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SELECTIONS FROM THE RECORDS OF THE BOMBAY  
GOVERNMENT.

No. LXIV.—NEW SERIES.

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R E P O R T-

ON THE

LANDED TENURES OF BOMBAY.

BY

F. WARDEN, Esq.

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Dated 20th of August 1814.

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# REPORT

ON THE

## LANDED TENURES OF BOMBAY.



CAPTAIN DICKINSON, in his exposition of the various tenures under which the ground within the Fort of Bombay is held, has refrained "from going back to a remote period," observing that "it will, perhaps, be fully sufficient for the present purpose to show that the Honorable Company were in possession; it is difficult to say of what portion, of the Fort so long back as the year 1720."

2. Upon an investigation of so important a nature, affecting in its result the rights and interests of so many individuals holding so large a portion of the landed property on the Island of Bombay, we cannot, in my opinion, carry our researches to too remote a period. The validity of those rights must depend, not so much upon the terms on which it was ceded to the Crown of England, and subsequently transferred to the East India Company, as upon the policy by which the administration has been governed in the assignment of lands, as an encouragement to merchants and others to establish themselves in

Bombay. A comprehensive review of this nature is essential to that full consideration of the subject which its great importance demands; and to the want of such a review I attribute the doubts and uncertainties under which we at present labour in regard to the line of conduct to be pursued towards the landholders. I will endeavour to supply Captain Dickinson's omission, and in doing so, no apology

The necessity of tracing the subject from the remotest period maintained.

The want of so comprehensive a view, the cause of existing doubts.

will be necessary, I am persuaded, for the prolixity of this report, embracing, as it does, a period of upwards of one hundred and fifty years, and involving the permanent interest of the Company and of so large and so wealthy a portion of their subjects.

3. The earliest English records in the office are for the years 1721-22 and 25-26. 1720, 1723-24, 1727-28, from which period the series, with the exceptions noticed in the margin, is complete. For information, however, of the state of private property prior to 1720, I have had recourse to Bruce's Annals of the East India Company from their establishment by the Charter of Queen Elizabeth in 1600 to the union of the London and English East India Company in 1707-8; and as those annals have been compiled from official documents, the information they afford may be considered as authentic as if drawn from any of the records now in existence in the Secretary's office of Bombay. I have had recourse also to other works that have treated on the state of this island at the period of its cession. I therefore flatter myself that this report will be found to comprehend data which may be relied on to assist the Government in passing that decision upon the nature of the existing tenures which the community is anxiously, and with no small degree of agitation expecting.

4. The points upon which I propose to treat, I will, for the sake of perspicuity, divide into the following heads, viz :—

Divisions of the Report laid down.

1st.—To inquire into the state of the claims to lands by the sovereign and individuals at the period of the grant of the island to the East India Company, and to endeavour to discriminate the extent of property belonging to each up to the year 1707-8.

2nd.—To develop the principles on which the Government has been in the practice of leasing or granting to individuals ground, the property of the Company, within the same period; and to ascertain whether those principles have been respected or departed from by the Government at any time, with the view to discover on what tenures it was the intention of the Government to allot lands to individuals.

3rd.—To ascertain the light in which the grantees have been accustomed to view their allotment of lands.

4th.—To review the system of taxation from the cession up to this period, tracing the several alterations or modifications which have been made, with the view of ascertaining the right possessed by the Company to increase the land-tax over every description of property.

5th.—To review the effect of the policy by which this island has been governed.

6th.—Possessed of this data, to offer observations on Captain Dickinson's revenue exposition ; and

*Lastly.*—To fix the rate at which the rent shall be fixed for the future.

*First.*—The state of landed property from the cession of the island up to 1707-8.

5. This report is confined principally to a review of the landed tenures within the walls of the Fort, which the survey Captain Dickinson has completed alone embraces, but it will be found to be applicable to the island generally.

The state of landed property from the cession of the Island to 1707-8 reviewed.

6. By the eleventh article of the treaty of marriage between King Charles the Second and the Infanta Catherine of Portugal, dated the 25th of June 1661, the Crown of Portugal ceded and granted to the Crown of England the Island and Harbour of Bombay in full sovereignty.

No. 1.—Copy of the Treaty.

The article of the Treaty ceding the Island in full sovereignty.

7. A fleet of five men-of-war, under the command of the Earl of Marlborough, with five hundred troops under Sir Abraham Shipman, appointed to be General on shore, was despatched in March 1661-62, with a Vice-roy of the King of Portugal on board, authorised to deliver the ceded island and its dependencies to the King of England.

A Fleet despatched from England to take possession.

8. The King's fleet arrived at Bombay on the 18th of September 1662, and demanded the cession of the island and of its dependencies, conformably to the treaty between the King and the Crown of Portugal. The Portuguese governor

The Commissioners arrive, and a misunderstanding between the English and Portuguese regarding the construction of the Treaty ensues.

evaded the cession in consequence of the English admiral interpreting the terms of the treaty to embrace Bombay and its dependencies or the Islands of Karanja and Salsette, whilst the Portuguese viceroy construed the cession to be limited to the Island of Bombay, and not to include the dependencies situated between Bombay and Bassein. After some fruitless endeavours to

The Earl of Marlborough returns to England, and the Force under Sir A. Shipman retire to the Island of Angedivah.

arrange the terms of the cession, the Earl of Marlborough returned to England, and Sir Abraham Shipman was obliged to land the troops on the Island of Angedivah, twelve leagues from Goa.

9. Without adverting to the attempts intermediately made to obtain possession of Bombay, it is only

1664-65.

The greater part of the Troops and Sir A. Shipman die at Angedivah, and his Secretary, Cooke, compelled to accede to a Treaty with the Viceroy of Goa on his own terms.

necessary to the object of this report to state that Sir Abraham Shipman and the greater part of the troops having died at Angedivah from want of provisions and accommodation, and from the unhealthiness of the climate,

Mr. Cooke, the Secretary to Sir Abraham Shipman, to preserve his own life and the lives of the remainder of the troops, was compelled to accede to a treaty with the Viceroy of Goa in November 1664, in such terms as he would grant. By this convention Mr. Cooke renounced, on the part of England, all pretensions to the dependencies, and accepted the cession of Bombay only, on the same terms which its governor had proposed on the arrival of the Earl of Marlborough, with the additional article that the Portuguese residents in Bombay should be exempted from the payment of customs, and have liberty of trade from Bandora and the other creeks of Salsette.

10. The King, on receiving intelligence of the manner in which

The convention disavowed by the King of England, and a Governor appointed.

Mr. Cooke had agreed to receive the island from the Viceroy of Goa, disavowed the convention as contrary to the terms of the

treaty, and appointed Sir Gervase Lucas to be Governor of Bombay.

11. When Sir Gervase Lucas arrived at Bombay (5th November

1666-67.

Cooke's malpractices exposed on the arrival of the Governor Sir Gervase Lucas.

1666) and took charge of the government, he instituted an inquiry into the proceedings and conduct of Mr. Cooke, and found that,

instead of carrying the revenues to His Majesty's account, he had extorted the sum of 12,000 Xeraphins from the inhabitants, and converted it to his own private use, which was proved by his receipts, with other acts of an improper nature.

12. The account which Sir Gervase Lucas subsequently transmitted, not only of importance and value of the island, but of its exposed situation to the Mogul power on the continent, affords evidence of the improvident convention which Cooke had formed by receiving the island from the Viceroy of Goa *without the King's rights being ascertained, or a statement given of the extent of them as transferred to the Crown of England.* In his letter to Lord Arlington of the 21st March 1666-67, Sir Gervase, amongst other things, stated that he was making every effort to increase the King's revenues, but from the *indefinite conditions* on which Cooke had received it, *it was impracticable to ascertain which of the inhabitants were legally possessed of sufficient titles to their estates, no stipulation having been made relative to the King's sovereignty of the soil, as some of the best estates in the island refused to pay rent, and produced titles which could not be disputed, though believed to be fictitious;* that the island, when properly cultivated, and the rights ascertained, would be very productive.

13. The Crown of England, considering the Island of Bombay as an unprofitable and chargeable possession, transferred it to the East India Company by letters patent, dated the 27th of March 1668.

14. By this charter, the King granted the Port and Island of Bombay to the London East India Company in perpetuity, with all the rights, "profits, and territories thereof, in as full manner as the King himself possessed them by virtue of the treaty with the King of Portugal, by which the island was ceded to His Majesty, to be held by the Company of the King, in free and common socage as of the Manor of East Greenwich, on payment of the annual rent of £10

1666-67.

The value and importance of Bombay, and its exposed situation.

The Crown lands not ascertained on taking possession.

Titles produced to the best estates on the Island believed to be fictitious, but could not be disputed.

1667-68.

Held as the Manor of East Greenwich.

Rights conveyed and powers vested in the Company by the Charter.



in gold, on the 30th September in each year." The Company were neither to sell nor part with the island; they were empowered to entertain officers and men as a garrison for the island; to appoint and dismiss governors and officers; to make laws for the better government thereof, and to exercise martial law in it. All persons born in Bombay were to be accounted natural subjects of England; and the Company were to enjoy all the privileges and powers granted by this charter in any place they might purchase or acquire in or near the said island.

15. This transfer was communicated to Sir Gervase Lucas by a letter from the Court of Directors, accompanied with an authenticated copy of the King's grant empowering him to deliver the island to Sir George Oxinden and the Council of Surat. The Court at the same time sent a Commission to Sir George Oxinden to receive charge of the island, and to vest one of the Council of Surat with the civil and military administration of it. An estimate of the revenues, amounting to £2,833 per annum, was also transmitted to Sir George Oxinden, with directions to engage any of the King's troops who might be disposed to enter into the Company's service, and to call in the guards of the Factory at Bantam, and a proportion of the companies serving at Fort Saint George, to fill up the garrison at Bombay; and as an encouragement, these soldiers were to be allowed half pay on condition of *their becoming settlers on the island, and affording their labour for the cultivation of it*; and annually new settlers were to be sent from England.

16. With the object also of improving the cultivation of Bombay (that the produce might be equal to the charges of the Government), Sir George was instructed to invite such of the natives as might choose to resort to and settle on the island; to encourage them by taking the most moderate profits on trade; and to endeavour to open a commerce between Bombay, the Persian Gulf, and the Red Sea, for each of which one small vessel laden with Company's goods was to be despatched, and powers given to the commanders to offer to the natives at the ports at

which they might touch, a free passage to Bombay, and full protection when they should arrive, to enable them to carry on their trade.

17. When Sir Gervase Lucas assumed the government, he appointed Captain Henry Gary to be deputy governor, and this officer seems to have

1667-68.

Conduct of Cooke, who claims the government: he assembles a force at Bandora in Salsette, and assisted by the Jesuits, attempts to re-establish himself.

Proclaimed a rebel and traitor.

proceeded on the same plan as his predecessor—in *ascertaining the royal rights in the island*, and improving its revenue and trade. In the preceding season Sir Gervase had dismissed Mr. Cooke for having appropriated part of the revenues to his own use, and endeavoured to defraud the heir of Sir Abraham Shipman; on this event, Mr. Cooke had gone to Goa, and placed himself under the protection of the Jesuits. On hearing of the death of Sir Gervase Lucas, which occurred on the 21st of May 1667, Mr. Cooke claimed his right to succeed to the government. This Mr. Gary and his Council rejected, which brought Mr. Cooke to Bandora on the Island of Salsette, where he endeavoured to assemble a force, assisted by the Jesuits, to re-establish himself in Bombay. Cooke was proclaimed a rebel and a traitor, and refused any countenance or protection from Sir George Oxinden.

18. These mixed transactions, however, would be of inferior consequence if the source of them could not be traced to an event which took place during the administration of Sir Gervase Lucas. At the time when Mr. Cooke acceded to the terms upon which the Viceroy of Goa agreed to cede the island, either he had not examined *the rights to the lands held of the Crown of Portugal by the inhabitants*, or he had considered that the ascertaining of those rights would become a

The Jesuit College at Bandora claims a considerable extent of land and of rights.

Being refused, they have recourse to force.

source of emolument to himself. *The Jesuit College at Bandora claimed a considerable extent of land and of rights in the island*, which Sir Gervase refused to admit, on which they had recourse to force. This the Governor conceived to be an act of treason against His Majesty's Government, and declared *the lands and rights to be forfeited to the King*—a decision which explains the reception and encouragement

Their lands and claims declared to be forfeited.

given to Mr. Cooke by the Jesuits of Bandora. Mr. Gary, the deputy governor, therefore, proclaimed Mr. Cooke a traitor, and Sir George Oxinden refused to receive or encourage him at the Factory of Surat. The whole of these parties referred the matters in dispute by letters to the King, to the Lord Chancellor, and to the Secretary of State, and Mr. Gary determined to maintain his right to the administration of the land till the King's pleasure should be known.

19. In making these communications to the King and to the Secretary of State, Mr. Gary transmitted a statement of the revenues of the island as improved by Sir Gervase Lucas and himself: this statement is the more interesting as it ascertains the value of the grant of Bombay to the East India Company, and is as follows:—

		Xeraphins.	
Rupees	6,438 2 13	rent of Mazagon .....	= 9,300 0 40
"	3,321 1 69	" Mahim.....	= 4,797 2 45
"	1,645 3 54	" Parell .....	= 2,377 1 56
"	1,203 1 20	" Vadella .....	= 1,738 0 40
"	547 0 40	" Sion.....	= 790 0 60
"	395 1 48	" Veroly.....	= 571 1 34
"	4,392 1 80	" Bombaim .....	= 6,344 2 61
"	6,611 2 16	" Tobacco Stank or Frame .....	= 9,555 0 0
"	1,661 2 16	Taverns .....	= 2,400 0 0
"	12,261 2 16	the accounts of Customs .....	= 18,000 0 0
"	12,261 2 16	the accounts of Cocoanuts ..	= 18,000 0 0
"	<u>50,740 0 88</u>	Xeraphins	<u>73,870 1 18</u>
"	801 3 58	more may be advanced .....	= 1,129 1 62
Rs.	<u>51,542 0 46</u>	Total...Xeraphins	<u>75,000 0 0</u>

which, at thirteen xeraphins for 22s. 6d. sterling, amounts to £6,490 17s. 9d.

20. The Court in this season, having made the requisite appointments for the administration of Bombay, framed the following general regulations, with the view of rendering the island an

1668-69.  
Regulations established by the Court.

English colony. The Fort or Castle was to be enlarged and strengthened; *a town was to be built* on a regular plan, and to be so situated as to be

A Town ordered to be built, and inhabitants encouraged to settle in it.

under the protection of the Fort; inhabitants, chiefly English, were to be encouraged to settle in it, and to be exempted for five years from the payment of customs; the revenues (amounting, according to Mr. Gary's estimate, to £6,490 per annum) were to be improved, *without imposing*

The Protestant religion to be favoured, but no restraint imposed on those professing a different faith.

of all sorts of cottons and silks were to be encouraged, and looms provided for the settlers; a harbour with docks

Docks to be constructed.

was to be constructed; a proportion of soldiers, with their wives and families, were annually to be sent from England; and an armed vessel of about one hundred and eighty tons was to be stationed at Bombay for the protection of the island and of its trade.

21. The orders of the Court of Directors on the subject of the claims of the Portuguese to lands on the

1669-70.

All claims to lands acquired posterior to 1661 held to have proceeded from an imperfect tenure.

*date must be held to have proceeded from an imperfect right*; but as

No delay, however, to ensue in purchasing lands in the immediate vicinity of the Fort, provided the expense did not exceed £1,500.

it would be imprudent to delay strengthening the port or building the town, the *Government was authorised to purchase the lands in the immediate vicinity of the Fort*, provided the expense did not exceed £1,500; the inhabitants were to be allowed a moderate toleration, but the claims of the Jesuits, though admissible by the Portuguese usages, were not to be held valid in an English settlement.

Oxinden dies, and is succeeded by Mr. Gerald Aungier.

22. Sir George Oxinden, the Governor, died on the 14th of July 1669, and was succeeded by Mr. Gerald Aungier.

23. President Aungier on his arrival published the Company's regulations for the civil and military administration of the island, and formed two Courts of Judicature, the inferior Court consisting of a Company's Civil Officer, assisted by Native Officers, who were to take cognizance of all disputes under the amount of two hundred xeraphins, and the superior Court, composed of the Deputy Governor and Council, to whom appeals were competent from the inferior Court, to take cognizance of all civil and criminal cases whatever; their decisions to be final, and without appeal, except in cases of the greatest necessity. These Courts were to meet regularly once a week. The exemption from taxes for five years recommended by the Court, to encourage the merchants and manufactures, Governor Aungier, without receding from the principle, modified by continuing the old Customs on the produce of the island, on cocoanuts, and coir used as cordage, and on wine, arrack, opium, and tobacco, but he exempted bullion and the goods specified in the Court's order from all customs, and to cover the loss of revenue, imposed a port duty of one per cent. The result of this survey was that the amount of the revenues from the lands had been over-rated, *by the large proportion of them claimed and retained by the Jesuits*; but the amount of the lesser inland customs had been under-rated, because, when put up to sale, they had produced £200 more in this than in the preceding year. With regard to the projected town, the expenses incurred in erecting the Fort had rendered it a subject for future consideration; and *as the claims for rights to lands near the town had been numerous*, he had removed the fishermen to some distance, and intended to build houses on the ground where their huts stood, but *it would require time to adjust the foundations of the rights to lands before houses for the settlers and merchants would be erected.*
- 1669-70.
- Measures adopted by him on his arrival.
- Forms a Court of Judicature.
- Articles subject to Customs.
- A port duty of one per cent. established.
- Large proportion of lands retained by the Jesuits.
- 1669-70.
- Claims to rights to lands near the Town numerous.

24. The fortifications of Bombay were at this period on a limited

1670-71. State of the Fortifications. scale : the bastions and curtains of the Fort towards the land had been raised to within nine feet of their intended height ; but towards the sea, batteries only were erected, as bastions would be the work of the subsequent year.

A Survey ordered to ascertain the rights to property, but not forthcoming. The services of a Mr. Herman Blake as an engineer were accepted, and he was appointed Engineer and Surveyor General in Bombay ; his surveys were also directed to ascertain the rights to property as well as to the works. This survey is not forthcoming.

25. The separate information from Bombay during the season 1673-74. 1673-74 consisted of what would in modern times be termed a statistical account of the island, specifying the division of it into the districts of Bombay and Mahim, with an account of its inhabitants, European and Native ; the extent and magnitude of the fortifications upon which one hundred pieces of cannon had already been mounted ; the strength of the garrison, consisting of two companies of two hundred men each, of which the greatest proportion were Topasses, and one hundred more of this force employed in the Marine, and of three companies of Militia. The report proceeded to consider (in the

event of peace) the practicability of rendering Bombay a seat of trade equal to Surat without interfering with the purchases or sales at that Presidency. It was taken as a principle that branches of trade might be opened between Bombay and the Gulfs of Persia and Arabia, and between this island and the Ports of Sevagee and those in the

Deccan ; but this speculation affords only the result that, however comprehensive the views of President Aungier might be, taking the whole of the preceding details into consideration, the prospect of an enlarged commerce from Bombay was precarious, if not doubtful.

26. President Aungier's attention was next directed to improve the revenues of the island by the establishment of a Mint, by farming the Customs, and by taking measures for the introduction of excise duties, to which the inhabitants had been accustomed under the Portuguese government.

1674-75. The establishment of a Mint. Farming the Customs, and the introduction of Excise duties contemplated.

27. As the exemption from the payment of customs for five years (or the period which had elapsed since the new Regulations framed. The Customs revised, and island was granted by the King to the Company) expired at the close of this season, Mr. Aungier and his Council framed regulations with the following object, viz. the carrying the amount of the revenue to the Company's account, and applying one per cent. to defray the charges of the fortifications; under this regulation all goods, whether imported or exported, were to be entered at the Custom-house of Bombay or Mahim, and the following rates were fixed for the principal imports and exports:—All goods imported, including coir, grain, and timber, to pay two and a half per cent., and one per cent. towards the fortifications, with the exception of Indian tobacco and Indian iron, which were to pay eight per cent. customs, and one per cent. towards the fortifications; all goods exported to pay three and a half per cent., with the exception of the produce of the island (cocoanuts, salt, fish, &c.), which was to pay eight per cent. customs, and one per cent. towards the fortifications. Gold, silver, jewels, pearls, bezoar stones, musk, amber, and coins of copper and tin, to be free of all customs, either on import or export.

28. Mr. Bruce has omitted to mention a very important proceeding that occurred during Mr. Aungier's government—the compact entered into between Governor Aungier and the Inhabitants regarding their estates. It must be evident from the preceding detail that, after the island had been surrendered to the English, many discontents and disputes must have arisen as to what property belonged of right to the Crown, and what to the people; besides which the lands and estates of several persons had been seized by the English. When these circumstances became known in England, orders were sent by His Majesty and the Court of Directors that restoration should be made to all who could, on examination of their titles, establish their right to what they claimed.

29. As in the examination which took place considerable doubts arose affecting the validity of other tenures, Terms which the people were desirous of acceding to. the people were desirous that their titles should be distinctly fixed by a regulation rather than weakened by

the scrutiny, and were willing to make a pecuniary compromise for the permanent security of their property.

30. An assembly of all the inhabitants interested in the question was therefore summoned on the 1st of November 1674, and the Governor, with the Members of Council and others, together with those of the Portuguese inhabitants who had been chosen representatives of the people, consented to the terms specified in the agreement copied in No. 3.

An assembly of the Inhabitants convoked.

Members of Council and others,

The Agreement entered.

31. It was stipulated that this agreement should be perpetual and irrevocable, and for the satisfaction of the inhabitants, Government promised to prevail on the Company to confirm it by a patent under their hands and seals.

To be perpetual, and Government engage to obtain the Court's confirmation of it.

32. It does not, however, appear that it was ever either ratified or annulled by the Court of Directors; but the frequent reference made to it, and the continued fulfilment of its stipulations, prove that the agreement was always considered valid, and conferred every force that it could have received from their confirmation.

This was never done, but the Agreement ever considered to be valid.

33. At this early period, therefore, were the inhabitants secured in their possessions, and all who now hold property subject to the payment of what is called pension, possess it by a tenure of which the Government cannot deprive them, unless the land is required for building "cities, towns, or fortifications," when reasonable satisfaction is to be made to the proprietors.

Possessions secured, except required for building Cities, Towns, and Fortifications, when reasonable satisfaction is to be made to the Proprietors.

34. The unsettled state of the Government had for almost three years obliged President Aungier to reside at Bombay, and to leave the management of the Company's interests at Surat to the Council. On his return to Surat in September 1675, the instructions which he framed and left with the Deputy Governor and his Council afford a distinct view of the situation of affairs at Bombay.

1675-76.

The unsettled state of Bombay in 1675.

A Mutiny suppressed.

After the President had suppressed a mutiny that had broken out, and introduced regularity



into the administration, he placed before the Court an account of the inhabitants of the island, consisting of the English garrison and settlers, the Portuguese who had remained after the cession, and a mixed assemblage of Hindoo, Mahomedan, and Parsee inhabitants; he next took a view of the great object of the Company to render Bombay an emporium of trade, and recommended that the regulations which had been established for the garrison and for the English

The expediency of forming the mixed classes of the Inhabitants into something like the English incorporations.

settlers should be the general rule of the Government; but as it would be difficult to reduce the mixed classes of the other inhabitants under these regulations, it would be proper to form them into something like the English incorporations, and to direct them to elect five persons, who were to become their representatives to hear and prepare their different claims for the consideration of the Governor and Council: these persons

The advantages of the plan.

to be responsible for all tumults, or disorderly conduct of the classes of inhabitants whom they represented. By this expedient, President Aungier trusted that a general confidence would be created in the Company's Government. With the object of encouraging the trade of the island, he recommended that forbearance and moderation should be observed in levying the duties of customs, rents, licenses, &c., but calculated that the revenue would amount to 1,07,000 xeraphins per annum.

35. This year the duties were farmed as the most profitable expedient, and excise taxes on provisions established on the same principle as practised by the Dutch at Batavia, by which the amount of the revenues had been increased, and this system was to be followed up as far as the circumstances of the island would permit. Of the military arrangements in contemplation, it is only necessary to notice the project to

A Militia raised and maintained by one hundred of the principal Landowners on the Island.

establish a militia for the better defence of the island. In the course of the season the expedient was tried, and six hundred men embodied, the charges of which were defrayed by about *one hundred of the principal landowners on the island.*

36. The only material occurrence in the subsequent year consisted in the appointment of a judge for the island, the embodying of a troop of

1677-78.

Diamond Merchants encouraged to settle in Bombay.

horse, and the encouragement directed to be given to the diamond merchants to settle at Bombay, and protection to the weavers, and such of the soldiers whose conduct had been regular, and whose term of seven years had expired, were to be promoted to small civil trusts.

1677-78.

Death of Mr. Aungier; succeeded by Mr. Henry Oxinden.

37. Mr. Aungier died on the 30th of June 1677, when the government devolved on Mr. Henry Oxinden.

38. The report of Mr. Oxinden on the internal circumstances of

His report on the state of the Island.

Inhabitants numerous, but of the poorer classes.

the island, stated that the revenues from customs amounted to 30,000 Xeraphins, and the duty on tobacco to 20,000 Xeraphins per annum; that, though the *inhabitants were numerous* (consisting of Gentoos, Mahomed-ans, and indeed the out-castes of all sects, who had sought protection), *they were of the poorer classes, to whom every indulgence had been shown in the hope of inducing the more wealthy native merchants and manufacturers to place themselves under the English Government.*

Prospect of the Island becoming a seat of trade remote.

Obstacles thrown in the way by the Portuguese.

the trade of the island.

But the prospect of the island ultimately becoming a seat of trade was remote from the opposite coasts being exposed to the armies of Sevajee, and from the Mogul armies being employed in the Patan wars and those in the Deccan, and unable to stop his progress; that the Portuguese at Tanna and Caranjah continued to obstruct the entrance of provisions, and created every obstacle to the political and commercial importance of Bombay therefore was distant, and the difficulties of bringing it beyond its present narrow influence daily increasing; for the progress of Sevajee in countries immediately connected with it, and his alliances with Vissiapore and Golcondah had enabled him almost to command the Deccan towards the Carnatic and all the countries between it and Surat.

39. With the view of providing a sum equal to the civil and military charges of the Government, the Court required in the year 1679-80 that all houses

1679-80.

Houses ordered to be valued, and a Tax imposed on each; uncultivated land surveyed and let out to rent; marshy grounds to be drained and rendered fit for agriculture.

should be valued, and a proportionate tax imposed on each,—the *uncultivated land surveyed and let out on rent*,—and the *marshy ground drained and rendered fit for agriculture*.

40. The King, by letters patent, dated 9th August 1683, authorised

1683-84.

The Company authorised to exercise Admiralty jurisdiction by the King's letters patent.

the Company to exercise Admiralty jurisdiction in the countries within their limits; the object of this grant was to enable them to seize and condemn the ships of the interlopers. For this purpose, the President was

appointed Judge Advocate *pro tempore*, to take cognisance of all naval cases; these powers were given to the President and Council of Surat to resist encroachments on the Company's privileges at the time when the ships and cargoes of the interlopers had been detained in England, and prosecutions instituted against the owners and commanders.

41. This authority to the President and Council of Surat was, however, temporary, only that they might be enabled to seize the goods of the interlopers and allow the parties to recover by suits in Chancery in England; for by a commission from the King dated 6th February 1683-84, and from the Court dated 7th April 1684, Dr. John St. John was appointed Judge of the Court of Admiralty to be erected in the East Indies, and to have cognisance of all Admiralty cases within the Company's limits. This Court was to be held at Bombay, as being a possession acquired by the Crown, and by it vested in the Company in full property; it was to consist of the Judge and two Merchants—Company's servants. The Judge was to have a salary of £200 per annum, and allowances at the Company's table; he was to take cognisance of, and to try, examine, and decide on all cases regarding the interlopers or private merchants who might attempt, contrary to the King's orders, and in violation of the Company's exclusive privileges, to trade or establish factories in the countries within their limits; all the processes were to be in English, and not in

Latin, and a table of fees was to be framed to prevent arbitrary charges on the King's subjects or the Natives of India.

42. The capture of Bantam by the Dutch led to the declaration of the Court that in future they would consider Bombay as an independent English settlement and the seat of the power and trade of the English nation in the East Indies—a resolution which was incompatible with the retrenchments, civil and military, ordered in the two last seasons.

43. The resolution at Bantam had induced His Majesty and the Court to send out a naval and military force, the object of which was to oblige the native powers to conform to subsisting treaties, and to assist in the restoration of the King of Bantam, who had been dethroned by his son, instigated by the Dutch. When this service should be effected, the soldiers embarked for that purpose were to proceed to Bombay, and to form the third company on the military establishment of that island. Forty recruits also were sent to complete the two established companies, and the fortifications were ordered to be strengthened; and to add to the effective force of the garrison, two companies of Rajpoots of one hundred men each were to be embodied, and the men selected from the countries not subject to the Mogul, to Sambajee, or to the Portuguese—to be commanded by officers of their own caste,—to use their own arms,—and to have a weekly pay, half in rice and half in money, and when on duty, to be blended with the regular English troops.

44. To defray the charges of this enlarged establishment, taking the Dutch at Batavia as an example, and proceeding on the practice at St. Helena, a duty of half a dollar was ordered to be levied on all ships anchoring in the Harbour to defray the charges.

levied on all ships anchoring in the harbour (the Company's ships not excepted); a duty on all fishing boats of one rupee each per annum, whether those of the island or those of the Portuguese at Tanna, to counteract their exactions; and one rupee per annum on each shopkeeper on the island.

An exception, however, was made of the ships and boats of the

subjects of the Mogul and of Sambajee to prevent disputes with these powers.

45. With these sources of revenue, the Deputy Governor and Council were to endeavour to liquidate the debts incurred on the dead stock estimated at so large a sum as £300,000, that the revenues and debts might balance each other.

46. The orders of the Court to the President and Council of Bombay for the internal administration of the island were equally precise. As the Company had been vested with authority to exercise admiralty jurisdiction and martial law, the Court resolved to bring to justice any of their commanders who might be guilty of disobedience, or refuse to act against their enemies, whether European interlopers, or Dutch or Portuguese rivals; and the President was ordered to enforce strict discipline in the troops, either regular or militia, that the force on the island might be adequate to its defence against any enemy.

47. To defray the charges of this naval and military force, the customs on all goods were increased to 5 per cent., and the President and Council were in future to observe such orders as they might receive from the Secret Committee appointed for the purpose of rendering the orders of the Court less known to their domestic or foreign enemies. In all treaties with the country powers, it was to be a preliminary that they should deliver up all English subjects in the territories without reserve (whether they were Company's servants or not), to the respective Presidencies or Factories which might demand them.

48. With the object therefore of rendering Bombay an efficient regency and seat of trade, and to enable it to protect the agency left to keep up the commercial relations between Surat and Bombay, it was ordered that a dry dock should be built, and a duty of one dollar per ton levied on every ship that might be repaired or careened at it; that a wharf and pier should be erected for loading and unloading vessels, and rates established, to be paid on landing or shipping goods; that, to make the

1685-86.

The Customs increased to Five per Cent. to defray the charges of a Naval Force.

1688-89.

A Dry Dock to be built, and a duty of one dollar per ton levied on every Ship repaired in it.

A Wharf and Pier erected.

revenues balance the charges, a progressive duty should be imposed of *from one shilling to two shillings and six pence on every house in Bombay*; that the English inhabitants not in the Company's service should be liable to a duty of consulage; that a post office should be established, and reasonable rates for letters imposed, either in the island or sent or received in the Company's commercial stations; that an insurance office should be constituted on the same principle as that at Fort St. George; that the fortifications should be increased, and the garrison strengthened, by recalling all Europeans who might be in the service of the native powers, and offering to such men encouragement to engage in the Company's military service, because, from having constitutions habituated to the climate, they would be of more use than recruits brought from Europe, "one seasoned man being worth two fresh ones."

49. At the commencement of this year, the Siddee's fleet and army invaded Bombay, and got possession of Mahim, Mazagon, and Sion, and the Governor and his garrison in fact were besieged in the Town and Castle, and unable to take any measures for carrying into execution the orders of the Court for the improvement of

the island; and it was not till the 6th May 1690 that orders were sent from the Governor of Surat to the Siddee to evacuate Bombay, or till the 22nd June that he quitted the island, and the English again took possession of Mazagon, Mahim, and Sion.

50. During these public transactions it was impossible the measures recommended by the Court for improving the revenue of the island could be carried into effect. The natives, it was found, would not undertake the coining of the money or managing of the Mint, as it had been supposed they would; and during the period of actual or threatened invasion, the revenues from lands or houses

A duty from one shilling to two shillings and six pence imposed on every house in Bombay.

English inhabitants not in the Company's service liable to a Consulage duty.

A Post Office to be established,

and an Insurance Office.

1688-89.

The Siddee's Fleet invade Bombay and take possession of Mahim, Mazagon, and Sion, and the Governor and Garrison besieged in the Town and Castle.

The Siddee evacuates the Island.

These events frustrate every endeavour to improve the Island and Revenues.

could not be collected, or the projects of establishing a post office or insurance office attempted, hence it was impossible to raise a revenue equal to the Company's estimate, which had erroneously been adopted, in imitation of the Dutch, without reflecting that what had been practicable in old establishments could not apply to Bombay, as yet only held by the Company only for a short time, and during that period exposed to the insubordination of the garrison and inhabitants, and to opposition by the Portuguese occupying the stations from which supplies could be brought to the island, or liable to perpetual claims of invasion by the contending powers in the neighbouring continent of India.

51. After explaining the general circumstances of Bombay, the Deputy Governor and Council reported that the *Jesuits* on the island had been *active during the invasion of the Siddee in promoting his views, and therefore that they had seized on all the lands owned or occupied by them*, but had deferred any final decision on this subject till the arrival of the President from Surat, who would judge of the claims of those people, and restore their lands to such of them as could exculpate themselves, or confirm the right of the Company to such portions as had been the property of the guilty. This measure, however expedient, it was feared might induce the Portuguese to attack the island, but it was kept in as good a state of defence as was practicable.

52. As the revenues were essential to the maintenance of their civil and military servants and the preservation of the trade, the Court directed that they should be improved by every practicable means, and explained that the *measure of confiscating the lands of those who had deserted them during the invasion of the island had already been justified by the precedent of Signor de Tavora, which had been decided by Charles II. and the Privy Council twenty years before the case occurred, but desired that the lands might be restored to such of the claimants as might be found innocent.*

53. This resolution appears to have originated in the conduct of

the Portuguese inhabitants of Bombay, who, during the Dutch war and that with the Mogul, refused to assist in the defence of the island, and claimed exemption from military service. In this claim they were supported by the Portuguese Envoy in London, who presented a memorial in their favour to the King, founded on rights under the

Important explanation by the Court of the nature of the tenures and of the reservation made by Aungier's convention of the military service under which the lands are held.

former Portuguese dominion at Bombay. In answer to this memorial, the Governor and Committees of the London East India Company stated *that* the inhabitants of the Island of Bombay, while they were subject to the King of Portugal, paid one-fourth part of the profits of their lands as a quit-rent, which President Aungier, soon after the island came into the possession of the Company, commuted for a quit-rent of twenty thousand xeraphins per annum, reserving to the Company, as representing the King, the right to the military services under which the lands were held by the Crown of *Portugal*; that during the late war with the Mogul, not only the payment of this quit-rent had been refused, but the right to the military services denied, and during hostilities the Portuguese inhabitants had, *by refusing military aids, forfeited*

A refusal of those services, a forfeiture of the lands.

to England, had become subjects of the King, to whom by their *tenures* they were bound to afford *military* services, either personally or by substitute, more particularly in cases of invasion; and that the

Lands held by ecclesiastics equally bound to furnish military service.

*lands held by ecclesiastics were equally bound to furnish military service either by the possessors or by their substitutes.* If therefore it was considered that the island, since being granted to the Company, had required for its defence, by fortifications and by garrison, so large a sum as £400,000, particularly during the wars between the Moguls and the Hindoos, this claim of exemption from such service was unreasonable, more particularly when the practice of the native inhabitants of Madras and of all the other English,

The Tenure general in every Colony in India.

Dutch, French, and Danish colonies *in India* could be adduced as evidence that *such services were admitted and general.*



54. The Court next approved the retaining the *Gentoo soldiers* in their service, and *assigning them portions of lands for their maintenance*. They were also to be allowed half pay; but in this case *the Company were to receive half the produce of their lands*—a regulation the more expedient from the difficulty of finding a sufficient number of recruits in England to strengthen the garrison.

55. Sir John Gayer, appointed Governor of Bombay, on his arrival, on the 17th May 1694, found the Company's government and trade in a miserable condition; for the revenue had been reduced from 62,500 to 17,000 xeraphins, and the principal source of it, or the coconut trees, from being totally neglected, had yielded a small sum only; the orders of the Court respecting the forfeited estates had been obeyed, and the lands restored to the proprietors who had not actually assisted the Siddee in his invasion, on condition of paying one-fourth part of the produce for the first year as a fine. Sir John, however, determined to make Bombay the centre of the English trade in the west of India.

56. No further information is traceable from Bruce's annals regarding the revenues or the nature of the landed tenures of Bombay. These details are, however, sufficient to lead to these important conclusions.

57. That the King's rights having been omitted to be defined from the indefinite conditions on which the island was taken possession of, it was impracticable to ascertain which of the inhabitants were legally possessed of sufficient titles to their estates, no stipulation having been made relative to the King's sovereignty of the soil; that some of the best estates refused to pay rent, and *produced titles which could not be disputed, though believed to be fictitious*; that the Jesuit College at Bandora claimed a considerable extent of land and of rights in the island; that the claims to lands near the town had been nume-

rous, but that it would require time to adjust the foundations of those rights before houses for the settlers and merchants could be erected ; that the fishermen's huts were removed from the town, and houses built on their site for the settlers ; that discontents and disputes having arisen as to which property belonged of right to the Crown and what to the people, Governor Aungier entered into the convention of 1674, which appears to have allayed those apprehensions by recognising the whole of the lands in a state of cultivation to be private property,—reserving, however, to the Company the right to the military services under which the lands were held of the Crown of Portugal.

58. It does not appear that, from the date of Aungier's convention to the year 1707-8, the lands were allotted to the new settlers under any specific leases. Within that period of thirty-three years the population must have increased, and crown lands been proportionably assigned for their accommodation ; but we are ignorant of their extent and the terms on which they were leased out, or whether they paid any rent. But I am inclined to think not, and that until 1718, the new tenants held their lands as feuds at the will of the lord under an implied engagement to afford military service when required, and that in that year a money rent was substituted, as will be hereafter more particularly noticed.

59. Although no satisfactory result can at this distant period be drawn from an attempt to ascertain the precise extent of the lands belonging to individuals and to the sovereign respectively at the date of Aungier's agreement, I have yet deemed it proper to enter upon the inquiry. The statistical survey of the island, noticed in the 25th paragraph, would at once have solved the difficulty ; but as it is not within our reach, we must have recourse to other evidence, and though it is utterly impossible to define, we shall yet be able to form a pretty accurate conception of the extent of the property belonging to the public at that period.

Conjecture as to the nature of the tenures created since the conclusion of Aungier's agreement to 1718.

The impracticability of correctly defining the extent of property belonging to individuals at the date of Aungier's agreement.

60. To judge from the small amount of the compromise, including the quit-rent, one would conclude that a very small part of the island was in a state of cultivation at the date of Aungier's convention, even admitting that the estates were considerably under-valued, of which I entertain not a doubt. This conclusion derives support from the smallness of the population at the period of the cession, which did not exceed ten thousand souls, and is further confirmed by the small amount of the revenues derivable from tobacco and spirituous liquors. I entertain, however, no doubt that the whole of that population resided where they could be best protected—near the Castle of Bombay, the Fort of Mahim, and Mazagon.

61. I annex to this report an extract from the Travels of Doctor Tryer, begun in 1672, and finished in 1681, which affords a very minute description of the island at the period. Tryer also states that in making over the island to us, it was stipulated that the royalties should belong to the King, but every particular man's estates to the right owner; that on Cooke's landing in Bombay in 1664, "he found a pretty well-seated, but ill-fortified house, four brass guns being the whole defence of the island, unless a few chambers housed in small towers, convenient places to scour the Malabars who were accustomed to seize cattle and depopulate whole villages by their outrages." "About the house was a delicate garden, voiced to be the pleasantest in India, intended rather for wanton dalliance love's artillery, than to make resistance against an invading foe." Such was Bombay Castle in the time of the Portuguese,—“the walks, which were before covered with nature's verdant awnings, and lightly pressed by soft delights,” were, on Tryer's arrival, open to the sun, and loaded with the hardy cannon. “Bowers dedicated to ease” were turned into bold ramparts, &c. “Within the Fort, were mounted 120 pieces of ordnance, and in other convenient stands 20 more, besides 60 field pieces ready in their carriages to attend the militia and bundaries, &c. At a distance enough (from the Fort) lies the town, in which confusedly live the English, Portuguese, Topazes, Gentoos, Mores, Cooly, and Christians—most fishermen. *It is a full mile in length*; the houses are low and thatched with oleas of the cocoa trees; all but a few the Portuguese

Grounds for believing but a small part of the Island to have been in a state of cultivation at that period.

Tryer's account referred to and quoted.

left, and *some few the Company* have built. The custom-house and warehouses are tiled or plastered, and instead of glass, use panes of oyster-shells for their windows; there is also a reasonable *handsome bazar* at the *end* of the *town*, looking into the field, where cows and buffaloes graze. The Portuguese have a pretty house and church, with orchards of Indian fruit adjoining. The English have only a burying place called Mendam's Point, from the first man's name there interred, where are some few tombs that make a pretty show at entering the haven, but neither church nor hospital, both which are mightily desired. On the backside of the towns of Bombaim and Mahim are woods of cocoas, under which inhabit the bandaries (those

Oarts.

that prune and cultivate them), these *hortoes* being the *greater* purchase and *estates in the island for some miles together*, till the sea breaks in between them, over against which, up the bay a mile, lies Massegoung, a *great fishing town*, peculiarly notable for a fish called bumbalo,—the sustenance of the poorer sort, who live on them and batty, &c.; the ground between this and the great breach is *well ploughed*, and *bears good batty*. Here the Portuguese have another church and religious house belonging to the Franciscans. Beyond it is Parell, where

The present Parell House.

they have another church and demesnes belonging to the Jesuits, to which appertains Seain (Sion), manured by Columbeens (husbandmen), where live the Trasses or porters also, &c., &c. Under these uplands the washes of the sea produce a luntary tribute of salt left in pans or pits made on purpose at spring-tides for the overflowing, and when they are full are incrustated by the heat of the sun. In the middle, between Parell, Mahim, Sion, and Bombaim, is a hollow wherein is received a breach, running at three several places, which drowns 40,000 *acres* of *good land*, yielding nothing else but samphire; athwart which, from Parell to Mahim, are the ruins of a stone causeway made by Pennanees. At Mahim the Portuguese have another complete church and house; the English a pretty custom-house and guard-house; the Moors also a tomb in great veneration for a peer or prophet, &c. &c. At Salvesong the Franciscans enjoy another church and convent; this *side is all covered with trees of cocoas, jawkes, and mangoes*; in the middle lies Verulee (Worlee), where the English have a watch. On the other side of the

great inlet to the sea is a great point abutting against Old Woman's Island, and is called Malabar Hill, or rocky, woody mountain, yet sends forth long grass. At the top of all is a Parsee tomb lately reared; on its declivity towards the sea is the remains of a stupendous pagod, near a tank of fresh water, which the Malabars visited it mostly for. Thus have we completed our rounds, being in circumference twenty miles, the length eight, taking in Old Woman's Island, which is a little, low, barren island, of no other profit but to keep the Company's antelopes and other beasts of delight."

62. Tryer makes the population equal to 60,000 souls, "more by 50,000 than the Portuguese ever had—a mixture of most of the neighbouring countries, most of them fugitives and vagabonds."

The population is 60,000 souls by Tryer's account.

63. The correctness of the picture thus drawn of Bombay in the year 1671 must strike every one who examines it at this period. We find the inhabitants resorting to those forfeited places where they could be best protected, and at the same time carry on their trades as fishermen, merchants, &c. near the Castle at Mazagon and Mahim.

Accuracy of the picture drawn by Tryer.

64. In respect to the extent of private property at that period, it appears to me more than probable, from the description, "that at a distance enough from the Fort lies a town full a mile in length; there is a reasonable, handsome bazar at the end of the town, at the backside of which are woods of cocoas, being the greatest estates on the island;" that the whole space within the walls of the Fort was such, with the exception of the custom-house, warehouses, and the few houses built by the Company. The space at the end of the town looking into the field, where cows and buffaloes graze, I also consider as private property,—the foras ground probably dependent on the cultivated portion, inclusive of course of the house and church and orchards, belonging to the Portuguese. "The woods situated in the rear of the towns of Bombay and Mahim *for some miles together*" must have been private property, and also the ground between Mazagon and the great breach represented as being "well ploughed and bearing good batty." Parell and its demesnes belonged

The principal part of the present limits of the Fort must have been private property by that account.

to the Jesuits, including Sion, to which it appertained. The side where, Salvesong is situated, "all covered with trees of cocoa,

Tryer's historical account represents a greater portion of the Island in a state of cultivation than is inferable from the amount of quit-rent payable under Aungier's convention.

from the amount of the quit-rent stipulated for by Aungier's agreement.

jawkes, and mangoes," must also have been private property, inclusive of "the lands held by ecclesiastics." Tryer's historical account of Bombay certainly represents a greater portion of the island to have been in a state of cultivation than one would suppose

65. In regard to the crown lands we are left entirely in the dark,

The Crown lands described.

with the exception of the 40,000 acres of good land covered by the sea, Malabar Hill, and Old Woman's Island; but even supposing that more than a moiety of the island was in a barren state, and consequently public property at the period of the cession, a considerable portion must have

Orders under which alienations must have been made.

1668-69.

1679-80.

1690-91.

been alienated under the operation of the orders of the Honorable Court to invite strangers to settle on the island; to let the uncultivated land out on rent; to assign portions of land to Gentoo soldiers for their maintenance, the Company receiving half the produce. The lands, however, belonging to the Jesuits, to a considerable extent situated at Parell and its vicinity, including Sion, became the Company's by forfeit, with the estates belonging to those who aided the Siddee in the invasion of the island, but some of the lands were restored to such of the claimants as were proved to be innocent.

66. Rama Commattee's property was also forfeited to the Company at the commencement of the last century, and the result of the proclamation issued on the 5th July 1720, in consequence of the Portuguese obstructing the communication between Mahim and Bandora, and stopping our pattimars, requiring all persons who lived in other parts and had estates in the island to repair hither with their arms in the term of twenty-one days, on pain of having their estates confiscated, must have thrown some property into the possession of

Further forfeitures to the Company.

company at the commencement of the last century, and the result of the proclamation issued on the 5th July 1720, in consequence

of the Portuguese obstructing the communication between Mahim and Bandora, and stopping our pattimars, requiring all persons who lived in other parts and had estates in the island to repair hither with their arms in the term of twenty-one days, on pain of having their estates confiscated, must have thrown some property into the possession of

the Company ; for on the expiration of the limited time, none of the absentees appearing, the Veriadores were, on the 30th of July, ordered to enter upon and receive the produce of their estates, and those who had demands on such estates were referred

No account of them forthcoming.

to the Chief Justice of the Court of Judicature ; but we have no particular account of these forfeitures, nor whether any of them were within the walls of the Fort, except Rama Commattee's,\* which would appear to have been situated within those limits.

67. Though I am of opinion that on the conclusion of Aungier's agreement by much the greater part of the present limits of the Fort was private property, I am at the same time inclined to think that, in the progress of constructing the fortifications, property became the Company's by purchases and exchanges, but not at the early period conjectured by Captain Dickinson. The orders of the Court in 1669-70 to purchase the lands in the immediate vicinity of the Fort, provided the expense did not exceed £1,500, for which no small extent of ground could have been purchased in those days ; the further instructions of the Court in 1709-10 to cut down the *cocoanut* and *toddy trees for the space* of a mile from the Fort, and the exchanges which Government subsequently effected up to 1745, in which year alone the value of the property acquired by the Company within the walls and on the Esplanade amounted to Rs. 20,169, are strongly corroborative of that conclusion.

68. This attempt to define what was private and public property preponderates, I think, in favour of the former as far as respects the limits under consideration. The inhabitants and merchants would not have voluntarily agreed, as they did in the year 1716, to pay an additional duty of two per cent. towards fortifying the town of Bombay, nor would the landholders have agreed to pay a tax sufficient to complete one bastion, to be raised in a term of years, if their property had not been at that period situated within the space intended to be thus secured.

\* This property was sold on the 25th of August 1786 to Hurjeevun Surput for Rs. 22,600.

69. Admitting however, for the sake of argument, that the

The point, however, conceded; but the mode in which the Government has permitted individuals to occupy ground has converted the public into private property.

whole of the lands of Bombay appertained of right to the Crown either at the date of Aungier's convention in 1720, or even at any later period, still I am of opinion that the mode in which the Government has been in the practice of permitting individuals to occupy ground, or, in other words, that the custom of the manor has, upon every principle of equity, converted the public into private property,—lease into copy-hold tenures, and that the Company have forfeited whatever right they might have possessed to resume lands, or to alter the tenure which custom has established. This leads me to the second head of inquiry.

*Secondly.*—To develop the principles on which the Government has been in the practice of leasing to individuals ground, the property of the Company, and to ascertain whether those principles have been respected or departed from by the Government at any time, with the view to discover on what tenures it was the intention of the Government to allot lands to individuals.

70. It has already been shown that the island is held by the Company of the King in free and common socage, as of the Manor of East Greenwich on the payment of an annual rent of £10 in gold on the 30th of September in each year. I am inclined to think that the intention of the Government has been to grant lands to individuals upon the same tenure.

71. Though Aungier's agreement fixed the amount of the quit-rent payable to the sovereign, still the right to the personal services of the tenant was not commuted by that convention, but expressly recognised and reserved. Those services must, however, have been subsequently redeemed; for it appears, by a letter from the Court of Directors of the 5th of April 1715, that "the Veriadores entered into an agreement to excuse themselves from finding trained bands or militia in consideration of fifteen thousand xeraphins a year, and though the Court called on the Government to report if that was a sufficient equivalent, and if it

See 53rd paragraph exemplified by a comparison.



altered the ancient constitution of the island in such a manner as to prejudice the Company's interest, and whether, under that agreement, they thought themselves absolutely discharged from assisting in case of an invasion by an enemy," I have failed to trace any elucidation of that important question, or that any payments were ever made under that agreement. I should conclude not, as some traces of the payment would have existed at this period.

72. The ancient constitution of the island was therefore feudal, and the lord could claim the military services of the tenants, until the year 1718, when the rent services may be considered to have been substituted by a tax having been imposed "on *all the inhabitants residing within the town walls*, in order to reimburse the Right Honorable Company some part of the great expense and charge they had been at in fortifying and securing the said town."

73. This tax was no doubt imposed in pursuance of the orders conveyed in the 64th paragraph of the Court's despatch of the 21st of February 1717, when they reminded the Government of its promise to improve the ground rent within the city wall by letting leases *renewable* or *by fines* or *quit-rent*, or *whatever way* Government should judge most for the Company's interest; the consideration of their prodigious charge and the people's protection and liberty are very cogent arguments, if rightly managed, to convince every one why that ground ought to be valued higher than it otherwise would."

74. I consider the imposition of the tax in 1718 to have changed the ancient constitution of the island, and that the military services of the tenants were commuted by a quit-rent.

• 75. In 1731 an appearance of regularity and vigilance in the lords of the manor for the first time manifests itself. On the 3rd of December of that year a "mensuration of the ground within the town walls occupied by the English as well as black inhabitants made by a Committee of the Board, with the assistance of Captain William Saunderson, Clerk of the Works, and Ramjee and Rowjee, Purvoes, by order of Council, as laid upon the table, with a calculate of *quit-rent* and *ground-rent* which was and *has been*

Period when the ancient constitution of the Island was changed.

And an appearance of regularity and vigilance in the Lords of the Manor first manifests itself.

*hitherto paid* IN A MANNER ENTIRELY UNASCERTAINED, whereby some people have been prejudiced and others favoured, to prevent which abuse in future it was resolved that all persons that have a mind to build apply to the Land Paymaster, and signify to him in what part of the town and what sort of a house they design to build, and on the Paymaster's being satisfied that the spot of ground they have pitched upon is a proper situation for such a house, he is to grant them his licence for building, receiving as fees for the same two rupees and no more, provided the said house is built with stone and mortar and covered with tiles, and for such houses as are covered with cadjans, one rupee; and upon any of the inhabitants applying to the Secretary for a lease or certificate to ascertain their title to the house to be built by licence of the Paymaster, he is to grant them such a lease or certificate for the same on paying one rupee and no more."

76. On the 18th of May 1733 an attempt was made to introduce leases for years. I annex an extract from the records—"It being found by experience that little regard has been paid by the inhabitants within and without the walls to an order of Council made the 3rd of December 1731, directing that *all persons who have houses*, or hereafter may have any, should apply to the Secretary for a regular lease of the said house or houses, paying him one rupee as his fees for drawing out the said lease, it is agreed that we order a publication to be made, enforcing the said order, under penalty of dispossessing all such persons as shall not produce an authentic lease signed by the Secretary in six months from the date of the said publication, *ascertaining their right to the said house or houses and the ground they are built on;*" and it was on this occasion agreed that the Secretary in framing such leases grant a term of forty-one years, renewable on the party's paying a fine of half year's rent of the said house or tenement, according as the same shall be valued by the second in Council and the Collector of the revenues for the time being and the possessor."

77. Here we have an instance of one of those vigorous measures of Government to which so much importance is attached. A proclamation is issued requir-

Leases attempted to be introduced for limited period, but renewable.

The total failure of those measures,

ing all the inhabitants indiscriminately—those whose estates were secured under Aungier's convention not excepted,—to apply, on pain of forfeiture of their property if they refuse, for regular leases, which were to be granted for forty-one years, renewable on the payment of a fine. What did this injudicious, and, I may say, arbitrary proclamation produce? Nothing; for on the expiration of the six months, and the obvious grounds we do not find that any applications for leases were preferred, or that any forfeitures were declared. Was it to be expected that tenants who had obtained possession according to the custom of the manor would have taken out leases for forty-one years for lands which had descended in the family for upwards of half a century probably? The Government must have issued that proclamation without a thorough understanding of the nature of the landed tenures on the island.

78. Since the conclusion of Aungier's convention the lands have not been allotted upon any established system. I have been unable to trace that, up to the year 1731, a single square yard of the crown lands has been leased on conditions clearly descriptive of the nature of the tenure or of the intentions of the parties. In contemplating the lamentable state to which the island was reduced in the year 1717-18, measures of encouragement could alone restore and

See Mr. Macklin's opinion of the 10th of January 1814.

increase its population and establish its prosperity; and so late even as 1731, the resolution of the 3rd of November of that year will "show the intention of Government to have been to invite settlers on the principle of granting them land on a low fixed quit-rent in perpetuity." If the intention of the Government was to fix the quit-rent in perpetuity, their acts have been at variance with that intention.

79. Adverting in the next place to the proceedings of 1739, which led to the construction of the ditch round the walls of the Fort, which was in a most untenable condition, we find "that the principal merchants of the place, convinced of the necessity of putting the town in some state of defence, subscribed the sum of thirty thousand rupees towards the expense of this work, which was as much as could have been expected from that body, considering the low declined state of

trade."\* Apprehensions were at this period entertained of an attack from the Marathas, who had subdued the neighbouring country, and threatened the invasion of the island.

80. Upon this occasion the Government remarked on "the irregular practice that had obtained of planting trees and building houses, *through the permission or connivance of the Government*, within the distance prescribed for the safety of all regular fortifications, against which the necessary precaution having hitherto been entirely disregarded, it behoved the Board to come to such a resolution as may effectually prevent this evil in future, and obviate such irregularities and inconveniences as have arisen for want of a proper control in the buildings, works, and plantation of trees both *within* and without the walls, agreed that the following order be published, viz:—

"That no houses be made or rebuilt, nor any trees planted, within the distance of four hundred yards from the town walls, nor any houses erected within the said walls until the ground be surveyed by the Engineer for the time being, and by him to be recommended to the Land Paymaster for his approbation and leave."

81. By this regulation, which has been and is still strictly attended to, no person could repair or build within the walls of the Fort without the permission of the Government, or of its officers, who, it is to be presumed, would not grant that permission upon crown lands without authority, or without observing the rule prescribed in 1731 or in 1733, viz. "that upon any of the inhabitants applying for a lease or certificate, the Secretary, in framing such leases, was to grant one generally or for a term of forty years, renewable on the party's paying a fine of half a year's rent of the said house or tenement, according as the same shall be valued by the second in Council and the Collector of the Revenues for the time being and the possessor."

82. The result of these proceedings thus proves that between the years 1731 and 1733, two descriptions of leases were established, and must have been

\* In order to raise that sum, one per cent. was levied additionally upon the trade, which was subject to pay two per cent. contribution to the town wall until the amount be cleared.

granted, to what extent it is needless to trace, because the resolution of the Government to introduce leases for years renewable on the payment of a fine, has entirely failed, leases having been granted conformably to the rule established in 1731, and which is to this hour considered to be in force in the Collector's office. In proof of this, I annex copies of the leases granted to Mr. Henshaw and Hormasjee Bomanjee, which I shall hereafter have occasion again to bring to the notice of the Government.

83. On the 22nd of March 1754, another publication issued, directing that the name of every person purchasing a house within the walls be entered in the Collector's office before he enters on the premises. The reason of this is, however, explained, as it was difficult to recover the ground rent or to know the real measure of each house, few of the present possessor's names agreeing with the rent-roll.

84. A variety of other measures of a similar nature were pursued by the Government to ascertain and preserve the rights of the public. It is needless to quote them. I will admit that the Government has been in the practice of promulgating those notifications and proclamations annually, and denouncing the severest and the most arbitrary penalties on all those who failed to obey them. What good effects have they produced? None whatever; we are as much in ignorance of the royal rights on the island in 1814, as our forefathers were two hundred years ago. The mere issuing of a proclamation proves nothing; those futile and unmeaning measures appear to me as strong presumptive evidence against the Company. The proprietors of land have disobeyed, or rather disregarded, the orders of the Government in every instance, the penalties fulminated against any act of contumacy have not been exacted, and they still remain in undisturbed possession.

85. Not only would these facts, as it appears to me, make directly against the Company, and in favour of individuals, but the acts of the Government or of its official servants can be adduced as positive evidence against them.

86. I have examined the registry of sales and transfers of landed property from the year 1715 to 1801, and annex four statements which I have framed from those books. The deeds of sale or grants or leases of land are drawn out in general and indefinite terms, the grantees being responsible for the payment of the established ground rent. I enclose an abstract of those leases of property of all description within the walls of the Fort. There is one instance of a purchase of ground made by the Company on the 20th of February 1715; there is another of a lease for thirty-one years, renewable at any time after the expiration of fifteen years, on payment of a year's rent and more; but I have failed to trace a single lease made out conformably to the resolution of the Government of the 18th of May 1733; but sales of ground paying ground rent alone, which is considered as Company's property and the tenants holding at the will of the lord, have been repeatedly made, and within these four years too, by the express permission of the Governor, and formally registered. These proofs of conversions of public into private property, of *base* into copy-hold tenures, would make against the Company in any Court of Equity. We here have a clear and positive order of Council passed in 1733 for the grant of fixed and renewable leases for the preservation of public rights, and are yet unable to adduce a solitary instance in support of its operation; but as the order of 1733 could not justly have a retrospective effect, property acquired prior to that date may at least be considered of a permanent character. The tenants must have been aware of the firm and immovable ground on which they stood, and they appear to have formed a correct judgment of their rights. Whilst I view, on the other hand, all those threatening proclamations issued by the Government, without any proceedings adopted to follow them up, as most injudicious, and instead of operating the effect intended of recovering

Abstracts from the Registry of Sale and Transfers of Landed Property from 1730 to 1801.

Appendices 5, 6, 7, and 8.

No instance of a Lease granted conformably to the Resolution of 1733,

but many, where assessed ground supposed to be held at the will of the lord, sold by the permission of the Governor.

Conclusions thence drawn unfavourable to the Company's right.

the Company's rights, have produced a result directly opposite of weakening their claims, and of legalising those of individuals.

87. Let us estimate the merits of this important question on the basis of those proceedings of Government which have recently occurred, and which must be in the recollection of us all. Let us first review the proceedings of the late Town Committee appointed, when the great fire in 1803 occurred, to investigate the nature of the tenures within the town, when the question underwent the fullest discussion.

88. The Town Committee were directed to ascertain the right of possession or property in the tract laid waste by the conflagration. They were furnished with statements from the Collector's registry of the two descriptions of ground, public and private, affected by that calamity.

89. By a statement of the latter description of property in which the names of the proprietors are given, it appears that 29,880 $\frac{2}{3}$  square yards had been laid waste, which, at the rate of six reas the square yard, paid Rs. 448-0-28 to the Company, besides the pension; of the latter 45,867 $\frac{1}{3}$  square yards were laid waste, of which the rent, at eleven reas the square yard, amounted to Rs. 1,234-2-59.

90. Upon those documents the late Mr. De Souza remarked, in a letter furnished to the Committee, that "the private belongs to different people; it is subject to the payment of the pension, besides a rent of six reas per every square yard. The public ground belongs to the Company, and was given, I understand (observes Mr. De Souza), to the inhabitants in perpetuity for building their houses at the rate\* of eleven reas the square yard."

91. Mr. Hall, the Company's Solicitor, did not acquiesce in Mr. De Souza's view of the nature of the Company's ground. He was of opinion that the pensioned proprietors might claim a reasonable value for their ground, which, by the

• The proceedings of the late Town Committee revised.

Opinions of Mr. De Souza that the Company's ground was granted to individuals in perpetuity.

See opinions dated 17th and 18th of March 1803, Town Committee's Records.

\* Mr. De Souza is here wrong.

Mr. Hall, the Company's Solicitor, of a different opinion.

The assessed Proprietors merely permissive tenants-at-will, unless they can produce Leases conferring a superior title.

original deed, is to be regulated by the pension ; but the latter species of proprietors can have no such claim on the Company, being merely permissive tenants-at-will, on payment of a yearly assessment, unless any such tenants can show leases from Government conferring a superior title.

92. In the progress of their inquiries, the principal native inhabitants attended the Committee by invitation, and the plan for rebuilding the town having been submitted to them, it met their approbation ; but their chief anxiety rested

The result of a conference between the Committee and the principal Native inhabitants.

on the certainty or assurance of compensation with respect to the property in general that might be affected by its appropriation to public roads and military purposes, without entering into any distinction of public or private property, of pension or assessed land,—“ the former paying six reas per square yard of quit-rent, and the latter eleven reas.”

93. Mr. Hall drew up a case at length, with the view as of tracing the tenures of the Honorable Company's property and those of individuals ; from that statement it is only necessary to make the following extract, on which the opinion of the Company's Counsel was desired.

94. Whether the proprietors of assessed houses destroyed by the late fire have any and what claim, under the circumstances stated, to compensation or allowance from the Company for the ground or sale of such houses, unless they produce some grant or lease by the Company to the same ?

The points applicable to this inquiry quoted.

95. The Company's Counsel was also requested to suggest what legal and effectual measures should be adopted for ascertaining, in future, the Company's right to the property they hold on the island, as distinguished from that of individuals ; and whether, in this view, it may not be a proper and desirable object to have a full and accurate plan of the whole island, distinguishing the Company's property from others, and that they may be at liberty to raise the rates of such property possessed by the tenants-at-will or others, where the present state and value of the land will bear it ; and particularly in



the event of any new town being marked out on their property for the residence of such of the inhabitants as may be excluded from the Fort ?

96. Mr. Thriepland was of opinion that the Company had no lands in a state of cultivation or improvement in 1674, but that whatever property was at that time waste and unoccupied, of which there could not fail to be then a very
- ✓ Opinion of Mr. Thriepland in favour of the Company's right to resume the assessed property.

great proportion all over the island, belonged of right to the Company, in virtue of their grant from Charles the Second in 1669. That in process of time, as population and wealth increased, this waste property would be occupied by individuals, at first most probably without attracting the notice of the Company's Government, or leading them to any demands on the tenants. But when the extent of property thus brought in became considerable, and the prosperity of the cultivator, keeping pace with his improvements, seemed to call for a return on his part to the lords paramount of the island, a rate of payment would be established which, while it increased the revenue of the Company, kept alive the remembrance of their right of ownership in the soil. Lands occupied and thus possessed, whether fenced with walls or covered with buildings, could never, in Mr. Thriepland's opinion,\* *by any length of time become the*

The Law of England supports the conclusion.

*property of the tenants.* By the law of England a grant or title of one sort or another is, in all cases\* of land, that indispensable foundation, wanting which a prescriptive right cannot possibly reach, and that if the Company's records make no mention of such grants, he thinks it extremely improbable that they ever existed; that with respect to deeds of transfer, the house alone was transferred, the right to the ground remaining with the Company; that the houses having been destroyed, the sufferers had no claim in *strict law* to any compensation for being deprived of that which was never their's, although they were permitted to enjoy the use of it from year to year on paying a certain annual tribute or acknowledgment to the real owner.

97. At the same time it is evident, observes Mr. Thriepland, that

\*In his report of the 3rd of September 1805, Mr. Thriepland will be found to attach some importance to "length of possession and other circumstances" in favour of the tenant.

those who purchased houses within the Fort, especially of late years, paid more for them in consequence of their situation than they would otherwise have done, and in that view certainly have some reason to complain when the site which raised the price they had to pay is taken from them without an equivalent, &c.

Qualifies his opinion in favour of an equivalent being paid for the site.

98. Taking these circumstances, and reflecting that much outlay of permanent advantage to the ground (such as digging of wells, &c.) may have been made by the late possessors, which the Company is certainly bound to make good in renewing possession of the soil, &c.,

Recommended by every motive of humanity and sound policy.

every motive of humanity, to say nothing of sound policy, where the welfare of so great a proportion of the trading part of the community is concerned, must recommend the measure of compensation to the Company's adoption, &c.; and while Mr. Thriepland agreed with the

A general Survey of the Island in due season advisable.

Committee in thinking that a general survey of the island, for the purpose of increasing the revenues derived from it, extremely advisable, it was evidently very much to be wished, for the present, to avoid whatever could create discontent of any kind among the natives, or have a tendency to prevent those wounds from healing to which time alone could apply a perfect cure.

99. The plan for rebuilding the town having been determined on, and attained a state of advanced progress, which had excited the attention of the natives, the most wealthy individuals among them formed a combination to resist, by legal process, any mode of lining out the new streets which should tend to intersect their old foundations, or to prevent their rebuilding on them. Under these circumstances the

A combination of the Natives to resist, by legal process, any measure that shall deprive them of their old foundations.

Further opinion of Counsel called for.

further opinion of Counsel was required, "whether Government might, under all the inducements for the future security of the fortress which had led to the course of conduct objected to by the natives, proceed in carrying the same into execution without risk of incurring material expense in pecuniary compensations to the inhabitants, who might prosecute, or whether he considered the said inhabitants to be at all events entitled

to rebuild on their old foundations, and thus debar the Government from the adoption of those measures which were deemed essential to the security of the garrison.”

100. Mr. Thriepland continued to think that the ground occupied by those who paid assessment was at the disposal of the Government, and that no opposition from proprietors of this description need be regarded, further than that they had an undoubted right to be indemnified for any outlay they might have made either of permanent utility to the soil, or from which their successors therein can derive advantage, &c.

States that no opposition need be apprehended, provided full indemnification be made.

101. The Town Committee expressed a decided opinion that the plan should be adhered to, and pursued with firmness, vigour, and expedition; they were aware that many instances of resistance would occur, but they pledged themselves to exert all their diligence, and to apply a remedy for every difficulty, expressing a hope that when the intentions of Government should be once promulgated as an absolute determination, many of the supposed obstacles would disappear, and a conviction be established in the minds of the inhabitants that their convenience and the public security were the grand and only points which the proposed arrangements were intended to embrace.

The Town Committee urged the prosecution of the Plan,

102. It appeared, however, to the Committee on further consideration that the obvious and liberal line of policy to be adopted by the Company was this:—Let the division of the new allotment be made among the pensioned proprietors, agreeably to the extent of their former possessions, as near as circumstances would admit, and those who desire more can purchase from others who may be inclined to relinquish their dwellings within the walls; as this might be reckoned an indulgence, they should be satisfied even with a deficiency (if such should arise) of a few feet, and their apparent title to compensation could only be for such deficit; but if, on the other hand, this class of proprietors insisted on a high value for their ground, it might be objected\*—

\* This is a very contracted view of the question. The Court will be found to have considered the compensation on more just principles.

1st.—That under the deed they are only entitled to abatement of pension.

2nd.—If an equitable principle is adopted, the value may be referred to a sworn Committee,—two to be Europeans and two Natives.

103. When the pensioned proprietors are thus satisfied, the Company may put up the remaining space to be built to public sale, in such lots as might be best adapted for the convenience of every description of purchasers, and divide the proceeds among the assessed proprietors, in full of all their claims, allowing them in the meantime to withdraw the materials remaining of their houses ; thus the Company appropriate every part of the ground to the former possessors agreeably to their right, and neither claim nor derive any benefit from it.

104. The Committee explained, on this occasion, that the indulgence proposed to be granted to the assessed proprietors should be understood to arise from a consideration of the losses they have sustained by the late fatal calamity of fire ; and as this indulgence might at first sight appear to put them on a footing with the pensioned proprietors, who may have a claim upon the Company, the Committee proposed that the line of distinction to be drawn between them shall be this, namely, that the pensioned proprietors shall have the full extent of their former ground allotted them, and the deficiency to fall upon the assessed property.

105. At about this stage of the discussions, a proceeding occurred which was of all others the least calculated to lower the expectations entertained by the inhabitants of a full and marketable compensation for their ground. The Town Committee required the space on which a house belonging to Mr. Hornby had been erected, near to the Mandavie Custom-house, for the new barracks ; they wrote to his agents that, as it was deemed by Government expedient, for the public good, to take immediate possession of the Company's ground on which the house lately belonging to Mr Hornby, near the Mandavie, stood, the Committee requested to know what valuation

Notwithstanding these opinions, the Government purchase a spot of ground belonging to the Company, on which the improvements have been destroyed.

the agents affixed to the remaining materials of the buildings,—the ground itself appearing, from a reference to the Collector, to be indisputably the property of the Company.

106. The agents replied that they had no power of relinquishing Mr. Hornby's claim to the ground on which the house stood, nor could they feel warranted, without his authority, in disposing of that building for the value of the materials, since the premises could be rendered very valuable to the proprietor for a trifling expense ; that they had, however, applied to England for instructions ; that it was impossible for the agents to give up such a valuable property and right in the manner required by the Committee, the more particularly as, from the documents the agents had seen, they could not view the Company's rights in the same light with the Committee.

107. Here, then, was a case which, under the opinions that had been delivered, ought to have been prosecuted to issue. It took, however, a different turn. The agents were informed that the urgency of the public service would not admit of the delay of a reference to England, and it was proposed to submit the claim to arbitration. The agents waived the proposal, but expressed a desire not to throw impediments in the way of the public service, and therefore, under a representation of the value of the property, proposed to accept Rs. 20,000 to save further discussions.

108. From a measurement of the *foundation*\* of this property, it was calculated that to set up as many and such walls, pavements, &c. as were standing, would probably cost Rs. 17,549-0-36 ; the Committee at the same time expressed an opinion that, situated as the property was, and believing, as they did, that no title whatever could be shown to the ground, *the demands of Mr. Hornby's agents were very exorbitant*, though it might, perhaps, be better to adjust the business at once, than leave an existing claim against the Company which might lead to an expensive law suit, when the difference of claim was so small from the estimate. The ground was required for the new barracks, and the property was therefore purchased by the Company for the sum of Rs. 20,000.

\* Every other spot of ground was upon the same principle of calculation equally valuable.

109. It is not necessary to trace any more of the proceedings of the Town Committee upon the subject of rebuilding the town; it is sufficient to state that, notwithstanding the decided opinion offered by the Advocate General in favour of the right of Government to resume possession of the assessed ground, and the opinion of all, of the necessity of such a measure, the efforts of the Town Committee to carry their plans into effect, as well by threats as by persuasion, entirely failed. The natives ultimately succeeded in their opposition, and in the object of rebuilding on their old foundations; all the Committee could do was to limit their houses in respect to height and taking off from each front a portion of ground for widening the streets, which the natives readily conceded.

110. The dates of the correspondence with the Honorable Court upon this subject are quoted in the margin. On the question concerning the right of pension proprietors to rebuild on their old foundations, and of the assessed proprietors to indemnification for improvements, the Court observed "we must think with the Town Committee, in opposition to the opinion of our standing Council, that the agreement of 1672, between Government and the pension proprietors, clearly proves that Government might resume for public purposes any part of the lands held by them on making a proportionate abatement of the pension or rent,\* and paying a valuation for the property standing thereon, with respect to the assessed proprietors, as they have always been considered merely as tenants-at-will and liable to be removed; whenever "the land might be wanted for public purposes, they can have no claim of compensation but for improvements, which, in the present instance, are destroyed."

A review of the correspondence with the Court on the subject.

Their opinion that assessed Proprietors liable to be removed when the Lands are wanted for public purposes, compensation being made for improvements.

111. On being subsequently informed of the opposition made by the natives to the various plans and modifications made by the

\* See Note to the 100th paragraph.

Committee to meet their prejudices, the Honorable Court directed that, "should the inhabitants still obstinately refuse to accede to such regulations as are essential to the future safety of the garrison, and the true interest of the community, and persist in their endeavours to gain possession of the sites of their former habitations, we direct that you take the earliest opportunity of advising us of the same, and that in the *interim* you use your utmost endeavours to delay, or, as far as may be practicable, to prevent, their rebuilding until you receive our further orders."

112. By comparing, however, the whole of the correspondence with the Honorable Court on the proceedings for rebuilding the town, it is obvious that they had no objection to the natives occupying their former ground within the Fort, provided they consent to "such regulations as, in the opinion of Government, are essential to the future safety of the garrison, and the true interests of the community." These objects they plainly think are perfectly compatible with permitting a native town within the walls of the Fort, though not with allowing its inhabitants to occupy the exact sites of their former habitations, and it is therefore only in the event of their insisting on this, and consequently refusing to give up any space for widening of streets, &c., that they direct "the utmost endeavours to be used to delay, or, as far as may be practicable, to prevent, their rebuilding until the further orders of the Court are received."

113. In reviewing the result of those proceedings, the sound policy which dictated the observance of a moderate line of conduct towards the inhabitants must be applauded. The assessed ground had been mortgaged in many instances, and it was therefore a species of property as valuable in the market as the pension. Had the Government brought the question of the right to resume the ground to legal issue, and succeeded, they would have gained a barren property, but lost, perhaps for ever, the unlimited confidence which the native inhabitants have hitherto reposed on the good faith and liberality of the Company. They would at once have seen that the acts and the long

train of encouraging measures under which this island had risen from a state of barrenness to its present height of wealth and prosperity were founded on disreputable views,—on acts ostensibly liberal, but covertly designed to ulterior advantages; but after purchasing Hornby's property, which was, in fact, paying for the ground exclusively, for the walls and materials were not worth the expense of

The compensation due to the Proprietors of the assessed ground estimated at five lacs of Rupees.

removal, the Government could not resume the ground of the other assessed holders of land without awarding a compensation, which was estimated at five lacs of rupees.

114. I will now adduce two important instances where ground has recently been granted to individuals within the Fort. They are important because the individuals to whom the grants were made have expended large sums of money upon the premises, upon the faith, no doubt, of their possessing a permanent right in the soil.

115. Mr. Henshaw, on the 30th of April 1798, solicited the grant of a spot of ground within the town on lease for the term and duration of the Honorable Company's agreement with Mr. Sabatier, whereon to erect an improved hydromechanical machine for compressing and retaining cotton wool. Instead of granting Mr. Henshaw a lease on the terms solicited for fourteen years, which I understand to have been the duration of the agreement with Sabatier, the Government directed the Collector "to adjust with Mr. Henshaw the terms of

Mr. Henshaw's.

The Collector accordingly granted the customary lease, indefinite as to the period, putting Mr. Henshaw in possession of 2,078½ square yards of ground, on condition of his paying annually to the Company Rs. 57-0-58, being the usual rate of quit and ground rent, calculated at eleven reas the square yard.

116. The original speculation on which the grant was solicited having failed, Mr. Henshaw applied, in May 1805, for permission to convert the buildings into warehouses. The Town Committee waved the delivery of an opinion upon his application, but the Govern-



ment agreed "to his retaining the ground granted to him for erecting his cotton presses, and to his converting the cotton premises into warehouses." Mr. Henshaw accordingly converted those spacious buildings, situated in the most central and advantageous part of the town as to trade, into valuable warehouses, the construction of which has cost him from first to last nearly two lacs of rupees.

117. The other instance will show that another spot of ground within the Fort of equal value, and which the Government might at one time have sold for at least fifty thousand rupees, has been made over to Hormusjee Bomanjee on similar terms. It was at first determined to sell the ground to Hormusjee at the rate of Rs. 12 a square yard, on his paying annually a quit-rent to the Company, provided it was usual to reserve such quit-rent on purchased ground within the garrison; but there being room to doubt the expediency of the Company's selling any ground belonging to them within the garrison, of which it was supposed scarcely any precedent could be found, the Town Committee was ordered to inquire into the practice that had hitherto obtained in that respect, and if it should be found in favour of leasing rather than selling, they were to settle with Hormusjee on that footing accordingly.

118. Leasing appearing to have been the practice, he was therefore put in possession on the usual "mode observed in putting any person in possession of ground belonging to the Honorable Company within the Fort, viz. by a grant or lease from the Collector without any definitive period being specified, the party or parties being thereby rendered responsible for the payment of the established ground rent of eleven reas the square yard annually." For this valuable ground, situated behind the Theatre, Hormusjee therefore pays an annual rent of Rs. 64-0-39. He has built a spacious family residence on it, at an expense of rupees one lac and a half probably.

119. Besides these, the statement No. 7 will show other instances where applications for ground have been complied with on similar terms. That these grants, or rather the titles to the ground, have been respected by the Government, the proceedings of the Town

Statement of other similar instances.

Committee afford sufficient evidence; nor can I trace an instance where these titles have been successfully or ever attempted even to be resisted. There are, however, many instances where the Government have stamped the validity of these grants by purchasing what is termed assessed property without bringing forward any claim of right to the ground, for the value of which the proprietor had the sole and exclusive advantage.

No instance where these grants have not been respected by the Government.

120. It is an extraordinary fact that the principal part, if not the whole, of the landed property which the Company now possess within the walls they have acquired by purchase, and that within the memory of many of the inhabitants now living. Having purchased all the ground they now possess within the Fort of those who were considered to be tenants-at-will, it is rather too late to attempt to establish a right to resume the property of that description at their will and pleasure.

The principal part of the Company's property within the Fort they have purchased from Tenants-at-will.

121. A part of the extensive range of buildings appropriated for the accommodation of the Secretary's Office was in 1764 purchased of Mr. Whitehill for the sum of Rs. 45,000. It appears by the Collector's books to have measured 2,133½ square yards, and paid Rs. 32 to the Company at the rate of six reas per square yard. It is within the recollection of some of the inhabitants now living, that the site of the Secretary's Office was, previous to the year 1764, a tank, which was filled up by Mr. C. Whitehill, and the house in question erected thereon.

1764.  
15th October.  
23rd October.

The Secretary's Office purchased.

122. Mr. John Hunter in the same year tendered his house, with all the warehouses, stabling, and two large compounds, being the premises formerly designated the Second's House, and now appropriated to the meeting of Council and for the Sudder Adawlut, for the sum of Rs. 60,000, which was purchased upon the report of a Committee showing that the Company would by the two preceding purchases save Rs. 1,766 per annum; the one was rented by Government

The Guard's House, now the Sudder Adawlut's Office and Council Chamber.

for the Secretary's Office, and the other possessed advantages more than adequate to the warehouses rented by the Company. It measured 2,766 $\frac{1}{3}$  square yards, and paid Rs. 4-1-2 rent to the Company, at the rate of six reas per square yard. 41-0-

123. A house and back apartments adjoining the Marine House, with the warehouses underneath on both sides of the compound, measuring 2,311 $\frac{1}{2}$  square yards, were purchased by the Government of Mr. George England in 1766, as being conveniently situated for carrying on the different branches of the Marine business, and for the reception of stores, for the sum of Rs. 27,675. Prior to that period, that is, ever since the year 1748, Mr. Mitchel Razor rented the ground of the Company, for which he paid Rs. 22-2 per annum.

124. The warehouses in which the military stores had for some years been kept were purchased by the Government in the year 1766, at public outcry, for the sum of Rs. 10,000; the Company at the time rented those premises at the rate of Rs. 225 a month; a house where the military stores were lodged was also bought of Mr. Hunter. In the register for 1756 these premises appear in the name of Mr. Thomas Byfield, and in the year 1764, Byfield appears to have sold it to the Company. The premises measured 400 square yards, and paid rent at the rate of six reas per square yard.

125. The Secretary's house was, on the 22nd of March 1780, bought by the Government of Mr. Secretary Ravenscroft for the sum of Rs. 20,000 as a residence for the Secretary. The first person who appears by the Collector's books to have rented this ground of the Company was Samuel Hough, on the payment of the quit and ground rent of six reas per square yard. In 1761-62 Hough sold the property to Captain G. England. England, in 1766-67, sold it to Maneckjee Limjee; from him it passed in 1773-74 to Mr. Secretary Skipp; Mr. Ravenscroft bought it from Mr. Skipp in 1779-80, and sold it, as above, to the Company.

126. By the register book it, however, appears that Mr. Skipp bought this property of Mr. John Hunter on the 17th of November

1772, for the sum of Rs. 17,000, the deed of conveyance purporting that Mr. John Hunter sold the dwelling-house, out-houses, *compound*, and every appurtenance thereunto belonging to his property, to Mr. Skipp, his heirs, &c. *for ever*; the boundaries of the premises are specified.

127. Nanabhoy Byramjee must have been a part owner of these premises; for immediately following the registration of that conveyance, there is a certificate from that person purporting that he had, on the 13th of November 1772, sold to Mr. George Skipp the house he inhabited in Church Street for the sum of Rs. 17,000, the amount of which was to be paid to Mr. John Hunter, who was to give a deed of sale for the same, Nanabhoy Byramjee binding himself to execute certain repairs.

128. This ground, from all I can learn, was considered to be the Company's. The house being occupied by, or the property of, an European probably in 1731, it became subject to the payment of the quit-rent only of six reas per square yard. Here then we have an instance of a formal registration of a conveyance or sale of property under the authority of the Governor, consisting of a house, compound, &c. *for ever*, which was as much the Company's property as any unpensioned ground is at this day, and subsequently purchased by the Government.

129. In pursuance of a suggestion of the Honorable Court, as  
 The late General Hos- offered in the 15th paragraph of their letter  
 pital premises. of the 21st of April 1790, the Government  
 purchased in September of that year, for the sum of Rs. 27,000, the  
 house, out-houses, and cotton-screws near the old bunder or landing-  
 place belonging to Mr. John Hunter, immediately adjoining the  
 Company's hospital, which had been so often recommended by Sir  
 Edward Hughes and others to be taken into the Marine yard. The  
 premises measured 1,961 square yards. This ground paid rent to  
 the Company, and was considered to be their property.

130. On the 1st of May 1809 the Government received from  
 Hormasjee Bomanjee's Hormasjee Bomanjee a spot of ground  
 ground near the Rope Walk, situated between the Rope Walk and the

Court-house, agreeably to deeds delivered in, standing in the Collector's books as containing 2,109 square yards, in exchange for property on the Island of Salsette. The ground was alone considered in this transaction, as Hormasjee was at the expense of removing the buildings which were of little value. The ground was as much the Company's as that on which Hornby's house stood, and yet the Government bought it at the rate of 16 Rupees a square yard. A portion of the property, viz. 720 square yards, was devised by one John Dicks to his wife and children by a will, dated the 18th of August 1757. It was sold and made over for ever, on the 25th of October 1793, by the heiresses and daughters of the above testator to Lieutenant Thomas (now Commodore) Turner, of the Marines, for the sum of Rs. 12,000. It was again sold, on the 16th of January 1794, by Lieutenant Turner to Captain Bond for the same sum, the deed of sale specifying that the property was held "according

Square yards 780·2, more to the usage of land occupied for buildings or less.

within the town of Bombay, subject to the payment of Rs. 11-8-84, of yearly ground rent to the Company on the 25th of June in every year." It was made over on the 1st of January 1803 by bond to William Whitaker for the same sum, and under a similar deed of sale. Whitaker sold the property to Jamsetjee Nanabhoy for Rs. 17,000, and from Jamsetjee Nanabhoy it passed, I conclude, into the possession of Hormasjee

Square yards 585·2 Bomanjee. Another portion of ground measured 1365·3

585 $\frac{1}{3}$  square yards, subject to an annual rent of Rs. 8-3-12, at six reas the square yard. The ground stands in the books of the quit and ground rent of 1740 under the name of Larger Gazette,—the person who first rented it of the Company; in 1756 John Miller appears the proprietor; in 1760 Thomas Cornish. It must have passed to Mr. Dickson on the 20th of May 1788, who bought it from Captain William Henry Blackford, of the Engineers, for Rs. 7,000, subject, as the deed specifies, "to the payment of Rs. 8-3-12 yearly, on the 25th of June, to the Company." Dickson sold it on the 30th of April 1791 to Mr John Forbes, which sale was registered in the Collector's office on the 26th of September of that year, and Forbes sold it to Ruttonjee Bomanjee on the 15th of January 1800 for Rs. 5,000.

131. I have not been able to trace this property beyond 1739. The register of quit and ground rent for that year exhibits only the quantity of ground transferred from the

Rs. 4-1-64	property of George Craig . . . 294 square yards.
	The Register of 1742 shows
	the quantity of ground on the
Rs. 4-3-44	title of Mr. Dicks to be . . . 324 " "
Rs. 7-2-60	The register for 1744 has it at 510 " "
	and that for 1748, the same
Rs. 11-2-84	as above stated, being . . . 780½ " "

The manner in which the property thus increased is not traceable. Probably the holder of the ground availed himself of the latitude afforded by the resolution of Council, of the 3rd of December 1731, to all those who wished to take in ground. The Company, however, will appear to have received a corresponding increase of ground rent levied at the rate of six reas per square yard.

132. The third portion, measuring 744 square yards, paying quit-rent at the rate of six reas the square yard, was first rented of the Company in the year 1729 by one Gowrozee, oil-maker, from whom it passed in 1737 to Jeejee Moody, from him to Captain Nun in 1739; in 1746 Jeejee Moody again appears as the possessor; in the following year the register of the ground and quit rent has the name of George Craig as the proprietor, from whom it passed to Captain John Blackford, and next to Mr. John Forbes in 1791. These three portions of ground were considered to be the property of the Company, and the tenants holding at their will.

133. I will adduce one more instance. The Committee of Buildings on the 21st of March 1812 reported the proceedings which they had been obliged to adopt, with the view of stopping the progress of certain repairs and improvements which Mr. Stewart had commenced to the house belonging to Mr. Charles Forbes situated in Rope Walk Street, opposite to the ramparts.

Mr. Charles Forbes' property.

134. The premises on which Mr. Forbes' house stands were stated to measure .....	1497	square yards.
An adjoining stable .....	56	" "
	<u>1553</u>	" "
The rent paid in two lots for this ground was calculated on.....	807	" "
Excess in his possession .....	<u>746</u>	" "
Another spot of ground adjoining measured ..	892	" "
The rent paid for this ground was on .....	<u>877</u>	" "
Excess of ground .....	<u>15</u>	" "
Total excess .....	<u><u>761</u></u>	" "

135. It was not possible to discriminate what portion of the whole space was public or private property : the impossibility of discriminating what portion was an encroachment. stabling bore the appearance of an encroachment on the public ground. But it is evident that, if a discrimination of what is actually and *boná fide* the portion belonging to the public cannot be made and sworn to, no suit can be instituted for its recovery.

136. It will appear, from the letters of the engineer officers acting under the orders of the Committee, that, if Mr. Stewart refused to build or repair under the restrictions prescribed by the regulations of the Government, some interchange of property might be made, which was considered to be advisable in a military point of view.

137. As the parties could not agree, it was determined, on the advice of the Advocate General, to have recourse to coercive measures for restraining the prosecution of the building should Mr. Stewart persevere, in opposition to the warnings he had received, in refusing to desist.

138. The Committee's proceedings were approved by the Government, and the law officers were directed to defend the cause, which might eventually be of such great importance to the Honorable Company's interests on the island.

139. The Committee of Buildings however, on the 28th of March, will appear to have taken a different view of the case, for they submitted a compromise, which they recommended should

The Advocate recommended the adoption of coercive measures, and concurred in by the Committee of Buildings.

The Committee alter their view of the case, and recommend a compromise.

be entered into with Mr Stewart, of the nature stated in their letter of that date, by which they conceived that the interests of the Company would be materially benefited ; under which impression, combined with the difficulty which must be experienced in substantiating the right of the Company to the small spot forming the subject of the suit that had been instituted in the Court of Recorder, they offered the recommendation.

140. The Governor in Council readily confirmed the compromise  
Confirmed by the Government, as removing all grounds for the agitation of a question affecting the Company's landed rights and interests, which it was considered, for many obvious reasons, to be most desirable to suspend for the present.

141. The compromise was entered into with Mr. Stewart on the ground, of the recommendation of the Committee of Buildings, as offered in their Secretary's letter of the 1st of May 1812.  
and concluded.

142. On the 18th of June Mr. Stewart's attorney informed the Committee of Buildings that notice of trial had been given for Thursday, the 28th following, and that he was requested to state that, provided the costs already incurred be forthwith paid, the trial should be countermanded. The Committee stated their sentiments on the conduct of Mr. Stewart in their letter of the 3rd of July, and "rather than allow a cause involving interests of so great a magnitude, and moreover viewed as untenable by the Company's law officers, to be further agitated in the Recorder's Court for so unworthy a consideration as Rs. 511-3," they had authorised its discharge, which was approved by the Government.  
Further difficulty arising from Mr. Stewart requiring the Company to pay the law charges.

143. It is here necessary to remark that the authority of the Committee of Buildings not having been recognised or established by any rule, ordinance, and regulation, which could alone render their acts valid, and as they had no legal powers to enforce their decisions, the Committee was abolished, and a rule, ordinance, and regulation passed in Council on the 11th of November 1812, and registered in the Court of Recorder on the 26th  
The Committee of Buildings dissolved, and the Court of Petty Sessions appointed.



of December following, vesting the control over all buildings and encroachments in the Court of Petty Sessions.

144. Mr. Stewart, after the negotiations with the Committee had been concluded, commenced the construction of a suite of low buildings adjoining to his house for the Courier office, which he contended

Further difficulties arise, and a Jury empanelled to value the ground required.

was included in the arrangement made with the Committee of Buildings. As this building encroached on the road, in breach of the provisions of the ordinance above mentioned, the Court of Petty Sessions applied for the instructions of the Government, expressing at the same time an opinion that, under the particular circumstances of that gentleman's case, some remuneration should be awarded to him, but what its precise extent should be the Court did not consider themselves at liberty to decide, and the Government being also of opinion that Mr Stewart was justly entitled to some remuneration, the Court of Petty Sessions was authorised to proceed, in conformity to Rule, Ordinance, and Regulation III. of 1812, to appoint a jury to estimate the amount to be paid to Mr. Stewart for so much of the ground as might be actually necessary for widening the public streets to the extent prescribed by the regulations.

145. Prior to the record of the award of the jury, a report was

The Revenue Surveyor reports that the property is the Company's.

received from the Revenue Surveyor on the subject of this property, who stated the ground in question to be *bonâ fide* Company's, and that the misconception on the part of the supposed proprietors arose from the very indulgent and too equitable principle upon which Government had hitherto acted, referring on this occasion to "a decided opinion of the Advocate General (Thriepland) that all the laud situated within the Fort paying an annual rent of six reas per square yard was indisputably the property of the Honorable Company, and under this denomination of rent is the whole of the ground laid claim to by Charles Forbes, Esq. Admitting however, for the sake of argument, that Government had made virtual surrender of their rights, there still remains a surplus of 1,244<sup>½</sup> square yards for which Mr. Forbes was accountable—a

quantity considerably more than equivalent to that which had been recently taken from that gentleman."

146. No grant or lease from the Honorable Company of the ground possessed by Mr. Forbes could be traced in the Collector's office. It appears to have been first rented of the Company in the year 1761 by the Honorable Mr. Bouchier, since which period the following transfers had taken place :—In 1764 from Mr. Bouchier to Dadabhoj Manockjee ; from him to Mr. Hunter in 1774 ; in the same year it passed from Mr. Hunter to Mr. Church ; and in 1786 from Mr. Church to Commodore Jervis ; from him in 1794 to Pestonjee Bomanjee ; from Pestonjee Bomanjee in 1797 to Captain Margotty, and from Margotty to Mr. Forbes.

147. Pestonjee Bomanjee in October 1794, previous to the date of the transfer to Captain Margotty, executed one to General Jones of some adjoining ground, for which no rent or land tax has ever been paid, the whole of the Company's rent having been levied on the property transferred to Captain Margotty, and subsequently by him to Mr. Forbes, which appears to have been the same originally rented by Mr. Bouchier.

148. On the 7th June the Court of Petty Sessions delivered in the Amount awarded by a Jury for the ground. inquisition found by the jury awarding the sum of Rs 10,890\* for 201 square yards.

149. The principle on which the valuation of the ground was computed was deemed by the Governor in Council extremely unjust to the Honorable Company ; under which impressions the Advocate General was furnished with the report from the Revenue Surveyor above quoted, with directions to state his opinion as to whether an appeal could be preferred from the award of the jury, and if so, to what authority.

\* Namely, Rs. 30 a square yard for that part of the ground which, according to the engineer's plan, would be required, being 201 square yards, Rs. 6,030, and for that part of the ground which would remain to Mr. Stewart, 324 square yards, the Jury awarded him Rs. 15 per square yard in consequence of its reduced value, it not being large enough to build upon.

150. A further report and sketch of the premises having been received from the Revenue Surveyor, they were referred to the Advocate General, with orders to consider and advise the steps proper to be taken for receiving possession of the ground belonging to the Company.

151. On the 10th of January the Advocate General made his report purporting that "the first thing to be determined was the nature of the tenure under which Mr. Stewart and his predecessors held the ground for which they paid quit rent\* and quit and ground rent."

152. That the term *quit-rent* in its legal import was confined to the certain established rents of the freeholders and ancient copy-holders of a manor, which cannot be departed from or varied. Mr. Macklin was not aware that it was viewed in any other sense, and it could not be legally used in that sense in Bombay, in which no such tenure † could possibly exist."

His opinion.

That the mere use of the words quit rent or quit and ground rent therefore could not affect the nature of the tenure, the rent might have been called by any other name; "nor could it be considered a free farm-rent unless the tenant can show that there was a grant in perpetuity, reserving a certain rent which has improperly been denominated quit rent or quit and ground rent."

"It seems that a continuance in grant by copy for fifty or sixty years fixes a customary interest, if it be without interruption (3 Leo. 107, and Com. Dig. copyhold, B). Now, though Bombay cannot, in his opinion, be viewed in any light as a manor, there is a very great similarity between the copy of Court Roll and the entry of the tenant's name and estate in the Collector's books in Bombay; and Mr. Macklin was inclined to think that the long use of the word quit-rent, coupled with the fact that the rent as fixed at first has never been departed from or varied, ‡ would be received as evidence of the intention of Government to grant a perpetuity.

\* They paid a quit-rent of six reas per square yard, established in 1718, and no ground rent.

† Surely it exists under Aungier agreement (see the 78th paragraph of this report).

‡ It has been repeatedly varied.

“That there was another objection to resuming possession of the lands lately held by Mr. Stewart, the exchange which took place some time previous to the assessment by the jury was certainly a virtual recognition of his title, and would be evidence in support of it. Government desiring a jury to be summoned to assess the value of the land, was also evidence in support of title, and the verdict itself, however high might have been the damages given, was in conformity with the regulation passed by Government, for the express purpose of enabling the Court of Petty Sessions to buy and pay for such lands. Government must always be a party in such a transaction, as they must always be either the absolute owners of the land taken by the Petty Sessions, or must provide the funds out of which the payments are to be made. If absolute owners of the land, why empanel a jury to assess the values? Mr. Macklin pressed on the serious attention of Government how far it might be proper to recede from their own acts and impugn their own regulation.

“On the third point, Mr. Macklin was of opinion that Mr. Stewart was liable to pay rent for the full quantity of ground that he occupied, and that an action should be brought against him if he refused to do so.

“Mr. Macklin annexed two extracts from the Diary of 1731, as deserving great consideration. Of the first was the sale\* of a piece of ground to Mr. Draper for Rs. 24, reserving a rent which is called pension. This shows how small the value of the perpetuity was at that time; while the second extract appears to show the intention of Government to invite settlers on the principle of granting them land on a low fixed quit-rent in perpetuity.”

The case referred to Arbitration as far as regards the sum awarded.

153. A settlement by arbitration is now under consideration.

154. This is the most recent instance where the Government has paid a valuable consideration for ground considered to be their own property. Besides which, the statement No. 7 will show that various sales have been made by individuals, with the permission of the Governor, of ground paying ground rent only to the value of Rs. 99,906.

\* This was ground situated beyond the limits of the Town. The pension, if properly levied, is equal to one-fourth of the net produce of the estate.

155. If therefore proprietors of ground within the Fort paying ground rent are tenants-at-will, the Company have in all these instances been purchasing their own property. Could the Company, in the face of this evidence, venture

In all these instances the Company have purchased of tenants-at-will.

into a Court of Law

Conclusions thence drawn against the Company.

with the view of dispossessing the ground rent proprietors of property which had been alienated for time-out-of-mind, and upon which, whatever may have been the nature of the original tenure, their own acts had stamped the seal of permanency? Is property so acquired to be considered as held at the will of the lord; and will any one, under the circumstances stated in this report, recommend that a suit be instituted in the Court of Recorder against Mr. Leckie for refusing to acknowledge a receipt which invalidated his property,—property which may have been alienated from the Company for upwards of a century, or, in other words,

See paragraphs 72, 73, and 74.

over which the right of the lord had devolved on the vassal in the manner already stated?

156. After these observations, I have but few words to offer,—the third head of inquiry.

*Thirdly.*—To ascertain the light in which the grantees have been ascertained to view their allotment of lands.

157. It will be admitted, I think, that the conduct and measures of Government have throughout been calculated to generate an impression on the inhabitants that the right to the soil was intended to be permanently vested in the landholder, and I ground that opinion upon

The measures of Government calculated to create an impression that the right in the soil was intended to be granted in perpetuity.

the evidence contained in the preceding division of this report.

158. Upon the abstract view of the case, and limiting our consideration of its merits to Aungier's convention and the proceedings of the Government since the year 1731, the opinion of Mr.

An abstract view of the case may be favourable to the Company's right.

Thrieland and of the Honorable Court, that the Government had a right to resume lands which had become waste from the destruction of the buildings or other improvements by fire or otherwise, seem

founded upon a just basis. But the successful opposition made by the natives in 1803, upon that particular point, the purchase of Hornby's premises, the exchanges made with Hormusjee Bomanjee, and with Mr. Stewart, the difficulty of forming a principle of compensation for improvements, and a comprehensive consideration of the policy uniformly observed by the Government in inviting strangers to settle on the island, would, I should think, operate decidedly against the Company in any legal investigation of the question. Any attempt to shake the confidence of the natives in the validity of their landed tenures should be avoided; but where ground may be required *bonâ fide* for public purposes, as was the case with Hornby's premises in 1803, it is to be regretted that the right of resuming such lands, where the houses had been destroyed, had not been brought to legal issue, when the principle of compensation would at least have been established, for I consider a tenant entitled to more than the mere value of the building; but the Government having, in every instance, shrunk from investigation, and purchased assessed ground on which the ostensible improvements had been destroyed, and otherwise, for its just value, what must the impression of the natives be? Unquestionably that their rights are indisputable.†

159. If the Government should be desirous of trying the right of resuming ground occupied, apparently without any authority, which yields an immense profit to the possessor, as I shall hereafter show, and upon which only sheds of a trifling value have been built, and for which alone the Company ought to pay according to the prevailing legal opinions upon the subject, they have only to urge their law officers to prosecute the measures already prescribed, with the view of resuming the ground which has been represented to be a nuisance to the Town Barrack.

A case noticed where the Government may try the question of resuming possession if thought expedient.

See the proceedings of the Government, 11th August 1813, Military Department; 8th September 1813, Revenue Department.

160. This is a case, however, very different from those which have been quoted in the course of this report. The parties occupy the ground without the colour of authority, and may be considered in

Not, however, strictly applicable to other ground.

the light of those persons who daily erect their stalls over every part of the island ; the improvements are of little value, though the profits derived from the rent of the ground is immense. It appears to me that the Company ought to succeed in ejecting the proprietors of this ground, but whether it will operate as a precedent to affect the other tenures within the walls of the Fort, said to be held at the will of the Government, which could not have been improved and built upon without some permission, by the substitution of leases more favourable to the Company, is a question upon the legality of which the Advocate General can best pronounce. Upon the equity and policy of the measure, however, there can be but one opinion.

161. As a precedent in support of such a measure, considerable

Examination of a cause gained by the Company much relied upon by those who maintain the Company's right to resume possession.

reliance has been placed on the issue of the case reported in Mr. Thrieland's letter of the 11th of July 1806, Shaik Abdul Ambly against Nusserwanjee Cawasjee, who was only nominally the defendant, the Company having been the most interested in the ques-

tion. I see, however, but little in that transaction which would uphold the Company in any attempt to eject a proprietor of ground within the walls of the Fort. The ground in dispute was a batty field, situated in the space described in the 61st paragraph of this report. The holder of the ground had expended no money upon it for which he had not been annually recompensed from the produce. Had Shaik Abdul, as Mr. Henshaw and Hormasjee Bomanjee have done, constructed a costly house on the ground, I feel persuaded that the Court of Recorder would have given judgment in his favour.

Strong opinion given by Sir James McIntosh in favour of the right derived from the conduct pursued by the Government.

Even in that case, however, Sir James McIntosh delivered an opinion, to the justness of which one cannot refuse one's unqualified assent. He observed that, "though the eventual right of resumption might be

known to many or most of the inhabitants, the Company certainly suffered an expectation to be created, and very generally entertained, that the right in question was one, the exercise of which was so exceedingly rare on their part, as not to require being very much, or at all, taken into account in the transmission of property from one

individual to another ; hence the large sums so frequently paid on such occasions ; hence the loans advanced on the security of such lands, and the imposing credit which they enable their possessor to obtain. While such things are familiarly known, and daily brought under the eyes of Government, the unwary occupants may not have regular conveyances enabling them to maintain possession in a Court of Law, but they have to allege a tacit acquiescence, a *pernitive right*, which, in the eye of conscience and morality, gives them almost an equal claim to subsequent forbearance, and must, in every case of resumption where an adequate price has been *bonâ fide* paid, make the act appear, and be felt, as a grievous hardship, if not an open and down-right injury."

162. Mr. Thriepland could not deny "that there was but too much truth in these observations of the Court." Its force admitted by Mr. Thriepland. The arguments which Sir James McIntosh has advanced, founded upon the custom of the manor, are unanswerable ; it would not only be felt as a grievous hardship, if not an open and down-right injury, but would, I am persuaded, discourage other capitalists from settling on the island, and probably compel not a few to withdraw themselves who have resorted hither with the view of becoming permanent residents. It would, in short, tend to sap the foundation of that policy by which the Island of Bombay has risen from a barren rock to its present state of prosperity and celebrity as a maritime port.

163. I have failed therefore to trace an instance where those who are viewed as tenants-at-will have been ejected within the walls of the Fort ; but the instances where possession has been held in defiance of the Government are numerous, and sufficient to prove that its intention in granting those indefinite leases to have been to confer right in perpetuity.

164. But whatever may have been the views of the Government from the mode in which the proprietors of ground have sold and transferred their property even to the Government itself, they have considered themselves to possess a right in perpetuity. The register of sales and transfers of property is not

No instance of a tenant-at-will ejected within the walls of the Fort, but many of them retaining possession in defiance of the Government.

The inhabitants have considered themselves to possess a right in perpetuity.



carried beyond the year 1801. They were formerly kept in the Secretary's office, and when I succeeded Mr. Grant, he informed me that the late Mr. Duncan had directed the discontinuance of the registry; of this, however, there is no official record. But the establishment of the Court of the Recorder, and the operation of Section

Cause of the discontinuance of the Registry.

XVI. Regulation III. 1799, restricting the Revenue Judge "from receiving or entertaining any suit under any pretence whatever relating to any house, land, tenement, or hereditament, nor a dispute regarding the boundary of lands, houses, tenements, or hereditaments situated within the Town and Island of Bombay," without the enactment of any regulation whatever for defining and preserving the rights of the Company, leaving them to be maintained by the rule of custom, have virtually

forfeited the titles by which estates within the town have been held. The proprietors have been at full liberty to obtain deeds drawn out by professional men and registration in the King's Court, which, in the entire absence and neglect of every provision for those purposes on the part of the Government, would appear to have abandoned from the year 1799 every control, if ever they can be said to have been vigilant in the exercise of it, over those transactions must have stamped their validity.

165. But allowing that every lease has been granted conformably to the order of Council of the 18th of May 1733, still, as it was renewable by the grantee on the payment of one year's rent, the property would still have partaken of the character of a permanent tenure, and all that the Company have lost therefore is the periodical receipt of a fine equal to one year's rent on a renewal of the lease.

166. I will, however, concede the argument, and admit that, though the Government have pursued a lax system in leasing out the public property, it is no justification for the blind and improvident manner in which individuals have invested their capitals in such undefined leases, and that the whole

The Recorder's Court taking cognizance of all claims to lands, &c., and no regulations framed for the guidance of the Revenue Officers. The natives have been at entire liberty to dispose of their property at pleasure.

Little evil that has resulted from the non-enforcement of the Regulation of 1733.

The argument conceded that the whole of the Estates are legally forfeitable to the Company.

of the estates are, by the letter of the law, forfeitable to the Company without any compensation. Will any one advise the Company even to agitate the question of right with the view to its formal recognition? What may be considered as a fair and unexceptionable transaction

The effects that would flow from enforcing the resumption.

between individuals in England, or even between the Government and an individual in England, where leases of lands are well understood, would operate as an oppression in India, and between the East India Company and the landholders of Bombay would be felt "as a grievous hardship, if not an open and down-right injury." Very few of the natives have any idea of the various tenures by which lands are leased in England, but few of them know what is necessary to be done to protect them against the operation of the statute of frauds.

167. The native governments of the country are fully sensible

Policy of the Native Governments in giving the cultivator a property in his possession.

of the advantage of giving the cultivator some property in his possession, and accordingly we find the right of possession considered as strong as though confirmed by the most formal grants or sunnuds. Indeed, the country-people seem to conceive the possession of a sunnud either to imply that a doubt has existed, or at least that the property is recently acquired, and therefore even possessors of such instruments are unwilling to show them. They conceive that they possess a "primitive right" superior to any

A primitive right considered by the natives superior to any grants.

derived from the most formal grant. These are natural impressions, and they have been long cherished in Bombay. Such, in fact, seems also to have been the policy of the Government in establishing settlers on the island: they have allowed a confidence to be created in the minds of the natives of the permanency of their lands. They

The policy of the Government regulated by those principles.

were told that if you want ground to build upon, apply to the Clerk of the Works and he will measure out what you want. This grant they have been accustomed to consider as conferring a right in perpetuity. They have seen ground thus granted repurchased by the Government; they have successfully resisted its resumption, and the Government have refrained to assert their right when they had the fairest opportunity to do so.

The "inhabitants of Madras, and of all the other English, Dutch, French, and Danish colonies in India were, we are informed, bound to furnish military service upon emergencies." Hence it appears that the lands all over India were held by a

The lands of all European Colonies in India appear to have been formerly held on the same tenures (see paragraph 53).

feudal tenure. By an advertisement published in the *Madras Gazette*, I find that the lands within the limits of that Presidency are leased for a number of years, renewable on the

Renewable leases obtain at Madras.

payment of an established fine, the grants of ground providing that "at the end and expiration of every thirty years of the term leased, there shall be paid, for the use of the Honorable Company, the full and just sum of thirty pagodas of current money of Fort Saint George, and at the end of

Smallness of the fine paid at Madras on the renewal.

the term of ninety-nine years, the full and just sum of one hundred pagodas of current money of Fort Saint George." I have no doubt that the lands are leased on the most moderate rents. The object of the resolution of 1733 was to establish a similar system in Bombay. At Madras, then, the lands appear granted on leases renewable on the payment of a very trifling fine. Bombay is held of the Crown by a similar tenure; and by the same tenure, as far as respects their permanency, have the crown lands been leased to individuals, or, in other words, the custom of the manor has converted them into private property or copy-hold tenures.

168. That the mode in which the Government has leased the

Indiscriminate mode in which the Crown Lands have been leased.

crown lands has not been regulated by the principles of English law, I admit. In fact, they have been guided by no established system, but have granted lands to individuals so indiscriminately that it is difficult to form an opinion upon an abstract consideration of the instruments by which they are held.

169. In the opinion of an English lawyer, probably both Mr.

The leases probably, in the eye of the Law, are only for life.

Henshaw and Hormasjee Bomanjee may be merely considered as *tenants for life*. There are no words of inheritance in those instruments, the lands being let out to Hormasjee Bomanjee on condition of his paying annually to the Honorable Company, or to their

Collector for the time being, the usual rate of quit and ground rent, calculated at eleven reas the square yard. Upon the death therefore of Hormasjee Bomanjee, the property, according to the tenor of the bond, devolves to the Company.

170. But equity would probably quiet him in possession in the event of Government being disposed to oust him: equity would found its decision upon the custom of the manor. By similar instruments the crown lands have been leased to individuals, yet their heirs have succeeded to the property without any objection on the part of the lord, and their assigns and administrators have disposed of these lands, in many instances, by the consent of the lord, and in others at their will and pleasure.

171. Upon these grounds then I contend that, by the custom of the manor, the crown lands leased since 1674 have become the property of individuals. The ancient constitution of the island was feudal. I refer to the history of feudal system and of the ancient and modern English tenures as contained in the 4th, 5th, and 6th chapters in the second volume of the commentaries, as affording a most applicable and correct view of the ancient constitution of this island, and of the effects which have flowed from the custom in which the crown lands have been allotted to individuals as constituting the basis upon which my opinion is founded.

172. In Bombay, as in England, "at the first introduction of the feuds, as they were gratuitous, so also they were precarious, and held at the will of the lord, who was then the sole judge whether the vassal performed his services faithfully. Then they became certain for one or more years. But when the general migration was pretty well over, and a peaceable possession of the newly-acquired settlements had introduced new customs and manners,—when the fertility of the soil had encouraged the study of husbandry, and an affection for the spots they had cultivated began naturally to arise in the settlers, a more permanent degree of property was introduced, and feuds began now to be granted for the life of the feudatory. But still feuds were not yet hereditary, though frequently granted by the favour of the lord to the children of the former possessor, till in process of time it

became unusual, and was therefore thought hard to reject the heir if he were capable to perform the services. In process of time feuds came by degrees to be universally extended beyond the life of the first vassal to his sons, &c.; but when a feud was given to a man and his heirs *in general terms*, then a more extended rule of succession took place, and when the feudatory died, his male descendants *ad infinitum* were admitted to the succession, &c."

Again, "villains, by these and *many other means*, in process of time gained considerable ground on their lords, and in particular strengthened the tenures of their estates to that degree, that they came to have in them an interest in many places full as good, in others better than, their lords. *For the good nature and benevolence of many lords of manors having, time out of mind, permitted their villains and their children to enjoy their possessions without interruption in a regular course of descent, the common law, of which custom is the life, now gave them title to prescribe against the lords, and on performance of the same services, to hold their lands, in spite of any determination of the lord's will. For though, in general, they are still said to hold their estates at the will of the lord, yet it is such a will as is agreeable to the custom of the manor, which customs are preserved and evidenced by the rolls of the several Courts barony, in which they are entered, or kept on foot, by the constant immemorial usage of the several manors in which the lands lie; and as such tenants had nothing to show for their estates but these customs, an admission in pursuance of them entered on those rolls, or the copies of such entries witnessed by the steward, they now began to be called tenants by copy of Court \* roll, and their tenure itself a copy-hold.*"

Again, "in some manors, where the custom has been to permit the heir to succeed the ancestor in his tenure, the estates are styled copy-holds of inheritance; in others, where the lords have been more vigilant to maintain their rights, they remain copy-holds for life only; for the custom of the manor has in both cases so far superseded the will of the lord, that, provided the † services be performed or stipulated for by

\* The Court of Directors had, in their letter of the 24th March 1709-10, ordered the lands in Bombay to be surveyed and registered, and every one's property ascertained.

In these proceedings therefore we may recognise the establishment of something like "a Court of Rolls."

† Fealty services (as well in rent as otherwise), relief, and escheats.

X9(J): (2231, 211:3) mlt

fealty, he cannot, in the first instance, refuse to admit the heir of his tenant upon his death, nor, in the second, can he remove his present tenant so long as he lives, though he holds *nominally* by the precarious tenure of his lord's will." I will not weaken the force of this quotation by any further observation on this division of the report.

*Fourthly.*—To trace the system of taxation from the cession up to this period, with the view to ascertain whether the Company possessed, or has exercised, the right to increase the land tax over every description of landholder.

The system of taxation reviewed.

173. It has already been stated in the 53rd paragraph that the inhabitants of Bombay, whilst subject to the King of Portugal, paid *one-fourth part of the profits* of their lands as a quit-rent, which President Aungier in 1674 commuted for a quit-rent of twenty thousand xeraphins, reserving to the Company the right to the military services under which lands were held of the Crown of Portugal.

Reference to the terms of Aungier's Convention.

174. On the 24th of June 1718, the Government "laid a certain tax or ground rent on *all the inhabitants residing within the town walls*, in order to reimburse the Right Honorable Company some part of the great expense and charge they have been at in fortifying and securing the said town." This tax \* may be considered as a commutation of the military services reserved under Aungier's convention, and to have changed the ancient constitution of the island in respect to all lands in a productive state or yielding rent.

See the deed of a free grant of ground of Framjee Rustomjee and Nowrojee Rustomjee, dated 13th April 1721.

175. In the year 1720 the principal inhabitants represented that the quit-rent was a heavy tax on them, and prayed to be relieved from the same. Government seeing reason for the complaint, the quit-rent was reduced to one-half. But as several of the inhabitants, to avoid paying the quit-rent, had built without the town walls, a proclamation

1720.

30th September.

The quit-rent reduced to a moiety of its former amount.

\* It may be worth while to trace this property, and to ascertain whether the ground is yet held free of rent. A tax levied in 1718 viewed as a commutation of the military services, and to have changed the ancient constitution of the island.

was issued, announcing that all houses "within cannon-shot of the town wall should pay the same quit-rent in proportion as those built within, which would in some measure make amends for the reduction in the quit-rent."

But extended to all houses within cannon-shot of the town walls.

176. By the resolution of Council of the 3rd of December 1731, the English inhabitants were hereafter to pay

Again modified in 1731.

the same quit-rent for their houses that they had hitherto been assessed in, but for such ground as they might have taken in since the building of their houses, or may hereafter take in, they shall pay an additional quit-rent of six reas for each square yard, but set free ground

A ground rent imposed on the native inhabitants which created the 11 reas per square yard—6 for the quit and 5 for the ground rent.

rent; and all natives or black inhabitants to pay for the ground they occupy, or should hereafter occupy, a quit-rent of six reas, and a ground rent of five reas for each square yard.

177. On the 3rd of January 1758, with the view of reimbursing

Letter to the Court, 8th April 1758, paragraph 174.

The tax of two shillings in the pound imposed on the estates of all the inhabitants on the Island.

the "prodigious expense which the Company had incurred in increasing the fortifications and the works on the island for the security of the inhabitants in general," a tax was ordered to be levied on the produce of all the landed estates belonging to the inhabitants of this island, at the rate of two shillings to the pound.

178. The original valuation made in pursuance of that order is now in the Collector's office. The annual

The annual produce of the tax.

rent of the estates within the Bombay division of the island was estimated by the Veriadores at Rs. 47,480-3-93; the charges, *pension*, &c. were taken at Rs. 5,567, leaving the net rent at Rs. 41,913-3-72½, which, at 10 per cent., gave in round numbers Rs. 4,191 per annum.

179. The inhabitants prayed that this tax might be relin-

The inhabitants complain of the tax, but the Court order its continuance, 12th April 1775 para. 39.

quished; but by their last orders on this subject, the Honorable Court directed that, "as their fortifications at Bombay were far from being completed, they could not consent to relinquish the tax laid upon

landed estates in the year 1758, which was designed as an aid to the Company in the erecting of those fortifications.”

180. These are all the proceedings I have been able to trace elucidatory of the taxes derivable from the landed estates within the walls which at all bear upon the question under consideration.

No further proceedings traceable.

181. The legitimate rents and taxes levied on the landed property within the walls of the Fort are therefore of three descriptions—the quit-rent, the ground and quit-rent of eleven reas, and the tax of ten per cent.

Three the only legitimate taxes.

182. By the 33rd, George the Third, an assessment was directed to be levied at the rate of one-twentieth part of the gross annual values on the owners or occupiers of houses, buildings, and grounds situated within the limits of the town, for cleansing, watching, and repairing the streets thereof.

The Parliamentary Tax levied within the limits of the Town.

183. By these proceedings it will appear that the Company or the Government have exercised the privilege of increasing the land tax, and of assessing even the pension property. The privilege was exercised in 1718, in 1733, and in 1758, and can be so again; at least, I am not aware of the ground on which the right can be disputed.

The right to increase the land tax maintained to be in the Company.

184. With respect to the pension, I have reason to think that the term has from the first been entirely misunderstood, if it has been considered in the light of a tax. The tenor of the article of Aungier’s convention proves that it was not the quit-rent. The Portuguese word *pencão* means, when applied to estates, a payment for the enjoyment of land,—the bonus or the premium paid for the fee-simple on the compromise of a doubtful tenure. It also implies the allowance made for the maintenance of curates and vicars, and the emoluments of benefices, granted in virtue of a pontifical order. It is to be taken in the former sense only when applied to the estates

Explanation of the term Pension.



in Bombay. It is to be regretted that the *penção* and the quit-rent was not distinctly specified under Aungier's convention. In some recent grant of lands the Government has sanctioned the pension to be levied, and has thus surrendered the fee-simple as fully as under Aungier's convention.

Pensions applied to lands since the conclusion of Aungier's Convention.

185. This detail will show the irregular and confused principles on which the property is taxed within the walls of the Fort. The estates under Aungier's agreement are subject to the payment of the pension (the rate unknown); of the quit-rent, which ought to be equal to 25 per cent. on the net produce of the tax established in 1718; of the ground rent which was ordered to be imposed upon all the inhabitants, and of the 10 per cent. tax imposed in 1758. The property created since Aungier's convention ought also to have paid the whole of those taxes, with the exception of the pension. If these taxes were *bonâ fide* levied, they would be pretty nearly equal to a moiety of the net proceeds of each man's estates.

Irregular and confused principles on which the property is taxed.

186. If the nature of Aungier's convention barred the right in the Government to increase the rent over the pension property, the exercise of it in the instances pointed out has been illegal. On the other hand, the pensioned ground was subject to calls of military service, which was commuted by the additional rents imposed in 1718; and if the rents have been once increased, they can be so again. Under any circumstances, the right of increasing the rent of the assessed ground is indisputable.

The right of increasing the rents again adverted to.

187. The 13th article of the instructions under which Bombay was surrendered to Great Britain specifies that the inhabitants of Bombay and the landholders of that island shall not be obliged to pay more than the *foras* (quit-rent) they used to pay to His Majesty, this condition being expressly mentioned in the capitulations. This article would seem to bar the right contended for. Upon this clause, however, I beg to offer some explanations.

The article of the instructions under which the Island was surrendered appears to bar the right.

188. No. 2 in the Appendix is a copy of these instructions. These instructions, though heretofore considered as authentic, proved to be invalid. They were obtained by the late Sir Miguel deSouza from the archives at Goa, at the express desire of the late Mr. Duncan, and have been brought upon our records as an authentic voucher. These instructions have also been produced in the Court of the Recorder, if I mistake not, as evidence against the Company's right to increase the rents. It is of the first importance that the Government and their officers should distinctly understand that these instructions were those which Cooke entered into, and which have been from the first disowned by the King and the Company. I have only recently discovered that the copy of the instructions received from Goa are those which Cooke accepted, or I should at an earlier period have done my duty in reporting the circumstance to the Government.

189. A memoria was sent home by the Portuguese authorities in this country in the year 1723, complaining of certain outrages committed by the English against the inhabitants of Portugal at Bombay, contrary, as was said, to the articles submitted to by Cooke and agreed upon between the two nations.

“In respect to the validity or invalidity of the articles in question and whether King Charles owned or disowned them, the Directors replied, in the first place, that it plainly appears, from the instructions given to Sir Abraham Shipman, that the King of England had given no power to sign any such articles, but the orders import quite the contrary; and the Portuguese memorial, which mentions the names of the Commissioners that made the agreement with Cooke, says not one word of their being named or authorised by the Crown of Portugal as such, which certainly would not have been omitted had there been any prospect in Europe of the necessity or intention of such a preliminary agreement; whereas, on the contrary, the Viceroy was singly and purposely sent to deliver the premises pursuant to the articles of marriage between the two Crowns, so that the pretended articles were not only imposed upon Cooke contrary to the directions of the King of Portugal himself,

The Court's reply disowning the instructions.

which was to deliver up Bombay upon the treaty of marriage without any further conditions, but are also inconsistent with the right of the King of England, as is manifest from the articles themselves, but more particularly so from the 11th article thereof, by which it is provided that those who are possessed of the inheritance

of lands in Bombay should not be deprived of them, but for crimes only which the law of Portugal does order, which condition is to be perpetually annexed to the land notwithstanding any alienation ; so that, if an owner of land in Bombay commits any crime against the laws of England, even high treason against his most sacred Majesty, he is not to forfeit his land there, because the law of Portugal doth not so order it.

“ This instance alone shows the absurdity of those articles, and that they could not be terms agreed upon by the Kings of England and Portugal, but were a gross imposition contrived by a faction of the Portuguese in the Indies against the command even of their own prince.

“ And to this may be added that it appears, by the records in the custody of the Lords Commissioners of Trade and Plantations, by the report of the Lords of Council, and by the letter of King Charles the Second, stated at large (page 26 to 31), that His Majesty was so far from owning the treaty with Cooke that he rejected it, and resented the making it in the highest manner : he deposed Cooke, appointed a successor, and demanded satisfaction and reparation for the damages sustained in not having the island surrendered up as it had been agreed on, and this is a truth so glaring that it can no longer be withstood : records of fact still remaining are not to be controverted.

“ And therefore since those principles are established, viz :—

“ That the treaty with Cooke was inauthoritative, both with respect to England and Portugal, and never ratified by those or either of those Crowns, it necessarily follows that all that is built upon this foundation falls to the ground, and yet upon this foundation only stand all that is offered against the English.

“ It is of the utmost importance to keep in view the non-ratification of those instructions, because in the petition recently delivered in by the inhabitants of Bombay against the increase\* in the rents of their

\* See the Petition now before Government assuming this very basis of objection to an increase of the rents.

batty ground, they rely on the term of the agreement for the surrender of the island, providing that the accustomed foras of that time, and no more, can be legally demanded from them, as an argument against the increase of the rent on the salt batty ground."

Fifth division.

190. *Fifth.*—I now proceed to review the effects of the policy by which this island has been governed.

"The most decisive mark of the prosperity of any country is the increase of the number of its inhabitants." To judge by this unerring criterion of the wealth and prosperity of Bombay, the wisdom

Policy by which the Island has been governed reviewed.

by which the island has

The increase of population the decisive test of prosperity. That of Bombay estimated by that criterion.

been governed will readily be admitted even by the celebrated author of the "Wealth of Nations," whose opinions are so hostile to the principles by which the colonies in the East have been managed by the Company.

191. At the date of

State of the population at the date of the transfer.

Increase in Fryer's time.

the Reverend Mr. Cobbe,

Decrease in 1715.

ants with the English at

The present population.

the transfer of the island from the King to the Company, the population was estimated at ~~two~~ <sup>two</sup> thousand souls,—“the out-casts of all sects.” Fryer computed it at the time he visited Bombay at 60,000 souls,—“most of them fugitives and vagabonds.” A letter from the Reverend Mr. Cobbe, the first clergyman appointed to Bombay, to the Bishop of London, dated the 5th of October 1715, reckons the number of inhabitants with the English at 16,000 only. The permanent population may now be taken at 180,000 souls. The small space within the Fort alone contains at this period as many inhabitants as were in the whole island in the time of the Portuguese. The floating population I calculate at 60,000, making a total of 240,000 souls.

192. The extent of the island is about sixteen square miles; taking the permanent population at 180,000 souls, we have 11,250 inhabitants to every square mile,—an almost incredible population. In England the computations fall short of 200 to every square mile; and by Mr. Revitt's report of the 25th of June 1796, the population of Salsette averages 212 to the square mile.

193. The rapid increase in the population between the date of the transfer of the island to the British and of Fryer's account may be attributed to the encouragement afforded to settlers, and to the moderation and justice of a British administration ; and the decrease which appears in 1716 may also be satisfactorily explained by a reference to the lamentable state of the island a few years prior to 1716, arising from the opposition made by the Portuguese, and the obstructions they threw in the way of its being supplied with necessaries from Salsette and Bassein, and from the doubtful basis on which the British influence was founded at that period.

194. Independently of the embarrassed state of affairs in 1702-3, from the prospect of a civil war in the Mogul Empire on the death of Aurungzebe, which exposed the Europeans to constant alarms, Bombay was from these causes constantly menaced with invasion by the Siddee and the Marathas ; the safety of the island was threatened also by the Portuguese, who, besides obstructing the transport of provisions required by the garrison and inhabitants, were giving secret assistance to the Marathas ; and as if these difficulties had not been sufficient to create alarm, the plague broke out in the island,\* carried off some hundreds of the natives, and reduced the Europeans to the small number of seventy-six men. This calamity was followed by a storm which destroyed the produce of the island, and wrecked the greatest part of the shipping by which it was protected.

195. These events and causes were sufficient to operate a diminution in the number of the inhabitants at the date of the last quoted authority, and to retard the increase for some years. If therefore we compare the present population of Bombay with that in 1715, as given by Mr. Cobbe, the accuracy of which, for the reasons above assigned, may be relied upon, no country in the world probably can exhibit so rapid and positive an increase of prosperity in the same period of time.

196. The population of England and Wales has somewhat more than doubled in one hundred years. In 1710 it was about 524,000, and had been decreased ten-fold.

\* See also Hamilton's account.

ing. In 1811 it was about 10,488,000, and rapidly increasing. The population of Bombay has increased more than ten-fold in a century. In 1716 it was estimated at 16,000 souls; in 1814 it is reckoned at 180,000, and increasing.

197. The revenues of the island at the date of the cession to the Crown of England amounted to £2,833. In 1667-68 they were estimated at £6,490. In 1694-95 they were reduced to 17,000 xeraphins. In the year 1812-13 they amounted to £130,268-10s. But the prosperous state of the island will appear in a more prominent light by estimating the wealth of individuals, and by contemplating the many valuable estates with which the island is so richly studded.

Comparison of the Revenues.

Rs. 10,42,148, at 2s. 6d. the rupee, is £130,268-10s.

Other proofs of prosperity noticed.

198. The buildings within the walls of the Fort, including the barracks, the arsenal, and the docks, may be valued at one crore and five lacks of rupees. Compare this picture with that afforded by Fryer. The houses in the town are low, and thatched with oleas of the coco trees; all but a few the Portuguese left, and some few the Company have built. The custom-house and warehouses are tiled or plastered, and instead of glass use panes of oyster-shells for their windows. If, in addition to these local improvements, we estimate the importance of Bombay in a national point of view in reference to the resources which it has afforded towards the extension and consolidation of the British Empire in India; to the means of promoting the vend of the manufactures of the mother country for upwards of a century and a half in every quarter of India, throughout Persia and Arabia; to the aid which it has afforded in upholding her military reputation, and in contributing to her naval power and resources, we cannot too highly extol the liberal policy which has acquired and cherished those advantages, and in viewing the commanding situation of this possession, either in a commercial or in a political light, on the security of which the permanency of our Eastern Empire mainly depends, we cannot be too cautious in preserving unimpaired the resources of the island by encouraging and conciliating not only its own subjects, but those of the surrounding

Value of buildings within the Fort.

country ; to convert the floating population into permanent residents, that Bombay, and ultimately the adjacent Island of Salsette, may continue what it has hitherto proved—an asylum for those who seek for refuge and protection from the oppression of their own arbitrary governments.

199. The Court of Directors have from the earliest period entertained an opinion that the Island of Bombay might be rendered an advantageous settlement, and have therefore repeatedly enjoined the exercise of a mild and good government to encourage people from all other parts to come and reside under their protection; the impartial administration of justice has been anxiously urged, and that every facility might be afforded to the new inhabitants to build themselves habitations.

200. The Government has been directed to encourage speculators to stop the breaches where the sea overflowed the island, by allowing them to hold the land they recover for a term of years free of rent, *reserving only a small quit-rent to the Honorable Company*, and that they would grudge no tolerable expense to render the island healthful, for the promotion of which they would be contented that their rents be diminished by cutting some trees down; that Bombay be declared a free port; to suffer none to engross all or any commodities imported, or to do anything else that may discourage merchants frequenting the port, or inhabitants that reside on the island; that the lands be surveyed and registered, and everyone's property ascertained; to construct a dry dock, &c.

201. In their later instructions the Court remarked that it was very agreeable to them to observe that, notwithstanding the superstitious attachment of the Indians to the place of their nativity, yet that the number of the inhabitants were greatly

1748

15th March. Paragraph 48.  
Orders of the Court relative to the improvement of the Island.

1703

4th June. Paragraphs 38 and 39.

1708

20th April. Paragraphs 59 to 67.

1709-10

24th March.

1755

26th March.

In reply to the letter from the Government of the 1st December 1753, reporting, "We never omit any occasion that offers to encourage substantial merchants to reside on the island under your honor's protection; but we beg leave to observe to you that the Indians in general are so superstitious and bigotted to their native country, that

very agreeable to them to observe that, notwithstanding the superstitious attachment of the Indians to the place of their nativity, yet that the number of the inhabitants were greatly

they will suffer almost any indignities and oppressive rather than quit the place of their birth, notwithstanding, which we have the pleasure to inform your honor at the same time, that the number of inhabitants are greatly increased, insomuch that the town is so crowded, that the people are murmuring for to have it enlarged, and that some very considerable shroffs from Aurungabad and Poona have opened shops here to the great advantage of the trade of the place."

those of circumstance, be encouraged to settle at Bombay, therefore they strongly recommended it to Government to use the *most prudent, equitable, and encouraging methods* for that purpose, and in particular "we direct that *you suffer them to build houses wherever it shall be convenient to them*, so as not to incommode the defence of the place, &c., and in general that they have all the reasonable privileges that can possibly be given them; and as a freedom in trade was the most probable method and inducement for increasing the number of inhabitants, and encourage a general resort to the island, you are hereby directed to suffer all persons to buy and sell publicly or privately, as they themselves shall choose; to deal freely and without restraint with whoever they shall think proper; and if any of our servants shall prevent, or endeavour to prevent, such a freedom of trade on any pretence whatsoever, they will incur our highest displeasure; and the more effectually to prevent all combinations, monopolies, and attempts upon the freedom of trade, you are to affix up in all the most public places, in the usual languages, publications for the notice of all persons of these our intentions that they may be entirely free from apprehensions of being hindered, imposed upon, or oppressed by the Governor, the Members of the Council, our inferior servants, or any other persons whatsoever."

202. No measure is so calculated to secure the permanency of these advantages on an island like Bombay as the establishment of a moderate land tax. Above all, it is indispensable to the increase

Measures necessary to secure and promote these advantages.

of its population scrupulously to avoid the resumption of lands under whatever defective titles they may have hitherto been held; to declare the property to be permanently vested in the present possessors; to fix the tax derivable from that property permanently, and to establish a scale of rent for lands which may be leased in future, in order that the whole of the demands of the State, which each individual is bound

increased, and that some very substantial people had settled in Bombay to the great advantage of the island; and as it was their earnest desire that as many people as possible, especially



to pay, may be certain and not arbitrary,—not liable to variation and increase at the will of the Government.

203. The recent order of the Court may appear adverse to a permanent settlement of the land rents. These orders, however, I conceive are intended to apply more immediately to the provinces ; in any event, they only prohibit a too premature proceeding in fixing the rents in perpetuity, before an ascertainment of the utmost extent to which the productive resources of the country can be carried. The experience of nearly two centuries ought to be sufficient to enable us to determine on the amount at which the land tax should be permanently fixed, particularly on building-ground, and on an island like Bombay. I fear that, unless the maximum of tax to which landholders shall be ultimately subject be not declared on the promulgation of the determination which the Government may now adopt, individuals will be deterred from vesting their capital in any further improvement of the island ; for nothing is so prejudicial to the progress of improvement as a dependency, as well in respect to the amount of rent as the permanency of tenures, upon the will and pleasure of the ruling authority.

204. In tracing the progress of improvement in the town, or the increase in private buildings, the greatest portion of the property will be found to have been created since the year 1758.\* The quantity of ground paying rent by measurement is ..... 287,468 square yards ; of that quantity the property paying pension and tax by measurement is ..... 75,046 „ „

leaving 212,422 square yards, which, as not being subject to the payment of the tax of two shillings in the pound established in 1758, may be considered to have been created since that, which is a great amelioration in a short space of time, and is to be attributed principally to the completion of the line of fortifications, which of course made the inhabitants anxious to reside within the walls of the Fort where they could be best protected.

Proof of it.

\* The decline of ground may be dated from this year.

205. Since, however, the removal of the old Mandvee custom-house to Musjid Bunder, an increase of substantial buildings, extending very nearly to three miles from the Fort, has appeared within these ten years in a ratio exceeding the improvement noticed in the preceding paragraph. This spirit of vesting capital in land has arisen as much, in my opinion, from the mode in which individuals have been permitted to occupy lands, and the lowness of the ground rent, as from the decrease in the rate of interest, or from the difficulties which have of late years been experienced in the more advantageous employment of money.

Great extension of buildings as far as the third milestone.

206. Possessed of these data, I proceed to the next division of the inquiry—

*Sixth.*—To offer observations on Captain Dickinson's revenue exposition.

207. These data, which my long employment in the Secretary's office, and the knowledge I have thence acquired of the records of the Government, have enabled me to collect, and to bring to the view of Government in a manner more satisfactory probably than Captain Dickinson had the means of doing, will, I trust, tend to elucidate many of the doubts with which that officer's observations are delivered, and enable the Government, by tracing the evil from its source, the better to understand the nature of the case, and to adopt such measures as may be necessary to secure the property of individuals, and to realise the public revenues by a more simple and efficient system than prevails at present.

*Sixth head of inquiry.*  
Remarks on Captain Dickinson's revenue exposition.

208. In the course of these observations, I have endeavoured to meet the arguments contained in Captain Dickinson's exposition of the various tenures under which the ground within the Fort of Bombay is held. The remarks I have to apply therefore to his view of the subject will be but few.

209. Captain Dickinson commences by stating that the ground comprising the area of the Fort is held of the Honorable Company under various *tenures*, enumerating nine. As no benefit can result from any attempt to trace the origin of these variations beyond what has been already attempted in this report, I will not enter into the inquiry.

The cause of the various denominations of taxes.

It is not at all surprising that, during so long a period when the island appears to have been almost left to itself, and individuals permitted to take ground as they pleased, and no system or regulation established for the security of the revenues, taxes of various denominations or tenures should have crept into fashion. I am only surprised that greater irregularities have not occurred.

210. The distinction drawn on the 3rd of November 1731 between the rent to be paid by the English and black inhabitants will account for some ground paying six and other eleven reas per square yard. The lump I cannot explain ; it is a species of impost created probably by the ingenuity of some of the Collectors ; for instance, the pension tax and six and five reas ground having been leviable on some of the property, the whole has been consolidated, bills made out in the lump, and the term has thence derived its birth.

211. I have not been able to trace any proceeding respecting the levy of fifteen reas per single yard, but from one of the statements to Captain Dickinson's report, that tax does not appear to have been so productive as the six reas per square yard.

212. I am not aware of any express orders from the Court for the formation of a new register of the landed property within the Fort subsequently to the year 1703. Those quoted by Captain Dickinson were by the Government. The resolution of the 3rd of December 1731 clearly explains itself. The English inhabitants were to pay six, and the black eleven, reas a square yard. There are inhabitants now living who recollect the space on which the government-house is built, and the whole range where the Rope Walk stood, including the premises belonging to Mr. Forbes, and in fact the best part of the Fort, as plantations of cocoanuts, which it became the policy of the Government to acquire and to remove. The Fazendar's property therefore, by exchanges, became the Company's, and been again transferred to individuals ; but in those exchanges the property lost whatever value may intrinsically attach to the term Fazendar.

213. To the first question propounded in the 9th paragraph, I reply that the quit-rent is derivable to the Honorable Company from the whole of the ground in the occupation of a proprietor, whether built upon or not.

The whole was formerly productive, and the quit-rent was computed at one-fourth of the net produce. To the second query I reply in the negative, provided the surplus ground be chargeable with rent; for the resolution of Council of the 3rd of November 1731, by prescribing the rent payable for ground which the English inhabitants *had taken in since the building of their houses, or may have hereafter taken in*, clearly shows that the practice of encroaching upon the public property, if it can be called an encroachment to pay for what ground you take in, and to which therefore the Collector must have been privy, had been recognised, if not sanctioned, by the Government.

214. Every inch of ground in the occupation of individuals in 11th Paragraph. 1758 ought to have been charged with quit-rent and the tax, and where exceptions exist, it must be chargeable to omission on the part of the Collector. The tax ought in fairness to have been also levied on all property created subsequently to that period.

215. It would be an endless task to enter into an examination of 12th, 13th, and 14th paragraphs. the statements annexed to Captain Dickinson's report, and to endeavour to reconcile the views and proceedings of former Governments. It is clear to me that the quit-rent and the pence have been confounded: six reas has been established as the rent of one species of property, and eleven reas of another. The black inhabitants have been taxed by one system, and Europeans by another, and some ground has been set free of rent entirely, and the 10 per cent. tax of 1758 has been levied on some property and not on others. In adverting to these circumstances, one cannot be surprised at the various denominations of taxes to be met with in the rent-rolls as exhibited in Captain Dickinson's exposition.

216. To the queries contained in the 14th paragraph, I reply that, in my opinion, the 6 reas ground did not originally belong to the Company, but that latterly it did. The precise period of its becoming public property is not traceable; but admitting that the six reas ground was originally the Company's, their right has been impaired and forfeited. I am of opinion that the Company possess the right to increase the rent. Upon the 4th question, I think surplus ground paying rent is not resumable by the Company; and I entertain

considerable doubts whether the surplus ground paying no rent is so, particularly if it has been alienated upwards of twenty years—it is a possession adverse to the Company's right. Admitting it, however, to be resumable, of what advantage will it be to the Company to obtain a few square yards in different parts of the town? It is rather too late to recover property that has been alienated probably for upwards of a century, but rent\* should in future be levied on such excess of ground.

217. I have no further remarks to offer on the 15th to 19th paragraphs.

218. I differ entirely from the opinions contained in the 20th to 23rd paragraphs of Captain Dickinson's report. That respectable officer has obtained but a limited insight into the nature of the landed property within the Fort from not carrying his inquiries beyond the year 1720. At that period I have adduced evidence sufficient, I think, to prove that the Company possessed but a small portion of ground within the Fort. The evil of not ascertaining what were the crown lands commenced at the date of the cession. "From the indefinite mode in which Cook had received it, it was impracticable to ascertain which of the inhabitants were legally possessed of sufficient titles to their estates. No stipulations having been made of the King's sovereignty to the soil, some of the best estates on the island refused to pay rent, and produced titles which could not be disputed though believed to be fictitious." Has anything been since done to remove those doubts; and are titles which, though questionable, could not yet be disputed in 1666, to be investigated in 1814? Captain Dickinson states "that a system, though ineffectual, was early introduced to preserve the Company's rights." The first appearance of the introduction of anything like a system was in 1731. I cannot call that an early period. What system prevailed prior to that date to preserve the Company's rights? None that I have been able to discover. The Company unquestionably possessed some lands round the Castle at the period of the cession, but comparatively with the extent of private property it was insignificant, if we are to believe the evidence deducible from Bruce's Annals, and Fryer's

\* It is provided for by the 10th Article of Rule, Ordinance, and Regulation III. of 1812.

upon the present generation would have been fatal to the best interests of the Company. The transfer of so large a capital, once the property of the subject, to the sovereign would have been a death-blow to the improvement of the lands the Company yet possesses.

222. If any grant or alienation of land has been made, subject to the payment of pension, as stated in the 22nd paragraph, the Company's property has very improperly been converted into free-hold. I am not aware that the term quit-rent is characteristic of the Company's proprietorship; ground rent may be; nor can I subscribe to the conclusions drawn in the 23rd paragraph. No one denies that the preservation of their landed property was not an object of importance to the Court of Directors; but has the order of 1731 put an end to all differences relative to property between the natives and Government? Differences existed at the date of the cession of the island; they were compromised by Aungier's convention; but precisely the same doubts and differences exist at this hour in respect to the property created since the conclusion of that convention as prevailed prior to it. Captain Dickinson attaches more importance to the proceedings of the 3rd of December 1731 than they merit.

223. The honest zeal which has dictated the remarks contained in the 24th paragraph of Captain Dickinson's report is in the highest degree laudable; but I am free to acknowledge myself to be one of those to whom that officer's animadversion applies. I do contend that the Company have relinquished their right to resume any part of the ground within the Fort paying rent at their will and pleasure. They may resume it for public purposes on paying a full value of the property. That "the most rigid orders have been issued from time to time to preserve its spirit," I admit; but I have failed to discover a single instance where those orders have been "enforced." The non-enforcement of those orders affords to my mind presumptive evidence of the weakness of the Company's cause, and of an abandonment of their rights.

224. The proceedings of Government connected with the three grants adverted to in the 25th paragraph only go to prove their right to modify the ground rent.

historical account of Bombay, and the Honorable Court's orders, to purchase the cocoanut oarts "to the extent of a mile from the Castle."

219. The order from the Honorable Court, adverted to in the 21st paragraph, was against the grant of a lease for ninety-nine years, with the rent probably fixed for that period. A lease of that description was certainly worse than those which the Government has been in the practise of granting. In the former the rent could not be increased, but in the latter it might. The objection, however, of the Court was to the perpetual surrender of the fee simple. Their words are these, "we find, in consultation the 9th of December 1719, an old house and ground, called Sir John Weybourne's, sold Mr. John Hill for one hundred and eighty rupees, to him and his heirs for ever. We don't like this way of giving any body a fee simple or absolute inheritance of any house or ground in Bombay. It may one time or other be of ill consequence. We will have no more of it, but to allow you to grant leases for a term of years, or for lives, *with a liberty of renewal*; but in that case don't give a very long term, for once Bombay could be made secure and fit to invite merchants and useful inhabitants to reside there, we cannot doubt the ground rents rising considerably.

220. There is something extraordinary in the sale and re-purchase of this old house and ground. On the 20th of February 1715 the Government bought of John Hill, in behalf of the Company, all that messuage, &c. commonly called or known by the name of "Sir John Weybourne's house" for Rs. 3,000, and on the 9th December 1719, the Government sell this very property to the very same person for Rs. 180 only.

Instance where the Company purchased property for Rs. 3,000, and sold it again for Rs. 180.

221. The orders of the Honorable Court, however, were ill adapted to the objects in view, or to the feelings and customs of a native community. No native would have invested his capital in buildings on leases for a short term of years, or for lives, even with a liberty of renewal, because that condition infers a doubt of its permanency. Suppose the Company's lands had been leased in 1700 for ninety-nine years, and that, on the expiration of the leases in 1800, the natives had witnessed the whole property, to the amount of half a crore of rupees, revert to the Company, the effects of such a system

225. I do not perceive the importance which Captain Dickinson attaches to the documents brought forward in the 26th paragraph. They are merely applications to build and rebuild. No person can at this time ever repair his house without preferring such an application to the Court of Petty Sessions. The report of the Clerk of the Works, dated the 8th of June 1788, marked R, particularly specifies the persons applying to build and rebuild their houses "*on the Honorable Company's ground;*" but the applications marked P and Q contain no such specification; those lands therefore were not the Company's. With regard to the applications under R, Captain Dickinson informs us "that Company's ground was petitioned for and granted on

Remarks contained in certain conditions for an *unlimited time.*"  
 Captain Dickinson's exposition. What those conditions were are not stated.

But if a grant for an unlimited\* time be not tantamount to an alienation, I know not what description of grant confers that right. These documents, however, are material to prove that some sanction,—some description of grant, was invariably given to persons desirous to build; these grants may be viewed as the copies of Court rolls referred to in the 74th paragraph. If the Company however, under the cover of a grant of ground for an unlimited period, were to come forward, on the expiration of twenty, thirty, forty, or fifty years, after that barren ground had been built upon and converted into a valuable property, and claim resumption, it would, to say the least of it, be the act of an arbitrary government.

226. The imposition of the tax originated with the Government, and not with the Court of Directors, as stated in the 27th paragraph. But what does the imposition prove? Surely not any recognition between the public and the Government of each other's rights as contended for by Captain Dickinson, but that the Government possessed and exercised the privilege of imposing a temporary tax on land for a

\* The author of the remarks on the husbandry and internal commerce of Bengal states that "none of the tenures in Bengal are secure *except* those by which the rent of an unascertained farm, or field, or a specified quantity of land, is fixed by a lease granted previous to cultivation, for a definite term or for perpetuity, whether the permanency of it be expressly stipulated, or the lease be framed as is not *common for an indefinite period.*



special purpose. That the quantity of ground taxable in 1760 was greater than it is at the present day is easily accounted for from the ruinous state in which a part of the bazar burnt in 1803 still remains, and from the property the Company has acquired by purchases and exchanges since the year 1760, amounting altogether to Rs. 7,37,927.

227. That the Company have governed this island by a wise and liberal policy is indisputable. Compare the public revenues, the public wealth, and the population of Bombay at its cession with the present period, and the fact is evident. But their liberality has not been entirely unrequited; the obligation between the Company and their subjects are at least reciprocal. In attending to the interests of the one, let us not neglect those of the other; let us be careful to perpetuate those advantages by a liberal policy; let us not sap the foundations of private property by any attempt to resume what has been granted "for an unlimited period," and the permanency of which the custom of the manor and the acts of the Government have confirmed. The effects of such a measure would soon be seen and felt. The island would be deserted, and the mild "administration" of the British Government lose that charm with which it has hitherto conciliated the affections of its subjects. I have already sufficiently remarked on the "strong measures" resorted to by the Council sixty years ago. General Meadow's proclamation, and the letter marked L adverted to in the 30th paragraph, have no relation to the tenures within the town. They referred to the *farmers of villages* and *currumbees*; to property without the walls of the Fort,—tenures of a different nature which are not at present under discussion.

228. I cannot conceive upon what ground blame can attach to Mr. Leckie for possessing landed property within the walls of the Fort yielding an income of £3,000 per annum. By investing his property to such an extent in the Company's territories, he has afforded the strongest proof of his reliance on their good faith; nor is it at all to be wondered at that, when called upon to acknowledge a right in the Company to take possession of that property at their will and

pleasure, he should have resisted such a requisition in the manner he has done. There is a great deal of truth and force of argument in that gentleman's letter of the 22nd of June 1812. It is true that the Island of Bombay has been enriched at the private expense of individuals, and I am persuaded that the Court of Directors would not, even if their claim to resumption was well founded and universally acknowledged, exercise it at this period "to the ruin of thousands of families," and it might have been added without any benefit to themselves; for an act of so arbitrary a nature would depopulate the island—at least the unbounded confidence which is now so universally and so justly reposed in the Company would be seriously weakened, and a stop would be put to the still greater improvement to which the revenues of this, and the adjacent Island of Salsette in particular, can yet be carried.

229. I am happy to peruse the sentiments contained in the 3rd and 4th paragraphs of Captain Dickinson's second report of the 3rd of December last. He has, however, fallen short of what I conceive ought to be done. I will answer for it that there is not a landholder who would thank the Government for a lease of 40 or of 60 or of 99 years. An application for a lease would be a virtual acknowledgment of a defectiveness of title in the present possessors, which no lawyer would, I am sure, advise an individual to prefer, and the landholders are themselves too well aware of the effects of such a measure to resort to it. The alarm which this scrutiny has excited is very considerable: it has depreciated the value and affected the sales of private property. It is most essential that these feelings should be allayed by a just and liberal proceeding in the Government.

230. Captain Dickinson proposes as a compromise that the holders of ground under tenures 7, 8, and 9 shall have leases granted to them for forty-two years, on the condition of their paying an increased rent of thirty-six reas per square yard; and that the holders of ground under tenure 8 should have leases for sixty-three years, on the condition of their rent being increased to twenty reas per square

Unfair principles on which Captain Dickinson recommends a compromise.

yard, from the effects of which "two-thirds of this very valuable city will, at no very remote period, revert to the Honorable Company."

231. This appears to me to be anything but a compromise, and very different from the compromise effected by Governor Aungier under circumstances in all respects the same. The proposal is not founded on fair and equitable grounds. A compromise is a compact or bargain in which some *concessions* are made on *each side*, and where the advantages are reciprocal. Let us estimate the merits of Captain Dickinson's plan by that criterion. Individuals are not only to forfeit the whole of their property to the Company without any compensation at the expiration of forty-two or sixty-three years, but they are also to pay in the interim an increase of rent. Now, what are the concessions on the part of the Company to abstain from enforcing what is considered after all to be but a dubious right,—a measure at the same time condemned as harsh, if not illegal, and which, if attempted, would involve the Government in endless disputes, not to mention the delay and very enormous expense attendant on a legal process of the peculiar and complicated nature alluded to? "Is this a compromise balanced by the scale of equity?" It runs in extremes. It is beneficial to the Company and ruinous to individuals. The proprietors of ground which has been in a family time out of mind, beyond the period of ascertainment, and subject to the payment of a moderate rent, are now to be offered a compromise which shall oblige them to pay an increase of rent more than double the former amount, and to surrender their property within a limited time. Any attempt to effect such an arrangement would be most injudicious, and would detract from the justice and established reputation of the Company.

232. The extent of freehold property under the six first tenures appears by Captain Dickinson's survey to be 75,046 square yards.

And the quantity paying the description of  
assessment enumerated under these  
numbers according to the rent roll is 69,671. " . "

Excess by the Survey . . 5,375 " "

	Sqr. yds.	Sqr. yds.
The ground paying the rent specified under Nos. 7 and 8, and supposed to be the Company's, measures .....	96,952	
And by the rent roll .....	90,398	
	<hr/>	6,554
The quantity of ground paying eleven reas per square yard by Captain Dickinson's measurement is .....	111,604	
And by the rent roll .....	107,854	
	<hr/>	3,750
		<hr/>
		15,679
In addition to which there is ground paying no rent whatever, aggregating by measurement		3,866
And appropriated to religious and charitable purposes .....	9,153	<hr/>
		Total of surplus ground.. <u>19,545</u>

233. From that surplus of ground paying no rent should be deducted the extent held on free grants.\* See the grants made on 3rd of November 1731, and to Ruttonjee Manockjee. But taking the surplus at 19,545 square yards, it cannot surely be considered as any serious alienation of public property. Encroachments to so small an extent can reflect no discredit upon the Collector's office, or upon the servants of the Company entrusted with the care of their landed interests, when the whole of the proceedings connected with their rights and privileges from the cession of the island to this date are taken into consideration, and when it is, moreover, recollected that all applications for ground were complied with under an admeasurement made by natives. This unexpected result, when the apprehensions of the Government that the public property had been seriously encroached upon, cannot fail to be gratifying to the Government. It affords, moreover, collateral evidence that the ground when required must have been allotted by the Collector or by his authority, otherwise the excess, it is not unreasonable to conclude, would have been greater.

\* Probably the 3,866 square yards.

234. Captain Dickinson proposes that the first six tenures described in his exposition, which are stated to have been originally one and the same species of property, and is freehold, measuring 75,046 square yards, and which now pays only Rs. 300, should be embodied and subject to an assessment of eight reas per square yard, which would yield ..... Rs. 1,500-3-68

That tenures 7 and 8, measuring 96,952, and paying at present Rs. 2,223-0-33, should be incorporated and pay at the rate of 20 reas the square yard, which would yield Rs. 4,847-2-40

2,624-1-07

And that tenure 9, measuring 111,604 square yards, and at present paying Rs. 2,734-3-49, should be assessed at thirty-six reas per square yard, which would yield.....Rs. 10,044-1-44

7,309-1-95

giving an increase of Rs. 11,134-3-70 (eleven thousand, one hundred and thirty-four rupees, three quarters, and seventy reas) per annum. Instead of three descriptions of ground rent, I would consolidate the whole into one, establish but one tax (the quit-rent), and abolish the rest. The reasons on which that opinion is grounded lead to the next and the last division of my report.

See comparative Statement E to Captain Dickinson's supplementary report.

Seventh.

*Seventh.*—To fix the rate at which the rent shall be fixed for the future.

235. According to Captain Dickinson's data, 834 square yards of ground most advantageously situated within the town wall, paying eleven reas the square yard, or Rs. 24-2-76 per annum, to the Company, yield to the present holder, from being relet to under-tenants, the enormous sum of 1,003 reas the square yard, or Rs. 2,103 per annum, and estimated to be worth Rs. 35,039, or Rs. 42 the square yard.

Principles on which the rent should be fixed.

Enormous profit derived from a portion of the Company's ground by the tenant.

“ If the pension or quit-rent were to be levied on this property according to the original principle at 25 per cent., it ought to pay 252 reas per square yard; if to this were added the tax imposed in 1758, it ought to pay a pension and tax of 353 reas; if ten per cent. alone be collected, it ought to pay 100 reas the square yard; and if 5 per cent. only be imposed, it ought to pay 50 reas the square yard.”

236. This is, however, no criterion of the general value of ground.

This is, however, a particular case, and no criterion of the general value of ground.

The property is situated in the most advantageous part of the Fort—behind the barracks, where the under-tenants have merely temporary sheds or shops, and is the property referred to in the 158th paragraph of this report as belonging to the Company. It can never be expected that any Government can realise the profits of individuals, or a great landholder those of his under-tenants. It would be bad policy to attempt it. There is, moreover, a wide difference between the character of the Company now and in 1703. At that time they were not the great sovereign they may now be considered to be, and their policy should be regulated on more enlarged principles. They should be content with a moderate quit-rent as an acknowledgment of their sovereignty, and leave it to the industry of individuals to improve the property to the utmost advantages for their own benefit. Their landed property should be rendered subservient to the increase of population, which naturally leads to increase of wealth. A greater revenue can at any time be realised by a small increase on the excise than by any augmentation in the rent on lands, and I am inclined to think that, if the whole of the rent on building-grounds were to be equalised and permanently fixed at its present rate of eleven reas the square yard, the revenues would, in the course of a few years, more than treble the utmost increase of assessment you can derive from the island.

237. As, however, the Court may expect an increase, and the majority of those whom I have consulted seem to think the ground rent moderate, our object at present is to fix upon such an augmentation as shall not operate as a discouragement to the increase of the population of the island.

238. The average value of one square yard of ground within the Fort is assumed by Captain Dickinson at Rs. 15 ; six per cent. interest thereon is Rs. 0-3-60, which he calls the profits. Ten per cent. on the latter will be found to yield thirty-six reas per square yard, which he proposes as the future annual rent for one description of the Honorable Company's ground. That that calculation is not made on too high a scale, the following statement of ground sold within the Fort subsequently to the fire in 1803 will probably satisfactorily prove, viz :—

Moody's Street	331 square yards	sold for Rs. 6,000	or Rs. 18-0-50 per square yard.
Ditto.....	489	" " " 8,000	" 16-2-26 " "
Great Bazar			
Street ....	189½	" " " 6,000	" 30-1- 0 " "
Moody's Street	275½	" " " 4,500	" 16-1-33 " "
Street not mentioned	.... 286	" " " 3,223	" 11-1- 7 " "
Golwar Street.	166½	" " " 2,700	" 16-0-86 " "
Ditto....	58½	" " " 1,000	" 17-3-76 " "
Moody's Street	68	" " " 1,800	" 26-1-80 " "
A sale by the Great Bazar	Moody's family to Nagur Hirjee for	" 13-2- 0	" "
Street ....	194 square yards	sold for Rs. 7,300	" 37-2-17 " "
Golwar Street.	95½	" " " 1,451	" 15-1-41 " "
2nd Bazar....	388	" " " 5,700	" 14-2-63 " "
Ditto ..	104	" " " 3,100	" 29-3- 4 " "
Ditto ..	328	" " " 9,750	" 29-2-90 " "
Mahomed Suf-fee Street..	138	" " " 3,100	" 22-1-42 " "
Ditto ..	333	" " " 10,400	" 21-0-80 " "
Bazar Street..	290	" " " 8,000	" 27-2-34 " "
Great Bazar			
Street ....	366	" " " 13,025	" 35-2- 8 " "
Moody's Street	233	" " " 4,775	" 20-1-85 " "
Street not mentioned	.... 2,400	" " " 30,000	" 12-0- 2 " "

239. The demand for ground, however, within the Fort was great after the fire in 1803, and the price rose in consequence, but the average price before that calamitous event was 8, 10, and 12 Rupees

See Mr. DeSouza's letter of the 10th of March 1807.

The price of ground before 1803. per square yard. The Company paid for Arda-seer's ground Rs. 25 and for Hormusjee Bomanjee Rs. 16 per square yard.

240. By taking the value of ground at Rs. 12-2 per square yard, the future rent would be thirty reas the square yard, which is very nearly equal to £48 per acre. The late Town Committee, in a report dated the 11th of May 1803, thought that the ordinary annual ground rent near the town being eleven reas per square yard, or Rs. 16-12-9 per annum, was a very handsome rent.

241. Let us ascertain the rate at which the ground within the walls of the Fort is taxed. The assessed and pensioned ground yields the Company only Rs. 5,257, whilst the parliamentary assessment on houses and grounds within the same limits amounts to five times as much, or about twenty-five thousand rupees per annum. The landholders in the town of Bombay hence contribute for the cleansing, watching, and repairing of the streets five times more than they contribute towards the maintenance of the expenses of the State for the security of their rights and property, and for the protection which they enjoy against foreign enemies. The reverse upon every principle of taxation ought to be the case.

242. According to Captain Dickinson's statement, \* the quantity of ground paying pension and tax by the Collector's books is . . . . . 60,992 square yards, the ground paying six reas per square yard, and the lump measures . . . . . 90,398 " " and eleven reas per square yard . . . . . 107,854 " "

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259,244 " "

The Company on an average collect only eight reas per square yard. from the whole of which a ground rent, tax, and quit-rent is derived to the extent of Rs. 5,257-3-49, being at the rate of little more than eight reas per square yard, or about £12 per acre.

\* Captain Dickinson's survey report would have been more complete had he given the area of the space within the walls of the Fort (the Company's property, &c.) in square yards.



243. But in estimating the amount at which the land is taxed, it is fair to include the assessment levied under the 33rd George the Third. The annual rent of the property assessed within the walls

	<sup>Rs.</sup>	
Assessment . . . .	26,368	of the Fort amounted in 1813-14 to
Deduct paid by the Company . . . . }	3,186	Rs. 5,27,360; the assessment at one-twentieth,
		excluding the Company's property,
Rupees	23,182	is . . . . . Rs. 23,182
		Add the ground rent as above in
		round numbers . . . . . Rs. 5,257

Total ground and house-rent . . . . . Rs. 28,439

which, if thrown upon the number of square yards assessed to the revenue, being Rs. 2,59,244, would average about forty-four reas a square yard, pretty nearly £66 an acre.

But by including the assessment, the inhabitants pay forty-four reas.

244. The great price given for all ground within the Fort which seems daily rising; the buildings carried on in every quarter of the European part; the commodious and costly family dwellings which many of the natives have constructed, and the large and expensive apartments used as shops and commission warehouses by natives as well as Europeans, afford the

The ground within the Fort very valuable.

£105 per acre, or 70 reas a square yard, a fair rent;

strongest evidence of the value of ground within the Fort of Bombay; and I am of opinion that on an average it could well afford to pay a rent at the rate of \* Rs. 105 per acre, or say 70 reas per square yard; but as it is already assessed at the rate of 50 reas a square yard, or rather as it already pays a parliamentary assessment at the rate of 36 reas per square yard, the question to be determined is whether the Company should exact 70 reas in addition, or fix the future quit-rent at the difference; upon this point I think there can be but one opinion.

245. I am fully aware of the arguments that may be adduced against the principle of admitting the town assessment to operate as a deduction from the contribution which the State has a right to expect from the

Reasons for that opinion.

\* 69½ reas per square yard.

subject, but I am satisfied that, if the rent be fixed at £105 per annum per acre, or at the rate of seventy reas a square yard, in addition to the thirty-six reas per square yard paid to the assessment, we shall, I fear, impose an insuperable bar to the progress of all further improvements.

246. To judge of the practicability of increasing the rent, it  
 The rate of taxation in may be as well to ascertain the rate at  
 Bombay generally. which the inhabitants of Bombay are taxed.

247. I have already taken the land and sayer  
 revenues and the customs at .....Rs. 10,42,148  
 Suppose we add for the assessment, wheel tax, market  
 fees, and other contingent taxes to which the inhabit-  
 ants are subject .....Rs. 1,00,000

Rupees 11,42,148

The fixed population I have taken at 180,000. The average of all the taxes is therefore Rs 6-0-24 per head,\* which is not equal to

Estimated at about Rs. 6 one-tenth of the earnings of the great part of  
 per head. the population, and may be considered as  
 an average moderate upon the whole for a flourishing island like  
 Bombay, which being, moreover, collected almost wholly through  
 the Custom Master, the inhabitants are but little exposed to the  
 vexatious importunities of the tax-gatherer.

248. It is not, however, from the condition of the majority of the  
 population that we can judge of the practi-  
 Not applicable to the inhabitants possessing pro- cability of increasing the rent on building-  
 perty within the Fort. ground. They inhabit huts constructed of the  
 cheapest materials, and which cover a space chargeable probably with  
 a few reas of ground rent. It is necessary we should ascertain whether  
 a builder's is a profitable trade in Bombay.

249. Doctor Adam Smith states "that the building rent is the  
 interest or profit of the capital expended in  
 Whether the trade of a builder is profitable in building the house. In order to put the  
 Bombay ascertained on Adam Smith's principles. trade of builder upon a level with other  
 trades, it is necessary that this rent should be  
 sufficient—first, to pay him the same interest which he would have

\* In England it is more than as many pounds per head.

got for his capital if he had lent it on good security ; and secondly, to keep the house in constant repair, or, what comes to the same thing, to replace, within a certain term of years, the capital which had been employed in building it. The building rent on the ordinary profit of building is therefore everywhere regulated by the ordinary interest of money. Where the market rate of interest is 4 per cent., the rent of a house which, over and above paying the ground rent, affords six or six and a half per cent. upon the whole expense of building, may, perhaps, afford a sufficient profit to the builder. Where the market rate of interest is five per cent., it may, perhaps, require seven or seven and a half per cent. If in proportion to the interest of money, the trade of the builder affords at any time a much greater profit than this, it will soon draw so much capital from other trades as will reduce the profit to its proper level. If it affords at any time much less than this, other trades will soon draw so such capital from it as will again raise that profit. Whatever part of the whole rent of a house is over and above what is sufficient for affording this reasonable profit naturally goes to the ground rent, and where the owner of the ground and the owner of the building are two different persons is in most cases completely paid to the former."

250. The current or market rate of interest being six per cent., the rent of houses in Bombay ought therefore, over and above paying the ground rent, to yield eight or eight and a half per cent. to the proprietor. With the view of forming some

Statement of property belonging to eight of the principal landholders. judgment upon the value of property within the Fort, I have framed statements of the ground belonging to eight of the principal landholders within the Fort, to ascertain whether the net rent yields a fair and sufficient profit on the capital invested. The documents are framed upon as correct information as I have been able to obtain.

251. By these statements it appears—

That Pestonjee Bomanjee possesses, according to Captain Dickinson's survey, 15,598 square yards, being an excess

Pestonjee Bomanjee's unprofitable, yielding  $7\frac{1}{2}$  per cent. on the capital. of 4,277 square yards beyond the Collector's books. He pays the Company only Rs. 155-2-58, or at the rate of four reas per square yard, and Rs. 1,302-0-40 to

the assessment, making a total of Rs. 1,417-3-22. The gross annual rent of the property is estimated at Rs. 32,552-2, which gives a net rent, after deducting the assessment and ground rents, of Rs. 31,134-2-78. The value of this property is taken at Rs. 4,24,500, the interest of which, at 9 per cent., is Rs. 38,205, of which the rent falls short in the sum of Rs. 7,070-1-22. Deducting, however, from that rent 15 per cent. for repairs (a very liberal allowance), leaves Rs. 26,469-2-78, being  $6\frac{1}{2}$  per cent. per annum on the capital, or nearly  $7\frac{1}{2}$  per cent. without that deduction.

That Hormusjee Bomanjee possesses, according to the survey, 12,146 sq. yards, or an excess of 3,658 square yards beyond the Collector's books. He pays the Company Rs. 175-1-46, or at the rate of nearly six reas per square yard, and for assessment Rs. 641-3-20, making a total of Rs. 722-3. The gross annual rent of the property is estimated at Rs. 16,045, which leaves, after deducting the assessment and ground rent, Rs. 15,322-1, being equal to 5 per cent. on the value of this property, estimated at Rs. 3,12,300. Allowing 15 per cent. for repairs, the net rent will be Rs. 13,027, being about  $4\frac{1}{4}$  per cent. on the capital invested.

Hormusjee Bomanjee's  
still more so.

5 per cent. on the capital  
expended.

That the premises called Dady's buldings contain, according to the above survey, 8,494 square yards, or an excess of  $5,120\frac{1}{2}$  square yards beyond the Collector's books; pays the Company Rs. 50-2-46, or at the rate of  $2\frac{1}{2}$  reas per square yard, and assessment Rs. 634, making a total of Rs. 676-1-88. The gross rent of the property is Rs. 33,600, which leaves, after deducting the assessment and ground rents, Rs. 32,923-2-12, being equal to  $8\frac{1}{2}$  per cent. per annum on the value of this property, estimated at Rs. 3,85,431-1-24. By allowing 15 per cent. for repairs, the net rent will be reduced to Rs. 27,988-2-12, equal to  $7\frac{1}{4}$  per cent. on the capital.

The late Ardaseer  
Day's four buldings yield  
 $8\frac{1}{2}$  per cent.—a fair allow-  
ance.

That [Mrs. Nesbit possesses, according to the survey, 11,087 square yards; no excess pointed out in the Collector's books. She pays the Company Rs. 940-0-69, or at the rate of  $3\frac{1}{2}$  reas per square yard, and assessment Rs. 709-2-20, making a total of Rs. 764-2-34. The gross annual rent of the property is estimated at Rs. 17,738-3, which gives a rent, after deducting the house and ground rents, of Rs. 16,974-0-66, being nearly equal to  $11\frac{1}{2}$  per cent. on the value of this property, estimated at Rs. 1,48,000. Allowing 15 per cent. for repairs, the net rent will be Rs. 14,860-0-66, or nearly 10 per cent. on the capital.

That Mr. Ashburner possesses, according to the survey, 4,059 square yards, being an excess of 1,357 square yards beyond the Collector's books. He pays the Company Rs. 41-0-6, or at the rate of  $2\frac{1}{2}$  reas per square yard, and assessment Rs. 555-3-80, making a total of Rs. 576-0-98. The gross annual rent of the property is estimated at Rs. 15,758-3, which, after deducting the house and ground rents, leaves Rs. 15,143-2-2, equal to  $15\frac{1}{2}$  per cent. on the estimated value of this property at Rs. 2,265. Rs. 97,000, which, after deducting an allowance of 15 per cent. for repairs, leaves a net rent of Rs. 12,878-2-2, or  $13\frac{1}{4}$  per cent. on the capital.

That Cursetjee Monockjee possesses, according to the survey, 2,958 square yards, being an excess of 899 $\frac{2}{3}$  square yards beyond the Collector's books, for which he pays the Company Rs. 38-2-33, or at the rate of five reas per square yard, and assessment Rs. 341-1-60, making a total of Rs. 376-0-24. The gross annual rent of the property is estimated at Rs. 8,535, which, after deducting the assessment and ground rent, leaves Rs. 8,158-3-76, equal to  $8\frac{1}{4}$  per cent. on the value of this property, estimated at Rs. 94,300. Deducting 15 per cent. for repairs, the net rent will be Rs. 6,943-3-76,—nearly  $7\frac{1}{2}$  per cent. on the capital.

That Moosa Mapla possesses, according to the survey, 5,725 square yards, being 1,203 square yards less than the Collector's books. He yields 5¼ per cent. Moosa's unprofitable, less than the Collector's books. He pays the Company Rs. 123-3-77, or at the rate of nearly nine reas per square yard, and assessment Rs. 368, making a total of Rs. 454-2-4. The gross annual rent of the property is estimated at Rs. 9,200, which, after deducting house and ground rents, leaves Rs. 8,745, being nearly 5¼ per cent. on the value of this property, estimated at Rs. 169,200. Allowing 15 per cent. for repairs, the net rent will be Rs. 7,440-1-96, or nearly 4½ per cent. on the capital.

That Kesowdass and Ransordass possess, according to the survey, 3,990 square yards, being 1,788½ sq. yards less than the Collector's books. Kesowdass, &c. unprofitable, yielding 6¼ per cent. They pay the Company Rs. 105-2-8, or at the rate of eleven reas per square yard, and assessment Rs. 310-3-20, making a total of Rs. 361-3-34. The gross annual rent of the property is estimated at Rs. 7,770, which, after deducting the house and ground rents, leaves Rs. 7,408-0-66, being Rs. 6¾ on the value of this property, estimated at Rs. 114,500. Allowing 15 per cent. for repairs, leaves a net rent of Rs. 6,298-0-66, or at 5 per cent. on the capital invested.

252. By these statements it appears that, in four out of the eight cases brought forward, the property within the Fort is overtaxed: two are assessed to the utmost extent of the principle, and two are under assessed. The statement of the property of the late Ardaseer Dady is framed from data obtained from his books, and is perfectly correct. It is, however, generally admitted that those buildings have been constructed on a very expensive scale, and that the ground and plan of the superstructure have not been disposed of to the best advantage. In respect to the other statements, it is probable that I have over-estimated the value of the property, and underrated the annual rent. Result rather unfavourable.

253. These documents therefore, supposing them to be accurate, show either that the property within the Fort is sufficiently taxed, or that the proprietors do not exact an adequate rent for their houses. To judge from the very exorbitant rent which Europeans are obliged to pay for houses, the latter conclusion must be erroneous. Whether the natives pay as exorbitantly I have no information. I should, however, think not. But whatever may be the rent to which the tenants are subject, and whatever may be the profit or loss of the landholders, it must be admitted that the Company do not derive an adequate rent from the ground.

254. The necessaries of life are exorbitantly dear in Bombay, and the wages of labour are consequently at least one hundred per cent. greater than in any other part of India. The expenses of bulding therefore are proportionably great, and will account for the apparently moderate profit enjoyed by the builder.

255. I have offered an opinion in the 237th paragraph of this report that, if the ground rent were to be equalised and permanently fixed at the rate of eleven reas the square yard, the revenue would, in the course of a few years, more than treble the utmost increase of assessment that can be derived from the land on the island. This remark, I am ready to admit, is more applicable to

land in the country beyond the space under consideration, than to the limits of the Fort, which, being occupied principally by Europeans and by the wealthier natives, can afford to pay a greater ground rent; but still this portion of the island, and as far as the third milestone, is already taxed heavier than any other division.

256. In establishing a principle of taxation for Bombay, the peculiarity of its situation should never be lost sight of. It is literally a barren rock. It affords no encouragement to agricultural speculations, but its commercial and maritime advantages are great. These advantages, however, are encourag-

Still the Company do not derive a sufficient rent from their ground.

Causes of the great expense of building.

The limits of the Fort able to bear a heavier rent than other ground.

Considerations to be attended to in establishing a principle of taxation for Bombay.

ing only to men of property,—to those who have a little money to embark in commerce. The large supplies which the shipping require are derived from the continent and from foreign territories. The adjacent Island of Salsette, even capable as it is of supplying all our wants, yet contributes but little towards that demand. To populate such an island, a moderate land tax, unrestrictive leases, and security of possession were indispensable at the introduction of our authority, and the policy of pursuing the same system, with the view to retain and increase that population, appears to me to be indisputable. How few of the inhabitants of Bombay have that unconquerable feeling—the love of country—to rivet them to the soil under every disadvantage which characterises the population of other regions more favoured by nature. Her inhabitants are absolutely strangers, who repair to Bombay to supply the demand for labour. To secure their permanent residence, let them occupy the ground free of rent, and you will derive a greater revenue from their industry, and from the two articles of spirits and tobacco which they consume, than from any assessment you can fix upon the lands.

257. I will submit the grounds on which I form that opinion.

The character of the floating population of the Island. The floating population I have taken at 60,000 souls, composed of Camatees, Ghatees, Carwas, Marathas, Arabs, Persians, and Goa Portuguese, a great part of the seafaring men, with many Parsees. The four first mentioned description remain in Bombay a few years, hoard their earnings, and having saved from two to three hundred rupees, return to their native country, where they obtain as much land as they require, little or at all assessed, by the cultivation of which they obtain a sufficiency for their future maintenance. It is true that their property is at the mercy of a despotic monarch. Their poverty, however, secures them from the rapacity of the State and of its officers, and they only estimate the advantages of a country by the easiest and cheapest mode of maintaining their existence.

258. To convert the floating population into permanent residents,

The policy of allowing them to occupy ground free of rent. suppose the Government were to allow these people to occupy lands free grant, and they should be encouraged to settle in Bombay,



the sayer would derive a certain revenue of at least Rs. 80,000 a year from the arrack and tobacco they would consume. That population by becoming permanent would make room for others to supply the demand for labour, and so on, until the population of Bombay would spread over to Salsette, and half a century hence it would be time enough to establish a ground rent over the island on the principle that may prevail within the limits of the walls of the Fort.

*Estimate.*

Tobacco . . . . .	Rs. 1,40,000
Arrack . . . . .	„ 1,30,000
	<hr/>
	Rs. 2,70,000

Population 1,80,000.  
About Rs. 1½ per head.

The revenue to be derived from the arrack and tobacco they would consume.

259. Upon these data therefore, and under these impressions, I

The rent within the Fort taken to seventy reas the yard.

Assessment Rs. 23,182 on 259,244 square yards gives thirty-six reas per square yard.

conceive that the ground rent should not be fixed at more than £105 per acre, or . . . 70 reas per sq. yd.

But as the parliamentary tax already bears upon the ground in the proportion of . . .

36 „ „ „

the ground rent for the future should be permanently fixed at .....

34 „ „ „

which, upon 259,244 square yards, would yield... Rs. 22,036  
Deduct rent at present levied ..... „ 5,257

gives an increase of Rs. 16,779

260. I am aware that the assessment is not levied as prescribed by the Act upon the gross annual rent, but upon a principle favourable to the owners of houses and grounds; and that by fixing the maximum of rent at seventy reas per square yard, the Magistrates have it in their power to absorb the whole of that rent by levying the assessment on the gross annual rent. Such an attempt, however, need not be apprehended; but if made, it can be counteracted by the Government decreasing the rate of the assessment.

Remedy.

261. In the event of the assessment being at any time reduced, the rent payable to the Company should be increased, provided that upon the whole the landholder pays no more than seventy reas per square yard.

Should the assessment be decreased, the rents to be increased, but never to exceed the maximum.

262. I have repeatedly remarked upon what I consider to have been the mismanagement of the assessment fund. It has been levied since the year 1794, and the Magistrates now require Rs. 50,000

The principle on which the assessment is managed objected to.

to construct spacious drains throughout the town to disembogue into the sea, instead of emptying themselves into the ditch as at present, to the serious annoyance of the whole population. Suppose the Government were to advance this sum under a proposal to the Magistrates to take charge of the collections until the advance shall have been repaid with interest, suggesting to the Magistrates a revision of the establishments maintained within the walls of the Fort, and to fix them upon the lowest scale consistently with the cleanliness and security of those limits.

	Rs.	q.	r.
In 1812-13 the rents amounted to .....	5,12,746	0	0
Assessment.....	25,637	1	20
In 1813-14.....	26,368	0	0
	<u>Rs. 731</u>	<u>0</u>	<u>0</u>

263. The rent of houses for 1813-14 within the Fort amounted to Rs. 5,27,360, including the Company's property, and the assessment to Rs. 26,368. At the expiration of the present charter then, or say in twenty years, the inhabitants will have paid Rs. 5,27,360.

In 1794-95 the assessment, at 5 per cent., was Rs. 31,251, and in 1795-96, Rs. 31,519.

I make no doubt if the collections were entrusted to

The decrease arises probably from the houses destroyed in 1803 not having been wholly rebuilt.

The advantage that would result from a better management of the assessment.

Estimated Rs. 49,866.

About Rs. 300 a year would be required for cleaning the drains annually.

the Collector of Bombay and the establishments for cleansing, watching, and repairing the streets within those limits placed on

a more economical and equally efficient scale, the whole of these expenses could be maintained for Rs. 13,184, a moiety of the present assessment, which for twenty years would be Rs. 2,63,680

Deduct expense of re-making the drains ..... ,, 50,000

leaves Rs. 2,13,680

as a saving, which would be realised by the Company as a fiscal receipt in twenty years by altering the limits of the town, and placing the expenditure under greater control and more economical management.

264. It will rest with your Government to determine whether it would be advisable to consult the Magistrates upon the practicability or expediency of co-operating in such a plan, the object of which has the public good alone in view. The construction of the drains is indispensable to the salubrity of the town of Bombay. I recom-

An advance recommended to be made to the Magistrates to enable them to construct the drains.

mend that the advance should, under any circumstances, be made by the Government to enable the Justices to complete so salutary a work ; the assessment would repay the amount, as it has before done in the instances where pecuniary aid has been afforded to His Majesty's Justices.

265. Supposing then the ground rent to be fixed at 34 reas per square yard, the terms to be conceded to the assessed proprietors would be the removal of all doubts as to the permanency of their tenures, and they and the pensioned proprietors would be guarded against any further increase of tax upon their landed property.

The concessions to be made to the landholders for an increase in the rent.

266. The advantages of consolidating all the taxes into one (a quit-rent), at the rate of 70 reas per square yard, are too obvious to require recapitulation. By such a consolidation, the duties of the Collector's office would be so simplified that he might make the collections, and render an account of it, on a smaller establishment, and in a less confused manner, than he can do in the present state of things.

The advantages of consolidating all the taxes.

267. The rent of ground not built upon, but let out to under-tenants for the erection of stalls and temporary sheds, such as is described in the 235th paragraph of this report, should be assessed at a quit-rent of 200 reas the square yard.

Grounds not built upon, but let out at more profitable terms to be higher assessed.

268. I propose that during the period a house or warehouse may be untenanted, the proprietor shall be subject to the payment of ground rent at the rate of eleven reas the square yard only; this will still improve the present receipts, and render the general plan less objectionable.

Houses when untenanted to pay ground rent at the rate of eleven reas only per square yard.

269. It will be necessary to frame and pass a regulation for the future collection and management of the revenues of Bombay, which should not, however, be done until the survey shall have been completed, and a system of taxation established generally for the whole island.

A regulation should be passed.

270. No better mode can be pursued in giving effect to any plan that may be determined upon than that of following the precedent of 1674. The preamble to Aungier's convention is remarkably applicable to the existing state of the tenures of Bombay. An assembly of the inhabitants need not be convened, but the measures determined on promulgated under a declaration of the views and intentions of the Government, couched in terms similar to those contained in that instrument. The nature and variety of the existing taxes, and the instances where they have been changed and increased, as well with respect to the pensioned property as others, are detailed in a clear and comprehensive manner, in order that the right to increase the rent over every species of property may appear distinct and indisputable.

Mode to be pursued in giving effect to whatever arrangement the Government may determine.

271. Pearls and precious stones have, from the earliest period, been exempted from the payment of any customs or duties on import or export, and the Honorable Court have recommended that every encouragement should be given to the diamond merchants to settle on the island. These articles continued to be exempt from duties until the year 1810, when they were first imposed.

The customs and duties on pearls and precious stones recommended to be abolished.

The receipts have been insignificant, and the import has certainly discouraged the diamond merchants from resorting to Bombay. That pearls and precious stones are smuggled, and evade the duties, is unquestionable, and as the object in imposing the duties has failed,

I would recommend that Clause 4th Section III. Regulation I. of 1810 be annulled, and that pearls and precious stones, as heretofore, be imported free of customs and duties.

272. I would also recommend that the intention of taxing lime-kilns be relinquished, as increasing the expense of building, already too exorbitant; and if the customs on timber and plank \* should not amount to a large sum per annum, I think they should be allowed to be imported free with the same view.

273. With all these remissions, the customs would not in my opinion decrease, provided they were levied in a different plan; that is, by the establishment of a tariff, to be framed by a committee, by which the duties should be collected, instead of the existing mode, which appears to me to be open to great abuse.†

274. I beg briefly to recapitulate the facts which this investigation appears to me to have established, viz:—

*Firstly.*—That the island was received from the Viceroy of Goa without the crown lands having been ascertained, or a statement given of the extent of them; it thence became impracticable to discriminate which of the inhabitants were legally possessed of sufficient titles to their estates; that some of the best estates refused to pay rent, and produced titles which could not be disputed though believed to be fictitious.

*Secondly.*—That with the view of removing these doubts, and of appeasing the apprehensions of the inhabitants, a convention was concluded by Governor Aungier, which commuted for a certain sum of money whatever rights the Company might have possessed over the estates on the island, which were in consequence acknowledged by that instrument to be freehold property, under a reservation, however, of the quit-rent, and, according to the ancient constitution of the island, of a claim to the military services of the inhabitants.

\* I have since ascertained the amount to be on an average of five years Rs. 6,956. See Appendix 18.

† See the Custom Master's letter of the 14th of June last. I make no doubt that "salt-water invoices" are in common use with the natives.

*Thirdly.*—That all uncultivated lands therefore, excepting probably such as by the constitution of the island was an appendage to the cultivated portion as pasturage ground, were at the date of that convention crown land, inclusive of the marshy grounds, subsequently to which the Jesuits' lands, the forfeitures under the proclamation of 1720, and Rama Camaty's property, devolved upon the Company, but that no register whatever of the extent of these lands is forthcoming.

*Fourthly.*—That, from the indefinite mode in which the orders of the Court of Directors of 1679-80 to let the uncultivated land out on rent,—to invite settlers on the island,—to assign portions of lands to Gentoo soldiers for their maintenance, and to restore lands to their former proprietors were carried into effect, a considerable portion of the crown lands must have been alienated up to the year 1707-8.

*Fifthly.*—That in that year the greater part of the present limits of the Fort was private property; but that, from the purchases and exchanges made from 1707-8 to 1758-59, it became the Company's, and was subsequently transferred to individuals.

*Sixthly.*—That notwithstanding the resolution of the Government of the 3rd of December 1733, fixing a limited period for leases to be renewable on the payment of one year's rent, lands have continued to be let on indefinite tenures since the conclusion of Aungier's convention; that encroachments on the public property have been recognised, if not expressly sanctioned, by the Government on the payment of rent on all ground that might be taken by individuals, and that the rights to the landed estates not subject to the pension are at this date precisely in the same doubtful state as they were at the conclusion of that convention.

*Seventhly.*—That the Government, from sanctioning the sales of assessed ground, and from becoming in various instances the purchasers of such property, has clearly defined its intention in respect to the nature of such grants—that they were meant to convey a right in perpetuity.

*Eighthly.*—That though many proclamations have been issued, and other proceedings adopted declaratory of the Company's right to the soil and to resume possession at their will and pleasure, these measures were pursued at too late a period to be effectual, and have been worse than nugatory, as not an instance is to be found where they have been enforced, the inhabitants having continued in undisturbed possession.

*Ninthly.*—That in 1718 a tax was established over every description of property, which may be considered to have operated as a commutation of the military services reserved under Aungier's convention on the pensions' property ; that in 1720 the quit-rent was reduced to one-half, but extended to all houses within cannon-shot of the town wall ; that in 1731 an additional quit-rent was imposed on all grounds which the English inhabitants might have taken in since the building of their houses, and set free of ground rent, but that the native inhabitants were required to pay for the ground they occupied, or should thereafter occupy, a quit-rent of six reas, and a ground rent five reas, the square yard, which is now imposed on all ground required for building ; and that in 1758 a tax, at the rate of two shillings in the pound, was imposed on the produce of all the landed estates in Bombay.

*Tenthly.*—That the Government has exercised, and can therefore again exercise, the right of modifying and of increasing the rent, whether quit or ground, or of imposing an additional tax upon every description of property on the island, pension not excepted.

*Eleventhly.*—That even admitting the legal right to resume possession of assessed property, it would be an unwise measure to disturb the tenures by which lands are at present held by individuals ; that the act would be "felt as a grievous hardship, if not an open and down-right injury."

*Lastly.*—That with the view of removing all doubts respecting the tenures of the estates created since Aungier's convention, the right of property should be declared to vest in perpetuity in the present possessors; and that the rents should be permanently fixed on principles just and equitable to the Company and to individuals, except in respect to such grounds as are held under special leases or conditions.

275. The valuable surveys, and the book of reference which Captain Dickinson has completed, should be lodged in the Collector's office, as affording the fullest information on all points connected with the regular discharge of the duties of that department.

The surveys and book of reference delivered in by Captain Dickinson to be lodged in the Collector's office.

(Signed) F. WARDEN,  
Chief Secretary.

*Secretary's Office, 20th August 1814.*



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