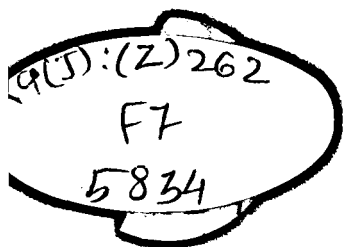


THE
HISTORY & ECONOMICS
OF THE
LAND SYSTEM IN BENGAL



K. C. CHAUDHURI

5834

**SERVANTS OF INDIA SOCIETY'S LIBRARY,
POONA 4.
FOR INTERNAL CIRCULATION**

To be returned on or before the last date stamped below

23 SEP 1958

25 MAY 1977

25 FEB 2000

THE
HISTORY AND ECONOMICS
OF THE
LAND SYSTEM IN BENGAL

THE
History & Economics
OF THE
LAND SYSTEM IN BENGAL

BY
KSHITISH CHANDRA CHAUDHURI

WITH A FOREWORD

BY
SIR P. C. RAY

THE BOOK COMPANY, LTD.
4/4A, COLLEGE SQUARE
CALCUTTA.

Published by
GIRINDRANATH MITRA, B.A.
of THE BOOK COMPANY, LTD.
4/4A, College Square, Calcutta.

X9(1) : (Z)262

F7

Price : Rupees Five only.

1927.

5834

Printer : S. C. MAJUMDAR
SRI GOURANGA PRESS
71/1, Mirzapur Street, Calcutta.

1017/27

FOREWARD.

The Permanent Settlement was the outcome of a combination of circumstances over which its authors had little control. On their acquisition of the Dewany in 1765 the East India Company as represented by their servants, i.e. the Council at Calcutta, became in fact the farmer-general of the revenue of Bengal, Bihar and Orissa. Their sole consideration was to raise as large a revenue as they could. Verelst who was Supervisor of Burdwan and afterwards Governor of Bengal has left it on record that "the lands were let by public auction for the short term of three years. Men without fortune or character became bidders at the sale, and while some of the former farmers unwilling to relinquish their habitations, exceeded perhaps the real value in their offers, those who had nothing to lose advanced yet further, wishing at all events to obtain an immediate possession. Thus numberless harpies were let loose to plunder, whom the spoil of a miserable people enabled to complete their first year's payments".

The cup of woe of the unhappy people was filled to the brim when the great famine of 1770 broke out. It swept away ten millions i.e. one-third of the entire population of Bengal and more than 35% of the land was turned into wilderness for lack of tillers. From this dreadful year "the ruin of two-thirds of the old aristocracy of Lower Bengal dates. The Maharaja of Burdwan, whose Province had been the first to cry out and the last to which plenty returned, died miserably towards the end of the famine, leaving a treasury so empty that the heir had to melt down the family plate, and, when this was exhausted, to beg a loan from the Government, in order to perform his father's obsequies. Sixteen years later, we find the unfortunate young prince unable to satisfy the

Government demands a prisoner in his own palace". (Hunter: Annals of Rural Bengal).

Warren Hastings was nominated Governor-General of India in 1772. His reputation stands high as an administrator and statesman, but he had the heart of adamant. He fully realized that the one thing needful to strengthen his own power was to find money anyhow by hook or by crook, by fair means or foul. Provided Bengal was made paying and the home remittances were regularly sent, he would be given a *carte blanche* as to the methods he adopted for raising revenue. The hapless ryots were made over to rapacious and unscrupulous landgrabbers and harpies. Then was perpetrated one of the grossest acts of tyranny and extortion recorded in history. The old Zemindars, many of whom were feudal lords under the Moguls, fared still worse. The graphic pen of Hunter has given us a vivid picture of their miserable plight as shown above.

The instruments chosen by Hastings for squeezing revenue out of the miseries of the ryots and their landlords, have earned unenviable notoriety, thanks to the eloquent tongue of England's greatest orator. One or two passages from Burke's impeachment of the great proconsul may not be out of place here :

"It was not a rigorous collection of revenue, it was a savage war made upon the country.

"And here, my Lords, began such a scene of cruelties and tortures, as I believe no history has ever presented to the indignation of the world ; such as I am sure, in the most barbarous ages, no political tyranny, no fanatic persecution has ever yet exceeded.

* * * * *

"The punishments, inflicted upon the Ryots both of Rungpore and Dinagepore for non-payment, were in many instances of such a nature, that I would rather wish to

draw a veil over them, than shock your feelings by the detail.

* * * * *

“Children were scourged almost to death in the presence of their parents. This was not enough. The son and father were bound close together, face to face, and body to body, and in that situation cruelly lashed together, so that the blow, which escaped the father, fell upon the son, and the blow, which missed by the son, wound over the back of the parent. The circumstances were combined by so subtle a cruelty, that every stroke, which did not excruciate the sense, should wound and lacerate the sentiments and affections of nature.

* * * * *

Your Lordships will not wonder, that these monstrous and oppressive demands, exacted with such tortures, threw the whole province into despair. They abandoned their crops on the ground. The people, in a body, would have fled out of its confines; but bands of soldiers invested the avenues of the province, and, making a line of circumvallation, drove back those wretches, who sought exile as a relief, into the prison of their native soil. Not suffered to quit the district, they fled to the many wild thickets, which oppression had scattered through it, and sought amongst the jungles, and dens of tigers, a refuge from the tyranny of Warren Hastings.”

No wonder that Lord Cornwallis who succeeded Hastings in 1785 should have to observe 2 decades after the great famine. “I may safely assert that one-third of the Company’s territory in Hindustan is now a jungle inhabited only by wild beasts.”

It is a mistake to suppose that Lord Cornwallis was the real author of the Permanent Settlement. We have seen above that the yearly or triennial settlement of the revenue brought Bengal to the verge of ruin and bankruptcy. Philip Francis in a masterly minute in 1776

had already pointed out that a Permanent Settlement was the sole panacea for the evil and it no doubt considerably influenced the leading English statesmen of the time including Pitt and Dundas, the President of the Board of Control. In their despatch of April 12, 1786 the Court of Directors laid down that the Settlement of land revenue should be permanent and that this Settlement should as far as possible be made directly with the Zemindars. At first a decennial Settlement was suggested as a provisional measure and if it proved satisfactory, it was to be made permanent. In fact, Lord Cornwallis had to carry out the mandate of his masters. "It is thus clear that the Permanent Settlement was no product of any pre-conception of Lord Cornwallis in favour of the landlord system of England". The measure in fact had taken its shape before the English nobleman arrived in Bengal.*

I have been at the pains to discuss the genesis of the Permanent Settlement because without a proper understanding of it the question at issue cannot be adequately be dealt with.

Thanks to the cruel and oppressive exaction of the revenue following close upon the heels of the great famine, the Zemindars had been ruined, the ryots fleeced to the skin had been reduced to abject misery. The short-sighted policy of the Company had all but killed the hen which used to lay the golden egg. The Governor-General was now confronted with a serious problem. "The Calcutta Exchequer had been emptied to carry on the Maharatta war and the Company was borrowing thankfully at exorbitant rates..... In the end of 1790 the war with Tipoo had drained the Company's warchests, and the failure of the crops in the Southern India left the whole deficit to be borne by the Bengal districts." (Hunter L. C.) In fact Bengal was the "milch cow" from which the other provinces drew their supply.

* J. C. Sinha—Economic Annals of Bengal.

In his historical minute, dated 18th June 1789 Mr. Shore (afterwards Lord Teignmouth) laid the foundation of that settlement on which the East India Company and Lord Cornwallis were determined.

"Discussing the three possible methods of land Settlements in Bengal, viz. a Settlement with ryots, a settlement with farmers of the revenue, and a Settlement with Zemindars, Mr. Shore proved conclusively that the last one was the only one consistent with good Government and the improvement of the country." Our author has studied the subject with care and diligence. He has sought information at first hand, has ransacked the wormeaten archives of Government Records. He has the rare gift of condensing the vast materials at his disposal into a brochure of 148 pages. He divides his subject into two parts, part first being devoted to the historical evolution of the land system of Bengal from the time of the Permanent Settlement, while part second is a valuable adjunct to it, as it deals with its Economics. In the latter part he has enriched and fortified his own arguments with ample quotations from the masters of Political economy. It has been all along maintained by a certain School of Economists, that a Permanent Settlement effected directly with the ryots would have been conducive to the welfare of the masses, the tillers of the soil, who constitute nearly 80% of the population of Bengal and who are really the backbone of the country. The existing system has lent itself to the creation of an interminable series of subtenure holders, e.g. *Pathanidars, Gantidars, Maureshidars, Dar-Maureshidars, Chhe-mauresiders* and so forth, who interpose between the Zemindar and the ryots.

This grand array of middlemen numbering sometimes as many as 20 to 25 in the Districts of Barisal and Faridpur, intercept most of the profits accruing from the produce of the soil, they are no better than so many drones and parasites who really eat up the fat of the land. One reason why Bengal is so backward in commercial and industrial enter-

prises and has been lagging so far behind some other sister provinces in trade and business is to be traced to the land tenure based upon the Permanent Settlement. The Zemindars and the Middle classes belong as a rule to the high castes—the *intelligentsia*—and being assured of a living have grown indolent and averse to business.

It is easy to be wise after the event. One should however take into consideration the state of Bengal and the condition of the ryots in the period immediately preceding the Cornwallis enactment. More than one third of the Company's possessions had gone out of cultivation as we have seen above. Due realisation of revenue had become an impossibility. There were rich fertile lands lying waste for want of cultivators ; in fact, there was a regular competition going on among neighbouring Zemindars to secure them ; and they were so much in demand that it became customary to entice them away by offer of more favourable terms.

This probably accounts for the fact that no proper precaution was taken when the new scheme was launched to protect the tenancy rights of the ryots. In the course of a decade or two, thanks to the recuperative power of the rich soil of Bengal, when agricultural prosperity was restored and when in the natural course population multiplied, there began a regular scramble for the land. The ryots being at the tender mercies of the Zemindars, the latter had now an easy time of it and they were not slow to take the fullest advantage of the opportunity in rack-renting their hapless tenants. The law of distraint again gave them a lien over the crops. The poor ryots were reduced more or less to the condition of tenants-at-will or serfs.

Our author has drawn a vivid picture of the injustice done to the ryots and has given a valuable summary of the successive measures adopted by Government from the time of Lord Moira (1815) to that of Lord Ripon for the protec-

tion of their occupancy rights culminating in the famous Act. VIII of 1885.

That the Permanent Settlement if made directly with the ryots would have conduced to the happiness and prosperity of the maximum number of people admits of no controversy, but for its non-adoption Lord Cornwallis and his school can scarcely be blamed. For reasons explained above the land revenue system was in a state of chaos. There was no proper survey, nor record of rights worth the name. The temptation was thus too great to come to an understanding with the party ready at hand. Political reasons also underlay at the bottom. The Governor-General was anxious to create a landed aristocracy, which for its own stability and existence would be loyal to and rally round the Foreign Government in the time of an upheaval or rising.

The creation of a body of land-owners with perpetual tenure has been objected to by several eminent authorities including Sir Henry Maine, who maintain that it was also done carelessly and recklessly. "In many cases, persons were confirmed in proprietary rights who had been merely farmers or collectors of revenue under the native Government, and who had not a shadow of legal title to the land ; only the person who paid the revenue for a whole estate into the treasury was taken to be the owner ; the definition of the village unit was neglected in the arrangement with the larger proprietors, some of whose estates were afterwards found to comprise districts widely separated from each other. Numerous varieties of subtenure then existed in Bengal ; but of these the Government took no account ; and while they exhausted language to limit their own demands on the Zemindars, they enacted no rules to protect and encourage the ryots or sub-tenants in their holdings."*

It should, however, be borne in mind that the measure was disliked by the very class for whose benefit it was

* Torrens—Empire in Asia, pp. 204-5.

passed. The sale laws made it unpopular. "Though apparently milder than the old method of realizing revenue through imprisonment the sale laws gave the last blow to the old aristocracy of Bengal. In the course of twenty-two years following the Permanent Settlement, one third or rather one half of the landed property in Bengal was transferred by public sale. This created a panic and it was sometimes difficult to get purchasers for defaulting estates. Cases were not rare when the sale proceeds did not cover the amount of arrears, thus causing a loss to the Government." (Sinha).

Lord Cornwallis has been found fault with for his hasty conclusion of the Permanent Settlement with the Zemindars instead of with the ryots. Let us for a moment turn our eyes to Madras, where with the experiment of Bengal to guide him Thomas Munro had effected a Ryotwari Settlement; but he almost pathetically writes that the pressing demands of the revenue authorities prevented him from showing that consideration for the people which his own judgment suggested. Every succeeding Board of revenue would signalise its administration by raising the revenue. In fact cases are on record showing that lenient and considerate collectors who had made moderate assessment were visited with displeasure. Under Lord Wellesly the Polygars who represented a class similar to that of Zemindars of Bengal were extinguished. The result has been that this Province has no strong, influential, prosperous middle class, forming a natural link between the cultivators and an alien Government.

Munro had laboured all his life to obtain for the cultivator of Madras a fixity of rental, so that all improvements made by him might lead to his own profit..... "The Madras Ryot" said the administration Reports of 1855-56, "cannot be ejected by Government so long as he pays the fixed assessment.....the ryot under the system is virtually a proprietor on a simple and perfect

title and has all the benefits of a perpetual lease.”* Strange as it may appear these repeated assurances have been ignored and set aside and at each periodic revision of the Settlement more and more is squeezed out of the unhappy ryot leaving him poor and resourceless. The humane and statesmanlike utterances of Shore were clean forgotten namely that “The demands of a foreign dominion like ours ought certainly to be more moderate than the impositions of the native rulers ; and that, to render the value of what we possess permanent, our demands ought to be fixed ; that, removed from the control of our own Government the distance of half the globe, every possible restriction should be imposed upon the administration of India without circumscribing its necessary power, and the property of the inhabitants be secured against the fluctuations of caprice, or the license of unrestrained control.” This is a clear indication of the fate which would have awaited the peasantry of Bengal if any loophole had been left for the later administrators to wriggle out of the permanent Settlement.

The Bengal ryot is hopelessly ignorant and illiterate. He is thrifless and improvident to a degree. Once there is a good harvest or bumper crop with high price ruling in the market, his extravagance and reckless expenditure knows no bounds. Two years ago the price of jute was a record one ; the superior quality fetching as much as Rs. 25/- to Rs. 30/- per maund. The result was that ryots began to imitate the ways of the *bhadralok* classes and to indulge in the luxury of buying foreign goods, including showy apparel of artificial or Japanese silk, gaudy articles of diverse sorts, bicycles, gramophones and what not. Last year there was an abnormally low price of jute, so much so that many cultivators left the plant to rot in the fields or under water and as the price of the staple article of food, rice, was proportionately high, they had not

* R. C. Dutt : Econ. Hist. of Brit. India, 5th ed., p. 168.

only to pawn those articles of luxury, but to borrow of Mahajans at exorbitant rate of interest. Paradoxical as it may seem the very rapid means of communications—the Railways and steamers tapping hitherto inaccessible localities—has been a cause of their improvident habits. Formerly the peasantry used to lay by one year's grain in addition to that required for their annual consumption as a provision against a bad year. Now all this is a thing of the past. Mr. Ramsay Macdonald who visited India in 1910, had the discerning eye to observe that "Railways have added to the difficulties and have widened the apparent famine area.....One firm alone sucks the sap of Indian life like a tropical sun leaving dust and barrenness behind" (Awakening of India).

An intelligent peasantry capable of looking after its own interests and of understanding what is good for it presupposes wide-spread primary education. Our author is by no means blind to this defect in the system. He realises that "A high level of education diffused among the population at large, is a *sine qua nan* for the success of peasant proprietorship," and he repeatedly refers to the backwardness of education. Again, "The essential conditions for the success of the system of peasant proprietorship is lacking, namely the existence of a well-educated and enlightened class of peasantry." Since the enactment of the Tenancy Laws "Peasant proprietorship has existed in some degree in Bengal" to quote the words of our author. But the very modified protection he enjoys has brought the ryot no near to his goal. In many districts I find that a few thrifty intelligent cultivators who are able to lay by a handsome amount of money, advance it to their thriftless neighbours, who seldom get out of the grip of the former and who in course of time become full-fledged Mahajans and mortgagees of the latter. Thus a class of serfs is being created who toil and drudge but all the fat of their land is eaten by their rapacious neighbours, the Jotdars.

The aim of the future legislation should be towards safeguarding the rights of the ryot so that he may not be ejected or be liable to harassing suits for the enhancement of rent instituted by greedy landlords. But the one thing needful precedent to the consummation devoutly wished for by our author is the dissemination of primary education. The ryot must first be raised to a higher level of intelligence.

Mr. Chaudhuri's essay is an opportune and valuable contribution on the subject. It is true that the scheme he formulates may be regarded as *Utopian* today but that is no reason why it should not be discussed in all its bearings. Every student of Indian Economics will welcome his labourious dissertation.

P. C. Roy.

INTRODUCTION

No plea is perhaps needed for publishing an Essay on the land system in Bengal. In a country where the vast majority of the people live by agriculture, there can never be any risk of the land system being studied too much. On the other hand, of Bengal it can be asserted without any fear of contradiction that the land system has been studied but too little. At this hour there exist special reasons why particular attention should be directed to this question. For some time past attempts have been made to amend the Bengal Tenancy Act. In the discussions that have taken place in this connection lawyers have taken too large a part. The result has been that while the legal aspect of the question has been brought into clear relief, the economic issues have been totally, and most harmfully ignored. Yet it is the economic issues which most vitally affect the progress of agriculture. Legislation should be guided by the broader principles of social welfare.—It should not be based solely on ingenious, hairsplitting discussions of statutes and of any real or imaginary rights bestowed by them. At the present moment the position of Indian agriculture is being reviewed by a Royal Commission which has been entrusted with the task of devising methods for improvement and progress. The land system of a country presents certain limiting conditions for the development of its agriculture. It is high time to realise how far the land system of Bengal tends to help or hinder agricultural progress.

For a clear understanding of the present position, and for devising a policy for the future, it is absolutely necessary to have a thorough knowledge of the past. In the first Part of the book an account has been given of the history of land legislation from 1793 onwards. The introduction of the permanent zemindary system constituted a

definite break with the past. Since then the development of the land system has, on the whole, preserved its continuity. For convenience sake, an account of the preceding period under British rule has been omitted from this book. Ascoli's "Early Revenue History of Bengal" contains the best summary account of that period. Recently, Prof. Ramsbotham has published a more detailed account of the period 1769-1787. The best written account of the period subsequent to 1793 is contained in Field's 'Introduction to the Bengal Code' and in his "Landholding and Relation between Landlord and Tenant in various countries." In the following pages an attempt has been made to give a brief running account of the period from the point of view of the student of Economics. In the first place it has been thought necessary to give a summary of the Grant-Shore, and Shore-Cornwallis controversies. Shore and Cornwallis are often referred to whenever there is a discussion on the permanent settlement, but they are seldom read. The result has been a large volume of misunderstanding. If one wants to realise the motives with which the Permanent Zemindary System was introduced, and the revolutionary nature of the change effected by it, one can do^{up} better than follow the stages of this controversy. After persual the assiduous reader will, perhaps, pardon the writer for giving what, at first sight, may appear to be undue importance to this controversy. The political, and economic history of Bengal in the 19th Century is being forgotten too fast. It has by no means been an easy task to write a connected account of the development of the land system during this period. The writer has tried his utmost to make proper use of all the materials available to him, and he trusts the reader will find some interesting facts which are not so generally known.

Part II contains an analysis of, and critique on the present system. The aim of the writer has been mainly to point out certain defects and evils which are inherent in the system. He has made his own suggestions regarding

reform and has stated his case with candour and firmness. He does not, however, claim any infallibility for his opinion. He will consider his labour amply rewarded if this brochure will help to draw the attention of the public to a much neglected but very important subject.

The author is deeply indebted to Dr. Nares Chandra Sengupta M.A., D.L. Advocate of the Calcutta High Court for help and encouragement in the preparation of this volume. He also takes this opportunity for expressing his gratitude to Dr. Sir P. C. Ray for kindly looking through the manuscript, and writing a Foreword.

K. C. C.

CALCUTTA.

The 23rd Sept., 1927.

Note:—There are endless varieties of land tenure in Bengal. But by far the most important and the most largely prevalent system is the permanent zemindary system as introduced by Lord Cornwallis, and modified by later Regulations and Acts. By the expression "Land System" used in the title of this book, this particular system is meant. It should always be borne in mind that this system is fundamentally different from a Permanent Ryotwari Settlement. The late Mr. R. C. Dutt, when he recommended a permanent settlement for the whole of India, did not sufficiently emphasise the difference between Zemindari and Ryotwari Settlements. Consequently his arguments were vitiated to a large extent and Lord Curzon had an easy task in demolishing them by exposing the evils of the Bengal System.

CONTENTS

FOREWARD	...	...	...	v
INTRODUCTION	...	...	...	xvii

PART I

HISTORY

CHAPTER I				
1765-1793	...	...	...	1
CHAPTER II				
1793-1857	...	...	...	35
CHAPTER III				
1858-1926	...	...	...	80

PART II

ECONOMICS

CHAPTER IV				
Theory	...	...	...	101
CHAPTER V				
Argument	...	...	...	113
APPENDIX				
Note on the status of the Ryots between 1793 & 1858	...	...	...	143

PART I
HISTORY

“A proposed reform in laws or customs is not necessarily objectionable because its adaptation would imply, not the adaptation of all human affairs to the existing idea of property, but the adaptation of the existing idea of property to the growth and improvement of human affairs.”

JOHN STUART MILL.

“The existing rights of property represent, after all, but a moment in historic time. They are not to-day what they were yesterday, and to-morrow they will again be different. It cannot be affirmed that whatever the changes in social institutions, the rights of property are to remain permanently inviolate. Property is a social fact, like any other, and it is the character of social facts to alter. It has assumed the most varied aspects and it is capable of yet further changes.”

H. J. LASKI.

“জমিদারের ঐশ্বর্য্য সকলেই জানেন; কিন্তু বাঁহারা সংবাদপত্র লিখিয়া, বক্তৃতা করিয়া, বহুদলবাহুর উদ্ভাৱের চেষ্টা করিয়া বেড়ান, তাঁহারা সকলে কৃষকের অবস্থা বিশেষ অবগত নহেন। * * বে বহুদল বাঁহারাও নহে তাহা ভূম্যাবিকারিবর্ষ বটন করিয়া লগুৱাতে কি কল কলিতেছে তাহা কিছু বলিতে হইল। স্বতন্ত্র জমিদারবাবু সাড়ে সাতসহস্র পুরীর মধ্যে রসিন সার্মাণ্ডেরিত বিদ্যালোকে স্বীকৃত্তার গৌরবান্তির উপর হীরকবাহের শোভা নিরীক্ষণ করিতেছেন, ততক্ষণ পরাণমণ্ডল, পুত্রসহিত দুই এহর রোজে, ঝালি মাধার ঝালি পায়, এক হাঁটু কাধার উপর দিয়া দুইটা অস্থিচর্মাৱশিষ্ট বলবে ভোতা হালে তাঁহার ভোগের অন্ত চাষ কর্ত্ত নিরীহ করিতেছে।”

—৮ বন্ধিমচন্দ্র চট্টোপাধ্যায়।

“While the Government of India are proud of the fact that: there are many worthy, and liberal-minded landlords in Bengal— as there also are in other parts of India—they know that the evils of absenteeism, of management of estate by unsympathetic agents, of unhappy relations between land-lords and tenants, and of the multiplication of tenure-holders or middlemen, between the zemindar and the cultivator in many and various degrees,— are at least as marked and as much on the increase there as elsewhere—”.

Resolution on the Land Revenue Policy of the Indian Government 1902.

CHAPTER I
HISTORY
1765-1793.

THE GREAT CONTROVERSY.

The East India Company obtained the Diwani of the provinces of Bengal, Behar and Orissa on August 12, 1765, but they did not immediately take upon themselves the task of the revenue administration of the country. The officers of the Company were strangers and ignorant of the affairs of the land; and they did naturally hesitate to undertake so big and complex a task. Accordingly Mohammad Reza Khan and Shitab Roy were appointed Naib Dewans and from 1765 to 1772 the revenue administration of Bengal was practically in the hands of the former. It was only on May 11, 1772 that the Company notified its intention "to stand forth as diwan." The Company now directly undertook the task of revenue administration. The attempt was a failure. From 1772 to the introduction of the Permanent Settlement, the company's revenue administra-

tion was full of serious blunders. Between 1772 and 1786 many changes did take place, and various devices were tried one after another. It is not possible here to describe them in all their details. Suffice it to say that they all failed ignominiously. The reasons for the failure are not far to seek. On the side of administration the policy was one of excessive centralisation. The authorities in Calcutta wanted to keep the whole country under their own eyes. This policy of centralisation was unsuitable to a vast country, and it effectively prevented the Company's officers from gaining a thorough knowledge of men and things. Secondly, in order to reduce cost and facilitate realisation, the Company adopted a policy of "farming" (sometimes quinquennial, sometimes annual) in respect of collection of land revenue. This policy was ruinous to the country. Discerning servants of the Company were not absolutely blind to the evils of the system. Many of them expressed their strong disapproval of the narrow shortsighted policy. "The system is fundamentally wrong" declared John Shore "and inapplicable to any good purpose." The policy of excessive centralisation was given up to a considerable extent in 1786, when the whole country was sub-divided into compact districts and the work of settlement was entrusted to district collectors, the authority of the Board of Revenue being correspondingly reduced. The same year saw the

beginnings of those enquiries and discussions which culminated in the introduction of the Permanent Settlement in 1793.

Section 39, of Act 24, George III Cap XXV (Pitt's Act of 1784) required the Court of Directors to give orders "for settling and establishing, upon principles of moderation and justice according to the laws and constitution of India, the permanent rules by which the tributes, rents, and services of the rajahs, zemindars, polygars, talookdars, and other native landholders, should be in future rendered and paid to the United Company." The necessary instructions for carrying out these orders were not, however, issued by the Court till 1786. In their revenue general letter of April 12, of that year they issued orders for a full investigation of the truth and extent of any grievances of the ryots and zemindars, and also for ascertaining the real jurisdictions, rights, privileges, and duties of the various classes dependent on land. At about the same time (May 11, 1786) Lord Cornwallis arrived as Governor General of India "with definite instructions" to carry out a Permanent Settlement with the Zemindars of Bengal. In order to understand the motives and considerations which led the Company to finally adopt this measure in 1793 it is necessary to go through the controversies that took place during this period on the question of the reform of the revenue administration in

Bengal. There were three questions to be decided :

- (1) With whom is the settlement to be concluded?
- (2) For what period is the settlement to be made?
- (3) What is to be the amount of the assessment?

On each of these questions opinion was sharply divided. They are discussed below *seriatim*—

A. Agency:—

Sir John Shore was the champion of the view that settlement should be concluded with the zemindars.¹ Shore tells us that the revenues of the state may be collected by three agencies : (a) by its own officers (b) by farmers, (c) by zemindars. Then he proceeds to discuss their merits and demerits, one by one.

(a) A system of direct collection "ought to be the most productive, by bringing to the account of the Government the profits of intermediate farmers and contractors as well as the produce of their frauds and embezzlements. Secondly when the revenue system is directly administered by the Company's collectors, it is possible to more equitably distribute the burden of the land tax."²

But the system is not free from defects. Firstly, it may become unworkable and oppres-

¹ Shores's Minute dated the 18th June, 1789. § 157.

² Ibid § 156.

sive, unless the Collectors are industrious and possess an intimate knowledge and experience of the country.³ Secondly, the Government is not secured. "Where the ryots fail, or are unable to pay, there is no remedy and the annual amount of the revenues must be subject to considerable variation." Thirdly, "where the operation is applied to the lands of a zemindar, he remains idle ; or, what is worse, employs himself secretly to counteract the success of the Collector; and a subsistence must be allowed him by the Government."⁴

Shore summarily rejects the system of direct administration on the plain ground that the Company's Collectors, lacking as they were in any intimate knowledge of the country, could not work it efficiently and would readily fall prey to the crafty guiles of the demoralised native underlings. Shore, however, makes the very significant admission that a system of direct administration was "often executed by Mahammadan Government, who entered into all the details of the business and examined the accounts of the aumil or collector with rigour and minuteness."⁵

(b) A system of collection by farmers has nothing to recommend itself. "It is certainly easy and simple to contract with a farmer for the revenues of a district ; and this is all that

³ Ibid § 158.

⁴ Ibid § 159.

⁵ Ibid § 162.

can be said for it." But the disadvantages are many and overwhelming. It is oppressive, wasteful and "fallacious in point of security."⁶

(c) Shore next proceeds to a consideration of the device of raising the revenue through the agency of the zemindars. He considers this question with great care and at very great length.⁷ His remarks on this point are well worth listening to; "The situation of a zemindar" he tells us "combines two relations; one, which originates in the property of the land, a portion of the rents of which he pays to the state; and the other, in his capacity of an officer of Government, for protecting the peace of country and for securing the subjects of the state from oppression." In order that they may perform these twofold functions satisfactorily, the zemindars as a class should be just, honest, moderate, humane, intelligent and industrious. But did the zemindars satisfy this high ideal? To this Shore replies in no uncertain terms. "If a review of the zemindars in Bengal were made" writes he "it would be found that very few are duly qualified for the management of their hereditary lands; and that in general, they are ill-educated for this task; ignorant of the common forms of business, and of the modes of transacting it, inattentive of the conduct of it, even, when

⁶ Ibid § 164.

⁷ Ibid § 166

their own interests are immediately at stake, and indisposed to undertake it." Shore's Minute from § 168 to § 192 is a terrible indictment of the zemindars as he found them. But still he advises settlement with the zemindars. And why? He adduces the following reasons :—⁸

- (i) All the imperfections of the zemindars were not natural to them. Constant political revolutions and arbitrary exactions of the government had demoralised them. If a Settlement were made with the zemindars for a long term of years it might be expected that the zemindars would administer their estates better and adopt those generous methods which pay in the long run.
- (ii) "That this mode affords the government the only substantial security for the revenues by making the property of the lands responsible for it".
- (iii) It was no use maintaining a zemindar class unless they did the work of collection. They would either remain as pensioners or would have to be bought out.
- (iv) "A zemindari system would simplify the task of administration for the Company. "The system has the simplicity derived from the employment of farmers, with a security which the other plan wants".
- (v) "Finally it is the only plan which can be adopted without some degree of injustice to the acknowledged rights of the zemindars."

⁸ Ibid § 193 Et seq.

“After considering the advantages and disadvantages,” concludes Shore, “of the several modes of agency which have been discussed, and after reflecting upon the evils resulting from fluctuating measures, I am of opinion that the settlement should be made with the zemindars upon a fixed and permanent plan. This opinion is not only conformable to the sentiments of others, whose authority I am happy to avail myself of; but also to the orders of the court of Directors, and intentions of the Legislature.”⁹

From the above, a few facts of very great interest emerge. Firstly, it may be readily noticed that none of the systems were considered in relation to their probable effects on agriculture. Secondly, the system of peasant proprietorship¹⁰ was given up not because it was intrinsically defective but simply because the Company had not had an adequate official staff to collect the land revenue directly from the cultivators. Thirdly, the zemindari was advocated not so much because it had any intrinsic merits over the other two systems as because it involved certain fiscal advantages for the Company and as also because Shore was always under a great apprehension that

⁹ Ibid § 265 & § 266.

¹⁰ A system of direct collection of land revenue by the state is, when the revenue is proportional to gross agricultural produce, a system of peasant-proprietorship and not of state-landlordism as it was, and is sometimes, erroneously supposed to be.

ousting the zemindars would be a very great act of expropriation.

Let us see how far these propositions or assumptions were valid. Shore knew the zemindars too well not to be apprehensive of the condition of the ryots under a zemindari system. The problem of devising means for the protection of the ryot taxed his brains and this question is discussed at great length in more than one of his historic Minutes. He could well perceive that the zemindars would take a long time to "give up those habits and impressions which have been continued through life."¹¹ Hence he writes—"In relying therefore upon the operation of the principle, which we assume, we ought not during the process of it, to abandon the ryots to caprice or injustice, the result of ignorance and inability. With knowledge or the means of obtaining it, we may correct the consequences of both; and at present we must give every possible security to the ryot as well as to the zemindars. This is so essential a point that it ought not to be conceded to any plan." With this end in view he proposes numerous and complicated "provisional rules for the security of the ryots." It is not necessary to recount them here but even a cursory glance at them is sufficient to convince anyone that a proper execution of them would require the

¹¹ Ibid § 531 Et seq.

Collector to be in constant and intimate touch with the affairs of the ryots and keep a close watch over the zemindars. But if it was possible to place the ryots at the mercy of the zemindars and then ask the Company's officials to safeguard their respective interests and maintain proper relations between them; would it not have been easier and more just and economical to institute a system of direct collection in preference to a system of check and balance with inefficient supervision?

Let us now consider as to how far Shore's assumption of a proprietary right of the zemindar in his land was justifiable. In the discussion which took place in the Governor General's Council in 1775-76 both Hastings and Barwell as well as Francis maintained that the land belonged to the zemindars. "The inheritable quality of the lands" wrote Francis "is alone sufficient to prove that they are the property of the zemindars, talukdars and others, to whom they have descended by a long course of inheritance." The theory would have been acquiesced in readily and without any discussion but for the protest entered by James Grant. In their revenue general letter of the 12th April, 1786 the Court of Directors had invited the opinions of the Company's officials on "the real jurisdictions, rights and privileges of zemindars, talookdars and jagheerdars under the constitution and customs of the Mahammadan and Hindu

Government." On April 27, 1786 Grant joined issue with Francis on the question of the proprietary rights of the zemindars in his "Historical and Comparative Analysis of the Finances of Bengal."¹² Grant advanced the theory that "the sovereign ruler in all parts of Hindustan, if not through the whole of Asia, unless it be in the Russian dominions, is declared to be the sole virtual proprietor of the Soil." The zemindars according to him were no more than "annual contracting farmers," though during the decline of the Mughal Empire they had "clandestinely extended their original powers."¹³ The Board of Revenue being called upon for their opinion, expressed a similar view and declared a zemindari to be a conditional office, annually renewable and revocable on defalcation."¹⁴ Shore now appeared on the scene with a very powerful advocacy of the rights of zemindars (in his Minute on the Rights of zemindars recorded on the Proceedings of Government in the Revenue Department, April 2, 1788). Shore divided the question into two parts; of right and policy. On both these points he gave a verdict favourable to the zemindars. They were of right the proprietors of the soil and it was good *policy* to regard them as such.

¹² Reprinted as Appendix 4 to the Fifth Report.

¹³ Fifth Report pages 231-32.

¹⁴ Communication to the G. G. dated March 27, 1786, See Harrington's Analysis Part III. pages 252-53.

Shore himself has summarised for us the arguments of his opponents as well as his own counter-arguments. "On the one side it is asserted that by the principle of the Mughal Constitution the property of the soil is absolutely and solely vested in the crown; that a zemindary is an office only, originally conferred under certain conditions expressed in the grant of investiture, which is the sole foundation of the tenure; that the right of the crown to the property of the soil is proved by the alienation of zemindari land in perpetuity under the denomination of *altumgha*; by the spirit of the rules of Mughal finance as detailed in the institutes of Timur and Akbar, and in the ordinations of the Emperors; and by the practice of the provincial delegates in increasing the revenue by an appropriation of the whole produce of the soil. On the other hand it is contended that the zemindars have by their tenure, however derived, a property in the soil and the right of disposing of it; subject however, under any disposal or alienation, to the sovering's claim for rent. In support of this assertion the universal testimony of the people, the law of prescription, and the avowed and established right of inheritance of the zemindars are adduced. These proofs are further strengthened by the ordinances of emperors; and by the instances deduced from their conduct, and that of their delegates, by the practice of the Moghul Government in

selling zemindary lands for the discharge of arrears of rent; and by records of sales of the same lands by the proprietors thereof; by the acknowledged privileges of the talookdars to dispose of their lands; and by the avowed right of malikana enjoyed by the zemindars of Behar. In opposition to the fundamental principle that the soil belongs to the sovereign exclusively, the institutes of Timur, the ordinations of Aurangzeb, and the Mahamadan law are produced. Doubts may perhaps still remain; and it is not surprising that upon a subject so involved, it may not be possible to produce full conviction. But under such circumstances the most favourable decision to the rights of the people should be adopted." And Shore had not the least doubt that the course most favourable was to recognise private property in land. "Instead of lowering its value still more, we should endeavour to improve it by regulations, limiting the demands of Government to a precise amount; and by such provisions, as will leave to its subjects a competence which due care and economy may convert into affluence."¹⁵

However satisfactory and ingenious Shore's arguments might seem to himself and his contemporaries they were inconclusive. Hindu and Mahamadan laws did not lay down that the state (*i.e.* the king) was the

¹⁵ See Harington's Analysis Part III pages 250-51.

owner of the land; neither did they ordain that land should belong to a middleman and not to the cultivator himself.¹⁶ No doubt zemindari became inheritable but this was no proof that the zemindar was the proprietor of the land. Zamindari (*i.e.* the office of the zemindar) became hereditary like every other office under Asiatic Governments. The minister's son usually became the minister, the Kotwal's son the Kotwal, and so on. Similarly the zemindar's (*i.e.* the revenue collector's) son too became a zemindar. There are numerous instances on record which conclusively prove that even the hereditary right to the "office" was not always recognised. Shore argues that when a zemindar was dismissed he used to get a compensation known as *malikana* in Behar but he himself dares not assert that the same rule obtained in Bengal. As a final proof of their proprietary right, Shore mentions that they had the right to and did often sell their lands. But this argument was not really so strong and decisive as Shore supposed it to be. Could not the ryots sell their lands? If they

¹⁶ Shore refers to the Institutes of Timur and the ordination of Aurangzib. But neither of them can be said to support the proprietary rights of zemindars. The Timurin Institutes ordain for the division of "the produce of the land, in certain proportions, between the sovereign and the *husbandman*". (Harington III page 231, footnote). Now '*husbandman*' can, by no manner of interpretation, be possibly made to mean a zemindar and not the cultivator. The ordinations of Aurangzib, (also re-printed in Harington) do not appear to make out any case for the proprietary rights of zemindars.

could, the peasants, according to Shore's argument, were as good proprietors of land as the zemindars. The fact is that as soon as zemindari was recognised more or less as a hereditary office, the zemindars acquired an inheritable income from soil, equal in value to a tenth part of the revenues of the state. This inheritable income might be sold, *with the permission of and without any prejudice to the interests of the Nawab*, at its capitalised value. But this did, in no sense, make the zemindars the proprietors of the soil itself. Even admitting that the zemindars did sometimes exercise proprietary rights over their lands, how did Shore know that they were not, as Grant argued, "clandestine encroachments" on the rights of others encouraged by the weakness of the Central Government?

On the question of policy, Shore's own argument militated against his conclusion. His aim in recognising private property in land, he himself tells us, was to leave to the Company's "subjects" a competence which due care and economy might convert into affluence! If by 'subjects,' Shore wanted to mean the vast population of peasants and not a few zemindars, the best way of guaranteeing them a 'competence' would be to recognise the cultivators themselves as proprietors.

In 1790 Mr. James Grant revived his case for state landlordism in "An Enquiry into the nature of zemindary Tenures in Bengal." Mr.

Rouse in a tract on the "Landed Property of Bengal" tried to make a refutation on almost the same lines as Shore. We may conclude by quoting the final sentiments and orders of the Court of Directors on the subject of "the landed rights of zemindars" conveyed in their general letter of the 19th September, 1792. "On the fullest consideration we are inclined to think, that whatever doubts may exist with respect to their original character, whether as proprietors of land or collectors of revenue, or with respect to changes which may in process of time have taken place in their situation, there can at least be little difference of opinion as to the actual condition of the zemindars under the Moghul government. Custom generally gave them a certain species of hereditary occupancy; but the sovereign nowhere appears to have bound himself by any law or compact, not to deprive them of it; and the rents to be paid by them remained always to be fixed by his arbitrary will and pleasure; which were constantly exercised upon this object. If considered, therefore, as a right of property, it was very imperfect and very precarious; having not at all, or but in a very small degree, those qualities that confer independence and value upon the landed property of Europe. Though such be our ultimate view of the question, our originating a system of fixed equitable taxation will sufficiently show that our intention has not been to act.

upon the high tone of Asiatic despotism. We are, on the contrary, for establishing real, permanent, valuable landed rights in our provinces; and for conferring such rights upon the zemindars; but it is just that the nature of this concession should be known; and that our subjects should see they receive from the enlightened principles of a British Government, what they never enjoyed under the happiest of their own."

Thus the momentous decision was made. If the state was not the owner of the land, the zemindars must be. Since definite proofs were wanting of the State's being the landlord, proprietorship must as a matter of policy, if not of right, be vested in the zemindars. Such was the logic of the persons who were in power. It did never occur to them that there was a third party connected with the land, namely, the tillers of it, and that proprietary right, perhaps did, and could with advantage, belong to them. But there was one person who, as if by intuition, hit upon the right theory and policy. Colonel Wilks in his "Historical Sketches of South India," laughs at the confusion among the great personages engaged in the controversy regarding landed property in Bengal. "In the controversy to determine whether the sovereign or the zemindar, were the proprietor, each party appears to me to have reciprocally refuted the proposition of his adversary without establish-

ing his own. They have severally proved that neither the king, nor the zemindar is the proprietor." Under the ancient laws and customs of India, landed property vested in the peasant. During Mahammadan misrule, zemindars, who were merely revenue farmers, had in many places usurped the rights of the peasants. But property in land belonged, of right, to the peasants, and it was good policy too to regard it as such. "Instead of creating" writes he "by the most absurd of all misnomers, a few nominal proprietors, who, without further usurpation, can, by no possible exertion of power be rendered either more or less than farmers or contractors of revenue, the British Government may still restore property and its concomittant blessings, to the great mass of the subjects. * * * * *". The only operation by which property in land can be restored is simply to leave the farmer that which constitutes property, a rent, a proprietor's share; and this may be affected without any material diminution of that revenue which the exigencies of the time so imperviously demanded, by conceding to the proprietor the abatement which has, in all cases been made to the newly invented zemindar." No saner and more sound advice could be given. But the final step had already been taken and this precious gem of sagacity was easily lost in the wordy torrents of pendant controversy. Later on, Harington

tried to show that some of Wilk's premises were wrong. No doubt his history might be bad; but no authentic history was available at that time. The particular arguments which he used might be defective; but in the light of recent historical investigations we can very well see that his theorem was correct.¹⁷

¹⁷ The battle was fought by Englishmen amongst themselves. At that time it was not at all deemed necessary to consult the opinions of any Indians. One Indian—a very well-known Bengali scholar—did, however, publish a treatise on the question of property in land. Whether that treatise was written freely and independently with a view to throw light on the question or whether it was written at the bidding of the powers that were cannot, perhaps, be ascertained at this distance of time. I have never seen a copy of this book, nor do I know if any be still in existence. But the following tribute paid to the author by a Bengal Civilian about 40 years later may prove highly interesting to modern readers.'

"As there is every reason to believe that the grand errors of Lord Cornwallis's Code, arose from too great a reliance upon the authenticity of a treatise upon proprietary rights, written by Juggernauth Turkupunchanan, a Bengali Pundit, employed by Sir William Jones to compile a digest of Hindu Law, it seems essential to offer a few observations, with the intent to show, that a careful consideration of the contents, with reference to the texts of the authorities quoted by that person, will prove the work to be altogether unworthy the credit and consideration claimed for it.

"Juggernath asserts that exclusive proprietary rights in the soil appertain only to the sovereigns and to Brahmins; but on perusal of the original or the very excellent translation of it made by Mr. Colebrooke it will be evident to the Hindoo Law student that the author had some other object in view than that of giving a fair and candid statement of the Hindu Law in respect to land tenure. Whether to forward some particular interest, or, with the cringing sycophancy of his nature, to favour the hypotheses entertained by the rulers of the day he has given to the world a work which though it does credit to his abilities as a casuist, stamps his memory with infamy since it proves him to have wilfully garbled the texts of his authorities in order to establish as law,

B. Period of Statement :—

The controversy regarding the period of settlement took place between Shore and Cornwallis. It arose at first in connexion with the settlement of the province of Behar. In 1789 the Revenue Board framed resolutions on this settlement. The first resolution stated that the settlement should be made with the zemindars, Chowdhuries, and talukdars. But the second was the most important and stated "that the settlement be made for a period of ten years certain with a notification that, if approved by the Directors, it will become permanent, and no further alteration take place at the expiration of the ten years."

Shore entered a protest against this resolution in his Minute of September 18, 1789. (i) "The intention of making it" writes Shore "is to give fuller confidence to the proprietors of the soil than a ten years' lease will afford. I am not sure that it will have this effect in any material degree; to those who have subsisted upon annual expedients, a period of ten years is a term nearly equal in estimate to

a system of his own, utterly inconsistent with the precepts and principles laid down by that Code which, if he believe as a Hindoo and as a Brahman, he was bound to revere as emanation of wisdom." A Memoir on the Land Tenure and principles of Taxation obtaining in the provinces attached to the Bengal Presidency. By a Civilian, Calcutta 1832, pages 27-29. The author gives extracts from Juggernath Turkapanchanan's book, and discusses them at length in order to point out the untenability of Juggernath's propositions.

perpetuity." In the next place Shore argues that it was not only not necessary but positively harmful at that time to conclude a settlement in perpetuity because, he writes, (ii) "we cannot answer for the confirmation of it; and if it be not confirmed, the confidence of natives will be shaken" and (iii) "whatever confidence we ourselves have in the propriety of the measures which we mean to adopt, we cannot pronounce absolutely upon their success, without experience; and before we recommend the perpetual confirmation of a general measures of so much importance, we ought to have that experience."¹⁸

Cornwallis replied to Shore in a Minute of the same date. On the first point he said that a ten years' lease would be equivalent to farming. The zemindars would exploit and not improve the soil under such a short lease. Again one-third of the Company's territory in Hindustan was under jungle. A ten years' lease would induce no one to clear away that jungle.¹⁹

On the second point he replies that the Governor-General was going to make only *conditional* promise of permanency and that no loss of confidence would result even if the Court of Directors did ultimately reject the proposal. A promise of permanence could do

¹⁸ Shores Minute of September 18, 1789 § 69-72.

¹⁹ Cf. Fifth Report, page 592.

no harm, for the only result of it would be to encourage improvements in land. Again, "I cannot, however, believe" writes he, "that they (*i.e.* the Court of Directors) would have held out the flattering hopes of a *permanent* settlement, which alone in my judgment, can make the country flourish, and secure happiness to the body of inhabitants, unless they had been predetermined to confirm the perpetuity, if they found that their servants here had not failed in their duty or betrayed the important trust that had been reposed in them."²⁰ In 1786 Lord Cornwallis had arrived in India with definite instructions to conclude a permanent settlement and his determination to carry out faithfully the orders of the Court is the keynote of his position regarding the question of permanency.

On the third point he asserts that they had already had enough experience. There were some doubts and confusion regarding the position of the ryots but "the word permanency was to extend to the word jumma only and not to the details of the Settlement." Any measures found necessary for the protection of the ryot might be enacted afterwards.²¹

In his second Minute of September 18, 1789, issued in reply to Cornwallis, Shore adhered to his former position and reasserted

²⁰ Ibid. page 591.

²¹ Ibid. page 594.

his main arguments. In reply to Cornwallis, who held that permanent settlement was the only means for ensuring an extension of cultivation, Shore pointed out that ever since the famine of 1770 cultivation had steadily advanced in the face of many obstructions and if it were necessary to give a further impetus to it, this could be done by granting special leases in favour of persons of known capacity.

Shore, in spite of the strength of his arguments, was worsted in the fight with the Governor-General and on September 18, 1789, the very day on which the Minutes were recorded, rules were issued for the Decennial Settlement of Behar with an undertaking to make it perpetual. The rules for the settlement of Bengal were still pending, and before his departure for Europe, Shore submitted a further minute of objection on 8th December 1789.

In this last Minute Shore starts with the proposition that "equality in taxation is of great importance." But a conclusion of permanent settlement would result in an unfair distribution of the assessment. The land had not been surveyed and its assets were unknown. The contributions of zemindars were disproportioned to their incomes. The burden of the ryots was quite unknown. To confirm the zemindars in their position in perpetuity might be to confirm a system of oppression on the ryots. Writes Shore—"We know from

experience what the zemindars are; and I am not inclined in opposition to that experience to suppose that they will at once assume new principles of action, and become economical landlords and prudent trustees of the public interest. The necessity of some interposition between the zemindars and their tenants is absolute—”²² But, he continues, “this interference though so much modified is, in fact, an invasion of proprietary right and an assumption of the character of landlord which belongs to the zemindar; for it is equally a contradiction in terms to say that the property in the soil is vested in the zemindar and that we have a right to regulate the terms by which he is to let his lands to the ryots, as it is to connect that avowal, with discretionary and arbitrary claims. If the land is the zemindar’s it will only be partially his property, whilst we prescribe the quantum which he is to collect or the mode by which the adjustment of it is to take place between the parties concerned. The most cursory observation shows the situation of things in this country to be singularly confused. The relation of a zemindar, is neither that of a proprietor nor of a vassal; but a compound of both. * * * * *. Much time will, I fear, elapse before we can establish a system, perfectly consistent in all its parts; and before we can reduce the compound rela-

²² Minute § 12-15.

tion of a zemindar to Government, and of a ryot to a zemindar, to the simple principles of landlord and tenant." Shore pleads time. He recommends settlement, in the first instance, for a period of ten years and asks the government to consider this period as "a period of experiment and improvement." Nothing could be more commendable than the spirit which the above passage evinces of Shore's eagerness and solicitude for the welfare of the ryots. As time passed on, and as his experience of the country increased, his mistrust of the zemindars deepened. Further, he could now very well perceive that the proprietary rights of zemindars in their lands, if there were any, were not absolute but limited by well-established rights of the ryots. The land system, as it existed in Bengal at that time, was not the landlord and tenant system. It was at most a system of divided ownership. Whether that could be replaced successfully, and without any prejudice to the interest of the community, by a simple system of landlordism of the British model, had to be tested by experience. Hence Shore's pleading for time was very reasonable and praiseworthy. But the mighty Governor-General had already made up his mind and was not in a mood to listen to counsels for delay.

Cornwallis replied to Shore in his Minute of February 3, 1790, after the latter's departure to England. The Minute betrays more eager-

ness to carry out the permanent settlement than a sober attempt to appraise Shore's arguments at their true worth. He argued that there was no reason to be afraid of bad zemindars. By a process of natural selection the bad zemindars would be eliminated and their estates would pass on to better hands. The Government's revenue would be fully safeguarded even against the effects of floods and drought and would show no tendency to increase. As regards experience he asserted that they had already had enough of it. Regarding the relations between the landlord and the ryot, Cornwallis held that the Government had every right to interfere. "If Mr. Shore means" writes he "that after having declared the zemindar proprietor of the soil, in order to be consistent we have no right to prevent his imposing new abwabs, or taxes on the lands in cultivation, I must differ with him in opinion, unless we suppose the ryots to be absolute slaves of the zemindars.

.....I do not hesitate therefore to give it as my opinion that zemindars, neither now nor ever, could possess a right to impose taxes or abwabs upon the ryots; and if from the confusions, which prevailed towards the close of the Mughul government, or neglect or want of information since we have had possession of the country, new abwabs have been imposed by the zemindars or farmers; that government has an undoubted right to abolish such as are

oppressive, and have never been affirmed by competent authority; and to establish such regulations as may prevent the practice of like abuses in future.

“Neither is the privilege which the ryots in many parts of Bengal enjoy, of holding possession of the spots of land which they cultivate so long as they pay the revenue assessed upon them, by any means imcompatible with the proprietary rights of the zemindars. Whoever cultivates the lands, the zemindars can receive no more than the established rent, which in most places is fully equal to what the cultivator can afford to pay.” There could be no greater confusion in thought and language. Shore saw distinctly the drift of the policy they were adopting. But to the vision of Cornwallis everything became blurred and hazy. The soldier administrator was but a poor match for the trained thinker and the tried official. Shore perceived that if the zemindar were to be recognised henceforth as the true landlord, he must have full powers to dispose of his land in any way he liked. Any interference with his treatment of his tenants was an invasion on his proprietary right. Unable to give any reply to Shore’s apprehension of the probable oppression of the ryots under a zemindari system, Cornwallis argues that it would not be incompatible with the proprietary rights of the zemindars to prevent them from ousting their tenants or even from raising the ‘established’

rate of rent! Nothing could be more absurd; and to make confusion worse confounded, Cornwallis finally adds that if the government did not interfere, natural economic laws would. For, if any landlord became very exacting, he tells us, the ryots would leave his lands. The explanation for such contradictory statements can perhaps, be found in the fact that Cornwallis strung his hopes very high in the zemindars. Though he intended the government to reserve full powers for taking all measures for the protection of the ryot; still he confidently believed that the permanent settlement would have such a magical effect on the character of the zemindars that any interference with their authority would never be necessary. "Mr. Shore observes" writes he "that we have experience of what the zemindars are, but the experience of what they are, or have been, under one system, is by no means the proper criterion to determine what they would be under the influence of another, founded upon very different principles. We have no experience of what the zemindars would be under the system which I recommend to be adopted."²³ And he had no doubts that under the system recommended by him, the Bengal zemindars would be the best landlords on earth. How far these expectations were realised will be narrated in the next chapter.

²³ Ibid. page 614.

On February 10, 1790, the rules for Decennial Settlement of Bengal were issued. In their revenue general letter of the 19th September, 1792, the Court of Directors expressed their final sentiments upon the question and approved of a policy of Permanent Settlement. They fully agreed with Lord Cornwallis in that a permanent settlement would not cause any diminution of, but give security to, the revenues of the Government. It would also be beneficial to the country as a whole because a permanent settlement "must contain in its nature a productive principle." The Directors shared the solicitude of Shore regarding the position of the ryot but they shared also the optimism of Lord Cornwallis and expressed the hope that a time would soon come when "the advantage of every class of the community would be best promoted by leaving to every one the care and management of his own property without restriction."

On receipt of this letter the Governor-General issued a proclamation on the 22nd March, 1793 which declared the jumma as fixed under the Decennial settlement to be "fixed for ever." The articles of the Proclamation were subsequently enacted into Regulation I of 1st May, 1793. Under Article VII full powers were retained to enact such regulations as might be found necessary "for the protection and welfare of the dependent talukdars, ryots and other cultivators of the

Soil" and the zemindars were expressly forbidden from being admitted to participation in any Sayer duties that might be imposed in future. All engagements for jumma were fixed in Sicca rupees. In case any zemindar declined to engage for the jumma fixed for his estate, he was to be awarded a malikana equivalent to 10 per cent. of the suddar jumma. Enforcement of payment of jumma and malikana was to be made by the auction sale of the estate.

C. Amount of Assessment²⁴ :—

It remains now to narrate the history of how the question of the amount of assessment was settled. This amount, as it subsequently was to become the limit of the resources which the government would ever in future derive from the land, it was necessary should be fixed with the utmost accuracy; but it appears that means adequate to so desirable and important a purpose, were not to be found. The lights formerly derivable from the Canongoe's office were no longer to be depended on; and minute scrutiny into the value of the lands by measurement and comparison of the village accounts, if sufficient for the purpose, was prohibited by orders from England. Under these circumstances government's attention was drawn to an estimate of resources published in Grant's analysis. In this document it was endeavour-

²⁴ See fifth Report pages 22-23. Also Chapters V & VI of Ascoli's Early Revenue History of Bengal.

ed to show that the real value of the lands had been concealed and the confidence of government abused by native officers entrusted, during the early part of the Dewani grant, with the management of the land revenue, and that the aggregate assessment ought to be above a million per annum, estimated in English money, more than had at any time been collected. Grant estimated the total cultivated area of Bengal to be 18,000 Sq. miles ($\frac{1}{5}$ th of the whole area) and he estimated the value of the gross produce of one bigha of land at Rs. 6/-. Calculating rents at $\frac{1}{4}$ th of the gross produce, the total rental of Bengal would amount to Rs. 5,22,72,000 and the revenue, deducing one-tenth due to the zemindars, to Rs. 4,70,44,800. Grant recommended that settlement should be made of Dewani lands at the full assets of the year 1765 (the year of highest Moghul assessment). The ceded lands, he maintained, should be settled after a regular survey.

Shore questioned the validity of Grant's principles and estimates in his Minute of June 18, 1786. He argued that the reduction of population had considerably diminished the area under cultivation. Shore then asserted that, if an accurate settlement were to be made it was necessary to have detailed knowledge on two points :—

- (i) The proportion of rent actually paid, compared with the gross produce.

- (ii) The actual collections and payments made by zemindars and farmers.

But any information on these heads was absolutely unavailable. In 1787 every collector was instructed to make inquiries regarding the resources of the area under his control; and Shore placed very much more reliance on the Collector's reports than on the figures of the Pre-Dewani assessments. Shore hoped that a fair assessment could be made on this basis. The Collectors sent their reports to the Board of Revenue upon whose recommendation, when approved by Government, the Settlement was finally concluded with the landlords for a term of ten years in the first instance, and for perpetuity later on. The revenue was fixed at about 3 crores of rupees. Thus the assessment was made without any regular survey of the land and without obtaining any accurate information on the two points raised by Shore. The Governor General was determined to carry out the Permanent Settlement immediately. A comprehensive survey of the land could not have been made without considerable labour and expense. Further, it would have meant delay and postponement for an indefinite period, of the declaration of permanent settlement. Hence, a survey was regarded as quite impracticable. The choice really lay between an assessment based on Collectors' reports, and one based on the figures of the pre-Dewani assessments. The

former method was adopted as being more reliable and less evil of the two. But it can by no means be denied that the method was rough and ready; it was defective in many ways and gave rise to gross inequality in the burden of assessment.

Thus was the momentous step taken. On all the three questions that were mooted, the decisions taken were wrong. The Permanent Settlement was an act of expropriation and misappropriation. It deprived the tillers of land of their agelong interest in the soil; hence it was an act of expropriation.²⁵ Nextly, it conferred full proprietary rights on zemindars who were merely middlemen revenue collectors;—in this respect it was an act of misappropriation. On the two questions of period of settlement, and amount of assessment, the authorities were swayed by impatience, they

²⁵ There is no doubt that the rights of cultivators were respected but little during the early years of British rule in Bengal when the ryots were thrown absolutely at the mercy of revenue farmers. During periods of anarchy might is the only recognised form of right. The period which immediately followed the Battle of Plassey was a period of anarchy when there was a total collapse of the administrative machinery. In considering the rights of zemindars and ryots this period should not at all be taken into account. In discussing the historical basis of economic or juristic rights it is dangerous to draw one's illustrations or inferences from periods of political disorder. In the light of modern historical researches (cf. K. P. Jayaswal's *Hindu Polity*, V. Smith's *Akbar*, Sarkar's *Moghul Administration*) we now know it for certain that during the best days of Hindu and Muhammadan Rule the land tenure was Ryotwari and property in land belonged to the cultivator.

would not listen to wise counsels for delay and more mature consideration.

The settlement had, primarily, three objects in view; namely, (1) to secure a stable minimum revenue to the state and ensure its punctual payment (2) to promote the extension of cultivation (3) to stimulate the progress and improvement of agriculture.²⁶ The last objective was never realised. There was rapid extension of cultivation; but it was due to the natural increase in population and not to the Permanent Settlement. As regards securing the *punctual* payment of a minimum land revenue, the Permanent Settlement did not succeed at all till after about 30 years of its inauguration. All these points will come out clearly in the chapters that follow.

²⁶ This object was not only emphatically stated in the Minutes of Lord Cornwallis, and the Despatch of the Court of Directors; it was reiterated in the preambles of some of the Regulations introducing the Permanent Settlement. In this connection, especially see Preamble to Regulation II of 1793.

CHAPTER II

HISTORY

I

1793-1815.

Lord Cornwallis counted upon the enlightened self-interest of the zemindars for the success of the great measure introduced by him. He believed that the zemindars, being secured by the Permanent Settlement in the enjoyment of the fruits of their own industry, would take an active interest in the improvement of land and agriculture and deal fairly with their ryots. Hence the proclamation regarding the permanent settlement was "couched in the language of distinct declaration as regards the rights of the zemindars, but in language of trust and expectation as regards any definition of their duties towards the ryots." In the Regulations of 1793 the rights or powers of the zemindar to evict the ryot were left uncertain. Opinions favourable to giving security of tenure to the ryots were expressed by Sir John Shore as well as by the Court of Directors; but no direct provision on the subject was inserted in any of the Regulations. Writing in 1792 the Court of Directors observed that "in order to simplify and regulate the demands of the zemindars upon the cultivators, the first step is to fix the

demand of the Government itself on the zemindar," and treating this as a mere preliminary to a far more important, ultimate end, they added, "we are led to believe that the situation of the ryots varies in different districts according to local manners, customs, or particular agreements; and, it appears as if, in some instances, the rights of ryots of different descriptions, though in the same district, are considered more or less permanent or secure. The application therefore, of any general principle must be guided by minute local investigation and we shall expect particular regulations adapted to all the different circumstances, to be prepared and finally submitted to our consideration." Replying in 1793, to these remarks by the Court of Directors, Lord Cornwallis simply refers to the powers reserved by the Government to interfere, in case of necessity, with the relations between zemindars and ryots. There is no allusion to any particular rules; for, as a matter of fact, no such rules had been framed or enacted. The zemindars were considered too good to require the check of law to restrain their cupidity. "If the aristocracy was provided for, it appears to have been thought, as by English aristocrates it was apt to be thought that everything else would provide for itself."¹

¹ James Mill's History of India, Volume V. page 486.

✓ Lord Cornwallis made only two provisions for defining the reciprocal rights and duties of zemindars and ryots, namely :—(1) Delivery of *pattas* by zemindars to ryots specifying the conditions of their holding, and (2) Maintenance of accounts and a sort of record of rights by *patwaris*. It will be shown later on how the former was transformed into an engine of oppression and the latter fell very soon into desuetude. As regards enhancement of the rates of rent, full powers were left to the zemindars to enhance the rates as they willed; for, otherwise, how could they enjoy the benefits of any improvements made by them? Regulation VIII of 1793 prohibited the zemindars from levying any abwabs upon the ryots on penalty of paying a fine of three times the amount of the abwab, but in Lord Cornwallis's opinion, "the imposition of abwabs and the raising of rents were two distinct questions and the prohibiting a landholder to impose abwabs was not tantamount to saying to him that he should not raise the rents of his estates." There is nothing fundamentally wrong about these conceptions. The landlord's right to evict and the right to enhance rents are essential elements of the landlord and tenant system. The pity is that these ideas were embodied in law without considering their suitability to the condition of Bengal. The zemindars instead of raising their rents by agricultural improvements, tried

to increase their income by rack-renting and the right to evict was utilised as a capital weapon for this purpose. What is worse, the abwabs, the imposition of which was strictly forbidden by Regulation VIII of 1793 continued to be levied as usual or with even more harshness. Throughout the greater part of the last century the zemindars and their gomasthas preyed upon the poor ryots and extorted whatever amounts they could over and above the legal rents. Even today it cannot be asserted that abwabs have absolutely ceased to be levied in outlying country districts.

One of the objects in introducing the permanent settlement was to secure a fixed revenue to the Government and ensure its punctual payment. In Regulation I of 1793 it was expressly declared that "in future no claims or applications for suspensions or remissions, on account of drought, inundation, or other calamity of Season would be attended to." The Government had allowed the zemindars to make whatever arrangements or contracts they chose with the tenants in respect of their land. But the land itself was held as security against any default of payment of revenue by the zemindars. It was the interest of the Government to see that the land remained free and unencumbered so that there might be no diminution in the value of its security. By the rules of Regulation XLIV

of 1793, therefore, two limitations were placed upon the arrangements made by the zemindars with the ryots :—Firstly, that the jama or rent should not be fixed for a period exceeding ten years and secondly that in the case of a sale for arrears of revenue such leases or arrangements should stand cancelled from the day of sale. But for these two limitations the zemindars had a free hand in dealing with the ryots. Nothing prevented them in any way from enhancing the rates of rent; and this was the task to which they now addressed themselves most assiduously. The Regulations of 1793 had already placed the ryots at the mercy of the zemindar, Regulation IV of 1794 further tightened the zemindar's hold on them. It gave the zemindars power to recover rent at the rates offered in the lease whether the ryots agreed or not. The patta regulations were made with a view to safeguard the rights of the ryots as against the zemindars; but the zemindars knew only too well how to utilise those very Regulations for squeezing and oppressing the ryots. "Not only were the patta Regulations a complete failure for the purpose for which they were intended—namely, the securing of certainty of demand of rent and procuring zemindars and ryots to adjust their mutual rights by adjustment among themselves but being adroitly utilised to promote and facilitate exaction, they, like many of our legislative enactments devised on

paper with the most excellent intentions, increased the very evils which they were intended to remedy. The zemindars, by putting up notifications in their kutcheries or rent-offices of their readiness to grant pattas at rates which the ryots would not accept, were enabled to distrain, for the recovery of the rents which they claimed, and the ryots in order to protect themselves were driven into the newly created Civil Courts.²"

When the Permanent Settlement was made population was thin, and one of the objects of the settlement was to encourage speedy growth of population. At that time competition was between landlords for ryots; and in this respect ryots possessed an advantage over the zemindars. But after 1793 population increased fast owing to natural causes, and the demand for land increased. The zemindars had now a splendid opportunity of raising rents. As regards old settled land, there were nominal restrictions upon the powers of the landlord to enhance rent. The zemindars could not increase rent unless it were permitted by the special custom of the district or by the condition under which the tenant held his land. (Vide sections 49-60 Regulation VIII of 1793). This paper regulation did not in any way interfere with the

² Field—Landholding and Relations between Landlords and tenants in different countries, pages 564 et seq.

extortions by the zemindars. As to the "remaining lands" (*i.e.* uncultivated waste lands) there was not even this nominal restriction. These lands the proprietor could let 'in whatever manner he might think proper.' Again, regarding land sold at auctions, the purchaser could deal freely with the ryots,—he was not bound by any of the undertakings of his predecessor.

The zemindars thus grew fat at the expense of the people. They rackrented the tenants, they imposed abwabs, and though they were forbidden to levy any *sayer* duties, they continued to realise tolls and market duties far into the 19th century. To increase their income by improving the lands in their possession was not so attractive a proposition. It was much easier to grow rich by extortion. And the zemindars chose the path of least trouble. There was an evolution not of competitive rents but of rack-renting.

At last the burden became too heavy for the Bengal peasants. They were driven to organised resistance. They refused to pay rent in a body. The zemindars who could not pay revenue punctually unless they received their rents in time had now to go to the wall. Their estates were sold by auction and many ancient houses lost their fortunes. "In course of ten years that immediately followed the Permanent Settlement a complete revolution took place in the constitution and ownership

of the estates which formed the subject of that settlement." The zemindars asked for legal powers to deal with the organised resistance by the ryots. The Government's own interests were involved in the matter. In making the Permanent Settlement with the zemindars the Government counted upon punctual receipt of the land revenue.^{2a} But these disturbances precluded punctual payment and the Government was only too eager to meet the zemindars halfway and thereby

^{2a} NOTE :—The causes of the large number of sales towards the close of the 18th century have been the subject of dispute. In reply to enquiries made by the Court of Directors, the Government of India replied it was, no doubt, true, that zemindars were being ruined by organised resistance of the ryots but at the same time, they added there was no cause for regret. "This circumstance" they wrote "evinced that the great body of the people experienced ample protection from the laws and were no longer subject to arbitrary exaction."

The authors of the Fifth Report were not satisfied with this opinion. They enumerated the following causes :—(i) High percentage of rental demanded as revenue from the zemindars and unequal distribution of the burden of revenue on subdivisions of estates, (ii) Defective law of distraint which gave too little powers to the zemindars to realise their rents in time, (iii) Lack of good management in some cases on the part of zemindars. The Fifth Report quotes abstracts from statements submitted by several district collectors which indicate clearly that the ruin of the zemindars was due to non-payment combinations among the ryots. The blame is sought to be laid principally at the door of the ryots. This explanation is somewhat improbable. The ryots stood to lose more than the zemindars by the sale of an estate. According to Regulations the purchaser at an auction sale had a free hand to evict and rack-rent the ryots. The latter had more cause of fear under a new purchaser than under the old proprietor. If the tenants planned and engineered the sale of an estate, it must be assumed that their condition had grown so bad and desperate that they had no reason to fear a change for the worse.

safeguard its own interests. The result was the enactment of the dreadful Huftum or Regulation VII of 1799. Under this new distraint rule the landlords were empowered "to distrain without sending notice to any Court of Justice or any public officer, the crops and products of earth of every description, the grain, cattle, and all other personal property whether found in the house or on the premises of the defaulter, or in the house or ^{the} on the premises of any other person." Legal remedy for any oppressions or extortions made by the distrainers was made so difficult and expensive for the ryot to obtain that he could hardly attempt to secure it. The zemindars obtained everything they had asked for—they had inquisitorial powers. "As to the immediate results of the legislation of 1799, there is a large body of concurrent testimony, after reading which no person can entertain a doubt that it had the most injurious operation and effect. Judicial officers having many important subjects to engage their attention, were notwithstanding every good intention, seldom

The real cause of the sales was, however, the contumaciousness of the zemindars themselves. They wilfully set up their estates at auction in order to purchase them later 'in fictitious names or in the names of their dependents, the object of which was to procure a reduction of the rate of assessment,' and to induce the Government to give them ampler powers of distraint. History shows that they succeeded in throwing dust into the eyes of the Government. See Preamble to Regulation VII of 1799. Also Ascoli's 'Early Revenue History of Bengal' pages 77 and Field's 'Introduction to the Bengal Code' § 87 and Foot Note.

able to find leisure to attend to the trial of petty rent suits. The ryots were too poor to employ mukhtars or attorneys and so had to attend in person at the courts, wasting day after day while their fields required ploughing or their ungathered crops were being ruined on the ground. The cattle were sacrificed by peremptory sale, buffaloes or bullocks of the value of 6, 7, or 8 rupees being sold for one rupee or half a rupee, while the debtor perhaps owed only 3 or 4 rupees. The zemindars used their power of compelling the attendance of the tenants and detained them till they gave Kubuliyats for rent at the rate demanded. When the ryots kept out of the way and could not be brought in, a forged Kabuliyat served the same purpose. The Kazis and native Commissioners who were vested with power to sell distrained property were too often corrupt, abusing their office to their private gain.³

The Bengal peasant was reduced to a condition of abject misery. But the authorities were loth to find any fault with their own measures. The Indian Government was not at all willing to admit the failure of a land settlement devised by itself. Even the authors of the Fifth Report expressed general satisfaction with the system. The Fifth Report shows a callous disregard for the welfare of the ryots

³ Field—Landholding and the Relation between Landlord and tenant, pages 583-4.

but the greatest solicitude for the security of the public revenue. The then system provided that security; and what more could judicious statesman ask from it? They express the opinion that the provisions of Regulation VIII of 1793 were sufficient to regulate the relations between landlords and tenants. Their argument was simple. The very fact that the Regulation was still allowed to remain unaltered was sufficient proof that it served its purpose quite well.⁴ Had the expectations or intentions of the Government in regard to that Regulation not been fulfilled, it must have been altered or rescinded by that time. The authors of the Fifth Report conclude by saying "It is moreover to be expected that the parties on experiencing the inconvenience, expense, and delay, combined with the uncertainty attendant on decisions in the newly constituted Courts of Justice, will come to a reasonable agreement between themselves, the zemindars for the sake of retaining the cultivator by whose means alone his estate

⁴ The following is the actual language used by the authors of the Fifth Report :—"With respect to the cultivators or ryots, their rights and customs varied so much in different parts of the country, and appeared to Government to involve so much intricacy that the Regulation (VIII of 1793) only provides generally for engagements being entered into, and pattas or leases being granted by the zemindar ; leaving the terms to be such as shall appear to have been customary or as shall be particularly adjusted between the parties; and in this it is probable that the expectations of the Government have been fulfilled as no new Regulation yet appears altering or rescinding the one alluded to."

can be rendered productive and the cultivator for the sake of gaining a subsistence on the spot where he has been accustomed to reside." It is needless to comment on such logic.

We have already seen that the Government had provided two safeguards for the punctual payment of land-revenue. Firstly, it had limited the term of leases to ten years; secondly, it had provided for the avoidance or cancellation of pattas or leases upon a sale for arrears of revenue. The necessity for retaining both these safeguards was discussed by Mr. Colebrook in his Minute dated May 1, 1812. He argued that the first limitation was unwise. Long leases were "requisite to the extension and improvement of agriculture and conducive to the welfare of both landlords and tenants." So far as the security of land revenue was concerned, the second limitation by itself was sufficient to safeguard it; and he pleaded for the retention of the second and the abolition of the first. There was another important subject discussed by Mr. Colebrook. According to the existing Regulations rents were to be adjusted by reference to the existing Pergunnah Rate. But there were many places, it was complained, where pergana rates were not ascertainable. There 'the Regulations looked to the Courts, and the Courts looked to the Regulations for guidance.' In order to remedy this defect of law, Colebrook suggested that where the pergana rates were

not ascertainable, rents should be fixed by the Courts, "according to the rate payable for rent of a similar description in the places adjacent." These recommendations of Colebrook were embodied in the Punjum or Regulation V of 1812. The same Regulation somewhat improved the position of the ryots by embodying an amendment of the law of distraint. "A written demand upon the tenant was made necessary before his property could be distrained. Ploughs implements and cattle used for agriculture were absolutely exempted from distress and sale. All attachments for rent were to be withdrawn if the tenant disputed the demand and gave security binding himself to institute a suit within 15 days. In order to prevent the sacrifice of distrained property by its being knocked out at grossly inadequate prices, it was to be appraised before sale; and if the price bid was less than the appraised value, the sale was to be postponed. Finally in order to expedite decision of cases arising between landlords and tenants, they were all to be referred as soon as instituted, to collectors for report, instead of the overburdened judge referring them, if he saw fit, when he found leisure to take them up for the first time.⁵" This new Regulation thus tended to mitigate the hardship of the law of distraint; but it dealt with a portion of the

⁵ Field—Landholding and the Relation Etc.

mischief only. So far as the fixing of the rates of rent was concerned, it hardly made any change. The zemindars were free as ever to enhance rents. In the meantime there had grown up a system of *patni*⁶ tenures (or contract leases) under which it was possible for the darpatnidars and sepatnidars (*i.e.*, under-contractors) as well as the cultivators to be ruined by a collusion between the zemindar and the patnidar. To bring about the result, the zemindar had simply to put up his estate for auction sale for default of revenue payment. Under the then Regulations the auction purchaser would receive the estate "free from all encumbrances" and the rights of all subordinate tenures would be swept off automatically.

By this time the right of Proprietorship of the zemindar became complete and absolute. "If it were the intention of our Regulations" wrote Lord Moira in 1815 "to deprive every class but the large proprietors who engaged with Government, of any share in the profits of the land, that effect has been fully established in Bengal. No compensation can now be made for the injustice done to those who used to enjoy a share of these profits under the law of the Empire, and under institutions anterior to all record, for the transfer of their

⁶ Regulation V of 1812 by removing the 10 years' limit legalised leases for longer periods as well as leases in perpetuity. See Regulation VIII of 1819.

property to the rajahs (i.e. zemindars)." This closes one period of history. During this period the zemindars were installed in full rights of ownership. Any occasional misgivings that individual officers of the Company might have regarding the wisdom of the system introduced in 1793 were stifled most effectually. The tendency of law and practice, on the whole, was to increase their powers more and more.

II

1815-1858.

About the year 1815 we enter upon a new phase of development. The authorities now began to have serious misgivings regarding the success and wisdom of the land system introduced by them. Previous to 1812, the Government had made certain enquiries "relative to the oppressions and exactions practised on the ryots with reference to the existing rules for the distress and sale of property on account of arrears of rent." (Vide Civil and Judicial consultations 1809-11 reprinted as an Appendix to the Report of the Committee of the House of Commons on East Indian Affairs 1832). But the Fifth Report had set its seal of approbation on the Settlement of 1793. As regards the abuses of the rules of distraint, the Government had saved

its conscience by passing Regulation V of 1812. Apparently, all that was necessary to do had been done. But Lord Moira re-opened the question shortly afterwards. In 1815 (vide his Minute dated the 21st September 1815) he made a scathing condemnation of the land-system of the country. Regulation V had been passed at the suggestion of Mr. Colebrooke, a member of the Supreme Council. Colebrook maintained that the state should either (i) make a survey of the country and regulate the details of the relation between the zemindar and the ryot or (ii) it should "abrogate most of the laws in favour of the ryot and leave him, for a certain period to be specified, under no other protection for his tenure than the specific terms of the lease which he may then hold." This, he maintained, would be better than to uphold the illusory expectations of protection from an ineffectual law, and it was hoped would compel the parties to come to an understanding whereby the oppression, fraud, and endless litigation produced by the previous uncertainty would be avoided. The Government, no doubt, had accepted the latter suggestion. The policy of Laissez faire was the easiest to follow. Under the Regulations of 1793, the form of the pattah had been subjected to the Collector's approbation. This was now considered unnecessary, and Regulation V of 1812, amongst other things, allowed the zemindar and the ryot to enter into contracts

according to such form as might be "most convenient and conducive to their respective interests." Lord Moira, after referring to the thoroughly unsatisfactory condition of affairs, argued that it was foolish to suppose that mutual interest would drive the zemindars and the ryots to amicably settle their relations. He denied that there existed any identity of interests between the zemindars and the ryots. "This reciprocity, however, is not so clear. The zemindar certainly cannot do without the tenants, but he wants them upon his own terms and he knows that if he can get rid of the hereditary proprietors, who claim a right to terms independent of what he may vouchsafe to give, he will obtain the means of substituting men of his own; and such is the redundancy of the cultivating class that there will never be a difficulty of procuring ryots ready to engage on terms only just sufficient to secure bare maintenance to the engager."¹

Lord Moira's despatches awakened the Directors to a consciousness of the gravity of situation in Bengal. Opinions were invited from the District and revenue officers as well as from the judiciary. Most of the opinions expressed were decidedly hostile to the existing system, and favoured a more effective protection of the rights of the ryots. The Court of Directors were highly impressed with the

¹ Para 147, Minute dated September 21, 1815.

volume of opinion expressed, and by the force of the reasons advanced for safeguarding the interests of the cultivators. In their despatch dated the 15th January, 1819, they write: "Without meaning to commit ourselves to an acquiescence in every view and principle which the Minutes of Lord Hastings embrace, we think it due to their author to declare that we consider them as containing one of the most valuable expositions of the actual state of the internal administration of the territories under the Bengal Government that we have had to peruse.

"The documents² here enumerated unequivocally confirm the truth of all the information which we were previously in possession respecting the absolute subjection of the cultivators of the soil to the discretion of the zemindars, while they exhibit to us a view of things with reference to the landed tenures and rights of that valuable body of the people, which satisfies us that a decisive course of measures for remedying evils of such magnitude must be undertaken without delay."³

So much for the good wishes of the Court of Directors. The measure that was immediately passed by the Bengal Government was, however, anything but beneficial to the ryots. ✓ The Patni Taluk Regulation VIII of 1819 may

² The reference here is to statements of opinion received from experienced servants of the Company.

³ § 21 & 22.

be regarded as one of the 'original sins' committed against the ryot. This Regulation definitely and unreservedly legalised the position of middlemen tenure holders (*i.e.*, patnidars, darpatnidars, and sepatnidars). The only effect of it was to increase the number of drones of society. The patnidar may be regarded as a rent farmer. Regulation VIII of 1819 recognised and confirmed his legal status. Suppose an indolent or inefficient zemindar dislikes, or is unable to manage his estate. Without having to part with it he could now lease it out for a fixed annual payment to a patnidar. This would free him from the duties and responsibilities of his office, and at the same time would guarantee him a fixed income, however moderate. Nothing could be more welcome to an unenterprising mind than the combination of fixed income with freedom from all responsibilities. The patnidar, in his turn, could easily get rid of the trouble of rent collection by leasing out the patni taluk to a darpatnidar. He thus got his share of the profits of agriculture only by virtue of signing two documents, one for hiring the estate from the zemindar, and another for leasing it out to the darpatnidar. The darpatnidar could, in his turn, lease out the estate to a sepatnidar, and so on. This legislation of 1819 did secure, to a limited extent, the position of certain classes of undertenures (namely patnis); but it did nothing but harm to the actual culti-

vators of the soil. The most pernicious and far-reaching effect of it was to create a large class of middlemen subsisting on the profits of agriculture.

These middlemen are more rapacious than the zemindars, and their treatment of the ryots was anything but humane and generous. The full effects of this legislation were not, however, felt till the Revenue Sale Law was gradually modified so as to ensure the validity of under-tenures even at sales of estates for arrears of revenue.

Though the actual legislation of 1819 was nothing but detrimental to the interest of the ryots, and though the authorities in India as well as in England were only too afraid to take any drastic measures against the proprietary rights of the zemindars, still the stream of opinion that had once formed against the Settlement of 1793 was slowly but steadily gathering strength. The first attempts for the protection of the rights of the ryots and under-tenants were made through modifications of the Sale Law. A comprehensive measure on revenue sales was introduced by Regulation XI of 1822. On the one hand this Regulation tried to mitigate the cruelty of the Sale Law to the defaulting zemindars, and on the other hand it tried to define the "nature of the interests and title" conveyed to purchasers. The preamble ran as follows:—"The existing Regulations relative to the public sale of

estates for the recovery of arrears of revenue appear to be defective in-as-much as they do not specify the conditions which are to be held necessary to the validity of such sales, nor define with sufficient precision and accuracy the nature of the interests and title conveyed to the persons purchasing estates so sold. Various doubts have accordingly arisen on both these questions, which it appears necessary and proper to remove by a legislative enactment; and it is also expedient further to regulate the course of proceeding to be hereafter followed in regard to sales of the above description, in order better to guard against error or irregularity in the conduct of them." The Regulation, accordingly, laid down, elaborate rules regarding the procedure for Revenue Sales. With them, however, we are not directly concerned here. As regards the rights obtained by purchasers, the Regulation made a pretty definite statement. "When land other than that upon which the arrear had accrued was sold, the purchaser was merely to acquire the rights, interests, and title of the previous owner, just as if the land had been sold by private sale, or under a decree of Court, in liquidation of a private debt. He did not, like a purchaser at a sale for arrears which had accrued on the *very land sold*, acquire a statutory title free from incumbrances. From the rule which avoided all incumbrances in the event of such a sale were now exempted

khukdhast Kadimi raiyats or resident and hereditary cultivators, who were not to be ejected by the auction-purchaser, though their rents might be enhanced after service of notice."⁴ This enactment did, by no means, give security of tenure and assessment to the hereditary, resident ryots, But nevertheless we can discover here an attempt to recognise rights possessed by special classes of cultivators which was considerably developed in later legislation (*e.g.* in Act XII of 1841 and XI of 1859.)

In the matter of protecting the rights of ryots, the Government was seriously handicapped by the absence of any knowledge regarding the privileges enjoyed by the cultivators of the soil. The land had never been surveyed by the Company's servants, and no attempt made to determine the relative position of zemindars and ryots,—the customary rights and obligations of each class. Regulation VIII of 1793 had provided for the appointment of patwaris. This was not an innovation but a continuation of the old Mughal System under which elaborate records were kept of all village and pergunnah accounts. The Kanungo was appointed for each estate or pergunnah; the patwari occupied the lower grade in the local agency and performed the duties of a village accountant. After the declaration of

⁴ Field's Introduction to the Bengal Code, § 103.

the permanent settlement the Government was relieved of the task of revenue assessment. A detailed knowledge of agricultural production or of the economic condition and legal rights of ryots was no longer necessary to the collection of revenue. The Kanungo's office was accordingly abolished on July 5, 1793 as 'unnecessary and expensive.' Only the patwari's office was retained. Regulation VIII of 1793 required every proprietor of land to appoint a patwari to keep the accounts of each village. According to the scheme of law the patwaris had a very important function to perform in protecting the rights of the ryots; for the Regulation provided that in adjudicating suits between landlords and tenants the Court of Justice should call upon patwaris to supply any necessary information. But the institution of patwaris had never any opportunity to develop under British rule in Bengal. Under the influence of English ideas regarding the rights of landlord, the state more and more inclined to a policy of non-interference. From the very beginning the zemindars neglected the duty of appointing patwaris, and the half-serious measures taken to compel them to appoint patwaris were attended with little, if any, success. Regulation VII of 1799 (Sec. 23) directed the collectors to ascertain whether patwaris had been universally appointed, and, if not, to appoint them. This was followed up by Regulation XXIX of 1803 prescribing in

detail the procedure for the appointment of patwaris, and the duties they were to perform. The zemindars gave little heed to these enactments. They simply refused to appoint patwaris and even where patwaris were appointed, they sank into the position of mere servants of the zemindars and the value of their accounts as public records became *nil*.

In 1815 the Court of Directors took up the matter afresh and directed the introduction of measures by which the patwaris were to be transformed from zemindari to Government servants and be paid from public revenues. Objections, however, were raised and the scheme fell through. The patwaris remained as they were; but it was decided to appoint Kanungas to supervise their work and make their accounts available for reference by the Courts and revenue officers of the Government.

Regulations XII of 1817 and I of 1819 were passed dealing with the appointment and duties of patwaris and Kanungoes. In 1824 the Court of Directors sanctioned a proposal for making a survey and record-of-rights of the permanently settled districts of Bengal in order the better to define the mutual rights of ryots and zemindars. Success, however, did not attend even these measures. The Board of Revenue strongly advocated the abolition of the offices of the Kanungoes and the patwari. In 1827, they reported as follows to the Court of Directors: "After careful consideration of

the subject in all its lights and bearings we beg to submit an opinion for your Lordship's consideration that the obstacles opposed by the zemindars and lakhirajdars to the Canungo System have hitherto rendered the records of the Canungoe's office useless as matter of judicial reference; that instead of affording information, they appear calculated to mislead those who require it; that the advantages realised from the establishment under its present constitution are by no means commensurate with the expense of keeping it up; and that until means are devised of ensuring the authenticity of the documents furnished, whether they relate to accounts, measurements or ryotwari assessments, the office of Canungo will mislead instead of giving any useful information."⁵ The zemindars did not like that light should be thrown on the relations subsisting between themselves and their ryots. They managed by passive resistance to defeat all action. Kanungoes dropped out everywhere in Bengal and the office of the patwari was discouraged and as far as possible abolished. Baffled in their attempt to build up a Record of Rights, the Court of Directors launched upon a very radical measure. They now adopted the policy of buying out the zemindars. Sales of estates for arrears of

⁵ Quoted by Mac Donnell in his speech introducing the Kanungoes and Patwaris Bill in Bengal Council on January 31, 1885.

revenue had become less frequent than before; but they were by no means unusual. Towards the close of the third decade, the Court of Directors sent definite instructions that, at each revenue sale, the Government should itself purchase the estate put up to auction and settle it directly with the cultivators. The following extracts from the evidence given by James Mill before the Select Committee of the House of Commons (1832) will give a clear idea of this important measure, and the aims with which it was introduced.

Q. 3145.—Could the Government by any process now return to the rights which existed in the year 1793?—There is one mode which has long appeared to me an unexceptionable one, and requiring only time for the full benefit of it. It is this:—that whenever any zemindary property shall come to be sold, it shall be purchased on account of Government, and resettled with the ryots upon their old hereditary principle. This has been strongly recommended by the Home Authorities.

Q. 3148.—You were understood to state that the Court of Directors had recommended that the zemindaries which came for sale shall be purchased by Government and resettled under the ryotwari system; Would they receive a much larger rent for them on the ryotwar plan than they had on the zemindary plan?—They do not collect from the ryots on the zemindary plan at all.

Q. 3149. In those cases in which this new enactment of the Court of Directors is brought into effect is not the only advantage given to the ryots this that there is to be no payment required from them beyond the payment which they made at the latest date before the Sale?—There is nothing fixed with regard to the payment that may be obtained from them. A settlement is then made with them according to what may appear to be reasonable.

Q. 3150.—Do you recollect the date of that late direction of the Court of Directors?—It has been given, in terms more or less explicit in more despatches than one, within the last few years. In a despatch of the last year it has been more particularly enforced, and in the shape of an express injunction; for at first the Government of Bengal started objections to it on the score of expense and difficulty, and they complained that a great many of the Collectors would be very ill-judges of the value of the land.

Q. 3152.—Under the order of the Court of Directors are the lands under the zemindary system brought to public sale?—They are brought to a public sale, because otherwise it would hardly be a fair bargain. They are put up to auction and bought in on account of Government; the Government is a competitor with the other intending purchasers in the open market.

Q. 3156.—It is presumed that the direc-

tions of the Court of Directors do not apply except in the case of public sales?—No, in the case of private sales, where the transfer takes place between a zemindar and another party in the way of private bargain, they do not interfere; but the instruction is that in all cases of public sales where there is not any great sacrifice on the part of Government the estate shall be purchased on the part of Government, and then settled with the ryots on the ryotwar principle.

Q. 3157.—Are the Committee to understand that the Estate purchased by Government at public sales are to be held as remaining perpetually in the hands of the Government?—That is the present purpose of the purchases that have been directed to be made; they are to remain in the hands of the Government and the revenue to be collected immediately from the ryots.

Q. 3158.—Has any great extent of land been purchased by the Government in that manner?—Not any great extent, because it is only recently that the suggestion has been made to the Bengal Government who at first were somewhat averse to it for reasons which they stated. Latterly, they are more inclined, and the instructions have been more positive; but the most peremptory instructions are of recent date.

Q. 3165.—On what principle do you suppose that the Court of Directors gave those

orders; Was it upon a conviction of the mischiefs of the existing system!—My opinion is that the Court were merely influenced by the consideration of the ryots, who had been divested of the rights they considered to belong to them; the desire that the ryots of Bengal should be restored to the situation they held formerly, or that now held by the ryots in other parts of India.”

The Select Committee of the House of Commons of 1831-32 made a thorough enquiry into the land system of Bengal. Many experienced servants of the Company gave evidence before it, and their opinions were, in most cases, hostile to the Settlement of 1793. Absentee landlordism, and rack-renting had even then become pronounced features of the land system of Bengal. We give below a few more extracts from the statements made by the famous historian James Stuart Mill.

Q. 3211.—Are the greater portion of the zemindars resident upon their zemindaries?—I believe a very considerable proportion of them are non-resident; they are rich natives who live about Calcutta.

Q. 3212.—Therefore the experiment of creating a landed gentry in India by means of the zemindary settlement may be considered to have entirely failed!—I so consider it.

Q. 3213.—Have the zemindars been in any way useful in the administration of justice or police!—In general, quite the contrary; it has

been found in cases in which the police of their district were assigned to them that it was a source of perpetual abuse and in almost all cases it was taken away."

Holt Mackenzie, A. D. Campbell and several others expressed their condemnation of the zemindary system in no ambiguous terms. Hugh Stark, Chief of the Revenue Department in the Indian Board, amongst other things, pointed out the harmful effects of the Patni Taluk Regulations. The following is the statement made by him.

"Q. 222.—Is the Raja (*i.e.*, of Burdwan) whom you have named in point of fact a zemindar?—He is; he holds land for which he pays the Government a 'jamma' of 3 lacs of rupees a year; and he had introduced a system of settlement within his lands by which the cultivators are three or four degrees removed from the zemindar. The Raja created patnidars; these in their turn divided their tenure into darpatnis and these latter into sepatnis, each class reserving a profit; all the profits of these middlemen are squeezed out of the unfortunate cultivators."

Raja Ram Mohon Roy, who was at that time in England gave very valuable evidence before the Committee of 1831-32. He mercilessly condemned the land administration. He described the condition of the ryots as utterly destitute and helpless under the prevailing land system. With singular insight he

urged for a measure fixing for good the rate of rent to be realised by the zemindar from all resident ryots. Being the opinion of a man with a towering intellect who was a native of the country, and had first-hand and intimate knowledge of revenue affairs and of the condition of the people,⁶ Ram Mohon Roy's evidence possesses very great value. He spoke the truth with characteristic ability and sincerity, and we cannot help quoting a few extracts from his evidence.

Q. 9.—Are the tenants now subjected to frequent increase of rent? A—At the time when the Permanent Settlement was fixed in Bengal (1793), Government recognised the zemindars (landholders) as having alone an unqualified proprietary right in the soil, but no such right as belonging to the cultivators (Ryots). Vide Reg. I & VIII of 1793, the foundation of the perpetual settlement. But by Art. 2, S. 60 of Regulation VIII of 1793, Government declared that no one should cancel the Pattahs (*i.e.* the title deeds), fixing the rates of payment for the lands of the Khudkhast ryots (peasants cultivating the lands of their own village) “except upon proof that they had been obtained by collusion,” or “that the rents paid by them within the last 3 years had been below the Nirikh bundee (general rate) of the Perganah” (particular part

⁶ Ram Mohan Roy was Sheristadar at the Rangpur Collectorate for some years.

of the district where the land is situated), or "that they had obtained collusive deductions," or "upon a general measurement of the Perganah for the purpose of equalising and collecting the assessment." In practice, however, under one or other of the preceding four conditions, the landholders (the zemindars) through their influence and intrigues, easily succeeded in completely setting aside the rights even of the Khudkhist cultivators, and increased their rents.

Q. 30.—What is the condition of the cultivator under the present zemindary system of Bengal and the Ryotwari system of the Madras Presidency?

A. Under both systems the condition of the cultivators is very miserable; in the one, they are placed at the mercy of the Zamindars' avarice and ambition; in the other, they are subjected to the extortions and intrigues of the surveyors, and other Government revenue officers. I deeply compassionate both with this difference in regard to the agricultural peasantry of Bengal, that there the landlords have met with indulgence from Government in the assessment of their revenue, while no part of this indulgence is extended towards the poor cultivators. In an abundant season when the price of corn is low, the sale of their whole crops is required to meet the demands of the landholders, leaving little or nothing for

seed or subsistence to the labourer or his family.

Q. 31.—Can you propose any plan of improving the state of the cultivators and inhabitants at large? A—The new system acted upon during the last 40 years having enabled the landholders to ascertain the full measurement of the lands to their own satisfaction and by successive exactions to raise the rents of the cultivators to the utmost possible extent, the very least I can propose, and the least the Government can do for bettering the condition of the peasantry is absolutely to interdict any further increase of rent on any pretence whatever; particularly on no consideration to allow the present settled and recognised extent of the land to be distributed by pretended measurements; as in forming the Permanent Settlement (Reg. I of 1793, Sec. 8 Art. I) the Government declared it to be its right and its duty to protect the cultivators as being from their situation most helpless and “that the landlord should not be entitled to make any objection on this account.” Even in the Regulation (VIII of 1793 Sec. 60, Art. 2) the Government plainly acknowledged the principle of the khudkhasht cultivators having a perpetual right in the lands which they cultivated, and accordingly enacted, that they should not be dispossessed, or have their title deeds cancelled, except in certain specified cases applicable of course, to that period of general settlement

(1793), and not extending to a period of 40 years afterwards. If the Government can succeed in raising a sufficient revenue by means of duties etc. or by reducing their establishments, particularly in the revenue department, they may, then in the districts where the rents are very high, reduce the rents payable by the cultivators to the landholders, by allowing to the latter a proportionate reduction.

Q. 32.—Are the zemindars in the habit of farming out their estates to middlemen in order to receive their rents in an aggregate sum, authorising the middlemen to collect the rent from under-tenants; and if so, how do the middlemen treat the cultivators?

A.—Such middlemen are frequently employed, and are much less merciful than the zemindars.

Q. 33.—When the cultivators are oppressed by the zemindars or middlemen, are the present legal authorities competent to afford redress?

A.—The judicial authorities being few in number, and often situated at a great distance, and the landholders and middlemen being in general possessed of great local influence and pecuniary means, while the cultivators are too poor or too timid to undertake the hazardous and expensive enterprise of seeking redress, I regret to say that the legal protection of the

cultivators is not at all such as could be desired.

Q. 35.—Is the condition of the cultivators improved within your recollection of the country?

A.—According to the best of my recollection and belief, their condition has not been improving in any degree.

✓ Unlike the Committee of 1812, the Select Committee of 1832 definitely condemned the land system of Bengal. "A great body of Evidence" wrote they "has been taken on the nature, object and consequences of the Permanent Zemindary settlement, and your Committee cannot refrain from observing that it does not appear to have answered the purposes for which it was benevolently intended by its author, Lord Cornwallis in 1792-3." They ascribed the failure to two causes, namely:—(i) Failure to recognise the rights of all except zemindars. (ii) Conversion of revenue collectors (*i.e.*, zemindars) into land-owners. As regards remedies the Committee set its face against the policy of buying out the zemindars, recommended and actually adopted by the Board of Directors. In its opinion, the state was not able to stand the heavy financial strain involved in purchasing estates at sales. The Committee laid strong emphasis on the necessity and importance of a survey, and recommended detailed regulation of the mutual rights of zemindars and ryots, such as

might be established by the results of the survey.

The policy of Government purchase of estates at public sales was now definitely abandoned, and more attention was paid to discovering, and safeguarding the rights "originally" (i.e. before 1793) possessed by the ryots. There was a long time ahead, however, before the state undertook a survey of the permanently settled areas. But the Government was presently involved in a controversy regarding the protection to be given to under-tenures at sales of estates for arrears of revenue. On the 27th August 1831 the Accountant General brought to the notice of Government "a very considerable increase of arrears" in Land Revenue Accounts of districts in which the fusilly era prevailed; which, he added, "if not checked either by more vigilant superintendence, or change of system, could not fail to operate prejudicially on the finances of the country." This rather insignificant communication was destined to open up a long course of enquiry. From inquiries made into the causes of the increase in the sales, one fact that emerged prominently was that the sales were, in many cases, purposely brought about by extravagant zemindars. The class of zemindars who resorted to them, and the motives which prompted their action, are best described in the following extract from a letter from C. Macswean, Secretary to the

Government, to the Sudder Board of Revenue dated August 26, 1833. "In regard to the practice mentioned by the Presidency Sudder Board of Revenue, of defaulting zemindars allowing their estates to be brought to sale for arrears of revenue, and purchasing the estates themselves, in fictitious names, it is understood to be resorted to only by zemindars who have recently acquired, and consequently possess a large proprietary interest in their estates. The main object of the practice is to get rid of existing leases, and to obtain an immediate increase of rental by a fraudulent application of the Regulation which annuls the leases of zemindars when their estates are sold for arrears of revenue; a Regulation the existence of which not only operates perniciously by inducing the practice adverted to, but opposes a complete bar to agricultural improvement, by depriving lease-holders of all security in the stability of their leases." Violent controversy raged round the question of curtailing the rights of the purchasers at auction. This controversy lasted for well-nigh a decade. Collectors, judges, and other servants of the Company expressed widely divergent opinions. One group maintained that it was highly improper to interfere with the existing practice, while another held that it was not only not improper but highly desirable to protect the rights of undertenures at auction sales.

The Sudder Board of Revenue, in forwarding the draft of a new sale law to the Government of Bengal in March 1838, referred to the various opinions, but contended that though subsequent legislation had abrogated the rights of under-tenures, still it was never the intention of the Regulations of 1793 to ignore or invalidate them. The Board drew up a list of different classes of tenants to whom the Regulations of 1793 extended definite protection, and in the draft bill it proposed to reconfer the lost rights and privileges on those classes. After six drafts had been rejected in Council, Act XII of 1841 was passed embodying practically the original recommendations of the Sudder Board.

Act XII⁷ laid down various rules regarding procedure; and by section XXVII it enacted that purchasers of estates sold for arrears due on account of the same were to acquire such estates free from all incumbrances which might have been imposed on them after the time of settlement, and were declared entitled, after notice duly given, to enhance the rents of all undertenures, and to eject all undertenants with the following exceptions:—

I. Istimrari or mukarari tenures held at a fixed rent more than twelve years before the Permanent Settlement.

II. Tenures existing at the time of the

⁷ The provisions of this law were re-enacted with slight modifications in Act I of 1845.

Decennial Settlement, but not proved to be liable to increase of assessment on the grounds stated in Section 51, Regulation VIII of 1793 (i.e., (1) Special custom, (2) conditions of tenure, (3) previous abatement.)

III. Lands held by khudkhast or Kadimi ryots having rights of occupancy at fixed rents, or at rents assessable according to fixed rules under the Regulation in force.

IV. Land held under *bona fide* leases at fair rents, temporary or perpetual, for the erection of dwelling houses or manufactories or for mines, gardens, tanks, canals, places of worship, burying grounds, clearing of jungle, or the like beneficial purposes, such lands continuing to be used for such purposes.

V. Farms granted in good faith at fair rents and for specified areas, for terms not exceeding twenty years, under written leases, registered within a month from their date, and of the particulars of which written notice had been given to the Collector.

The first four clauses simply reiterated the rights which theoretically belonged to the ryots and undertenants under the old Regulations. It is only clause V which introduced a new principle. The professed 'aims and objects' of it will appear from the following remark made by the then Governor General Lord Auckland:—

"The rule in this clause respecting a security to farming leases under certain

circumstances in the event of a sale is regarded by me with peculiar interest. The indiscriminate destruction of under-tenures by a sale for arrears has always been considered as one of the chief blemishes of our system, and I earnestly hope that the experiment to give some certainty and security to leases may prove successful. We propose to give stability, on the conditions specified, for 20 years and not to perpetual leases because at least as a first step it may be unwise to run the hazard of error in regard to a perpetual tenure which we may yet be justified in incurring for a limited term, and because 20 years may fairly be considered a sufficient term to admit of good return for capital employed upon land.”⁸

Under the Settlement of 1793, land is always regarded as a security for the revenue which accrues on it. Any measure that tended to reduce the value of this security was discountenanced by the Government. Recognition of rights of undertenures at revenue sales tended to reduce the value of land as security; hence these rights were always regarded as “encumbrances” and the purchaser at an auction sale received the estate “free from all encumbrances.” Act XII of 1841, however, gave definite protection to certain classes of tenures, and recognised the validity of leases for a limited period of 20 years and thus pre-

⁸ Minute dated the 19th July, 1841.

pared the way for their recognition in perpetuity in future. So far as actual cultivators were concerned, the protection extended by the Act was more apparent than real. It revived, and re-enacted totally forgotten or half-forgotten clauses of old Regulations. But, in order to claim protection under this new Act, the tenant would have to prove his title to one of the privileged classes enumerated in Section XXVII. The burden of proof lay on the ryots, and it was a burden he could very ill-afford to bear. So far as the larger and more intelligent leaseholders were concerned, they derived material advantage from the Act.

The Bengalee peasants and under-tenants were too poor, too ignorant, and too unorganised to represent their case adequately to the Government or to obtain from it any concessions against the powerful zemindars. Such was not the case, however with European planters. They, too, obtained their land from the zemindars, but they could not be treated so shabbily as the 'natives' and their complaints received ready response from the Government. The names of indigo planters are associated with one of the blackest chapters in Bengal's history; their oppression of the ryots became proverbial. They were tenureholders; and finding the operation of the Sale Law too hard on their class they fought for an amendment of the law so as to safeguard their interests as against the zemindars. Act XI of

1859 is a measure whose initiation can be specifically attributed to agitation by European planters. This Act finally consolidated the position of all middlemen tenure-holders. Unfortunately, however, like everything connected with indigo planters, even this Act XI of 1859 has been productive of much evil result.

In 1849 Mr. J. Mackenzie 'a considerable indigo and sugar planter in Jessore, presented a petition in which he represented the difficulties that had to be contended with by himself and by other parties engaged in the plantation, and cultivation of date trees, owing to the uncertainty of law in respect to the effect which a sale for arrears of revenue would have upon lands held under leases for this purpose.'

The security provided by Act XII of 1841 was not deemed sufficient and the planters demanded additional security. The question was referred to the Sudder Board of Revenue which asked for the opinions of its members and of several of "the most able and experienced revenue officers." Diverse views were expressed on the question ranging from a recommendation for the complete annulment of all tenures, on the one hand, to their recognition *in toto*, on the other. We shall quote here only the opinion of Mr. Ricketts, Member of the Sudder Board of Revenue, in-as-much

⁹ Letter from J. Mackenzie, Esq. of Jingeratch, Jessore, to J. P. Grant, Esq., Secretary to the Government of Bengal, dated Calcutta 4th December, 1849.

as his recommendation was practically embodied in later legislation. "I do not think" wrote Ricketts "that plantations are protected by the existing law so effectually as to give any confidence to farmers. I would protect them completely under all contingencies, I would have no reservations respecting 'bona fide leases' and 'fair rents.' The auction purchaser should buy the rights which the defaulting zemindar had reserved for himself, i.e., had not already sold, and such leases registered systematically so that the encumbrances of an estate might be ascertained in a few minutes. The register book should be accessible to all, without a fee, or on payment of a moderate fee just sufficient to prevent parties from examining it from mere curiosity—purchasers would know what there was to buy, and bid accordingly."¹⁰ On September 10, 1852, Cecil Beadon, Secretary to the Government of Bengal introduced a bill 'for the better security of under-tenants and ryots,' embodying practically the proposals of Ricketts, but with the important modification that when the Government was the purchaser at an auction sale, it would receive the estate free from all encumbrances. There was strong opposition in the Council Chamber as well as outside of it; and the measure was not passed till seven years later. The then Governor-General Lord Dalhousie vigorously supported

¹⁰ Minute dated 10th May, 1850.

the bill, and by sophistical arguments he tried to prove that the case when Government itself was the buyer deserved special treatment. The British Indian Association, and the Hindu Patriot made some good fun out of the inconsistent remarks of the Governor-General. The British Indian Association was (and is even now) an organisation of the zemindars and it fought hard against the enactment of this measure. The grounds of their opposition are summarised below :—

“The objections of the zemindars are :—
1st that the measure is unconstitutional and involves a breach of the Permanent Settlement. 2nd—That the bill without giving additional security to under-tenures will introduce the seeds of decay into the superior tenure in the country which will ultimately be fatal alike to it and the inferior tenures. 3rd—That the measure is uncalled for by any real want of the community. 4th—That the Bill in its present form is calculated to increase temptations to fraud, litigation, forgery, and perjury to an incalculable extent. 5th—That it is pre-eminently liable to reduce the marketable value of zemindaries.¹¹ The first four reasons were stated to conceal rather than to give expression to the zemindars’ inmost thoughts. Only the last reason stated gives a clue to their real objection to the measure. If

¹¹ “Observations on the New Sale Law Bill’ by a Member of the British Indian Association, Calcutta : 1857.

the under-tenures were to remain valid even after sale, an estate would fetch very much less value than it would otherwise do. Moreover, zemindars could now, no longer, practise the old game of putting up encumbered estates to auction and buy them *benami* free from all encumbrances. But the Government was determined to carry the measure through and it was actually embodied in Act XI of 1859, which considerably reduced the powers originally intended to be reserved for the Government when Government was itself the buyer. But in the meantime a law of far greater consequence to the ryots had been enacted; and we must refer to Act X of 1859 before we describe the provisions of Act XI.

✓ The year 1858 may be said to close another period of history. Between 1815 and 1858, the administrators of the Company had, on many occasions, had serious misgivings regarding the wisdom of the land system introduced into Bengal. But though the evils became more manifest and were more clearly perceptible, still the authorities dared not alter the system. Tentative measures were tried from time to time, and minor modifications introduced, but the position of the zemindars was never materially affected. They enjoyed full rights of proprietorship during these years and were as free to eject tenants as to raise the rates of rent.

CHAPTER III

HISTORY

1859-1926.

Act X of 1859 marks an epoch in the history of agrarian legislation in Bengal. With the passing of this Act the period of Laissez Faire definitely comes to an end. The state now assume active championship of the cause of the ryots—it stands out to protect their rights as against the zemindars. Mr. Currie was the author of the measure and introduced it in the Governor-General's Council as the representative member for Bengal in October 1857.

The Bill was passed by the Council and received Governor-General's assent on April 29, 1859. The Act has been called the Magna Charta of the ryot. In introducing the Bill, Mr. Currie said—"The Bill is a real and earnest endeavour to improve the position of the ryots of Bengal and to open to them a prospect of freedom and independence, which they have not hitherto enjoyed, by clearly defining the rights and by placing restriction on the power of the zemindars such as ought long since to have been provided." All regulations relating to the mutual rights of zemindars and ryots had so long been in utter confusion. In the

absence of definite laws, the stronger party (i.e. the zemindars) had invariably the better of the weaker (i.e. the ryots). Act X of 1859 consolidated in a concise and intelligible form the existing laws relating to pattas, adjustment of rates of rent, occupancy of land and penalty for illegal exactions and extortions. This new Act entitled the zemindars to receive from their ryots Kabuliyats or counterparts of pattas, and above all it provided a Code of Procedure for the trial of suits between land-
 ✓ lords and tenants. The act divided the ryots into three classes and assigned to them different rights of tenure;¹ (1) Those, who held at rates of rent which had not been changed since the Permanent Settlement, were declared entitled to hold for ever at these rates. If the rate of rent had not been changed for 20 years, it was to be presumed that it had not been changed since the permanent settlement.

(2) Every ryot, who had cultivated or held land for 12 years, was declared to have a right of occupancy in that land, so long as he paid the rent payable on account of the same. But this rule did not apply to proprietor's private land let out on lease for a term of years or year by year and the accrual of occupancy rights in any land could also be barred by a written contract.

✓ (3) Other ryots, not having rights of

¹ Adapted from Rampini's Bengal Tenancy Act.

occupancy, were declared entitled to pattas only at such rates as might be agreed upon between them and their landlords.

The Act contained further important provisions for the protection of occupancy ryots. Their rents could only be enhanced on certain specified grounds; they could only be ejected by a judicial decree or order and their crops could only be distrained for the arrears of one year. The provision of Regulation VII of 1799 by which zemindars could compel the presence of ryots at the kutcherie was also rescinded.

Another important measure (Act XI of 1859) was passed in the same year. As has already been shown in the last chapter, Act XI was the outcome of prolonged deliberations. Besides other things it provided for the registration of tenures. The Act ordained the maintenance of two sets of registers—one for common registry and another for special registry. Section 37 of this Act virtually reproduced with slight modifications the provisions of Section 26 of Act I of 1845 (or, in other words of 27 of Act XII of 1841) regarding the protection of rights of ryots and under-tenants at sales of estates for arrears of revenue. The Act also provided for a registration of such rights. Section 39 enacted that "common registry shall secure such tenures and farms against any auction purchaser at a sale for arrears of revenue except the Government.

"Special registry shall secure such tenures

and farms against any auction purchaser at a sale for arrears of revenue including the Government."

Act XI of 1859, with minor and unimportant amendments, continues even to-day to regulate the Land Revenue Sales in Bengal.

The legislation of 1859 thus conferred very important rights on the ryots. A long step forward was taken towards legal provision for fair rent and fixity of tenure. But it was only a first step and was not free from attendant evils. Act X opened out fresh sources of litigation. The law charges in rent suits were heavy, and greatly disproportionate to the small amounts involved. Revisions of the Stamp Act in 1860 and 1861 considerably increased the cost of litigation. It was never easy for the poor ryot to prove a case against the powerful zemindar, and when justice in the law courts was costly to buy, redress became almost out of the question. Act VI of 1862 added legal fees and compensation to the rent decreed and made the lot of the ryot harder still.

Act XI of 1859 gave absolute security to the position of middlemen tenure-holders. Since that date they have grown and multiplied with terrible rapidity like some evil fungi, till subinfeudation has proceeded so far that, at the present day, we can, in some places, discover as many as 13 or 14 intermediate tenures between the zemindar and the actual

cultivator. Prior to 1859, intermediate tenures were periodically destroyed when estates were brought to sale for arrears of revenue; but since 1859 they had a steady and ever-increasing growth.

The legislation of 1859 give rise to a prolonged controversy in which some persons held that Act X had conferred occupancy rights on ryots who had never possessed them according to the ancient custom of the land; while others maintained that the provisions of the law had stopped too short and that the net of its protection ought to have been cast wider. But the exact boundaries of the rights conveyed by Act X had yet to be decided. In 1862 Sir Barnes Peacock, Chief Justice of the Calcutta High Court tried the case of *Hills v. Issur Ghose*, and in delivering his judgment he remarked that the rent in Bengal was "economic rent" in the Malthusian sense and could be increased freely at the option of the landlord. This was a cruel blow at the rights of the ryots. Thus while legislature remained inactive, and the form of the law remained unaltered, the meaning of it was twisted by the Law Court in such a manner as to completely defeat the aims of the measure. But shortly afterwards, the High Court righted the wrong done by itself. Complications arose in 1864 when contrary verdicts were given in the cases of *Haran Mohun Mukerjee v. Thakoor Doss Mundul* and *Kashee Pershad Mookerjee*

v. Sibnarain Ghose. These conflicting decisions of the High Court gave rise to an extremely anomalous situation. The confusion was removed by judgment delivered by the High Court in the Great Rent Case (*Thakoorani Dosse v. Bisheshur Mookerjee*) of 1865. The case was tried by the full bench of the Court. All the judges, except the Chief Justice Sir Barnes Peacock, gave verdicts favourable to the ryots. They held that it was never the intention of the law to instal the zemindars in absolute ownership of the land. The law never gave to the zemindar arbitrary powers of increasing the rent. They, further, maintained that rent represented a specific share of the produce of the soil and could be increased only in proportion as the value of the produce increased. This decision of the High Court finally put an end to all talk about "economic rent" and Ricardian economics. The judges had a complacent belief that they had discovered a simple formula for the equitable distribution of any increase in the profits of agriculture due to rise in prices. But as will appear later on, the simplicity of this formula was more apparent than real.

Act VIII (B.C.) of 1869 repealed Act X of 1859 and transferred the trial of rent and enhancement suits from collectors to the Civil Courts. The substantive law of Act X was, with some minor and insignificant omissions

embodied in the repealing Act, which was expressly confined to an amendment of the existing law in respect of procedure and jurisdiction only. But though the substantive law was not changed, the spirit in which it was applied by the Courts was perhaps changed by the transfer of rent suits to the Civil Courts. In the meantime the ryots' outlook was undergoing rapid change. A growing consciousness of his legal rights made him restive and unamenable to arbitrary control. "The period of seven years which followed the passing of the Act of 1869 was marked by incessant efforts on the part of landlords to obtain higher rents, and determined opposition on the part of the tenantry, more particularly in the Eastern Districts, to what they conceived to be unjust and unauthorised demands. In the Eastern Districts, the rapid growth of the jute trade, and the improvement of communications, had placed the cultivator in a position of comparative affluence. This accounted at once for the anxiety of the landlord to share these profits, and the resolve of the tenant to retain them."²

There was danger ahead. Act X of 1859 and subsequent enactments had sown the seeds of strife between zemindars and ryots. The zemindars would not give up their wonted

² Ilbert's speech in the Imperial Legislative Council introducing the Bengal Tenancy Bill on Friday, March 2, 1883.

ways of extortion; while the ryots became watchful of their newly acquired rights and would not tolerate any encroachments on them. This was sure to lead to a struggle. Premonitions of it were early perceived by intelligent statesmen. In 1869, Lord Lawrence, the then Governor-General referred in a Minute to the desperate condition of peasantry in Bengal and expressed the opinion that "it would be necessary for the Government sooner or later to interfere and pass a law which would thoroughly protect the ryot and make him,—what he is only in name,—a free man, a cultivator with the right to cultivate the land he holds, provided he pays a fair rent for it." As time went on, increased knowledge and consciousness of the occupancy ryots made them more and more vigilant of their rights, and their relations with the zemindars steadily became more and more strained. The District Road Cess Act was passed in 1871. This Act had no direct connexion with the subject of tenancy; but indirectly it placed a weapon in the hands of the ryot for resisting arbitrary demands of the landlord. Under the provisions of the Road Cess Act, the zemindar was required to furnish returns of the rents collected by him, and by Section 7 of the Act it was enacted that the landlord would be "precluded from suing or recovering any rent in respect of any land or tenure which shall be proved not to have been included in the return

lodged by him.”³ On the imposition of the road cess some zemindars attempted to recover their share of tax from the ryots. The ryots resisted the demand, and the revelations in the law courts taught them that they could not be asked to pay a higher rent than was entered in the returns submitted by the zemindars under the Road Cess Act. The Government itself had taken effective measures for making the contents of the Act widely known throughout the country. This had made the ryot more alert than ever.

The clouds that had so long been gathering did burst out into a storm at last. In 1872 there was a peasants’ revolt and serious breach of peace in the Isufshaye pergunah in Rajshahi Division.⁴ In 1873, similar disturbances took place in the Dacca district. The relations between landlords and ryots were far from satisfactory in other districts of Eastern Bengal. The ryots had learnt the power of

³ In explaining the Road Cess Bill. Mr. Schalch, (the Member in charge), observed—“Another object was to ensure the correctness of the returns, which was proposed to be done in two ways; first, by requiring that no zemindar or tenure-holder should be entitled to sue for more rent than might be entered in his returns, these papers being capable of being used as evidence against himself. Of course they would be of no value as evidence against the parties who were sued; and if the zemindar puts down more rent than he had to receive, that would be his own loss; he would have to pay a cess upon that amount, while he would not be able to recover it, etc.”

⁴ The immediate cause of the riots was the high-handed measures adopted by five zemindars who had bought the Natore Raj Estate at an auction sale.

combination and passive resistance and frequently applied it with considerable effect. The then Lieutenant Governor, Sir George Campbell, took keen interest in the progress of events. Inquiries conducted by his orders revealed the startling fact that in spite of very strict prohibition of the law, illegal cesses and duties were levied in very large numbers by almost every land-holder. The illegal levies were divisible into two classes :—(1) Tolls and market duties (1) abwabs. As regards the former, Sir George ruled that zemindars should have no right to levy any tolls or duties in public markets. Levy of any river or mooring tolls was also forbidden. But the zemindars were left free to impose duties in their private markets. As regards abwabs, he empowered District Magistrates to interfere in cases of oppression and illegal exaction. The protection afforded to the ryots by these rules was not material in-as-much as it was never very easy for the ryot to bring any case of extortion to the notice of the magistrate.⁵ Sir George Campbell intended to take more far-reaching measure; but he was not supported by the Government of India and the Secretary of

⁵ The Bengal Administration Report of 1872-73 narrates the story of a typical case in which the ryots of a small village in Nuddea were subjected to levy of two large abwabs in addition to the legal rent. The abwabs brought the villagers to the verge of destruction and the case was only accidentally brought to the notice of the magistrate. The same report also gives a list of 27 abwabs usually levied at that time in the 24 Parganas.

State. No permanent solution of the problem was made, the measures that were adopted being more or less of a make-shift nature. And as the historian Mr. Buckland says—“Partly by compromise, partly by natural movement of events, partly by the shadow of the impending famine of 1873-4, the Pabna difficulties to a very large extent settled themselves for the time. The disputes between landlords and tenants, in fact remained in abeyance during the famine which postponed the adjustment of the rent question. Still, things were unsettled in several districts though the public peace was not again disturbed and in some cases the scene of the struggle was transferred to the courts.”⁶ The fire had not been extinguished, it only lay smouldering. Early in January 1875 agrarian disturbances actually began to take place in the eastern portion of the Dacca District and signs were not wanting to show that the ryots in other places had grown restive too. The then Lt. Governor, Sir Richard Temple, became very anxious for the maintenance of peace. He examined the whole situation in a series of Minutes; but without going very deep into the causes of the troubles, he simply stated that “in parts of Eastern Bengal there was a disposition among the ryots to combine in something like leagues or unions.” “The

⁶ Bengal under the Lieutenant Governors.

objects of such combinations" he added "might be various; but in any case a combination for non-payment of rents was dangerous and must be prevented by all means." He opined that the Civil Courts were not so well-fitted as the land revenue officers to decide matters affecting large numbers of excitable people on both sides in times of disquiet.' Accordingly the Agrarian Disputes Act was passed in 1876 which provided for the transfer in special localities and for a period of three years of "the entire jurisdiction in respect of enhancement and arrears of rent from the Civil Courts to the revenue authorities." In April 1876 Sir Richard Temple formulated some recommendations for improving the substantive law for the determination of the rent. He recommended that definite principles should be laid down for deciding questions of rent between zemindars and occupancy ryots. He also advocated giving powers to the zemindars for more speedy realisation of their rent. But Sir Richard Temple left Bengal in 1877 before he could pass them into law. He was succeeded by Sir Ashley Eden who also took an active interest in the settlement of the agrarian question. He found the zemindars and ryots comparatively at peace; but the outward quiet was more in the nature of a truce than of a lasting peace. Sporadic acts of violence were not absent. There were two ghastly cases of murder of zemindars by ryots—one at Faridpur

and another at Midnapur. "In Bengal" wrote Sir Ashley Eden "the primary want is a ready means of recovering rents which are clearly due and which are withheld either for the sake of delay or in pursuance of some organised system of opposition to the zemindar." Accordingly, he obtained permission of the supreme Government for enacting a law to that effect. A Bill was introduced into the Bengal Council which was ultimately referred to a Select Committee. The Select Committee, however, reported that what the Bill purported to do was mere patchwork. They very strongly urged the revision of the whole rent law of Bengal in a more comprehensive manner.⁷

In accordance with this recommendation Sir Ashley Eden appointed in April 1879 a Rent Law Commission of experienced revenue and judicial officers who were entrusted with the task of reviewing the existing land laws and of preparing a draft bill for their suitable amendment or revision. The Committee consisted of the Hon'ble H. L. Dampier (President), the hon'ble J. O'Kinley, the Hon'ble H. L. Harrison, and Babu Brajendra Kumar Seal (members). Mr. C. D. Field LL.D. District Judge of Burdwan was charged with the duty of preparing a digest of the existing laws.

⁷ Sir Ashley Eden had also appointed a Bihar Rent Committee with a very different object in view. That Committee presented their report on March 8, 1879, and recommended a thorough overhauling of the existing law; and the Bengal Committee's recommendation, was no doubt, affected by their opinion.

C. D. Field's is the greatest name in the history of tenancy legislation in Bengal. His three great monumental works, 'The Digest,' 'The Regulations of Bengal Code,' and 'Landholding and the Relation between landholders and tenants in various countries' bear eloquent testimony to the great care and labour he had bestowed on the study of the agrarian problem in Bengal. It was his ideas that were embodied in the Report and draft bill of the Rent Law Commission. Field was too much obsessed by the example of Ireland. He made elaborate comparison between the land systems in Bengal and Ireland and discovered extraordinary similarity between the two. The Irish Land Act of 1881, securing the three F's to the Irish peasant, had recently been passed and Field considered that a similar measure was urgently called for in Bengal. He was always a sincere and whole-hearted friend of the ryots. He gave out, and carried through in the teeth of fierce opposition, what he considered to be in the best interests of the ryot. Obsession of the Irish example somewhat clouded his judgment. The Bengal Tenancy Act of 1885 reflects the merits as well as the defects of the Irish Land Act of 1881. During the last half century Irish land laws have been fundamentally altered and recast. But the tenancy law of Bengal still stands where Field left it in 1885, unresponsive to the progress of times.

To return to our subject, the Report of the Rent Law Commission and the Draft bill prepared by it were circulated for opinion among the public and the officers of the Government. A bill embodying the recommendations, as approved by the Government, was introduced into the Governor General's Council in March, 1883. It was passed on March 11, 1885 and after being assented to by the Governor General on the 14th, became law as Act VIII of 1885. During the four years, from the publication of the Report of the Rent Law Commission to the passing of the Tenancy Act, the whole atmosphere was thick with controversy. Numerous pamphlets were issued which afford interesting, and sometimes amusing, reading at the present day. Most of them repeated stock arguments and brought into prominent relief the point of view of the zemindars. They asserted that the measure was an infringement of the rights of the zemindars as guaranteed to them by the Settlement of 1793. Further, it did not fulfil the primary object for which the measure was originally sought, viz., the simplification of the procedure for the realisation of rent. The new measure, it was pointed out, would lead to nothing but endless litigation. The ryots had no spokesmen amongst their own class. Vocal native opinion, such as there was, belonged mostly to the zemindars. It expressed itself most strongly against the bill. The Hindu Patriot, the leading native newspaper

referred to the Tenancy Bill as "that ungodly measure of wholesale robbery and a measure which threatens to create an agrarian revolution." The zemindars carried on a vigorous propaganda against the measure. They carried the agitation to the far-off shores of England where, with the active help and sympathy of the "Liberty and Property Defence League", they tried to influence English public opinion against the Bill.

The Bill had a stormy career within the Council where the zemindars had very able spokesmen in Babu Krishtodas Pal, Raja Peary Mohan Mukerjee, Maharaja Lachmi Narain of Darbhanga and Raja Siba Prasad. All of them thundered against the measure. Babu Kristodas Pal died before the final discussion on the Bill took place in March, 1885; but he was a member of the Select Committee on the Bill and in that capacity had recorded very strong remarks against it.⁸ The only native member who supported the Bill in the Council was Mr. Ameer Ali who was "an ex-official looked upon as a sort of quasi-representative of the ryots." But the Government carried the measure through the Council in spite of all opposition, and the Governor General gave his assent almost immediately. "Pandora's box," wrote the Hindu Patriot on March 16, 1885,

⁸ Kristodas Pal wrote a series of articles in the Hindu Patriot. They were collected and published in one volume entitled "Thirty-nine Articles on the Bengal Tenancy Bill."

“has been unlocked, and its lid is about to be lifted to deluge the country with those evils: with which the fatal receptacle is so full to repletion.” The zemindars made a final attempt to obtain the Queen’s veto over the legislation. They caused questions to be raised in the Parliament regarding the measure. Lord Kimberly replying on behalf of the Government, stated “that the legislation had in principle the full approbation of her Majesty’s Government, and, therefore, it was extremely improbable that he should advise Her Majesty to disallow the Bill.” Thus ended the fierce opposition made by the zemindars to the passing of the Tenancy Bill.

The Tenancy Act of 1885 is still in force. It is a very comprehensive measure, and it is not necessary to give a detailed summary of its provisions here. It introduced the principle of dual ownership. It gave greater security to the tenants in the occupation of their holdings. It defined with greater particularity the various classes of tenants and their respective rights and obligations. It laid down a definite procedure for the judicial determination of rents. It prohibited tenants from contracting themselves out of any rights conferred on them by law, and, lastly, it provided for the survey of, and preparation of a record of rights in land. In all matters regarding ejection or enhancement of rent, the authority of the lawcourts became supreme, and the whole tendency of

the Tenancy Act was to make zemindars and ryots run to the lawcourts for the settlement of all disputes between them.

During the remaining years of the nineteenth century no other land laws were passed, except slight amendments in the Act of 1885 for giving more powers to the Settlement Officers in the preparation of the record of rights.

Bengal Act No. I of 1903 was passed to validate certain transfers of permanent tenures.

Act I of 1907 prevented zemindars from enhancing rents by entering into inequitable and collusive compromises with their tenants. This Act also gave greater authority to the Record of Rights when such record had been duly prepared and published.

An amendment of the tenancy law has been discussed during the last a few years. But no positive result has come out. Act VIII of 1885 even now continues to regulate the relations between zemindars and ryots. Here we must conclude our historical retrospect.

PART II
ECONOMICS.

CHAPTER IV.

THEORY.

All lands, above the marginal, yield a surplus over the normal expenses of production. This 'surplus' is called the "economic rent." Under normal and healthy conditions of economic and social life, the economic rent (which, according to Ricardo, is the result of the niggardliness of nature) should be spent for the further improvement of agriculture, for preventing denudation of the soil, and for the advancement of knowledge and spread of education which, above all, enable men to learn the secrets of nature and fight her niggardliness and impetuosity with her own weapons. According as the economic rent is appropriated and utilised for these purposes by the state, the landlord, and the cultivator, we have three distinct types of land system, namely (1) State land-lordism, (2) Landlord and tenant system and (3) peasant proprietorship. But just as in Aristotle's Politics there is an artificial or corrupt form of state contrasted with each natural form of it, so there is a corrupt or unhealthy form of land system contrasted with each of the healthy forms.

mentioned above. The characteristics of each system are described below :—

A. State-Landlordism¹:—Under this system the state is the sole proprietor of all available land within the country. It hires out the land directly to the cultivators themselves. There are no middlemen or revenue farmers. The Government assesses each field to its full economic rent. The total revenue thus collected is spent by the state for the improvement of cultivation and for other benefits of the cultivators. Provided the state is guided by paternal motives, and provided it is served by an honest and efficient official staff, this system is an ideal one. But supposing these conditions are not fulfilled, what then?—Then we are confronted with the corrupt form of state landlordism. The officials are exacting, the actual assessment is higher than the economic rent. The peasants groan under the burden of overassessment; while the money collected from them is spent, not for the good of cultivation and cultivators, but for some wasteful or unproductive purposes.

B. Landlord and Tenant System :—Under this system the landlord is the owner of the land but instead of cultivating it himself or by hired labourers, he lets it out to tenant

¹ State-landlordism has often been advocated on grounds of abstract social justice; but here the question is discussed chiefly from the points of view of agricultural progress and of social welfare.

farmers. He hires out the land to such tenants as offer him the best terms; he enjoys the full economic rent of his land. He may own the land fee-simple or may be liable to make a small fixed annual payment to the state; but in either case his ownership of the land is absolute. Liability to pay a tax is not considered to be any diminution of, or interference with the right of private property. It is apparent that, under a system of landlordism, we have, besides the actual cultivators and the state, a class of middlemen who live upon the rent of the land. Their appropriation of the rent can be justified from the social point of view, only if they spend their money in such a way as to promote the ends which have been enumerated at the beginning of this chapter. Where this system is successful, the landlords take an active interest in the cultivation of the soil. They invest capital in "permanent improvements," they introduce the newest methods of cultivation, and organise means for the better marketing of the produce. In short, the good landlord acts as the brains of his cultivating class,—he is the guide, friend and philosopher of his tenantry. The tenants lack intelligence and capital;—the landlord supplies exactly these two things. Under this system we have capitalist farming, in which the entrepreneur landlord and the labouring tenant work harmoniously for a common good. When a tenant is inefficient, he is driven out at the next

farming out of the land which is now leased to an abler tenant who offers a higher rate of rent. Thus the unfit are weeded out by a process of natural selection and only the best farmers remain on the field.² Under a system of landlordism production is maximised and agricultural science and methods are likely to improve fast. But, however desirable this system may be from the viewpoint of Production, it is not equally so from the viewpoint of Distribution: So far as the increased output of corn increases the aggregate national dividend without a corresponding increase of population, every one is a gainer though not all to the same extent. It means concentration of landed property in a comparatively small number of hands. Since the increased output is mainly the result of increased investment of capital, and since the capital is invested by the landlord himself, his total income tends to increase more than in proportion.

The landlord and tenant system will be successful only when the landlord takes an active interest in agriculture and behaves paternally towards his tenants. But these conditions are not always satisfied. When they are not fulfilled there appears the corrupt form of landlordism. The landlord now tries to increase his income by rack-renting while he scrupulously avoids the duties and res-

² Cf. Marshall—Principles of Economics, pages 648-49.

possibilities of his position. He takes no interest in his estate, he stays away from it, and leaves his tenants alone to live and cultivate their fields as best as they can with their own poor intelligence and scanty resources supplemented occasionally by advances from the money-lender. The landlord, under these circumstances, does not perform his proper function in the economy of the nation. He is a burden upon society and we have the worst features of absentee landlordism.

C. Peasant Proprietorship :—Under a system of peasant proprietorship, the peasant himself is the owner of the field he cultivates. He enjoys not only the normal profits of agriculture but also any economic rent which his land may yield. Indeed he may be liable to make an annual payment to the State; but the payment must be purely a tax.

Peasant proprietorship derives its strongest support from the principle of Distribution. It is desirable that property should be distributed as widely as possible and a system of peasant proprietorship ensures the distribution of landed property in a very large number of hands. Also it precludes the existence of any idle class supporting themselves upon land.

On the side of Production too, peasant proprietorship has some very strong points in its support. "The magic of property" said Arthur Young "turns sand into gold." And

travellers in France and Germany have always testified to the immense industry and frugality of peasant proprietors in those countries. Lack of capital and intelligence are often made up for by the application and industry of the cultivators. But modern phases of agricultural evolution have conclusively shown that the small peasant should not necessarily suffer from want of capital and economies of large-scale production. Co-operation has brought unlimited resources of capital and many of the economies of large-scale farming within the reach of the smallest cultivator. Provided the peasants possess a sufficiently *high* level of honesty and intelligence, there is no reason why agriculture under peasant proprietorship aided by co-operation should be less efficient than under the landlord and tenant system.

Peasant proprietorship aids the conservation of the powers of the soil. In this respect, it has a distinct superiority over the landlord and tenant system. Farming is a permanent business; it is no "fly-by-night occupation." "The renter who ends harvest knowing that he will move in the spring will not do as good a job of hauling out manure and full ploughing as he would were he going to stay; nor does he take as good care of the buildings and other improvements..... But the farm itself suffers through his lack of care for it. The landlord, the coming tenant, the community and the nation at large suffer because of the

depreciated productiveness of that farm and no one gains thereby.”³

Peasant proprietorship can also be defended on grounds of social soundness. Progress of industrialism leads to the congregation of large masses of people in big cities. But city population is far less virile than the people of the country. Peasant proprietorship tends to keep a larger percentage of population in the country than landlordism or any other system of capitalist farming. Hence it is socially more desirable. The ‘back to the land’ movement is a tangible proof of the recognition of this principle. In England the movement has borne fruit in the small Holdings Act of 1908.

No less remarkable is the educative value of peasant proprietorship. It is a very good nurse of industry and thrift and fosters the moral virtues of prudence, temperance and self-control. “Another aspect of peasant properties,” writes John Stuart Mill “in which it is essential that they should be considered, is that of an instrument of popular education. Books and schooling are absolutely necessary to education; but not all-sufficient. The mental faculties will be most developed where they are most exercised; and what gives more exercise to them than the having a multitude of interests, none of which can be neglected, and which can be provided for only by varied

³ Nourse—Agricultural Economics, pages 648 et seq.

efforts of will and intelligence? Some of the disparagers of small properties lay great stress on the cares and anxieties which beset the peasant proprietor of the Rhineland or Flanders. It is precisely those cares and anxieties which tend to make him a superior being to an English day-labourer. It is, to be sure, rather abusing the privileges of fair argument to represent the condition of a day-labourer as not an anxious one. I can conceive no circumstances in which he is free from anxiety, where there is a possibility of being out of employment; unless he has access to a profuse dispensation of parish pay, and no shame or reluctance in demanding it. The day-labourer has, in the existing state of society and population, many of the anxieties which have no invigorating effect on the mind, and none of those which have. The position of the peasant proprietor of continental Europe is the reverse. From the anxiety which chills and paralyses—the uncertainty of having food to eat—few persons are more exempt; it requires as rare a concurrence of circumstances as the potato failure combined with an universal bad harvest to bring him within reach of that danger. His anxieties are the ordinary vicissitudes of more or less; his cares are that he takes his fair share of the business of life; that he is a free human being, and not perpetually a child, which seems to be the approved condition of the labouring classes according to the

prevailing philanthropy. He is no longer a being of different type from the middle classes; he has pursuits and objects like those which occupy them and give to their intellects the greatest of such cultivation as they receive."⁴

It has sometimes been argued that a system of peasant proprietorship leads to excessive subdivision of land and to un-economic and scattered holdings. But there is no reason why this should necessarily be the case. Excessive subdivision is prevalent in some of the countries of Continental Europe. But this is due more to the law of inheritance than to the land system. The United States of America is a country of peasant proprietors; but the size of the average holding is not smaller than in England. Only when the population is very large and landed property is shared equally among all the sons, there is a genuine fear of excessive subdivision of land.

The landlord and tenant system is based upon Capitalism and competition. For its success it depends, on the one hand, upon the existence of a class of well-educated resourceful, active, and broad-minded landowners and, on the other hand, upon the existence of a free and constant competition among tenants for land. The peasant proprietorship system is based on the principles of economic democracy and co-operation. For its success it depends

⁴ Mill's Principles of Political Economy. (Ashley's Edition) pages 285-86.

upon the existence of an honest, intelligent, sociable, and industrious class of farmers. When this condition is not fulfilled we have got the unhealthy form of peasant proprietorship. Supposing the farmers are not intelligent and farsighted let us see what does take place.

When a population is uneducated, it is not progressive but stagnant. Its standard of living is low and has no tendency to rise. Any increase in their income tends to increase their numbers, and not to raise their standard of living or comfort. Hence, if peasant proprietorship be introduced among a backward population, their income will increase by the amount of the rent; and the only result of this rise in income will be an increase of population. Agriculture will remain as primitive as ever, or may become even poorer than before. Only we shall have a larger number of people wallowing in the mire of squalor, poverty, and degradation.

Peasant proprietorship, we have seen before, tends to develop thrift but when the peasants are uneducated and lack in far-sightedness, even the virtue of thrift is likely to be carried too far and be a cause of degeneration. Writes Professor Marshall "Land, we are told, is the best savings bank for the working man. Sometimes it is the second best. But the very best is the energy of himself and his children; and the peasant proprietors are so intent on

their land that they care for little else. Many even of the richest of them stint the food of themselves and their families; they pride themselves on the respectability of their houses and furniture; but they live in kitchens for economy, and are practically worse housed and far worse fed than the better class of English cottagers. And the poorest of them work hard during long hours; but they do not get through much work, because they feed themselves worse than the poorest English labourers. They do not understand that wealth is useful only as the means towards a real income of happiness; they sacrifice the end to the means."⁵ Thus we see that a high level of education, diffused among the population at large, is a *sine qua non* for the success of a system of peasant proprietorship.

We may now conclude our arguments in this chapter. So far as the unhealthy forms of land system are concerned, there is nothing to choose between them. It is difficult to make a comparative estimate of their respective demerits. It is safe, however, to assert that they are all bad and should be avoided by all means. So far as the healthy forms are concerned, the landlord and tenant system is, perhaps, the best from the viewpoint of Production; but the peasant proprietorship system has the best claims to our recommendation since,

⁵ Principles of Economics. Page 646.

though in some cases it may be less productive than the landlord and the tenant system, still it is the best from the viewpoint of Distribution and has many other socio-economic grounds to support itself. State landlordism requires a very high degree of honesty and efficiency in state officials, such as is rarely to be found, and should only be tried when the two other systems have failed. This is our *a priori* conclusion, but in applying it to the case of any particular country we should take note of its past history and present conditions.

CHAPTER V

ARGUMENT.

The present land system of Bengal is a confused medley of all the three systems discussed in the last chapter and, what is unfortunate still, it combines the bad features of all the three but the good features of none.

To the unwary it may appear at first sight that the system in Bengal is the landlord and tenant system, and that the property in land is vested in the zemindar. In fact it is not so. The present system in Bengal is one of divided ownership, and it lacks some of the essential features of landlordism. One of the merits of the landlord and tenant system, as we have already seen, is that it enables the landlord to weed out the unfit farmers and select the best among them. But in order that this function may be adequately performed it is necessary that the landlord should have freedom in dealing with the cultivator, and that he should have liberty "to turn the cultivator out of the holding by an arbitrary increase of payments exacted from him or by any other means."¹ In Bengal the zemindar does possess no such powers at present. He cannot even enhance the rate of rent at his will. He must retain the

¹ Marshall—Principles of Economics. Page 638.

old tenant at the old rate even though there may be many others ready to offer him a higher rate of rent. Strangely enough, while the zemindar has been deprived of one of the elementary rights of proprietorship and thus been precluded from performing one of his most beneficial functions, his right and his duty of making "permanent improvements in his land" have not been taken away from him. Section 30 (c) of the Tenancy Act empowers the zemindar to enhance the rate of rent if "the productive powers of the land held by the raiyat have been increased by an improvement effected by or at the expense of the landlord during the currency of the present rent." But this concession is hedged in with so many restrictions as to be of very doubtful utility. The enhancement cannot be effected without the decree of a lawcourt. And section 33 of the Bengal Tenancy Act ordains that—

- “(a) The court shall not grant an enhancement unless the improvement has been registered in accordance with this Act ;
- (b) in determining the amount of this enhancement the Court shall have regard to—
 - (i) the increase in the productive powers of the land caused or likely to be caused by the improvement.
 - (ii) the cost of the improvement.
 - (iii) the cost of the cultivation required for utilising the improvement, and
 - (iv) the existing rent and ability of the land to bear a higher rent.”

Freedom is the lifebreath of enterprise. When the return from the investment of capital depends, not upon the investor's free power of bargaining, but upon the decision of a third person, it is quite likely that investment will be materially checked. Thus, though the law leaves the zemindar the power to make "permanent improvements," the inducement for doing so does not exist to any appreciable extent. Fully deprived of his right of weeding out the unfit cultivators, and effectively discouraged from making "improvements", the Bengal zemindar occupies to-day a position which is extremely anomalous. He is neither landlord nor cultivator;—but merely a pensioner living on the produce of the soil, and a parasite of the social organism.

Let us now consider as to how far does peasant proprietorship exist in Bengal and to what extent it has proved successful. Since the enactment of the tenancy laws, the Bengal peasant has obtained fixity of tenure, and security against arbitrary ejection. So far as law goes these rights are absolute; but they have not always been realised in practice. Freedom to mortgage the tenant-right has been recognised by custom in some districts, and the rental also has remained fixed for all practical purposes. In a limited sense, the tenant is today the proprietor of the soil. He can follow ^{any} ~~his~~ method of cultivation he chooses. In the case of occupancy holdings,

or holdings at fixed rates, section 77 of the Tenancy Act distinctly confers upon the ryot the right to make "improvements". If the ryot be ejected from his holding before the exhaustion of the results of any improvement that might have been made by him on the soil, provision is made under section 82 to enable him to claim compensation for the unrealised fruits of his improvement. Theoretically at least, the ryot thus possesses today some of the most important rights of a peasant proprietor, and may, if he choose, practise his virtues. But there are the same elements of uncertainty and insecurity as we noticed in the case of the zemindars. The ryot may make some 'improvements' in his soil; but the realisation of the fruits thereof depends to a large extent on the goodness and sympathy of the zemindar, and on the chance of receiving justice and protection from the lawcourts. Those who are acquainted with the actual state of affairs will readily admit that these two factors can never be relied on. The cultivator's 'right to make "improvements" is, therefore, more or less chimerical. Moreover, ignorance and lack of capital are the ryots' supreme curse; and these have stood in the way of his making any use of the partial right given him by the law.

At the present time the position is this:— Of the net profits of agriculture, about 20 p.c. is given up by the ryot to the zemindar; of this 20 p.c. of the economic rent received by

him the zemindar gives up one-tenth to the state and retains the remaining 9/10ths for his own use. The 80 p.c. of the economic rent kept by the farmer does not go to raise his standard of living, it is not utilised for the improvement of agriculture—it simply tends to increase the size of his family. In other words, we have the worse aspect of the present proprietorship system. The share kept by the zemindars is squandered oftentimes in mirth, revelry, and luxury and, in a few instances, in some sporadic acts of benevolence or public utility. But the zemindars as a class take no interest in agriculture, or in the improvement of their estates. In other words, we have the worst features of the landlord and tenant system. The state also takes share of the economic rent of the soil, and what does it do for agriculture? For well-nigh a century it simply did nothing. Recurring famines, and pressure of public opinion have, in recent times, compelled it to take some measures. At the present moment it does much more than the zemindars, though it may not be doing all that it should do. Thus the rent of land which should have best been utilised for counter-acting the operation of Law of Diminishing Return, and for the welfare of cultivation and cultivator, is being squandered uselessly. Money, which should have rained like the dews of heaven, is now burning like the fire of hell. In stead of blessing the giver and the

taker, it curses him who gives as well as him who receives.

Divided ownership is the curse of our land system. Property in land is primarily divided between the zemindar and the ryot. But apart from these two parties there is, in many places, a hierarchy of intermediate tenure-holders who have acquired limited degrees of ownership in land, and who in their turn, claim a share in the profits of agriculture. Two or three intermediate tenure-holders between the zemindar and ryot can be found in many places, and in a few districts (*e.g.*, Faridpur, Noakhali, Bakarganj) there are as many as ten to twenty intermediaries. The intermediate tenure-holders are mere rent-receivers with certain limited proprietary rights in the lands covered by the tenure. They take no more interest than the zemindars in the actual business of agriculture. As a matter of fact, under the existing state of affairs they can have very little interest in the improvement of agriculture. When the ownership of a particular plot of land is divided between the zemindar and the ryot and a whole host of intermediate tenure-holders, the plot becomes a kind of no man's land. Everybody is eager to share the gains therefrom, but nobody is willing to put in labour or money on it.²

² Subinfeudation has reached enormous proportions in Bengal. It is not possible here to deal with it in all its ramifications. I must be satisfied with the mere mention of its existence. Full

The land system of Bengal stands in urgent need of reform. The perpetuation of the present system means absolute stagnation of our agriculture and eternal damnation to the Bengal peasant. If we want agricultural progress, nay, if we want to live, we must revive one of the three healthy forms of land system. The question that immediately presents itself is which of the three systems should we try to revive and develop. The question bristles with difficulties. From an *aprioi* point of view we have seen in the last chapter that peasant proprietorship is, on economic and social grounds, the most desirable form. But mere desirability is not enough; we must also consider what *likelihood* under the peculiar circumstances of Bengal, the system has of success. We have shown in the last chapter that for the success of each system, the fulfilment of certain conditions is absolutely necessary. Let us proceed to briefly examine how far the conditions necessary for the success of the three different systems can be found *existing* or can be *created* in Bengal.

Firstly, we take up the case of state landlordism. Let us visualise the actual state of affairs under such a system. Under this system the state takes up the whole economic rent directly from the peasant. Every year

details regarding the growth and extent of this evil will be found in the Final Survey and Settlement Reports of the various Bengal districts.

(or every 2 or 3 years) it leases out the land to the farmer who agrees to pay the highest rent. The state, under this system, is directly responsible for all "improvements" in estates and farms. In order that the system may work successfully we want, in the first place, a swarm of government revenue officers scattered all over the country who will deal personally with many millions of cultivators, and assess the economic rent from time to time. If these officers be partial, or dishonest in the least degree, there can be no end to the evil the system will do. In the second place, we want another set of officials whose duty it will be to constantly exploit all avenues of agricultural progress and undertake all works of permanent improvement. No sane man will admit that such honest and efficient officials are available in Bengal, or, for the matter of that, in any country in the world.³ A system of bureaucracy lacks flexibility, and when it errs, it errs on the side of hardship. Hence, a system of state-landlordism is quite out of the question.

The choice, therefore, actually lies between reviving a healthy form of landlord-and-tenant system, and a healthy form of peasant-proprietorship. Prof. H. S. Jevons has expressed the opinion that in India the landlord and tenant system is the easier and more use-

³ Cf. Introduction to Agricultural Economics—By L. C. Gray.
Pp. 296—300.

ful to revive. Says he "The fact is that the rural population of India has not yet arrived at the stage of educational, social, and political development in which alone co-operation can influence efficiency, or production. Even if such an educational and social development had been reached, the system of scattered holdings on minute fields prevents its being efficient in application.

"There is no doubt in my mind, therefore, that the agricultural organisation most appropriate to this stage of social development in India is the landlord and tenant system with fairly large estates, and a certain number of large farms worked by gentlemen farmers."⁴ Prof. Jevons holds the opinion that a small number of active, intelligent, public-spirited landlords can be trained easily and within a short period of time while it will take a very long time to educate the numerous peasantry in India and train them up in the methods of co-operation. The basis of a healthy landlord and tenant system can be laid more easily, quickly and securely than the basis of a healthy peasant proprietorship system. Further, he holds that what is desired in India today over everything else is increased supply of corn, and the landlord and tenant system is likely to be more successful in this respect. What is necessary is simply to repeal the

⁴ H. S. Jevon's *Economics of Tenancy Law & Estate Management*. Page 27.

tenancy laws, give the landowners more power over their tenants, and make arrangements for training prospective landlords and estate managers in the science and art of estate management.

Prof. Jevons, however, appears to string his faith too high in Indian landlords. His hopes and expectations regarding the building up of a class of responsible and active landlords seem to be extravagant. At least they are so as regards Bengal. If the history of land administration in Bengal during the last 130 years has any lesson for us, it is this:— that the zemindars as a class are incapable of taking any active interest in the progress of agriculture and unworthy of any confidence in this respect. Regulation I of 1793 gave them full proprietary rights in their land, and Lord Cornwallis placed great faith in their sense of responsibility. But as a class they betrayed his confidence. Instead of adopting measures for the improvement of agriculture they devised every conceivable means for extorting money from the ryots. Matters assumed such a grave aspect that the state felt called upon to restrict their rights by enacting tenancy legislation. But even then the road to improvement was left open to the zemindar, and scope was given for the free play of his enlightened self-interest. If the zemindar had proved true to the trust reposed upon him, the agricultural condition of Bengal would have

been different from what it is. The zemindars have persistently refused to take any active interest in agriculture. As a class they are not ignorant, and uneducated like the ryots; they are not resourceless, but they are indolent, and indifferent—they are more concerned with the enjoyments of life than with the duties thereof. As matters stand, it is, I think, absolutely futile to try to awaken the zemindars from their age-long apathy and slumber.

From a practical point of view there are serious difficulties in the way of introducing the landlord and tenant system in Bengal. The introduction of such a system will mean the expropriation of millions of ryots, and the outcome will be the emergence of a huge agricultural proletariat. These questions will be discussed presently; but, in the meantime, let us consider another grave question. The landlord and tenant system depends, for its success, on a healthy co-operation between the landlord and the tenant. Now, is this condition likely to be satisfied in the present circumstances of the country? The answer is emphatically in the negative. Population has grown so much, and there is so great pressure on land that if the tenancy law be abolished all on a sudden, the outcome will be not the evolution of economic rent but of rack-renting. The history of the last century will be repeated, and oppression and extortion will

take place on a much larger scale. Dr. S. G. Panandikar, who has advocated a policy of gradual introduction of the landlord and tenant system, is quite alive to the difficulties referred to above. With all his leanings and partiality for the landlord, he has been obliged to admit that it would be neither safe nor prudent at present to place more power into the hands of the zemindar. After describing the ryot's low standard of living, his wasteful and extravagant habits, his want of education, and the excessive growth of population, he remarks, "For these reasons, it is impossible to maintain the old fiction that in the delta the tenants, and the landlords can meet on equal terms and enter into free contracts. Consequently, if the rent in the delta were to be allowed to be determined by a competition uncontrolled by law, there is little doubt that the more rapacious and short-sighted landlords would be able to charge more than the economic rent and to cause considerable misery to an appreciable section of the agricultural population."⁵

Let us now turn to a consideration of what chance of success there is in a full-fledged system of peasant-proprietorship in Bengal. Since the enactment of the Tenancy Laws peasant proprietorship has existed in some degree in Bengal; but it has borne none of

⁵ S. G. Panandikar—Wealth and Welfare of the Bengal Delta.
Page 143.

its good fruits. But from this it will be unfair to assume that peasant proprietorship is inherently incapable of success in Bengal. The system has not at least been given as fair a trial as the landlord and tenant system.

Firstly, though the peasant has a tolerable fixity of tenure, he is not the "owner" of the soil. The magic that turns sands into gold is absent. The peasant does not "feel" that he is, for all practical purposes, the absolute proprietor of his field. His tenure, however much may the law safeguard it, is not absolutely secure. Justice in the law-courts is costly to buy, and an ejected ryot may never expect to obtain it against a powerful zemindar. The power to make "improvements" is hedged in with similar, or even more stringent, restrictions as in the case of the landlords, and has proved equally ineffectual.⁶

Secondly, the essential condition for the success of the system is lacking, namely, the existence of a well-educated and enlightened class of peasantry. But the blame for this cannot be laid at the door of the peasants themselves. The zemindars had the power and the opportunity to become the best landlords on earth, but the Bengal peasant had no such opportunity. Until the enactment of the tenancy law, he was the victim of rapacity and wanton mal-treatment. When the tenancy

⁶ See chapter IX of the Bengal Tenancy Act.

law was at last enacted, he had already sunk down to the lowest depths of poverty. He is incapable of self-help. It is a great principle of sociology that once a population has sunk below a certain level of economic and moral civilisation, they cannot rise above by their own efforts. They require some external help for their uplift. Unless and until this external help be forthcoming, and unless and until a vigorous effort has been made for educating the agricultural population of Bengal, we can, by no means, assume that the Bengal peasant is inherently incapable of becoming a good peasant proprietor. Though the conditions necessary for the success of peasant proprietorship do not exist at present in Bengal, it is, by no means, impossible or difficult to *create* these conditions within a short period of time. Peasant proprietorship thus seems to be the only system which holds out any promise of success.

Let us now proceed to consider some of the arguments that may be urged against the introduction of peasant proprietorship.

(i) VESTED RIGHTS OF THE ZEMINDARS—Divided ownership is not the proper remedy for absentee landlordism. This remedy was tried in Ireland, and was found wanting. The Irish land Acts of 1870 and 1881 admitted the peasants to partial ownership of the soil by guaranteeing the three F's to them. But the tenant who was persecuted while he was

absolutely subordinate to the landlord, could never be expected to pull well with him when the law made him his co-equal, and partner. The arrangement failed to work smoothly, and a system of land-purchase had to be introduced later to cure the evil of divided ownership. In Bengal, too, divided ownership must be abolished. Either we must have a landlord and tenant system or a system of peasant proprietorship; but whatever system we adopt, we must adopt it in its purity, and in toto. If we want to introduce peasant proprietorship, the question that immediately faces us is how to dispose of the vested rights of the zemindars. The introduction of peasant proprietorship will mean the abolition of all rights of the zemindars. But will not such abolition be an act of expropriation? The Permanent Settlement made the zemindars proprietors of the soil. Purchase and sale have since taken place on the assumption that the zemindars have full proprietary rights in the soil. If the rights of the zemindars were to be abolished today, many people who have invested money in land will suffer a grievous loss. Will it not be an act of grave social injustice?

There is some weight in this argument but it is possible to exaggerate its magnitude or importance. The Permanent Settlement did not confer full proprietary rights on the zemindars *unconditionally and for all time to come*. Lord Cornwallis plainly stated that it

might be found necessary later to curb the freedom of the zemindars in dealing with the ryots. Even if the Permanent Settlement conferred proprietary rights on the zemindars, the Tenancy Act did materially encroach upon these rights: I am inclined to think that a law abolishing the ryot's rent to the zemindar will be no more an act of expropriation than the Tenancy Law of 1885. The difference between the two acts will be merely a difference of degree, not of kind.

No act of reform can be carried out if we feel too scrupulous a regard for 'vested rights'. A similar but more extensive and bigger injustice will take place if we want to reinstitute landlordism in Bengal. It will involve the abolition of the present tenancy laws, and together with them the partial proprietary rights of many thousands of ryots. Any way, the vested interest of a certain section of the people must give way before the higher good of society at large. The present land system is bad, to perpetuate it would be worse and more iniquitous than to disregard the vested rights of a few zemindars. Yet, I am not speaking of expropriation. The zemindars should be bought out and not expropriated. Let the zemindars get full value for their interests in land. Let them be richer and more prosperous than they are now,—let them conquer new worlds;—only let them give up their connection with land. From a pecuniary

point of view they do not suffer any loss,—there can only be a question of sentiment. Some amount of prestige has long been associated with landed property. The big zemindars have played, and even now play, little nabobs in their own zemindaries. To be deprived, all on a sudden, of the influence over the tenants may be felt bitterly by some of them. But they should not grudge this little amount of sacrifice. Of course when Government introduced the Permanent Settlement, it did not say that the zemindars would ever be bought out; but neither did it ever say that they would not be if occasion arose.

From the utilitarian and social point of view there is no reason to feel sorry for the zemindars. The zemindars as a class have failed to do their duty by the country, and so have forfeited all claims to its lands. As John Stuart Mill has said. “Whenever, in any country, the proprietor, generally speaking, ceases to be the improver, political economy has nothing to say in defence of landed property as there established. In no sound theory of private property was it ever contemplated that the proprietor of the land should be a mere sinecurist quartered on it.”[†]

(ii) IMPETUS TO EXCESSIVE SUB-DIVISION OF HOLDING. —Under the law of inheritance there is always a tendency in Bengal towards exces-

[†] Principles of Political Economy (Ashley's edition). Page 231.

sive sub-division of landed property. This tendency, it may be argued, will be further accentuated by the introduction of peasant proprietorship. The point needs careful consideration.

Any contention that under peasant proprietorship the tendency towards excessive sub-division will be greater than under the present system is quite untenable. This is almost self-evident, and it is unnecessary to labour this point. But there is a difference between the future probable effects of a landlord and tenant system, and of peasant proprietorship on the size of the average farm. It may, with some justification, be urged that the effect of peasant proprietorship will be to perpetuate and augment the present tendency towards excessive sub-division while the introduction of landlordism is likely to counteract it.

Suppose the landlords of Bengal to be invested with the full proprietary rights in their land. Then they will let their lands at the highest competitive rents. If the system work successfully, and if the tenants and landlords introduce a scientific and more productive method of cultivation then the medium and large-scale farmers will be able to offer higher rents than the small cultivators, and the former will easily, outbid the latter. In the struggle for existence small-scale farming will

go under, and large-scale and medium scale farming will tend to survive.

It is just possible that such a result can be achieved; but at what cost! The size of an average holding in Bengal at the present time does not exceed two acres. If we want to substitute *grande culture* for *petite culture* the size of the average farm must be at least as great as 100 acres. But this increase in size of the farm must result in an enormous decrease in the number of hands required for its cultivation. In Bengal there are only 2.14 acres of land per cultivator; but in England or America they require, at least, as much as 15 acres per worker. If the same methods are to be adopted in Bengal, about 4/5ths of the present cultivating population must be at once thrown out of employment. In view of the facts that the door of emigration is practically barred to Indians, and that the industrial cities cannot readily or, even in a few decades, absorb such a large population; the ousting of such a large number of cultivators will be fraught with the most disastrous consequences. If the expropriated peasants are to find employment in the agrarian industries, they cannot do so without immensely reducing the wages of country labour. Thus the inevitable result of such a policy will be the creation of a huge agricultural proletariat. Or, else, it may give rise to cottier tenancy. Small tenants will agree to pay ruinously high rents for fear of ejection.

There will be an evolution, not of competitive rents, but of rack-renting with all its attendant evils.

But is subdivision of land so harmful to agriculture, and, if so, can there be no palliative or preventive of it under a system of peasant proprietorship? Excessive subdivision of land is nothing peculiar to India. If we look to the countries of Continental Europe, where the law of succession to landed property is in principle almost the same as ours, we find that subdivision of land has proceeded very far in them. In Germany, the size of the average farm is less than 20 acres, in France it is about 15 acres. In Belgium, of 700,000 proprietors of land, about 520,000 are owners of less than 5 acres each. There are only about 35,000 who own more than 25 acres each, while over 400,000 own less than $2\frac{1}{2}$ acres each. In Bulgaria and Serbia the holdings are quite small. In Japan the average holding is between $2\frac{1}{2}$ and 3 acres. Still, many of these countries have prosperous agriculture. When the size of the farm becomes small what is necessary is simply to change the methods of agriculture, and substitute specialised and more valuable crops for the cheaper food crops. Wheat or rice may not be grown most economically except on big or medium-sized farms; but vegetables, fruits, dairy produce, cattle and poultry can be raised economically on small farms as well. Wherever suitable marketing

is possible the small farmer can easily maintain his own by raising such specialised crops. In the Presidency and Burdwan Divisions where almost all places are within easy reach of Calcutta, there exist splendid opportunities for the development of dairy and poultry farming and for the production of vegetables and fruits. In the low-lying districts of Eastern Bengal, jute is a very important crop. Now jute, like tobacco, requires very intensive cultivation, and can be grown economically on comparatively small plots of land.⁸

Some of the disadvantages of small holdings may, again, be overcome by the methods of co-operation. The buying of seeds, implements, and cattle, and the selling of crops can be organised as efficiently by a number of co-operating small farmers as by a single big farmer. Even ploughing, irrigation, thrashing etc., may, in a few cases, be carried out on

⁸ Foolish cries are raised from time to time for restricting the area under jute crop. Jute is a monopoly of Bengal, and it may be possible to make more profits by restricting supply, and putting up the price. But this monopoly is not in the hands of one single person. Individual cultivators will look to their own interests; they are concerned with their *aggregate incomes* and not with the rates of *monopoly profits*. The same plot of land can be utilised for producing jute or rice. Under the law of equimarginal return, the cultivation of jute will be pushed till the return from the marginal land under jute becomes equal to the return from the marginal land under rice. This is not only inevitable but also desirable; for the point of equilibrium is, in this case, also the point of maximum satisfaction. What is necessary is not to restrict the output of jute; but to wrest the power of price control from the ring of speculators and merchant princes who now rule the market.

a co-operative basis. When the size of the holding is very small it may happen that the peasant is under-employed, and has much time lying on his hand, while the other members of his family are almost absolutely unemployed. This is perhaps, the case at present in many places in Bengal, though it cannot be asserted that it will remain so when a proper system of rotation of crops has been introduced and the field no longer lies fallow for a considerable part of the year. What is necessary in such cases is simply to establish suitable cottage industries to supplement the income of the farmer from cultivation.

In Bengal a defective system of land tenure and backwardness of education have made the population increase very much,—much further than it ought to have increased. The pressure of population has led to an altogether excessive subdivision of land. On the one hand any rapid growth of population must be checked by spreading education and by teaching the value of a higher standard of life; on the other hand, some portion of the existing agrarian population should be drawn away to the cities and industrial centres.⁹ When these relieving factors operate, as they are bound to do under a wise national policy, there is very little apprehension of a still further subdivision of land. The present size

⁹ C. F. Carver—Principles of Rural Economics—page 254.

of holdings appear smaller than it actually is owing to fragmentation. If the scattered holdings are consolidated by means of direct legislation, or through the agency of "Co-operative consolidation of Holdings Societies" they will become more economical to work.

Even supposing that the movement towards subdivision continues and tends to assume very serious proportions it will not be impossible to prevent its progress by legislation. The state may put a legal limit to subdivision. If need be, it may even alter the law relating to the succession to landed property. But as a matter of fact these drastic remedies are hardly found necessary.¹⁰ In Bengal if excessive growth of population be arrested by the application of prudential checks, and if our commerce and industry develop steadily so as to absorb a larger and larger proportion of the rural population, I firmly believe that it will never be necessary to make drastic changes in the law of inheritance for preventing further subdivision of land.

(iii) Lastly we come to a very formidable objection. It has been argued that it is very

¹⁰ In a country where peasant proprietorship is combined with a law of equal inheritance, the apprehensions regarding a tendency towards excessive subdivision of land are very often exaggerated. Such apprehensions led the School of Le Play to advocate an alteration of French Law of inheritance in such a manner as to ensure the succession of one son only to an estate or farm. For a criticism of this school of opinion, see a very informative article on the subject by Dr. J. Dumas in the *Economic Journal* for March 1909.

difficult to maintain a pure system of peasant proprietorship. "It appears" says Prof. Jevons "to be almost impossible to avoid a landlord class coming into existence in any tract of country which is highly fertile, and where the standard of living of the cultivating class is low."¹¹ This comes about in two ways. Firstly, successful farmers will gradually buy more and more land till their estates have grown so large that they can comfortably live on their rents without cultivating the land themselves. Thus in one or two, or at most three generations a family of thrifty and industrious peasant proprietors will become a family of zemindars. Secondly, peasants, who mortgage their property to mahajans, may have ultimately to surrender it to them. The mahajans, when they thus come by land, do not cultivate it themselves but let it out to others. Thus grows up a rent-receiving class.

This danger is more apparent than real. Once an enlightened class of peasants have become proprietors of their own soil, it is not likely that a large number of them will become landless at any time. When Co-operative Credit System is well-organised the growth of landlordism due to the second cause will be reduced to a minimum. Under the first cause there will always be some persons passing from the working to the leisure class.

¹¹ Economics of Tenancy Law & Estate Management, page 14 et seq.

But in order to belong to the leisure class they need not necessarily be zemindars. Land grabbing is keener under peasant proprietorship than under any other land system. There is always a demand for land from existing or would-be cultivators. And it is quite likely that our zemindar will sell his land at a high price and exchange it for government or other stock. Thus there is no tendency towards the creation of a *permanent* class of zemindars unless by social convention some special value come to be attached to landed property. There will, of course, always be a small number of zemindars who will choose to remain so only during a period of transition. The existence of such a small class of zemindars is not only not inconsistent with but highly congenial to the maintenance of a well-organised system of peasant proprietorship. A landless agricultural labourer cannot at once become a peasant proprietor. He may start as a farm servant, then become a tenant farmer and, lastly, a peasant proprietor. The existence of a tenancy system on a small scale thus provides a ladder by which the energetic agricultural labourer can rise to be a peasant proprietor.

We have disposed of the most weighty arguments against the introduction of peasant proprietorship in Bengal. The objections are found to be not so formidable as they appear. In our opinion the goal of land administration policy should be the gradual introduction of

peasant proprietorship. The zemindars and intermediate tenure-holders should be bought out, and ownership of agricultural land should be vested in the actual cultivator of the soil. However radical this measure may appear to the more conservative classes, it is absolutely necessary for the emancipation of agriculture and agriculturist. It has been suggested by some people that the same purpose can be served better and more smoothly by so amending the tenancy laws in favour of the ryots as to make the zemindars rent-receivers, pure and simple.¹³ The rent payable to the zemindar should be fixed in perpetuity so that there may be no wrangling between the zemindar and the ryot. If the zemindars are to be bought out, they will have to be paid for by means of Government stock or directly by the peasants. In either case the zemindars will receive a capital sum for which they can get interest;— in other words, they will continue to have a share in the national dividend. This share, in the final analysis, will come out of the profits of agriculture. So, whether the zemindars be bought out or whether their title be reduced to the mere receipt of a permanently fixed rent the result in both cases will practically be the same. So far as it goes, the argu-

¹³ In this connection see 'সায়তের কথা' by Pramatha Chaudhuri. Another interesting little book in Bengali is 'বাঙালার কৃষকের কথা' by Hrishikesh Sen who propounds more radical views. For a passionate advocacy of the cause of ryots, see "Peasant Proprietorship in India" by Dvijadas Datta.

ment is sound; but it ignores an important consideration. Everyone who is familiar with the state of affairs in Bengal must know of the enormous amount of litigation arising in connexion with land. Divided ownership has been a prolific mother of litigation. Criticising the Bengal Tenancy Bill in 1884, Mr. (afterwards Sir) Roper Lethbridge remarked "under this Bill of Mr. Ilbert's I assert that over Bengal might be written 'If there is a paradise on earth for lawyers it is here.'" Every one can now see how prophetic the statement was. Until divided ownership has been completely abolished each party will try to go beyond its jurisdiction and encroach on the rights of the other. Zemindars and ryots will always have occasion to quarrel and to run to the lawcourt for help. The length of his purse gives the zemindar a decided advantage in the lawcourts. It is advisable to keep the two parties apart, rather than keep them together and then call for the intervention of law to adjust relations between them. If we want to introduce the peasant proprietorship system the best means is to buy out the landlord. Permissive legislation only may be undertaken in the first instance giving the ryot the right to buy out the zemindar by paying him the capitalised value of the rent. The rate of capitalisation may be fixed to be the same as the current rate of interest for public debts. This proposal involves no financial burdens on

the Government. It will enable the more well-to-do farmers to acquire absolute proprietary rights in the lands they cultivate. It will lay the foundation of a peasant proprietorship system by helping to abolish the present anomalous state of affairs. It is likely to have a healthy effect on landlords too. The legislation being of a permissive character, and the right of purchase being optional, the tenant will exercise the right only when it is profitable for him to do so. If the zemindar begins to take interest in agriculture, and if by advancing capital, and by giving help in various ways he can make it useful and profitable for the ryot to retain connexion with the zemindar, the ryot will not be induced to buy him out. It is difficult to forecast as to how far this result is likely to be attained; but, in any case, a permissive law of the kind suggested is calculated to produce only beneficial results one way or other.

The whole tendency of tenancy legislation has been to transfer more and more rights from the zemindars to the ryots. The introduction of peasant proprietorship will be the fulfilment of past history. For some time past the reform of the tenancy law has engaged the attention of the Government and the public. Proposals and draft bills have succeeded one another in quick succession. A Committee considered the proposals and submitted as many reports as there were members

in it. The whole thing has again been sent to the melting pot and nobody knows in what new shape it will re-emerge. It is mere waste of time and energy to make elaborate criticisms of nebulous proposals. But one cannot too much emphasise the fact that a revision of the tenancy law requires broad statesmanship. It is not enough to satisfy the lawyer's scruples; the interests of agriculture and agriculturists should receive prime consideration. The land laws should be made simpler and not more complex. Too much reliance on the lawyers and the lawcourts should be avoided by all means. It is high time to realise that lawyers and judicial officers are not omniscient and that they may be quite incapable, in many cases, of finding the truth and of dealing even-handed justice at reasonable cost and without undue delay and harassment to the parties concerned.

One word more before I conclude. Many of our politicians and "leaders" talk glibly and enthusiastically of 'agricultural co-operation' and 'consolidation of holdings' without at all considering the issues which are involved. True agricultural co-operation postulates peasant-proprietorship. Co-operative *credit societies* can, and have developed to some extent in rural areas; but co-operative farming cannot develop under a system of divided ownership of land. Consolidation of holdings, again, presupposes the existence of a simple

type of land tenure. In the present circumstances of Bengal, any scheme of consolidation is faced with almost insuperable difficulties. Where there are more than a dozen middlemen between the zemindar and the actual cultivator it will require the consent of at least 24 persons to consolidate two small pieces of land. From this the reader will at once realise the magnitude and impracticability of the task under the existing circumstances.

National life is an organic whole. It is neither possible nor desirable to develop one limb at the expense of another. A nation cannot develop politically and economically without developing educationally and socially. Development must be all-round. It is futile to think that we can advance our trade and industries, can bring about phenomenal improvements in agriculture while the people remain as ignorant as they are, the zemindars remain as lazy and the ryots as illiterate as they are, and the land system continues to be as anomalous as it is today. The problem is not simply one of reform of land tenure, or improvement of agriculture. The problem, really speaking, is one of national regeneration. The magnitude of the problem may frighten many; but it is foolish to overlook facts. We cannot overcome a difficulty simply shutting our eyes against it. If the task is big, our efforts should be bigger still.

APPENDIX

Note on the status of the Ryots between 1793 & 1858.

The legal status of the ryots between 1793 and 1858 has been the subject of vigorous controversy. Even as early as the second decade of the last century, it became a subject of dispute. Responsible servants of the Company, who had spent years of their life in revenue administration expressed diametrically opposite opinions. This difference of opinion between persons, who were in the best position to know, clearly brings out the utter state of confusion in which the law was. And when the law was uncertain, any legal rights possessed by the ryots were worse than useless.

In the judgments delivered by the several judges in the Great Rent case, an attempt was made to determine the exact legal situation. The question was whether the zemindars had any powers to arbitrarily increase the rates of rent. Justice Trevor, after making a laborious research into the existing state of law, expressed the opinion that under Regulations of 1793, the rents of Khudkhast ryots could not exceed the Pergunah rates. According to him, the Pergunah rate represented something very definite. It was equivalent to the ussal jama of Todar Mal *plus* abwabs recognised at the time of the Permanent Settlement. This perganah rate set the upper limit to the rent realisable from the khudkhast ryots. The perganah rate, however, represented a fixed amount in kind and its money value was liable to fluctuations. The position of the khudkhast ryots was, according to Justice Trevor, very adversely affected by legislation between 1812 and 1842, till they were reduced to the status of mere tenants-at-will ; and customary rents gave place to competitive rents.

As to the pykost ryots, Justice Trevor held that they never had any rights independent of the particular engagements under which they held land. Act X of 1859 sought to reinstate the ryots in their original position, and Justice Trevor wanted to interpret it in that light.¹ The other judges agreed more or less with the opinion expressed by him. But the Chief Justice, Sir Barnes Peacock wholly disagreed with them. He said, the pergunah rates were fictitious; they never existed except on paper. Since 1793, the zemindars were regarded as absolute owners of the soil and had full powers to eject the tenant and enhance his rents. Sir Barnes Peacock absolutely denied that the intention of Act X of 1859 was to give any kind of authority to the Perganah Rate.

In order to have a correct idea of the exact position occupied by ryots between 1793 and 1858, we should sharply distinguish between the question of law and the question of fact. So far as the question of law was concerned, perhaps Justice Trevor was right in his interpretation of the Regulations of 1793 and of subsequent years. But so far as the question of fact was concerned, certainly Sir Barnes Peacock was more right than anyone else.

In the Minutes of Lord Hastings and Colebrook, in the correspondence between the Court of Directors and the authorities in India, and in the various statements received at different dates from collectors, and judges, one

¹ His estimate of the protection given to ryots was, however, grossly exaggerated. According to his own interpretation, the Perganah rate could not but represent a very uncertain and variable sum of money. The Perganah rate was the "Assal jama" of Todar Mal plus abwabs. The abwabs, in most cases, were illegal cesses and there were no limits to the number or amount of them.

Again, Justice Trevor says that the Perganah Rate represented a fixed amount in kind and its money value was liable to fluctuations. While these two facts are borne in mind, no body can dare assert that the Perganah Rate represented "something very definite."

is surprised to see the confusion and anomaly and the absolute lack of any knowledge on the subject. But while the law was in a state of confusion, the practice was ruthless in its effects.

The following extracts from the evidence given by James Mill before the Committee of the House of Commons of 1832 will give a clear idea of what the practice was.²

"3138.—To what extent do you believe that the Permanent Settlement did affect the rights of the ryots?— I believe that in practice the effect of it has been most injurious. The most remarkable circumstances and that by which all the rest seem to have been introduced, was the interpretation put upon the effects of the sales of land, particularly public sales that were made for arrears of revenue. The idea came to be entertained that the purchasers at these sales were proprietors; a man that purchased an estate was considered to be the proprietor of the estate; and in consequence of this notion of proprietorship, and the great powers that are annexed to it in the mind of an Englishman an idea seems to have been entertained that the purchaser of this estate purchased the rights over it as completely as a man would purchase rights over an estate, by purchasing it at a public sale in England. Those auction purchasers, as they were called, proceeded to act upon this assumption, to impose new rates upon the ryots, and even to oust them wherever they found it convenient. When applications were made to the Courts, and they were not early made, because the people are exceedingly passive, the judges for the most part coincided in opinion with these auction purchasers, and decided that the rights included everything, and that the ryots were in the condition of tenants-at-will. This has

² James Mill was Examiner of Correspondence at the East India House and was in the best position to get at all the facts of the situation. There can be no doubt that a man of his intellectual calibre and honesty made the very best use of his opportunities.

proceeded to a very considerable length ; because during the first years of the operation of the Permanent Settlement a very great transfer of property took place. It appears also that the same sort of feeling as to the rights of the ryots, which was spread by the interpretation of the act of purchasing, has pervaded also the other properties which had not changed hands, and even those cases of transfer which took place by private bargain ; and that generally in Bengal now there is hardly any right recognised as belonging to those inferior holders.

“3139.—Do you conceive that at present the transfer of property by any means is held to give the new acquirer a complete right over the cultivators?—I believe so: the thing is not so distinctly made out upon the records in other cases as in that of the auction purchasers, but there is every reason to infer that the same sort of feeling that was generaed in the case of those estates that were sold, now pervades the whole of them. There is a very remarkable expression in one of the Despatches from the Government of Bengal that the rights of the ryots of Bengal under the operation of the Permanent Settlement had passed away *sub silentio*.

“3140.—Has it come to your notice that the Government of Bengal, some years since, directed queries to be circulated among the collectors, in the permanently settled provinces, to ascertain whether in point of fact, the transfer of property was held to annul existing rights?—Yes, there were queries of the description circulated, and replies were obtained from a great proportion of the Collectors and Judges ; there was diversity of opinion upon the matter of right, but with respect to the matter of fact, it was admitted that generally such had been the construction.

“3144.—Are you of opinion that at present the ryots have no rights at all in the land?—Generally that is the case ; they are mere tenants-at-will of the zemindars in the permanently settled provinces.

"3182.—Do you understand that the zemindars enhance the rates frequently and capriciously upon the the ryots?—The understanding is that they take from them all that they can get ; in short, that they exact whatever they please.

"3183.—What defence has the ryot against such exaction?—According to what is now the common understanding, and apparently the decision of the Courts, they have no defence whatever but that of removal ; they may decline to pay what is exacted and quit the land.

"3184.—Is there no distinction between cultivators who inherit and those who are annual, what are called khudkhist and pyekhast ryots?—I understand that in Bengal, under the Permanent Settlement, that distinction is obliterated, and that the ryots in Bengal are considered as mere tenants-at-will.

"3204.—You spoke of a contrary opinion having been established by the decision of the Courts : will you explain more particularly the way in which those decisions originated?—It is impossible and needless to refer to particular cases. When disputes arose upon the claims of the zemindars and the ryots thought it necessary to contest them by instituting suits, it seems to have been generally held that the ryot had no remedy against the claim of the zemindar ; and when these decisions were confirmed by the Sudder Adawalat they became law.

"3205.—Was the decision as confirmed by the Sudder Adwalat founded upon the Regulations of 1793 only?—Such was the Court's interpretation of those Regulations. I may refer to a very important discussion which has recently taken place, and of which the documents will be laid before this Committee, in the selections now preparing at the India House. Mr. Harington, one of the most instructed and painstaking of the Company's servants in India to whom we owe that very valuable book, the Analysis of the Regulations, recorded in 1827 a Minute in which he maintained at much length, that the rights of

ryots were unimpaired by the Regulations of 1793; and the draft of a Regulation for the better protection of the rights of the ryots was then prepared by him and sent home. This proposition of Mr. Harington was referred to the Sudder Adwalat, and minutes upon the subject were furnished by the several judges differing in opinion from Mr. Harington, and the other members of the Government. Among those judges of the Sudder Adawalat I may mention Mr. Ross, one of the most valuable of the Company's servants a man of great zeal, probity, and experience, who declares absolutely that the ryots in Bengal had no rights, and never had any. These documents must be regarded as of high importance; because so direct a difference of opinion among the best informed and most trustworthy witnesses shows in how much obscurity the subject lies. * * * *

James Mill's remarks leave no room for doubt regarding the actual position of the ryots. In the controversy that took place between 1831 and 1841 in connexion with the modification, and amendment of the Sale Law, the same facts emerged more clearly, and prominently. Most of the Collectors maintained that the ryots were mere tenants-at-will and had no rights whatsoever in the land they occupied and cultivated. In a Note dated the 13th March 1838, the Sudder Board of Revenue took great pains to refute this opinion. By laboured interpretation, the Board tried to show that under the Regulations of 1793, the rights of cultivators were adequately safeguarded; it was only the enactments of later times and the wrong application of the older Regulations that had obliterated the rights of tenancy. But, in any case, the fact remains that since the introduction of the Permanent Settlement, the zemindars enjoyed the fullest rights of proprietorship and the ryots became mere tillers of the soil with no rights therein.

CHECKED-
2003-04