROPRIETOR—Continued.</th>
<th>PUTNIDARS—</th>
</tr>
</thead>
<tbody>
<tr>
<td>even if putni or other lease be granted, 72.</td>
<td>are entitled to resume and assess invalid lakhiraj, 72.</td>
</tr>
<tr>
<td>See Proprietor’s Private Land.</td>
<td>proprietor of estate entitled to resume and assess notwithstanding the grant of putni leases, 72.</td>
</tr>
<tr>
<td></td>
<td>when entitled to abatement, 184.</td>
</tr>
<tr>
<td>PROPRIETOR’S PRIVATE LAND—</td>
<td>See Putni taluqs;</td>
</tr>
<tr>
<td>what is, 319.</td>
<td>Putni Sale.</td>
</tr>
<tr>
<td>right of occupancy cannot ordinarily be acquired in, 319, 330.</td>
<td></td>
</tr>
<tr>
<td>waste lands not to be considered as, 320.</td>
<td></td>
</tr>
<tr>
<td>land abandoned by raiyat is not, 321.</td>
<td></td>
</tr>
<tr>
<td>tenant right in, 321, 322.</td>
<td></td>
</tr>
<tr>
<td>right of occupancy may be acquired when, 313.</td>
<td></td>
</tr>
<tr>
<td>determination of raiyat or non-raiyati land a question of difficulty, 323.</td>
<td></td>
</tr>
<tr>
<td>onus on landlord that land is private, 323.</td>
<td></td>
</tr>
<tr>
<td>presumption is that land is private, 323.</td>
<td></td>
</tr>
<tr>
<td>rules for the determination of, 324.</td>
<td></td>
</tr>
<tr>
<td>recognition by village usage is good evidence of land being, 324.</td>
<td></td>
</tr>
<tr>
<td>includes private lands belonging to tenure holders, 324.</td>
<td></td>
</tr>
<tr>
<td>PROTECTED INTEREST—</td>
<td></td>
</tr>
<tr>
<td>at putni sale, 156, 157.</td>
<td></td>
</tr>
<tr>
<td>at sale for arrears of rent, 198, 199.</td>
<td></td>
</tr>
<tr>
<td>interests of raiyats at fixed rates are, 288.</td>
<td></td>
</tr>
<tr>
<td>occupancy holdings are, 304, 305.</td>
<td></td>
</tr>
<tr>
<td>at revenue sale, 304, 388, 389.</td>
<td></td>
</tr>
<tr>
<td>non-occupancy holdings how far are, 345, 346.</td>
<td></td>
</tr>
<tr>
<td>PUBLIC DEMANDS RECOVERY ACT—</td>
<td></td>
</tr>
<tr>
<td>Govt. dues from khas mahals realizable by certificate procedure, 56.</td>
<td></td>
</tr>
<tr>
<td>some provisions of the act, 56.</td>
<td></td>
</tr>
<tr>
<td>remarks on certificate procedure, 57.</td>
<td></td>
</tr>
<tr>
<td>law amended since, 57.</td>
<td></td>
</tr>
<tr>
<td>applicable to the realization of dawk cess from zamindars, 96, 97.</td>
<td></td>
</tr>
<tr>
<td>also to the realization of road and public works cesses, 98.</td>
<td></td>
</tr>
<tr>
<td>PUBLIC DOCUMENTS—</td>
<td></td>
</tr>
<tr>
<td>whether chittas, jummahandsis and maps prepared by officers of Govt. under the Settlement Regulations are public documents, 45, 46.</td>
<td></td>
</tr>
<tr>
<td>PUBLIC WORKS CESS</td>
<td></td>
</tr>
<tr>
<td>See Cess.</td>
<td></td>
</tr>
</tbody>
</table>
PUTNI SALE—Continued.

sale void if no arrears, 151.
payment of purchase-money by purchaser, 151.
Commissioner may set aside when, 151, 152.
confirmation of sale, 152.
limitation in suit to set aside, 152.
how sale may be set aside, 152.
who may sue to set aside sale, 152.
who are necessary parties to the suit, 153.
who are to pay costs and damages if sale is set aside, 153.
under-tenure holders protecting putni from sale entitled to be reimbursed, 153.
when the amount is a charge on the taluq, 153.
under-tenureholder entitled to possession, 153.
under-tenureholder may sue for the money, 154.
limitations in suits for arrears of putni rent when sale is set aside, 154.
right of purchaser to avoid incumbrance, 154, 155.
onus on purchaser to show when incumbrance was created, 156.
as soon as he makes prima-facie case onus is shifted, 156.
how far the law of merger applies when zemindar purchases putni, 156.
what rights are protected notwithstanding sale, 156, 157.
distribution of surplus sale proceeds on, 157.
compensation to subordinate tenureholders on sale, 157.
surplus sale proceeds, 157, 158.
arrears for the period antecedent to sale, 158.
registration of purchaser’s name, 159, 160.
does not avoid occupancy right, 305.
See Putni Taluqs.

PUTNI TALUQ—Continued.

ferable and capable of being sublet on exactly similar terms, 143, 144.
not modified by the Rent Acts, 144.
in matters in which the Reg. is silent the Rent Acts furnish rules of substantive law and procedure, 144.
the zemindar may resort to the ordinary procedure for sale for arrears, 144.
the effect of such sale the same regarding avoidance of incumbrances, 144.
registration of, under Act XI, 161.
effect of common and special registry of, 161.
See Putnidars; Putni Sale.

RAIYAT—
not bound to pay dawk cess, 97.
but bound to pay road and public work cesses, 97.
the share to be paid by, 98, 99.
Marquis Cornwallis on the rights of, 275, 276.
Sir John Shore urged the necessity of some interposition between zemindar and raiyat, 276, 277.
Government reserved the power to legislate for, 277, 278.
Regulation VIII of 1793 imposed restrictions on the levying of illegal cess, 278.
also provided for the enforcement of bona fide leases, 278.
these pottas to be cancelled in what cases, 278.
but beyond these no provision made to regulate relation between zemindar and raiyat, 278.
English theory of rent introduced in India, 278.
and accepted as correct in two cases, 280.
Bengal Regulations speak of khodkast and paikast, 280.
distinction between khodkast and paikast raiyats 281—283.
the khodkast raiyat who is, 281, 282.
the paikast raiyat who is, 282, 283.
khodkast raiyat protected from eviction under the earlier sale-law, 283.
but paikast raiyat not protected, until Act X, 283.

PUTNI TALUQ—Continued.

meaning of, 142, 143.
originated in the estates of the Maharaja of Burdwan, 142, 143.
general characteristics of the tenure before Reg. VIII of 1819, 143.
Regulation VIII of 1819, 143.
made the taluqs heritable trans-
RAIYAT—Continued.
distinction practically abolished by
Act X, 283.
Act X of 1859 classified agricultural
population into three classes, 284.
Act VIII (B. C.) of 1869, 284.
the Bengal Tenancy Act made ma-
terial alterations in the law relating
to non-occupancy raiyats,
judicial decisions as to the meaning
of the word, 285, 286.
defined in the Bengal Tenancy Act,
indigo planter or tea planter is, 287.
need not cultivate land himself,
does not become middleman by
erecting shops on the land and
receiving profit from shop-
keepers, 307.
alone to acquire occupancy right,
settled raiyat acquires the right in
all lands held by him, 309.
idea of settled raiyat owes origin
to that of khodkast raiyat, 309.
residence in village essentially
necessary to give status of khod-
kast raiyat, 309.
settled raiyat a creature of the legis-
lature, 309.
how the right is acquired, 309, 310.
bhagdari raiyats may acquire right
of occupancy, 310.
no difference between rent in kind
and rent in specie in acquisition
of occupancy right, 311.
different classes of raiyats in Orissa,
RAIYATS (at fixed rates)—
reservation from holding at uniform
rate for 20 years, 287, 288, 291.
interests of, are protected interests,
no ejectment except on breach of
an express covenant, 288.
tenants holding under, cannot
acquire occupancy right, 288.
ejectment of, 288.
includes those who pay rent in kind,
what changes in the rent cannot
take away status of, 290, 291.
proof of payment at uniform rate
must be strict, 291, 292.
what alteration of rent does not
affect status, 292.
RAIYATS (at fixed rates)—
Continued.
how presumption of holding at uni-
form rate may be rebutted, 292.
unlawful eviction is no break in ten-
ancy and does not rebut presump-
tion, 292.
alteration of rent on alteration of
area, 292, 293.
increase by alluvion, 293.
increase by encroachment on land-
lord's land, 293, 294.
increase by encroachment on stran-
ger's land, 295.
decrease by diluvion, 295.
decrease by decrease by title,
registration of transfers and succes-
sions, 296.
may be created by contract, 296.
their incidents to be regulated by
contract, 296.
protection afforded to statutory
raiyat at fixed rate not available
to the fullest extent to, created
by contract, 296.
RECORDED PROPRIETOR—
assignee of, not his representative
under Act XI of 1859, 111, 112.
entitled to rent, 336.
RECORD OF RIGHTS—
powers and duties of Revenue
Officers, 377, 379.
remarks as to the procedure adopt-
ed in making, 379.
objections as to entries, 380.
REDUCTION OF RENT—
See Abatement.
REDEEMED LANDS—
are a class of revenue-free lands,
and are subject to the provisions
of the Registration and Tenancy
Acts, 82.
RE-ENTRY—
effect of condition for, in perma-
nent tenures as against purchasers
at private sales, 183.
conditions for, cannot defeat the
rights of purchasers at auction, 183.
REGULATIONS—Continued.
I of 1792.
  p. 250.
I of 1793 (Permanent Settlement).
  pp. 74, 92.
  s. 5, p. 93.
  7, pp. 93, 96, 99.
  8, pp. 249, 251, 257, 277.
  8, cl. 1, p. 93.
  8, cl. 3, p. 69.
  8, cl. 4, p. 251.
  8, cl. 5, p. 121.
  9, p. 93.
  10, p. 93.
II of 1793 (Powers and duties of Collectors and Board of Revenue).
Preamble, pp. 30, 91.
VIII of 1793 (Decennial Settlement).
  pp. 71, 73, 74, 93, 95, 137, 271.
  s. 4, p. 94.
  6, p. 132.
  9, p. 95.
  10, p. 131.
  11, p. 131.
  13, p. 130.
  14, p. 130.
  21, p. 121.
  36, pp. 69, 251.
  39, p. 323.
  41, pp. 251, 255, 270.
  43, p. 50.
  44 to 47, p. 126.
  46, p. 127.
  48, pp. 133, 134, 140.
  49, pp. 133-135, 140, 166.
  51, pp. 133-137, 140, 166.
  55, p. 278.
  60, p. 278, 283.
X of 1793 (Court of Wards) p. 121.
XI of 1793 (Succession to estates of Intestate Persons).
p. 112.
XIV of 1793 (Recovery of arrears of Revenue).
  s. 2, p. 100.
  4, p. 100.
  13, p. 100.
  44, p. 100.
  48, p. 121.
XIX of 1793 (Non Badshahi Lakhi-
ra\ Grant)
  pp. 67—71, 131.
Preamble, pp. 28, 58, 69, 70.
  s. 2, p. 70.
  2, cl. 3, p. 71.
  3, p. 72.
  3, cl. 4, p. 75.
  5, p. 74.

REGULATIONS—Continued.
I of 1792.
  p. 250.
II of 1793 (Permanent Settlement).
  pp. 74, 92.
  s. 5, p. 93.
  7, pp. 93, 96, 99.
  8, pp. 249, 251, 257, 277.
  8, cl. 1, p. 93.
  8, cl. 3, p. 69.
  8, cl. 4, p. 251.
  8, cl. 5, p. 121.
  9, p. 93.
  10, p. 93.

REGISTRATION—Continued.
VII of 1792.
  p. 411.
XLIX of 1792.
  p. 250.

REGULATIONS—Continued.
I of 1793 (Permanent Settlement).
  pp. 74, 92.
  s. 5, p. 93.
  7, pp. 93, 96, 99.
  8, pp. 249, 251, 257, 277.
  8, cl. 1, p. 93.
  8, cl. 3, p. 69.
  8, cl. 4, p. 251.
  8, cl. 5, p. 121.
  9, p. 93.
  10, p. 93.
II of 1793 (Powers and duties of Collectors and Board of Revenue).
Preamble, pp. 30, 91.
VIII of 1793 (Decennial Settlement).
  pp. 71, 73, 74, 93, 95, 137, 271.
  s. 4, p. 94.
  6, p. 132.
  9, p. 95.
  10, p. 131.
  11, p. 131.
  13, p. 130.
  14, p. 130.
  21, p. 121.
  36, pp. 69, 251.
  39, p. 323.
  41, pp. 251, 255, 270.
  43, p. 50.
  44 to 47, p. 126.
  46, p. 127.
  48, pp. 133, 134, 140.
  49, pp. 133-135, 140, 166.
  51, pp. 133-137, 140, 166.
  55, p. 278.
  60, p. 278, 283.
X of 1793 (Court of Wards) p. 121.
XI of 1793 (Succession to estates of Intestate Persons).
p. 112.
XIV of 1793 (Recovery of arrears of Revenue).
  s. 2, p. 100.
  4, p. 100.
  13, p. 100.
  44, p. 100.
  48, p. 121.
XIX of 1793 (Non Badshahi Lakhi-
ra\ Grant)
  pp. 67—71, 131.
Preamble, pp. 28, 58, 69, 70.
  s. 2, p. 70.
  2, cl. 3, p. 71.
  3, p. 72.
  3, cl. 4, p. 75.
  5, p. 74.
REGULATIONS—Continued.

s. 6, pp. 71, 74.
" 7, p. 72.
" 8, cl. 3, p. 73.
" 9, p. 74.
" 10, pp. 72, 74, 78.
" 11, p. 74.
" 11 to 34, p. 79.
" 17, p. 75.
" 24, p. 80.
XXII of 1793 (Police) p. 250.
XXIII of 1793 (Police) p. 250.
XXXVII of 1793 (Badshahi Lakhi-
raj Grant) pp. 67, 69, 131, 245.
Preamble, pp. 28, 58, 69.
s. 2, p. 70.
" 6, p. 71.
" 12, p. 70.
" 15, pp. 64, 65.
" 16 to 41, p. 79.
" 19, p. 80.
XLIV of 1793 (Limitation of Term
for grant of Leases) s. 2, p. 141.
" 5, p. 134.
" 7, p. 134.
" 9, p. 388.
XLVIII of 1793 (Land Registration)
p. 113.
III of 1794 (Recovery of arrears of
Revenue) p. 100.
L of 1795 (Limitation of term for
grant of leases by proprietors) s. 2, p. 141.
VI of 1797 (Appropriation of
Police funds) p. 250.
 XV of 1797 (Expenses of keeping
Land Revenue Records) s. 2, p. 113.
VII of 1799 (Recovery of arrears of
Rent and Revenue) p. 195.
" 15, p. 189.
" 23, p. 100.
" 30, p. 100.
VIII of 1800 (Perganah Registers)
p. 80.
s. 19, p. 80.
X of 1800 (Succession to Landed
Estates) p. 112.
I of 1801 (Realization of revenue) p. 100.

REGULATIONS—Continued.

s. 14, p. 130.
XLVII of 1803 (Powers of Land-
holders to grant Leases) s. 2, p. 141.
" 5, p. 142.
I of 1804 (Invalid Jaigirs and Pen-
sions) s. 24, p. 133.
XII of 1805 (Settlement in Kattack) s. 4 to 7, p. 410.
" 33, p. 410.
" 34, p. 410.
" 35, p. 410.
" 36, p. 409.
" 37, p. 409.
XI of 1806 (Russud) p. 123.
XVII of 1806 (Interest and Condi-
tional sales) p. 190.
VI of 1810 (Responsibility of
Zemindars to give information of
Crimes) p. 124.
I of 1811 (Punishment for house-
breaking) s. 10, p. 124.
III of 1812 (Responsibility of
Zemindars for Crimes on
their estates) s. 4, p. 124.
V of 1812 (Realization of Revenue)
pp. 100, 373.
s. 2, p. 142.
" 9, p. 135.
" 26, p. 128.
XVIII of 1812 (Limitation of time
for leases) s. 2, p. 142.
VIII of 1814 (Responsibility of
landholders to give notice
of Crimes) p. 124.
XVIII of 1814 (Sale for arrears of
XIX of 1814 (Partition of Estates)
pp. 118, 119.
s. 3, p. 262.
" 4, p. 262.
" 5, p. 262.
XXIX of 1814 (Beerbhoom Ghat
wals) p. 262.
 s. 3, p. 262.
" 4, p. 262.
" 5, p. 262.
REGULATIONS—Continued.

II of 1816 (Re-establishment of the office of Canoongoe) p. 271.
IX of 1816 (Commissioner of Sunderbuns) p. 52.
XII of 1817 (Patwaris) p. 271.
XX of 1817 (Native Police) p. 253.
I of 1819 (Modification of Reg. XII 1817) p. 271.
II of 1819 (Resumption of unauthorized Lakhiraj) pp. 53, 67, 75, 131, 264.
s. 3, pp. 41, 52, 68.
" 50, p. 76.
" 31, p. 41.
Preamble, pp. 142, 143.
s. 2, p. 142.
" 3, p. 144.
" 5, p. 159.
" 6, p. 159.
" 8, p. 146.
" 8, cl. 2, pp. 146, 147, 148.
" 8, cl. 3, pp. 149, 150.
" 9, p. 151.
" 13, p. 153.
" 14, pp. 150, 152, 153.
" 15, p. 152.
" 17, p. 157.
I of 1820 (Putni Rent) p. 144.
III of 1821 (Powers of Criminal Officers) s. 7, p. 124.
VI of 1822 (Court of Wards) s. 4, p. 121.
VII of 1822 (Settlement) pp. 41, 44, 46, 48-50, 52, 410.
Preamble, p. 45.
s. 5, p. 126.
" 9, p. 45.
" 12, p. 48.
" 14, p. 48.
XI of 1822 (Government Estates) pp. 101, 283.
I of 1824 (Land Acquisition) p. 55.
s. 10, p. 55.
VI of 1825 (Russud to troops) s. 2, p. 124.

REGULATIONS—Continued.
IX of 1825 (Revenue administration) pp. 43, 44, 49, 52, 67, 126.
s. 2, pp. 52, 68.
XI of 1825 (Alluvion and Diluvion) pp. 50, 325.
s. 4, pp. 50, 293, 295.
XIII of 1825 (Canoongoe and other Lakhiraj lands) p. 271.
XIV or 1825 (Lakhiraj Grants) p. 67.
s. 3, pp. 68, 70, 75.
XVIII of 1825 (Annexation of Chinsurah to Zilla Hooghly) p. 39.
V of 1827 (Estates under attachment to Zilla Courts) p. 128.
III of 1828 (Commissioner of Lakhiraj Resumptions) pp. 41, 67, 264.
s. 13, pp. 52, 53, 68.
IV of 1828 (Powers of Collectors regarding Settlement) p. 46.
VII of 1832 (Administration of Justice) p. 144.
s. 16, p. 145.
IX of 1833 (Appointment of Deputy Collectors) pp. 49, 52.
s. 2, pp. 49, 47.
" 11, p. 126.
III of 1872 (Santhal Perganah Settlement) s. 18, p. 422.
" 43, pp. 408, 422.
I of 1886 (Assam Land Revenue Regulation) p. 408.
II of 1886 (Santhal Perganah Rent) pp. 408, 422.

RELINQUISHMENT—
See Surrender.

RENT—
The amount payable directly to Govt. in khas mahals is, 51.
but the proprietary interest of Govt. merges in the paramount title
and rent is called revenue, 51.
of dependent taluqs, enhancement of, 133, 134.
of taluqs, enhancement of, 138, 139.
RENT—Continued.
summary sale of putni taluq for
arrears of rent, 145-152.
may be paid by under-tenure
holder to protect putni from
sale, 153.
ancient and modern conception of,
171-173.
a first charge, 171, 172.
definition of, 172, 173.
presumption of uniformity of, 177,
178.
English theory of, introduced in
India, 278, 279.
payable for land encroached by
tenant, 222, 295.
occupancy raiyat bound to pay
fair and equitable rate, 302.
rate previously paid to be presumed
fair, 302, 332.
non-payment of, was ground of
ejection of occupancy raiyat,
303, 331.
non-payment of rent does not bar
acquisition of occupancy right,
330.
evience of the amount of, 333.
instalments of, 333, 334.
where payable, 334.
arrear of rent defined, 334.
interest on arrears, 334.
contract to pay a different rate of
interest, 334, 335.
damages in lieu of interest, 335.
who is entitled to get rent, 335.
registered owner, 336.
tenureholder entitled to, though
name not registered, 336.
but name must be registered in
zemindar’s sherista, 336.
mode of realizing, 339.
in India is never competitive but
customary, 349.
what is customary rent, 349.
theories of rent discussed, 350—352.
analysis of the idea of customary
rent, 352.
causes of variation from customary
rent, 352, 353

RENT-FREE LAND—
distinction between rent-free and
revenue-free lands, 77, 78.
may be measured by landlord, 372.

RESUMPTION LAW—
by the operation of, large quantities
of land within the ambit of per-
manently settled estates came

RENT-FREE LAND—

RENT—Continued.
resumption
sicca
RENT-FREE
RENT—Continued.
resumption
sicca
REVENUE—Continued.

of Wards but otherwise exempt from sale, 123.

abatement of revenue on acquisition of land, 125.

quasi-contract arising out of payment of, and similar other dues for the protection of the estate, 127.

cosharer paying, has no charge, 127, 128.

sources of, in ancient India, 383, 384.

REVENUE-FREE LANDS—

policy of the East India Company as to, 58.

origin and history of, 58.

In the Hindu period.

Manu ruled that a king must not receive any tax from Brahmans learned in the Vedas, 59.

Kalidas in Sakuntala, 59.

Vishnu, 60.

the exemption of pious Brahmans is an instance of legal fiction, 60.

Vrihaspati, 60.

Yajnavalkya, 60.

grants made by Hindu kings were expressly revenue-free, 161.

such grants were called sasanas and were required to be on copper plates, 61.

copper plate grants, 61, 62.

grants to Brahmans are called brahmottur in Bengal and brit in Behar, 62.

lands dedicated to Gods are devuttar or bishenprit, 63.

mahatran are revenue-free gifts to non-Brahmans, 63.

in later days zemindars also made revenue-free grants, 63.

In the Mahomedan period.

Wukfs, 63.

Mahomedan religion also favored grants for religious and charitable purposes, 64.

Jaigirs, 64.

For details see under this heading.

milk or milik grants, 65.

are heritable and transferable, 65.

altamgha grants, 65.

are heritable and transferable, 65.

ayna lands are heritable and transferable, 65.

madadmash lands are heritable and transferable, 65.

seuyrghal grants, 66.

REVENUE-FREE LANDS—Continued.

nazarat grants, 66.

character of, 66.

succession how regulated, 66.

revenue-free grants made between 1765 and 1790, 66, 67.

after Diwani fresh alienations made, 66.

the Directors adopted plans to check further alienations, 67.

Regulations XIX and XXXVII of 1793, 67.

Regulation II of 1819 (Doem Quanon), 67.

Regulation XIV of 1825, 67.

Regulation III of 1828, 67.

study of Resumption laws now of little practical utility, 67, 68.

Resumption Regulations, 68.

revenue-free grants of two classes, Badshahi and non-Badshahi, 69.

Badshahi grants, 69-71.

For details see under this heading.

non-Badshahi grants, 71-75.

For details see under this heading.

onus probandi regarding validity and genuineness of grants was on those who set them up, 70.

sec. 3 Reg. XIV of 1825 applicable to all classes of lakhiraj land and bona fide possession could be relied upon, 75.

jurisdiction in Resumption cases, 75, 76.

also when grants made subsequent to Decennial Settlement, 76, 77.

who may resume, 77.

distinction between rent-free and revenue-free lands, 77, 78.

limitation in resumption cases under Acts X & XIV of 1859, 78.

limitation under later acts, 78, 79.

Act IX of 1871.

Act XV of 1877.

registers of lakhiraj land prior to the Land Registration Act, 79, 80.

what are taidads, 80.

their evidentiary value, 80.

registers of lakhiraj land under the Land Registration Act, 80, 81.

registration compulsory, 81.

revenue-free lands are estates, 81.

sec. 60 of Land Registration Act applicable to, 81.
REVENUE-FREE LANDS—Continued.
secs. 78 and 79 Bengal Tenancy Act applicable, 81.
Land Registration Act does not deal with lands which have not been admitted to be revenue-free by proceedings under the Resumption laws, 81.
redeemed lands, 82.
cesses are payable for revenue-free lands, 82.
but the dawk cess not payable, 82.
revenue-free lands are partible, heritable and alienable, 82.
but not partible under the Estates Partition Act but by civil courts, 82.
subletting common, 83.
but putni sale law not applicable to permanent tenures created by holders of, 83.
onus probandi in suits in which question is whether land is mal or lakhiraj, 83—86.
finding should be based upon weight of evidence, 86.
cannot be measured by landlord, 372.

REVENUE OFFICER—
estate under attachment or management by, exempt from sale for arrears of revenue, 123.
powers and duties of, in proceedings for record of rights, 377.

REVISION—
by High Court of the order of District Judge appointing common manager, 129.

ROAD CESS—
See Cess.

RUSSUD—
landholder liable to supply provisions &c. to the army, 123, 124.
Regulation XI of 1866.
Regulation VI of 1825.
penalty for default, 124.

SALE CERTIFICATE—
to be conclusive in favour of purchaser, 110.

SALE FOR ARREARS OF RENT—
special procedure for, 195.
simultaneous execution, 195.

SALE FOR ARREARS OF RENT—Continued.
the decreeholder may proceed against any property of the judgment-debtor, 195, 196.
sale proclamation, 196, 197.
non-observance of formalities of service, 197, 198.
effect of, on incumbrances, 198, 199.
protected interests, 198, 199.
procedure to be followed at sale in order to give right to avoid incumbrance, 199, 200.
iccumbrances voidable and not void, 200.
procedure in avoiding incumbrances, 200.
limitation in suit for possession against incumbrancer, 201.
remedies of the incumbrancer paying arrears to stop sale, 201.
protection of lessees of lands for certain purposes, at, 388.

SALE FOR ARREARS OF REVENUE—
Government revenue is a first charge on land, 99.
old sale laws, 99, 100.
arrear of revenue defined, 100.
Act I of 1845, 101.
construction put upon sec. 9 of the Act by the Privy Council, 102.
Acts XI of 1859 and VII (B. C.) of 1868, 102.
hardship under the present law, 102, 103.
tables of dates fixed for the payment of revenue of all classes of estates in all districts, 104.
instalments of revenue and the payment thereof, 104, 105.
in case of default defaulter has no right to prevent sale by payment or tender of payment before sale, 105.
Collector and Commissioner can however exempt estate from sale, when, 105.
express order of exemption necessary, 105.
if no arrears sale can be set aside by the civil court, 105.
when deposit in the collectorate is sufficient to prevent sale and when not, 106.
sale notifications to be issued before sale, 106, 107.
SALE FOR ARREARS OF REVENUE—Continued.
how served, 107.
consequence of non-service or ir-
regular service, 107.
power of Commissioner in case of
hardship, 107.
otice under sec. 5 of Act XI of
1859, 108.
consequence of non-service of this
notice, 108.
name of proprietor need not be
specified in notice under sec. 6, 109.
suits to set aside sales, 109.
jurisdiction of civil courts to set
aside revenue sales is of a limited
character, 109.
suit to set aside sale must be
brought within one year, 109.
when sale becomes final, 109.
grounds for setting aside sale must
be mentioned in petition of appeal
to Commissioner, 109.
if there is illegality no appeal to
Commissioner necessary, 109.
no person who has received pur-
chase-money can sue to set aside,
109.
Act VII (B. C.) of 1868, sec. 8,
109, 110.
certificate to be conclusive in favor
of purchaser, 110.
whether non-compliance of the prov-
isions of sec. 6 is a mere ir-
regularity or illegality, 110.
purchaser’s title dates from when,
110.
purchaser liable for instalments that
have fallen due since default of
kist on which sale has taken place,
111.
provisions against benami purchases,
111.
defaulter may purchase but such
sale does not avoid incumbrances,
111.
distribution of sale proceeds, 111.
mortgagee has right to recover his
money from surplus sale proceeds,
111.
assignee of recorded proprietor not
representative, 111, 112.
what procedure if amount be attach-
ed, 112.
limitations in suits for payment of
surplus sale proceeds, 112.
sale of shares of which separate
accounts have been opened, 114.

SALE FOR ARREARS OF REVENUE—Continued.
in case of deficient sale proceeds
from separated share entire estate
to be sold when, 115.
effect of payment of revenue by
sharer, 115.
what estates are exempt from, 120, 121.
estates under attachment or manage-
ment by Revenue officers exempt
from, 123.
sec. 17 of Act XI of 1859, 123.
but the issue of certificate of attach-
ment is not attachment by Collect-
or, 123.
of entire estate avoids putni unless
registered under act XI, 161
purchaser of share of estate pur-
chases subject to encumbrances,
162.
effect of benami purchase by default-
er, 162.
does not avoid occupancy right,
304.
purchasers at sales for, not entitled
to eject tenants from lands where-
on dwelling houses have been
erected, 388.
this protection from eviction extends
to manufactories or other perma-
ent buildings or gardens, planta-
tions, canals, places of worship,
burning and burial grounds, 388,
but on a sale free of incumbrance,
the tenant though allowed to re-
main on the land must pay a fair
and equitable rent, 388, 389.

SALE NOTIFICATIONS—
of putni taluqs under Reg. VIII,
146, 148.

SALE PROCEEDS—
of revenue sale how distributed, 111, 112.
mortgagee has right to recover his
money from surplus sale proceeds
of revenue sale, 111.
assignee of recorded proprietor not
entitled to draw, 112.
limitation in suits for payment of
surplus proceeds of revenue sale,
112.
of putni sale how to be distributed,
157, 158.

SALI LAND—
See p. 357.
SALT LANDS —
Reg. I of 1824, 55.
settled as khas mahal, 56.
Government has absolute right to,
56.

SANTHAL PERGANAHS —
a part only permanently settled, 43.
hill tracts not brought under regular
control till 1835, 43.
damani-koh, 43.
removed from the operation of the
general law and held as khas
mahal except parts permanently
settled, 43.
Regulation III of 1872 provides
rules of settlement in, 43.
law in force in, 422, 423.

SAyer —
Regulation VIII of 1793 contains
rules as to sayer compensation, 95.

SCHEDULED DISTRICTS —
Settlement Regulations in force
throughout the territory of the
Lieutenant-Governor except, 48.
the whole of Assam is included in,
49.
tenures in Jalpaiguri, 420, 421.
raiyati holdings in Jalpaiguri, 421.
jurisdiction of Collector and Com-
missioner, 421.
reduction of rent, 421.
measurement, 422.
See Chotanagpur ;
Orissa.

SEPARATE ACCOUNT OF
REVENUE —
who is entitled to have opened, 114.
owners of specific portions also en-
titled to have, 114.
Collector may open, where no
objection, 114.
on objection parties to go to the
civil court, 114.
rules for sale of separated share, 114.
in case of deficient sale proceeds
entire estate to be sold when, 115.

SERVICE TENURE —
Reg. VIII of 1793 contains rules as
to zemindar's private chakeran
lands, 95.
assignment of land for service, 244.
conversion of service into rent, 244.
jaigirs, 245.
thanadari lands, 245, 246.
SETTLEMENT—Continued.

old policy of Govt. was to settle lands permanently after assessment under the Settlement Regulations, 51. since 1861 the policy of selling estates outright was also adopted, 51. since 1861 temporary settlements only allowed, 51.

rules of settlement in temporarily settled estates, 51.

takes place periodically in khas mahals and temporarily settled estates, 51.

rules of, for Sunderbuns, 53.

if grantee of invalid lakhiraj refuses settlement the land to be held khas and the settlement rules to apply, 73.

Regulation VIII of 1793 contains principles of settlement and mode of assessment, 93, 94.

See Settlement Regulations.

SETTLEMENT OF RENT—
duties of Revenue Officers in cadastral survey and settlement proceedings, 380, 381.

when and for what period rent settled has operation, 381.

SETTLEMENT REGULATIONS—

settlement and adjustment of rent of khas mahals regulated by Reg. VII of 1822, 44.

Reg. VII of 1822 for ceded and conquered provinces in Cuttack and Puttaspur, 44.

extended to other provinces by Reg. IX of 1825, 44.

object of Reg. VII of 1822, 44, 45.

Settlement Officer to give notice and prepare chittas and jummabundis, 45.

jummabundis final until altered after full investigation in a regular suit, 45.

evidentiary value of chittas, jummabundis and maps prepared by officers of Govt. under the Settlement Regulations, 45, 46.

they are not public documents, 45.

contrary view of Jackson J., 45.

which was accepted in later cases, 46.

rent assessed on invalid lakhiraj binding unless assessment is set aside, 46.

principles of assessment, 46, 47.

later Settlement Acts, 47.

jummabundis prepared are final.

SETTLEMENT REGULATIONS—Continued.

after publication unless contested in civil suits within four months, 47.

and that enhancement was not in accordance with the Act, 47.

no presumption that rent previously paid was fair and equitable, 47.

Beng. Act VII of 1879 repealed in the Regulation provinces except Orissa, 48.

chap. X of Bengal Tenancy Act extended by notification to Orissa, 48.

Settlement Regulations in force throughout the territory of the Lieutenant-Governor except the scheduled districts, 48.

Regulation VII of 1822 and Regulations modifying it not expressly repealed by Bengal Tenancy Act but chap. X of that Act is adopted in khas mahals, 48.

assessment under Reg. VII of 1822 final in some cases, 48.

of the Bengal Code supplemented by rules framed by the Bengal Govt. are in force in Assam, 49.

old policy of Govt. was to settle lands permanently after assessment under the, 51.

rules of settlement in temporarily settled estates, 51.

Bengal Tenancy Act, Chap. X, and rules framed under sec. 189 substituted in the place of the, in Orissa, 52.

made applicable to Sunderbuns, when, 52.

SOVEREIGN—

entitled only to a share of the produce, but is not the proprietor of the lands, according to the Hindu sages, 7.

this share is only the price for the protection afforded, 7.

functions of the, 10.

meaning of synonyms for, 10, 11.

right of, as regards conquered territories according to Hindu notions, 11.

STATUTES—

13 Geo. III c. 63 (Government of India).

pp. 30, 34.
STATUTES—Continued.
21 Geo. III c. 70 (Government of India) s. 17, p. 35.
24 Geo. III c. 25 (Government of India) p. 88.
38 Geo. III c. 60 (Land Tax in England) p. 89.
33 Vic. c. 3 (Council of India) p. 49.
44 & 45 Vic. c. 41 (Conveyancing and Law of Property) p. 235.

SUBLETING—
originally unknown amongst Aryans, 11.
but afterwards became common, 12.
of revenue-free lands common, 83.

SUIT—
between landlord and tenant in Calcutta, jurisdiction of Presidency Small Cause Court, 36, 37.
for resumption, 75-79.
to set aside revenue sales, 109.
for payment of surplus proceeds of revenue sale, limitation in, 112.
for malikana money charged upon immovable property, 126.
for malikana, limitation in, 126, 127.
for recovery of malikana tenable, 127.
it is not incumbent on plaintiff to set out distinctly the grounds impeaching the sale in suits to contest putni sale, 148.
to set aside putni sales, 152, 153.
for ejectment for breach of covenant, procedure in, 182.
for arrears of rent by one of joint landlords, 202.
See Limitation.

SUNA LAND—
See p. 357.

SUNDERBUNS—
in the beginning of the century not included within the permanently settled area of Twenty-four Perganas and Jessore, 52.
Commissioner of Sunderbuns appointed in 1816, 52.
Resumption and Settlement Regulations made applicable to, 52.
up to 1825 the attention of Govern-

SUNDERBUNS—Continued.
ment directed to encroachments and to taufir lands, 52.
in 1828 rules laid down for the determination of the boundaries of the tract formerly declared to be the property of the State, 52.
claims of persons in possession of neighbouring cultivated lands left to be determined by rules laid down in Reg. II of 1819, 53.
objection to the line of delimitation was to be made within three months, 53.
the boundary line of Dampier, 53.
Captain Hodge's map, 53.
patit-abadi taluqs, 53.
jungleburi leases granted until when, 53.
rules made for grants, 53.
grants made for 99 years, 53.
the sale rules known as fee simple rules, 53.
revised lease rules, 53, 54.
tenures heritable and transferable, 54.
Sunderbun grants are temporarily settled estates, 54.
they are saleable for arrears of revenue, 54.

SUTANUTY—
incidents of tenancy in, 34.
taluqdi right of the East India Company in, transferred to Maharaja Nobokrisna of Sobhabazar, 34.
holdings in, generally rent-free, 34.
rent-paying holdings in, existing from before 1778 are permanent and rent is nominal, 34.

SURRENDER—
permanent tenures cannot be relinquished, 203.
of leases does not avoid incumbrances, 241, 242.
occupancy raiyat may, 307.
contract against this right invalid, 307.
raiyat bound by lease for fixed term cannot, before expiry of term, 307.
cannot be made of part or share, 307.
abandonment may amount to, 307.

SURVEY—
of noabad lands and taluqs in
SURVEY—Continued.
Chittagong between 1841 and 1848, 41, 42.
duties of Settlement Officers in Cadastral Survey proceedings, 380, 381.

TAIDADS—
what they are, 80.
their evidentiary value, 80.

TALUQS—
cultivated portions of Sunderbuns formed into permanently settled estates as patitabadi taluqs, 52.
meaning of the word, 130.
existing from the date of the Permanent Settlement, 137.
are hereditary and transferable and seldom if ever held on terminable leases, 138.
presumption of fixity of rent when arises, 138, 165.
how rebutted, 138.
onus of proving nature of tenure its permanency and fixity is on taluqdar, 138.
rent not enhanceable if not changed from the time of the Permanent Settlement, 138.
where no Permanent Settlement taluqdar to show that it has not been changed since 1793, 139.
o presumption of fixity of rent where taluq is situated within the ambit of temporarily settled estate, 139.
express recognition in the Settlement proceedings may be evidence of the right to hold exempt from enhancement, 139.
alteration of rent on alteration of area, 139, 140, 182.
changes made by the Bengal Tenancy Act, 140, 141.
otice of enhancement not necessary, 141.
summary of the law of enhancement of rent of, 141.
those created after the Permanent Settlement, 141, 142.
incidents of, other than putnis, 163, 164.
are partible by civil court, 165.
zemindars not bound to apportion rent, 165.
held from Permanent Settlement not liable to ejectment, 165.
enhancement of rent of, 166, 167.
See Dependent Taluqs.

TARAFDARS—
are original settlers of noabad lands in Chittagong, 42.
their lands measured between 1841 and 1848, 42.
generally hold lands khas, 42.
where there are raiyats resumption and settlement do not affect their right, 42.

TEA-PLANTER—
may be a raiyat, 287.

TEMPORARY SETTLEMENT
change in the policy of settlement since 1871, 51.
rules of settlement in temporarily settled estates, 51, 411.
takes place periodically, 51.
Orissa proper conquered from the Mahrattas is subject to, 93.

TENANTS—
not bound to pay dawk cess, 97.
bound to pay road and public works cesses, 97.

TENURE-HOLDER—
road and public works cesses payable by, 97.
the share to be paid by each class interested in land, 98.
principles under which compensation for land acquisition to be apportioned between proprietor and tenureholder, 203, 204.
person holding more than 100 bighas presumed to be, 287.

TENURES—
unknown in earlier days amongst Aryans but are of later creation, 12, 169.
causes that led to the creation of, 169, 170.
classification of, 170, 171.
Permanent tenures.
permanent mukarrari lease may be granted on any terms mutually agreed on, 180.
no ejectment from, for non-payment of rent, 180.
but tenure liable to be sold in execution of a decree for rent, 181.
contract restricting alienation of, 183.
alteration of rent on alteration of area of, 183, 184.
TENURES—Continued,
are heritable and transferable, 186, 187.
at fixed rent only, 188.
registration in landlord’s office, 188, 194.
effect of non-registration, 190, 191.
cannot be relinquished without consent of landlord, 203.
are partible by civil court, 203.
See Re-entry; Presumption.
Non-permanent tenures.
not dealt with in legislative enactments, 206.
Sources of law regarding, 207.
Transfer of Property Act how far applicable, 207.
vernacular names of, 207.
See Lease.

THANADARI LANDS—
thanadas were appointed by the zemindars to maintain peace and had control of the police, 246.
See Service Tenure.

TICCADAR—
See Jiaradar; Lease.

TRANSFER—
of lease, 224-226.
of occupancy right, 299, 300, 339-341.
otice to be given to landlord in case of, 300, 341.
of non-occupancy holding, 344.

TRESPASSER—
encroachment does not make tenant a trespasser to the encroached land, 294.
cannot acquire occupancy right, 314.

TWENTY-FOUR PERGANAHs.
See Khas Mahals.

UDBASTU LAND.
See p. 317.

UNDER-RAIYAT—
person holding under-raiyat at fixed rate is, 288.
cannot acquire occupancy right, 307-309

UNDER-TENURE HOLDER—
may protect putni from sale by paying arrears, 153.
right of, in case of such payment, 153, 154.
may sue for compensation for loss at putni sale when, 157.
under-tenures in Chotanagpur, 416.

USAGE—
recognition by village usage is good evidence of land being proprietor’s private land, 324.
established usage regulates instalments of rent, 333.
regulates incidents of homestead land, 316, 384.
See Custom.

UTBANDI—
right of occupancy in, 298, 317, 318, 326.

VILLAGE COMMUNITIES—
Sir Henry Maine on, 13, 14.
what are, 14, 15.
in Bengal in a dismembered condition, 14.
but in N. W. P. in complete form, 14.
how far they are important in relation to right in land, 14, 15.
there was no idea of joint or common ownership amongst members of, 15.
no settlement of any estate was made at the Permanent Settlement with any village community as such or headman thereof, 15.
no unity of proprietorship except in certain common property, 16.
each family was proprietor, 16.
each village had defined boundaries, 16.
grazing ground was common property, 17.
agricultural lands not common property, 18.

ZEMINDARS—
theoretically were mere collectors of revenue, 26.
but had to perform the functions of a sovereign, 26.
in fiscal matters their authority was supreme, 26.
what they were said to have been
ZEMINDARS—Continued.
before the Permanent Settlement, 87.
the only class to whom the Govt. could then look for punctual realisation of State dues, 89.
this class had different sources of origin but known under one name, 89.
they may be classified as follows, viz.—
(1) the old Hindu Rajahs.
(2) great land-holding families that came into existence during the Mahomedan Govt.
(3) persons whose families had held offices for collecting revenue for two or three generations.
(4) revenue farmers placed in office since the grant of the Diwani, 89, 90.
bound to pay dawk cess, 96.
but not entitled to recover it from tenants, 97.

ZEMINDARS—Continued.
road and public works cesses payable by, 97.
liable to supply provisions &c. to the army, 123, 124.
penalty for default, 124.
liable to give information of certain offences, 124.
their officers also liable, 124.
responsible for due publication of sale notifications of putni taluqs under Reg. VIII, 148.
onus of proving due publication of notices under Reg. VIII on, 148.
and he has to prove due observance of formalities, 148.
no presumption in favor of, regarding due service of notice, 148.
to pay costs and damages if putni sale is set aside, 153.

ZERAET.
See Proprietor's Private Land.