

F O U R T H
R E P O R T

FROM THE

SELECT COMMITTEE

ON

COLONIZATION AND SETTLEMENT (INDIA);

1858

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE,

MINUTES OF EVIDENCE,

AND

A P P E N D I X.

Ordered, by The House of Commons, to be Printed,
23 July 1858.

Martis, 16^o die Martii, 1858.

Ordered, THAT a Select Committee be appointed to inquire into the Progress and Prospects, and the best Means to be adopted for the Promotion of European Colonization and Settlement in India; especially in the Hill Districts and Healthier Climates of that Country; as well as for the Extension of our Commerce with Central Asia.

Lunæ, 22^o die Martii, 1858.

Committee nominated of—

Mr. William Ewart.	Mr. Mangles.
Mr. Baillie.	Sir Erskine Perry.
Mr. Campbell.	Mr. Seymour.
Mr. Gregson.	Mr. John Benjamin Smith.
Mr. Kinnaid.	Mr. William Vansittart.
Mr. Knight.	Mr. Villiers.
Mr. Lowe.	Mr. Willoughby.
Mr. Lygon.	

Ordered, THAT the Committee have power to send for Persons, Papers, and Records.

Ordered, THAT Five be the Quorum of the Committee.

Jovis, 25^o die Martii, 1858.

Ordered, THAT the Committee do consist of Sixteen Members.

Ordered, THAT Mr. De Vere be added to the Committee.

Jovis, 6^o die Maii, 1858.

Ordered, THAT the following Petitions be referred to the Committee, viz. :—From Landed Proprietors, Indigo Planters, Merchants, and Traders in Calcutta and the Lower Provinces of Bengal;—and, Indigo Planters' Association in Bengal;—and, British Subjects resident in Calcutta and the Mofussil Districts of the Residency of Fort William, in Bengal.

Ordered, THAT the Committee have power to Report the Minutes of Evidence taken before them, from time to time, to The House.

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FOURTH REPORT.

THE SELECT COMMITTEE appointed to inquire into the Progress and Prospects, and the best Means to be adopted for the Promotion of EUROPEAN COLONIZATION and SETTLEMENT in *India*, especially in the Hill Districts and Healthier Climates of that Country, as well as for the Extension of our Commerce with Central Asia, and who were empowered to Report the MINUTES of the EVIDENCE taken before them, from time to time, to The House ;—HAVE proceeded with the Examination of the Matters to them referred, and have agreed to the following REPORT:—

YOUR COMMITTEE have agreed to Report to The House the Evidence which they have received. As the Subject referred to them is still unexhausted, they beg leave to recommend that a Select Committee be appointed to resume the inquiry in the ensuing Session of Parliament.

23 July 1858.

PROCEEDINGS OF THE COMMITTEE.

Mercurii, 24° die Martii, 1858.

The Committee met.

Mr. Ewart.
Mr. Lowe.
Mr. Kinnaid.
Mr. Lygon.
Mr. Mangles.
Mr. Villiers.
Sir Erskine Perry.

Mr. Campbell.
Mr. W. Vansittart.
Mr. Gregson.
Mr. Willoughby.
Mr. J. B. Smith.
Mr. Seymour.

The Committee deliberated.

[Adjourned to To-morrow, at Three o'clock.

Jovis, 25° die Martii, 1858.

MEMBERS PRESENT:

Mr. Ewart.
Mr. W. Vansittart.
Sir Erskine Perry.
Mr. Lowe.
Mr. Kinnaid.

Mr. J. B. Smith.
Mr. Gregson.
Mr. Campbell.
Mr. Baillie.
Mr. Villiers.

Mr. EWART was called to the Chair.

[Adjourned to Thursday, 15th April, at One o'clock.

Jovis, 15° die Aprilis, 1858.

MEMBERS PRESENT:

Mr. EWART in the Chair.

Mr. Knight.
Mr. Campbell.
Mr. W. Vansittart.
Mr. Lygon.
Sir Erskine Perry.
Mr. Gregson.
Mr. J. B. Smith.
Mr. Willoughby.

Mr. Lowe.
Mr. Baillie.
Mr. Mangles.
Mr. Seymour.
Mr. Villiers.
Mr. Kinnaid.
Mr. De Vere.

Major-General *Tremenheere* and Mr. *James Ranald Martin* examined.

[Adjourned to Tuesday next, at One o'clock.

ON COLONIZATION AND SETTLEMENT (INDIA).

Martis, 20^o die Aprilis, 1858.

MEMBERS PRESENT :

Mr. EWART in the Chair.

Mr. Baillie.	*	Mr. W. Vansittart.
Mr. Lygon.		Mr. Knight.
Mr. De Vere.		Mr. C. Villiers.
Mr. Campbell.		Mr. Kinnaird.
Mr. J. B. Smith.		Mr. Seymour.
Sir Erskine Perry.		Mr. Mangles.
Mr. Lowe.		Mr. Gregson.
Mr. Willoughby.		

Major-General *George Tremenheere* further examined.

Mr. *Hooker* and Mr. *Joseph Dalton Hooker*, M.D., examined.

[Adjourned to Thursday, 22d April.

Jovis, 22^o die Aprilis, 1858.

MEMBERS PRESENT :

Mr. EWART in the Chair.

Mr. Willoughby.		Mr. Villiers.
Mr. Campbell.		Mr. Gregson.
Mr. W. Vansittart.		Mr. De Vere.
Mr. Lygon.		Mr. Knight.
Mr. J. B. Smith.		Mr. Kinnaird.
Mr. Mangles.		Mr. Seymour.
Mr. Lowe.		Mr. Baillie.

Mr. *Robert Baikie*, M.D., and Mr. *William Theobald* examined.

[Adjourned to Tuesday next, at One o'clock.

Martis, 27^o die Aprilis, 1858.

MEMBERS PRESENT :

Mr. EWART in the Chair.

Mr. W. Vansittart.		Mr. J. B. Smith.
Mr. Gregson.		Mr. Kinnaird.
Mr. Campbell.		Mr. Villiers.
Mr. Willoughby.		Mr. Seymour.
Mr. Mangles.		Mr. Lowe.
Mr. De Vere.		

Mr. *William Theobald* further examined.

[Adjourned to Thursday next, at One o'clock.

Jovis, 29^o die Aprilis, 1858.

MEMBERS PRESENT :

Mr. EWART in the Chair.

Mr. Kinnaird.		Mr. Seymour.
Mr. Campbell.		Mr. Lowe.
Mr. Mangles.		Mr. Gregson.
Mr. J. B. Smith.		Mr. Baillie.
Mr. Willoughby.		Mr. Lygon.
Mr. Villiers.		Mr. Knight.
Mr. W. Vansittart.		

Mr. *Steward Jolly Auld* and Mr. *J. Freeman* examined.

[Adjourned to Tuesday next, at One o'clock.

PROCEEDINGS OF THE SELECT COMMITTEE

Martis, 4^o die Maii, 1858.

MEMBERS PRESENT :

Mr. EWART in the Chair.

Mr. Willoughby.
Mr. J. B. Smith.
Mr. Villiers.
Mr. De Vere.
Mr. Mangles.

Mr. Kinnaird.
Mr. W. Vansittart.
Mr. Lowe.
Mr. Campbell.

Mr. *John Freeman* further examined.

Motion made, "That the Chairman be directed to ask leave to report the Minutes of the Evidence from time to time" (Mr. *Villiers*). Question put, and agreed to.

Resolved, To report the Minutes of the Evidence to the House.

[Adjourned to Thursday next, at Twelve o'clock.]

Jovis, 6^o die Maii, 1858.

MEMBERS PRESENT :

Mr. EWART in the Chair.

Mr. Campbell.
Mr. Mangles.
Mr. De Vere.
Mr. Kinnaird.
Mr. Willoughby.
Mr. C. Villiers.

Mr. J. B. Smith.
Sir Erskine Perry.
Mr. W. Vansittart.
Mr. Lygon.
Mr. Lowe.
Mr. Seymour.

Mr. *George MacNair* examined.

The following Petitions referred to the Committee by The House, read: from Landed Proprietors, Indigo Planters, Merchants, and Traders in Calcutta and the Lower Provinces of Bengal [presented 23d February 1857]; and Indigo Planters' Association in Bengal; and, British Subjects resident in Calcutta and the Mofussil Districts of the Residency of Fort William in Bengal [presented 15th May 1857].

[Adjourned to Tuesday next, at One o'clock.]

Martis, 11^o die Maii, 1858.

MEMBERS PRESENT :

Mr. EWART in the Chair.

Mr. Willoughby.
Mr. J. B. Smith.
Mr. Lygon.
Mr. Villiers.
Mr. W. Vansittart.
Mr. Kinnaird.

Mr. Campbell.
Sir Erskine Perry.
Mr. De Vere.
Mr. Gregson.
Mr. Seymour.
Mr. Lowe.

Mr. *George MacNair* further examined.

Mr. *Josiah Patrick Wise* examined.

[Adjourned to Thursday next, at One o'clock.]

Jovis, 13^o die Maii, 1858.

MEMBERS PRESENT:

Mr. EWART in the Chair.

Mr. J. B. Smith.
Mr. W. Vansittart.
Mr. Gregson.
Mr. Willoughby.
Mr. Villiers.
Sir Erskine Perry.

Mr. De Vere.
Mr. Campbell.
Mr. Kinnaird.
Mr. Lowe.
Mr. Seymour.

Mr. William Theobald and Mr. Josiah Patrick Wise further examined.

Mr. James Dalrymple examined.

[Adjourned to Tuesday next, at One o'clock.

Martis, 18^o die Maii, 1858.

MEMBERS PRESENT:

Mr. EWART in the Chair.

Mr. J. B. Smith.
Mr. Willoughby.
Sir E. Perry.
Mr. Campbell.
Mr. Villiers.

Mr. Gregson.
Mr. W. Vansittart.
Mr. De Vere.
Mr. Kinnaird.
Mr. Lowe.

Mr. James Thompson Mackenzie examined.

[Adjourned to Thursday, One o'clock.

Jovis, 20^o die Maii, 1858.

MEMBERS PRESENT:

Mr. EWART in the Chair.

Mr. Kinnaird.
Mr. J. B. Smith.
Mr. Lowe.
Mr. Willoughby.
Mr. Villiers.

Mr. Campbell.
Mr. Knight.
Mr. De Vere.
Mr. Gregson.
Mr. Seymour.

Mr. James Thompson Mackenzie further examined.

Mr. J. A. F. Hawkins examined.

[Adjourned to Tuesday next, Twelve o'clock.

Martis, 1^o die Junii, 1858.

MEMBERS PRESENT:

Mr. EWART in the Chair.

Mr. W. Vansittart.
Mr. Villiers.
Mr. Willoughby.
Sir E. Perry.
Mr. J. B. Smith.

Mr. Gregson.
Mr. Campbell.
Mr. Kinnaird.
Mr. Lowe.
Mr. De Vere.

Mr. J. A. F. Hawkins further examined.

Mr. N. B. E. Baillie examined.

[Adjourned to Thursday next, at One o'clock.

PROCEEDINGS OF THE SELECT COMMITTEE

Jovis, 3^o die Junii, 1858.

MEMBERS PRESENT:

Mr. EWART in the Chair.

Mr. Campbell.	Mr. H. Baillie.
Mr. Villiers.	Mr. Gregson.
Mr. Willoughby.	Mr. Kinnaid.
Sir E. Perry.	Mr. De Vere.
Mr. J. B. Smith.	Mr. Knight.

Mr. *N. B. E. Baillie* further examined.Mr. *Joseph Gabriel Waller* examined.

[Adjourned to Tuesday next, at One o'clock.]

Martis, 8^o die Junii, 1858.

MEMBERS PRESENT:

Mr. EWART in the Chair.

Mr. Campbell.	Mr. D. Seymour.
Mr. J. B. Smith.	Mr. De Vere.
Mr. Willoughby.	Mr. Gregson.
Sir E. Perry.	Mr. Kinnaid.
Mr. W. Vansittart.	Mr. Villiers.
Mr. Lowe.	

Mr. *Joseph Gabriel Waller* further examined.*Ordered*, To report the Evidence to The House.

[Adjourned to Thursday next, at One o'clock.]

Jovis, 10^o die Junii, 1858.

MEMBERS PRESENT:

Mr. EWART in the Chair.

Mr. Campbell.	Mr. Seymour.
Mr. C. Villiers.	Mr. W. Vansittart.
Mr. J. B. Smith.	Mr. Knight.
Mr. Kinnaid.	Mr. Gregson.
Sir Erskine Perry.	Mr. De Vere.
Mr. Willoughby.	

Captain *Ouchterlony* further examined.

[Adjourned to Tuesday next, at One o'clock.]

Martis, 15^o die Junii, 1858.

MEMBERS PRESENT:

Mr. EWART in the Chair.

Mr. Lygon.	Mr. J. B. Smith.
Mr. Campbell.	Mr. Lowe.
Mr. Gregson.	Mr. De Vere.
Mr. W. Vansittart.	Mr. Kinnaid.
Mr. Mangles.	Mr. Seymour.
Mr. Willoughby.	Mr. Villiers.

Captain *Ouchterlony* further examined.

[Adjourned to Tuesday next, at One o'clock.]

Martis, 22^o die Junii, 1858.

MEMBERS PRESENT:

Mr. EWART in the Chair.

Mr. Gregson.	Mr. W. Vansittart.
Mr. Mangles.	Mr. Lowe.
Mr. Willoughby.	Mr. Seymour.
Mr. Kinnaird.	Sir Erskine Perry.
Mr. J. B. Smith.	Mr. Villiers.
Mr. De Vere.	

Mr. A. G. Fowler and Mr. William Balston examined.

[Adjourned to Thursday, the 24th, at One o'clock.]

Jovis, 24^o die Junii, 1858.

MEMBERS PRESENT:

Mr. EWART in the Chair.

Mr. Mangles.	Mr. De Vere.
Sir Erskine Perry.	Mr. Willoughby.
Mr. Vansittart.	Mr. Gregson.
Mr. Villiers.	Mr. Campbell.
Mr. Kinnaird.	Mr. Knight.

Mr. John Warden examined.

[Adjourned till Tuesday, at One o'clock.]

Martis, 29^o die Junii, 1858.

MEMBERS PRESENT:

Mr. EWART in the Chair.

Sir Erskine Perry.	Mr. W. Vansittart.
Mr. Willoughby.	Mr. Mangles.
Mr. Kinnaird.	Mr. Gregson.
Mr. J. B. Smith.	Mr. Seymour.
Mr. Villiers.	Mr. Campbell.

Mr. William Balston further examined.

Colonel Campbell Onslow examined.

[Adjourned to Thursday next, at One o'clock.]

Jovis, 1^o die Julii, 1858.

MEMBERS PRESENT:

Mr. EWART in the Chair.

Mr. Campbell.	Mr. Villiers.
Mr. Kinnaird.	Mr. W. Vansittart.
Mr. J. B. Smith.	Mr. Seymour.
Mr. Willoughby.	Mr. Gregson.
Sir Erskine Perry.	Mr. De Vere.
Mr. Mangles.	

Colonel William Campbell Onslow further examined.

[Adjourned to Tuesday next, at Twelve o'clock.]

PROCEEDINGS OF THE SELECT COMMITTEE

Martis, 6^o die Julii, 1858.

MEMBERS PRESENT:

Mr. EWART in the Chair.

Mr. J. B. Smith.
Mr. Gregson.
Mr. De Vere.
Mr. Willoughby.
Mr. Mangles.

Mr. Villiers.
Sir Erskine Perry.
Mr. Lowe.
Mr. Kinnaird.
Mr. Campbell.

Mr. *Herman Schlagentweit*, Phil. D. and L.L.D., Mr. *Robert Schlagentweit*, Phil. D., and the Rev. *Joseph Mullens*, examined.

[Adjourned to Thursday, at One o'clock.

Jovis, 8^o die Julii, 1858.

MEMBERS PRESENT:

Mr. EWART in the Chair.

Sir Erskine Perry.
Mr. Willoughby.
Mr. W. Vansittart.
Mr. Gregson.
Mr. J. B. Smith.
Mr. Kinnaird.

Mr. Mangles.
Mr. De Vere.
Mr. Villiers.
Mr. Lowe.
Mr. Campbell.

Rev. *Joseph Mullens* further examined.

Mr. *John Warden* and Major *Wingate* examined.

Ordered, to Report the Evidence to July 1st, inclusive.

[Adjourned to Tuesday next, One o'clock.

Martis, 13^o die Julii, 1858.

MEMBERS PRESENT:

Mr. EWART in the Chair.

Mr. Willoughby.
Mr. W. Vansittart.
Mr. Mangles.
Mr. J. B. Smith.
Mr. Gregson.

Mr. Kinnaird.
Mr. Villiers.
Mr. Seymour.
Mr. Baillie.

Major *Wingate* further examined.

[Adjourned to Thursday, at Twelve o'clock.

Jovis, 15^o die Julii, 1858.

MEMBERS PRESENT:

Mr. EWART in the Chair.

Mr. Mangles.
Mr. Willoughby.
Sir Erskine Perry.
Mr. Kinnaird.
Mr. Gregson.
Mr. Campbell.

Mr. W. Vansittart.
Mr. J. B. Smith.
Mr. Lowe.
Mr. Villiers.
Mr. Seymour.

Major *Wingate* further examined.

[Adjourned to Friday, at Twelve o'clock.

Veneris, 16^o die Julii, 1858.

MEMBERS PRESENT:

Mr. EWART in the Chair.

Mr. Mangles.
Mr. Willoughby.
Mr. Villiers.
Mr. J. B. Smith.
Sir Erskine Perry.
Mr. Kinnaid.

Mr. Campbell.
Mr. Lowe.
Mr. W. Vansittart.
Mr. Seymour.
Mr. Gregson.

Mr. James Lander examined.

[Adjourned to Tuesday next, at Twelve o'clock.

Martis, 20^o die Julii, 1858.

MEMBERS PRESENT:

Mr. EWART in the Chair.

Mr. Mangles.
Sir Erskine Perry.
Mr. W. Vansittart.

Mr. J. B. Smith.
Mr. Kinnaid.
Mr. Villiers.

Mr. J. F. Moffatt Mills and Mr. William Henry Martin, examined.

[Adjourned to Thursday next.

Jovis, 22^o die Julii, 1858.

MEMBERS PRESENT:

Mr. EWART in the Chair.

Mr. Mangles.
Mr. J. B. Smith.
Mr. W. Vansittart.
Mr. Gregson.

Mr. Villiers.
Mr. Kinnaid.
Mr. Seymour.

Mr. William Theobald further examined.

Mr. John Marshman examined.

[Adjourned till Twelve o'clock To-morrow.

Veneris, 23^o die Julii, 1858.

MEMBERS PRESENT:

Mr. EWART in the Chair.

Mr. W. Vansittart.
Mr. J. B. Smith.
Mr. Lowe.
Mr. Mangles.

Mr. Villiers.
Mr. Gregson.
Mr. Campbell.
Mr. Kinnaid.

Mr. J. O'Brien Saunders examined.

Proposed Report read, as follows: "Your Committee have agreed to report to The House the Evidence which they have received. As the subject referred to them is still unexhausted, they beg leave to recommend that a Select Committee be appointed to resume the inquiry in the ensuing Session of Parliament."

Report again read, and agreed to.

Ordered, to Report.

EXPENSES OF WITNESSES.

NAME of WITNESS.	Profession or Condition.	From whence Summoned.	Number of Days absent from Home under Orders of Committee.	Expenses of Journey to London and back.	Allowance during Absence from Home.	TOTAL Expenses allowed to Witness.
				£. s. d.	£. s. d.	£. s. d.
Mr. John Warden - -	- - - - -	Lymington - - (Twice summoned.)	2	4 4 -	2 2 -	6 6 -
Mr. Moffatt Mills - -	- - - - -	Arundel - - -	1	1 5 -	1 1 -	2 6 -
					£.	8 12 -

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MINUTES OF EVIDENCE.
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LIST OF WITNESSES.

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The following Petitions were referred to the Committee:

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Papers delivered in by William Theobald, Esq., 27 April 1858:

Revised Affray Bill and other Bills referred to in the Evidence of W. Theobald, Esq.:

No. 1.—Report of the Secretary of the Indigo Planters' Association, on the Act IV. Bill and Revised Affray and Mochulka Bill, read at a Meeting of the Society on the 5th April 1855 - - - - -	p. 238
No. 2.—Report of a Meeting of Europeans to complain of Disorders in the Dacca District, through the Inefficiency of the Deputy Magistrate - - - - -	p. 243
No. 3.—Report of Meeting of Indigo Planters' Association, respecting an Outrage on an European in the Jessore District - - - - -	p. 244
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Of the Original Affray Bill, referred to in the Evidence of W. Theobald, Esq.:

Petition of the Members of the Indigo Planters' Association, on behalf of themselves and the Association - - - - -	p. 251
Report of the Committee of the Indigo Planters' Association on the Draft Bill now before the Legislative Council, entitled, "A Bill for the more effectual Suppression of Affrays concerning the possession of Property," being the Report referred to in the above Petition - - - - -	p. 252

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Paper put in by Captain John Ouchterlony, 15 June 1858:

Letter from H. Williams, Esq., to the Rev. F. A. Dawson - - - - -	p. 261
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No. 2.—Petition of the Indigo Planters' Association and Enclosures - - - - -	p. 343
No. 3.—Petition of Rajah Sutt Shurn Ghosaul, dated 19th September 1856 - - - - -	p. 351
No. 4.—From the Secretary to the Government of Bengal, to the Clerk of the Legislative Council, No. 671, dated Fort William, 19 September 1856 (with Enclosures) - - - - -	p. 352
No. 5.—Petition of Rajah Sutt Shurn Ghosaul, dated 19 November 1856 - - - - -	p. 414
No. 6.—From the Junior Secretary to the Government of Bengal, to the Clerk of the Legislative Council, No. 864, dated Fort William, 8 December 1856 (with Enclosures) - - - - -	p. 414
No. 7.—Petition of certain Zemindars of the 24-Pergunnahs - - - - -	p. 417
No. 8.—Petition of Protestant Missionaries residing in or near Calcutta - - - - -	p. 419
No. 9.—From the Secretary to the Government of Bengal, to the Clerk of the Legislative Council, No. 1296, dated Darjeeling, 11 April 1857 (with Enclosures) - - - - -	p. 426
No. 10.—Minute by Mr. H. T. Raikes, Judge of the Sudder Dewanny Adawlut at Calcutta - - - - -	p. 432
No. 11.—From the Member of the Legislative Council for Bengal to the Junior Secretary to the Government of Bengal, dated Fort William, 3 September 1856 - - - - -	p. 433
From the Secretary to the Government of Bengal, to the Member of the Legislative Council for Bengal, No. 13, dated Fort William, 6 January 1857 (with Enclosures) - - - - -	p. 434
From the Secretary to the Government of Bengal, to the Member of the Legislative Council for Bengal, No. 17, dated Fort William, 10 January 1857 (with Enclosure) - - - - -	p. 442
From the Secretary to the Government of Bengal, to the Member of the Legislative Council for Bengal, No. 59, dated Fort William, 2 February 1857 (with Enclosures) - - - - -	p. 443

A P P E N D I X.

Appendix, No. 1.

Appendix, No. 1.

**
The following PETITIONS were referred to the Committee.

PETITION of the Indigo Planters' Association on the State of the Magistracy, Law Courts, and Police.

Sess. 1857.
App. No. 993.

To the Honourable the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled.

The humble Petition of the undersigned Members of the Indigo Planters' Association in Bengal.

Showeth,

THAT at the annual meeting of the Indigo Planters' Association (a society whose members are settled in all parts of the lower provinces of Bengal), held in January last, it was resolved to make a representation to the Houses of Parliament on the administration of justice, and state of the law courts and police in the said lower provinces, and this petition is prepared in conformity with the said resolution. Your petitioners who have signed the petition being all members of the said association and representatives of it under the said resolution.

That in November 1852, a Select Committee was appointed by your Honourable House to inquire into the operation of the statute 3 & 4 William 4, cap. 85, "for effecting an arrangement with the East India Company, and for the better government of Her Majesty's Indian territories till the 30th April 1854," but the said inquiry was prematurely concluded; only the evidence was reported to your Honourable House, the said Committee came to no resolution on the subject matter referred, and on the 20th August 1853, nine months before the said statute expired, the Royal assent was given to the statute now in force, 16 & 17 Victoria, chapter 95, "to provide for the future government of India."

That owing to the very great extent of the subject, discouragements and difficulties in the way of giving evidence, the abridgment of the time devoted to investigation, and probably some aversion to obtaining a full disclosure to Parliament of the truth, many parts of the inquiry received scarcely any or a very imperfect elucidation, and among these were the important subjects of the administration of justice and state of the magistracy, law courts, and police in the said lower provinces.

Your petitioners desiring the ends for which courts, magistracy, and police are established to be the preservation of the peace, the security of persons and property, and the enforcement of legal obligations and civil and criminal responsibility, beg to state to your Honourable House that it is almost incredible how comparatively worthless the country courts, magistracy, and police are for these purposes, how they have failed for the enforcement of civil obligations and legal responsibility, and to how great a degree the police, instead of giving security, are the terror of the people, and instruments of oppression and cruelty.

That the said association has made representations to this effect both to the Legislative Council and the Bengal Government, and your petitioners beg here to quote and re-affirm some of those representations.

"Police, magistracy and courts are the means established, and on which all regular communities rely for the preservation of the peace, the enforcement of civil and criminal responsibility, the defence of the rightful possession of property, and expulsion or dispossession of those who have no title to it. The connexion between these means and order and security is that of cause and effect in all civilised communities. In Bengal the means are established. There is a police force, a magistracy and courts criminal and civil; but it cannot be affirmed that there is anywhere order and security. The means therefore which succeed elsewhere, fail in Bengal. Obviously, on this state of the case, a very grave suspicion [of incompetency] rests on the police, magistracy, and law courts of Bengal."

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Again,

"As to the police, there is but one opinion of it throughout the mofussil (country). In its chief duty of affording protection to persons and property, it is nearly useless. As a sword, as a shield, for defence, for attack, it cannot be trusted. At the same time it is universally reproached with many corrupt habits and practices, among them extortion on all sorts of occasions and pretences, and great venality; "and to these your now petitioners add the practice of torture.

Again,

"Such being the state of the police, the laws for the preservation of the peace are not enforced, the authority of the police is much abused, the inhabitants have to rely on their own resources for the most common protection of themselves and their possessions, and are left free in their quarrels. The poor protect themselves as best they can, by combinations and otherwise; and the propertied classes and persons engaged in traffic, by the employment of large and costly establishments. In the opinion of this committee the state of the police is in a considerable degree a cause of affrays, and of all sorts of agrarian disputes and disorders."

Again, as to the civil courts:

"With respect to the civil courts it is a general complaint on the part of members of this society, that if they obtain a decree of any court in their favour, they can rarely and with great difficulty get it executed. Those whose concerns are of great extent, speak of having hundreds of decrees which on this account are mere waste paper. The causes of this failure may be various. But some of them are in the courts themselves, or their officers or amlahs."

Again,

"Another complaint is the great length of time passed in obtaining a decree. In many cases the delay, two, three, and four years, renders a decree of no value. Another universal complaint is of the extreme uncertainty of the law, which also arises from a variety of causes; partly, for example, in the want of an authoritative text of the law, more generally in the vacillation and incompetence (and want of professional training) of its administrators; but from whatever cause, the effect is the same on the public and suitors. The general result is, that there is scarcely any certain rule of right, and the want of certain rules is general insecurity. The step from general insecurity of rights to the general practice of violence, fraud, and minor irregularities, is easy."

Again, referring to a peculiar class of grievances:

"By law under these circumstances the ryots, and the zemindar also in the case supposed, are liable to make the planter compensation. But the planters can never get compensation. They get decrees by hundreds after an infinity of trouble, they fail universally on the most notorious cases of instigation; the law, such as it is, is invalid, the legal right worthless to them. Breaches of contract and those who commit them are practically protected and favoured, while the planter, who is in such cases a manufacturer and capitalist, is regarded as an oppressor of the people. If the law on this subject were more equitable, and at the same time more effective, or if, such as it is, it were not wholly invalid, broken contracts, which are the provocations of affrays and the true causes of them, would less frequently happen."

Again, referring to a recent Act of the Legislative Council which had greatly failed:

"I have already remarked on the fact of affrays concerning the possession of land having been rendered more frequent by the Act passed to prevent them. Its intention was to provide a summary and immediate interposition of magisterial authority on a dispute happening. To crush the element of affrays before it was developed, or as soon as formed, was the legislative principle. That Act therefore may be considered a legislative declaration, that disputes concerning possession come to affrays, because, or in a degree because, there were no ready-at-hand means of obtaining or enforcing a decision upon them. Why then, did the Act fail? Plainly from maladministration or faults in the administration; and as the legislative principle of the Act was unquestionably sound, the presumption is that, with better functionaries to administer the Act, the result would have been different."

Your petitioners are aware that the recent statute (16 & 17 Vict., c. 95) provides for the appointment by Her Majesty of Commissioners, with the view of effecting reforms in the law and judicial establishments in India, and that Commissioners have been appointed, but their powers of inquiry appear to be limited. In August of the present year they will cease. They have reported without taking evidence on the state of the courts as respects the personal efficiency of the magistracy, judges, and judicial officers, and they have proposed nothing to raise that efficiency. Their attention has chiefly been directed to procedure, and except as to procedure, the principal changes proposed by the said Commissioners are, as your petitioners are informed, a reconstruction of the one court, the Sudder Dewanny Adawlut, or Chief Court of Appeal, by the amalgamation with it of the Supreme Court Judges, and the conversion of the Supreme Court to a merely local or Calcutta court, except as respects the upper provinces; and an inquiry into the state of the police appears not to fall within the scope of the said Commissioners.

That without wishing to disparage the labours of the said Commissioners, your petitioners beg to observe, that for 20 years the Legislative Council has been employed in modifying
and

and reforming civil and criminal procedure, and in remodelling jurisdictions, and during that period judicial officers and courts of all kinds, from the lowest to the highest, have undergone in these respects some legislative change. But little substantial improvement in the courts or benefit to the public has resulted; and your petitioners are of opinion that, whatever improvements may be made in procedure, a great reform of the magistracy and courts themselves, as respects the personal qualifications of all classes of judicial functionaries and in many other particulars, not falling within the scope of the said Commissioners, is imperatively needed. It is true that by the commission itself power is reserved for the Board of Control to enlarge the sphere of inquiry, but this power has not been exercised; and to your petitioners it appears that it would be of the highest public utility for your Honourable House still to institute a full inquiry, specially into the character of the courts, police, and magistracy.

Your petitioners also beg to observe that public opinion, with reference to the said proposals of the said Commissioners, in the lower provinces has been clearly expressed on several occasions in a regular or constitutional manner, on the comparative merits of the one Queen's Court of the Presidency, and the many country courts of the East India Company. That opinion has been generally condemnatory of the latter, while the Supreme Court has generally for 80 years given satisfaction to the public and suitors by reason chiefly of the superior merits and qualifications of its judges; and now the said Commissioners, in indifference apparently to such oft expressed and well-settled public opinion, propose to transfer that important part of the jurisdiction of the Supreme Court which is exercised beyond the limits of Calcutta to the unreformed country courts of the East India Company; and even as to so much of the jurisdiction of the said Supreme Court as the said Commissioners propose to reserve, it may, on the plan of the Commissioners, be exercised by those who are not even English lawyers.

That by the course prescribed to or taken by the said Commissioners, an investigation into the most important and unquestionably difficult branch of that general inquiry, which was referred by your Honourable House in 1852, to a Select Committee, has been avoided.

That in the hope of inducing your Honourable House to take up the subject, your petitioners will humbly submit a few remarks relative to the persons and classes of which the judicial body is composed. Your petitioners beg to premise that one broad distinction has hitherto run through the East India Company's entire system of civil administration in Bengal. There are two orders of public servants, the covenanted and uncovenanted, and both are employed in the judicial line. The former, supplied from England, have hitherto come direct from college or school, inexperienced in business and the world, with only the advantages of a liberal education; and with the addition, after a few months' study, of some imperfect acquaintance with the language of the people, they enter on their public duties. The duties first assigned to them (with the designation of assistant magistrates), are nominally of little but really of great significance. Though called assistants, they are in fact practically in a great degree independent, and they soon rise to an important official position; become while still young, and after being a very few years in the country, managers of the police, exercising at the same time important judicial functions, in districts of six, seven, or eight thousand square miles, and with perhaps a million of inhabitants. The uncovenanted have a different origin, and are appointed by the local government, which is comparatively unfettered in making its selections. Respecting their comparative merits the said association made several representations to the said Legislative Council and Bengal Government, and which your petitioners beg here to quote and re-affirm:

"Bearing in mind the distinction of covenanted and uncovenanted, this committee would willingly pay a tribute of praise as due to many able men in both branches of the service. At the same time the committee could not forget that there are others wholly unfit for the judicial office. Passing by exceptions, this committee must advert to the fact, that the judges and magistrates of all ranks and degrees, civil and criminal, are neither prepared by practice at any bar, nor by a scientific education in law, nor by any education at all specially designed to qualify them for the judicial office.

* * * * * The uncovenanted judges generally are pre-eminent in one qualification, a knowledge of the language of the people; in which the covenanted are often deficient. But the uncovenanted branch on the other hand is much complained of for (to use general terms) the want of those important virtues and qualifications which depend on the united advantages of education, and a previously respectable status or origin, and for the defects and vices the opposite of those virtues and qualifications."

And then follows the remark:—

"That in this state of the police, the magistracy and courts are agencies constantly at work tending to produce and producing disorders, and at the same time nullifying the remedies passed for their removal."

That further evidence to the same effect is contained in the petition presented to your Honourable House in 1853, from the British and Christian inhabitants of the Lower Provinces of Bengal, which said petition contains the following, among other allegations which your now petitioners beg to re-affirm, and for further explanations on the same point your petitioners beg to refer to the Blue Book printed in 1853, by order of the House of Commons, and the copy therein of the said petition:—

"Your petitioners confidently represent; that their [i. e. the covenanted] administration of

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of justice is the subject of universal complaint and dissatisfaction, and which are founded, as your petitioners believe, on experience of their want of proper qualifications, and the bad quality of their decisions." * * * * *

* * * "They come to India, and are appointed to the judicial office, without professional qualifications; for sixty years they have been in exclusive possession of the whole or some important part of the administration of justice, and yet have furnished the inferior courts with no body of general rules or principles."

With respect to the powers of the two classes. If the manner in which judicial offices and duties are divided between them is considered, it will appear that so far as the public interests are concerned they are of equal importance. Criminal judicature primarily and chiefly belongs to the covenanted class; the uncovenanted are employed in criminal judicature only with generally subordinate and inferior jurisdiction. Nearly all civil judicature on the other hand in which the revenue is not concerned, is vested in the uncovenanted, except that they are not eligible to the Sudder or chief Court of Appeal.

Here then your Honourable House has two classes of public servants in the judicial line, of totally different origins and connexions, but with (in point of importance) an equality of functions and equal want of qualifications, but there the equality between the two ends; in pay, emoluments, official designations, honours, recognition by Government, and class interests, the covenanted are placed at such an elevation above their uncovenanted brethren, that there is no comparison. On this part of the case your petitioners would again beg to refer to and to re-affirm the statements made in the said petition of the British and Christian inhabitants.

Your petitioners are aware of the great change made under the recent statute in the mode of appointing the covenanted portion of the service (no longer to be put under covenants), and they anticipate great benefits to the public from this change, especially in the diminished influence of connexions and patronage, and the increased chance which the public interests will have; but still much of the description given above will remain applicable. It will still be true that they come direct from college or college studies, inexperienced in business, with only the advantage of a liberal education, though now of a higher order; and it will still be true that after a few months study of the languages they will enter on their public duties, and after being a very few years in the country they will rise indiscriminately to posts of the greatest importance, without provision made for their fitness for judicial office. The superior merit therefore of the new civilians will probably only consist in superior capacity for learning, and the description given above of the uncovenanted branch will remain entirely applicable. Your petitioners therefore cannot see in the measures hitherto proposed respecting the courts and magistracy, a prospect which can properly be accepted in lieu of inquiry, or which renders inquiry on these subjects less desirable than when in 1852 your Honourable House referred the operation of the statute 3 & 4 Will. 4, c. 85, to a Select Committee of Inquiry.

That your petitioners beg to illustrate the importance of an intimate acquaintance with the qualifications of the judicial body and officers, while proposing important changes in their jurisdiction, by a short example, in which will appear a great contrast between the Legislative Council and Her Majesty's said Commissioners, arising from the different degree in which the Council and Commissioners are informed respecting the qualifications of moonsiffs, the inferior class of the East India Company's judges. The Legislative Council had before it a Bill for the more easy recovery of small debts and demands in Bengal, and in it was a provision that every moonsiff's court should be a small cause court for the summary trial of actions. This peculiar part of its jurisdiction not to be subject to appeal. This provision raised the question of the competency of the moonsiffs. The Legislative member produced a record from one of the courts in a mortgage suit of value Rs. 60 (61), which record extended to very great length and bulk, quite a volume, the real question being whether a certain deed was executed by the defendant, which was lost sight of, and it appeared that nearly the whole course of the trial was beside the question; this record was presented as a fair specimen of the proceedings of courts of this kind. The Bill awaits a third reading, which has been delayed in consequence of difference of opinion as to the expediency of investing the existing moonsiffs indiscriminately with the proposed summary jurisdiction. Your petitioners will quote the annual report of the said Association respecting the Bill referred to:—

"The Small Cause Courts Bill has been settled in a Committee of the whole Council, and only waits a third reading, which from the tenor of the debate upon it has been deferred, probably from doubts as to the expediency of investing, as it does, the existing order of moonsiffs with the summary jurisdiction to be established by this Bill. It appears to the committee of this society that the Bill would be a great boon, if properly qualified persons were appointed as Small Cause Court judges. The Bill follows the spirit of the institution of small cause courts in England, and of the similar courts in the presidency towns, and it appears to the committee that it is incumbent on the Executive Government not to arrest this expedient and just measure, but to provide such a remuneration for judges of these courts as may induce properly qualified persons to accept the appointment." With respect to these very moonsiffs Her Majesty's said Commissioners propose to raise their jurisdiction nearly tenfold.

That your petitioners, though deeply impressed with the importance of inquiry, beg to point out some reforms as certainly desirable and likely to stand the test of any inquiry.

1. In the office of magistrate judicial duties and ministerial and executive duties are combined

bined, and make antagonistic claims on the time and attention of the officer. In the higher office of judge also, whose duties are principally judicial, many functions are vested which are not of a judicial kind. In these cases, and generally, it would be better in the opinion of your petitioners that the non-judicial duties should be separated, and vested in an officer of a different kind.

2. That all functions properly of a judicial kind and affecting private persons, now belonging to collectors, commissioners, and others whose duties are not primarily judicial, should be taken from those officers, and transferred to judicial officers.

3. That no preference on the ground of class should be given to the covenanted class, as respects appointments to judicial office of any kind; that the judicial service should be a distinct service and be open, and that admission to it and the terms of admission should be put on a footing to attract the legal profession both in India and at home, and that it should be made an object of ambition to barristers and pleaders, European and native, who have earned distinction, or who are of known attainments, character, and talents.

4. That the responsibility of judicial officers should be restored to what it was before Act 18 of 1850 of the Legislative Council, and that that Act should be repealed; and that judicial orders of any kind, civil and criminal, should be made subject to revision for the purpose of being annulled by summary processes and motions as in English law, of which the writ of *habeas corpus* is an example.

5. That the areas of jurisdiction, sometimes extending 40, 50, and 60 miles in different directions, and everywhere too large, should be reduced, the number of courts and magistrates increased, and every town with a certain population should be a separate jurisdiction.

6. That the portion of the public service supplied from England should be specially prepared for special duties, and not employed in offices for which, like judicial office, special qualifications are required, unless they have those qualifications.

7. That certain educational tests should be applied to all judicial officers who are not taken from the legal profession, and a knowledge of English should be essential in all judicial officers and the heads of their executive establishments.

8. That every court should be provided with interpreters and translators to assist the judicial head, who should be permitted a large discretion to avail himself of them. Their importance should be more highly estimated than at present.

9. With respect to the police, your petitioners beg to quote and re-affirm the following observations from the paper already referred to, and submitted to the Legislative Council and Bengal Government:—

“Turning from these general traits to its numbers, composition, and organisation, I am to remark that its numbers are too few for the wide areas over which it is distributed; that it is not taken from the best classes of men for a police force, and that improper men are not only not carefully excluded, but are admitted in large numbers into it. The general opinion also is, that it requires both more officers and of a better class than the existing darogahs. The darogahs have enormous power, and that their power is much abused is notorious. Effectual superintendence over the darogahs there is none. The superintendence and general command belong to the magistrate, but the darogah often through his reports rather directs the magistrate than the magistrate him. These various allegations could be illustrated by cases, but they would swell this letter beyond limit.”

In conclusion, your petitioners humbly pray your Honourable House to take this their petition into your gracious consideration, to institute an inquiry, parliamentary and local (the latter under guarantees for its fulness and freedom), into the state of the courts and magistracy, especially as respects their personal efficiency and qualifications, and into the state of the police, and to pass the reforms specifically mentioned in the paragraphs at the latter part of this petition, numbered consecutively 1 to 9, and generally for the reform of the police, magistracy, and country courts of the East India Company.

And your petitioners shall ever pray.

To the Honourable the Commons of the United Kingdom of Great Britain and Ireland
in Parliament assembled.

The humble Petition of the undersigned Landed Proprietors, Indigo Planters, Merchants,
and Traders in Calcutta and the Lower Provinces of Bengal.

Sheweth,

THAT the interests of your petitioners are deeply affected by the character of the courts and administration of justice in Bengal, and that the said courts and administration are greatly in need of reform.

That by the Act of Parliament passed in One thousand eight hundred and fifty-three (16 & 17 Vict. c. 75) to provide for the Government of India after the expiration of the then existing arrangement with the East India Company, provision is made for (among other things)

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things) the appointment by Her Majesty of Commissioners to consider and report on the reforms proposed by the Indian Law Commissioners (the said Indian Law Commissioners having been appointed under the 3 & 4 Will. 4, c. 85, for the purposes therein mentioned).

That Her Majesty accordingly appointed Commissioners, who have since, according to the design of their commission, reported concerning the reform of the judicial establishments; judicial procedure and laws of India, and your petitioners are informed that measures founded on the said report are about to be brought into Parliament. Your petitioners beg here to premise, that the Report referred to appears not to have been printed until the present year, One thousand eight hundred and fifty-six; no copy accessible to the public arrived in Calcutta until very recently, and only two or three copies came, as your petitioners are informed, to as many high official persons whose opinion was officially requested, and therefore your petitioners are only acquainted with the general tenor of some of the recommendations of the said Commissioners, and are now induced to address your Honourable House in consequence of the alarm with which chiefly one of those recommendations at present is regarded by your petitioners.

Your petitioners confine themselves now to that portion of the said recommendations which relates to judicial establishments. They are informed that a complete or extensive subversion of existing judicial establishments in Bengal is recommended, and is designed not only for the East India Company's or Mofussil courts, but also for Her Majesty's Supreme Court of Calcutta. Your petitioners readily admit that the East India Company's courts are universally deemed to require reform of the most extensive and fundamental kind, and that those courts have not the respect or confidence of any portion of the public; but Her Majesty's Supreme Court of Calcutta as universally has the public esteem and confidence.

Connected with this general subversion of existing courts is a plan or scheme for an entire reorganisation of judicial establishments in one uniform system of merely local courts and magistracy for the Presidency and Mofussil. Without entering at present into details, your petitioners submit that this new organisation is necessarily only an experiment, and it would be wise to confine it as an experiment to those courts or classes of courts which are universally regarded as requiring such extensive reform; and it appears to your petitioners that to extend it to the Supreme Court would be a premature sacrifice of a valuable tried and honoured institution, and a wide departure from the maxims of political prudence, for the sake of a mere theoretical idea of establishing an uniformity of organisation. If the experiment tried on the courts undoubtedly requiring the most extensive reform succeeds, all the reasons, whatever they may be, in favour of exclusively local courts and uniformity of system, will have undiminished force, and there will be one objection less to the change; but it may from a variety of causes fail, and in that case a popular and respected institution will have been sacrificed past revival to a theoretical idea and a vain system, greatly to the injury of the industry, enterprise, capital, personal security, and well-being, especially of British people and the numerous bodies of natives connected with them, and their business and transactions.

Entertaining so strongly such objections to one part of the proposed plan, your petitioners have great satisfaction in representing that it may easily be separated from the rest of the plan, and consequently that the abandonment of the proposal for the abolition of the Supreme Court needs not retard the reform or re-organisation of the East India Company's courts in the Mofussil. For instance an illustration:—The abolition of the Supreme Court is proposed under the name of an amalgamation, and the benefit to be gained is the introduction of the three Supreme Court judges to the sudder court, and their incorporation with the East India Company's judges in that chief court of appeal. It is obvious that these three professional judges are wanted for their forensic training and knowledge of English law and general knowledge of practical jurisprudence. But the Supreme Court may be preserved, and the object alluded to be obtained, only by doubling the number of the judges of that court, and establishing a rota among them to sit in the Court of Appeal, or by some other slight modification of this plan, the Supreme Court bar and different bars, English, Scotch, and Irish, of the United Kingdom, would be amply sufficient to supply the demand.

Equally unnecessary is the abolition of the Supreme Court for the practical establishment of other parts of the plan for reforming the courts of the Mofussil. For example, the procedure of those courts is indescribably faulty and bad to so great an extent that the Commissioners propose not its reform, but a new code of procedure for them; it is not necessary to touch the Supreme Court for the purpose of making this change in the Mofussil. The Supreme Court is a reformed court; its procedure is in some respects in advance of the reforms in England, and is well adapted for its jurisdiction. Why then force a wholly new procedure on this court? It will only have the effect of unsettling the court and not be an improvement; and obviously, as your petitioners submit, the wise and prudent course would be to introduce a new procedure only into those courts which need such extensive reform.

Again, for illustration, the Commissioners have proposed a new criminal code, and purpose to prepare a new civil code. There is no more difficult duty than to bring new codes into operation; and it appears to your petitioners highly inexpedient to abolish the most competent, and, indeed, only qualified court, just on the eve or with the immediate prospect of such a change. The hundreds of local courts will, on the proposed plan, have but one court, and that court merely of appeal, to look up to for authority and precedent; whereas the Supreme Court, with its centralised action and general jurisdiction, could afford the local courts daily instruction in all sorts of juridical questions and the most minute details.

Your

Your petitioners have yet to refer to that part of the plan of the Commissioners which relates to criminal judicature over British people. They have been to the present time exempt in the case of the graver offences from the criminal jurisdiction of the East India Company's courts in the Mofussil, and have had the right of being tried in the Supreme Court, for which purpose they are brought to Calcutta. Repeated attempts have been made by the local Government to abolish this exemption, and give the criminal courts of the Mofussil an indiscriminate jurisdiction over British people. The said Commissioners have revived this proposal. On all former occasions it has been regarded with extreme alarm and apprehension, and the opposition made to it by the British inhabitants has been successful; and generally, as your petitioners believe, their grounds of opposition have eventually had the concurrence of the Governor-General for the time being. The proposal is now revived on a supposition, it is presumed, that the new courts will be more worthy of their judicial functions. It may be admitted that that assumption divests the proposal of some of the former grounds of objection. But in the opinion of your petitioners, the judicial body, as much as the judicial system, requires to be changed; and without that change all other changes will end in a greater or less degree of disappointment. The Commissioners appear not to have proposed any change of this kind. It can be made only by the Government. Your petitioners strongly submit it would be more wise, just, and prudent first to see the courts in operation, and afterwards to propose any extension of their jurisdiction. The British inhabitants would be the last persons to resist any change in the true interests of justice as ascertained by experience; but they protest against being made the victims of an experiment. Such as the courts are, your petitioners regard the said proposal with the same alarm as on all former occasions, and feel the most serious apprehension of danger to the British inhabitants of the Mofussil. The criminal courts of the East India Company have been the dread and terror of the people; are used as instruments of revenge and persecution; convictions in them are regarded as evidence quite as much of misfortune as guilt; and the public have no confidence in them. It is in the character not of a privilege that the British inhabitants so tenaciously cling to the exemption from these jurisdictions, in cases in which not mere fines are involved, but the life, or liberty for long terms, or character and social existence of the accused is concerned. The British inhabitants only desire justice and fair trials, and they claim these in the Supreme Court because there only can justice and a fair trial be had. It is a claim simply of remaining secure as heretofore from a calamity, the effects of which are seen and deplored in the condition of all classes in the Mofussil. All these things, then, considered, your petitioners regard the extension of the Mofussil jurisdiction in the graver cases to themselves as a new evil, in the same light in short, as if the question were of some new pestilential influence, some misery of misgovernment from which they have been hitherto exempt, but which it is now proposed to bring upon them.

Your petitioners have already adverted to the very short period, a few weeks only, since a few copies, two or three only, of the Report of the Commissioners, arrived in Calcutta. The Report also is founded not on evidence taken by the Commissioners themselves,—only one or two official persons were examined,—but on the papers and reports of other Commissioners, the Indian Law Commissioners, those Commissioners also having never proceeded in a Parliamentary way, by the examination of witnesses, or an extensive collation of different kinds of evidences.

Your petitioners, therefore, submit that further inquiry, Parliamentary and local, is desirable, and that legislation should not proceed on the said report until the British inhabitants have had the opportunity of previously knowing, in detail, what is proposed, and conveying their respectful opinion to Parliament.

If however the subject be pressed,—with respect to remedies, your petitioners having regard to the interests of capital and commercial enterprise, and to the security of persons, would hope for changes in the opposite direction, so far as concerns the Supreme Court; to the recommendations of the Commissioners. By the law at present the Supreme Court may acquire jurisdiction by the agreement of the parties; and no merchant or capitalist in Calcutta ever lends or invests without such agreement, when the transaction is with persons to whom the jurisdiction would not otherwise extend. Mofussil capitalists often resort to the same expedient. It is the jurisdiction of this court which gives the immediate commercial and practical value to the mortgage bond or bill. On the faith of that jurisdiction large enterprises depend for capital, and many millions of capital would, in the opinion of the parties concerned, be jeopardised, if the jurisdiction of the Supreme Court were cut down. By these and other similar considerations your petitioners are led to believe the extension of the jurisdiction of the Supreme Court highly desirable. To give it in all cases above, say, 5,000 rupees (500 l.) a jurisdiction, at the option of the creditor, would tend to the increased investment of capital in the Mofussil.

Your petitioners, therefore, humbly pray your Honourable House not to sanction any plan for the conversion of the said Supreme Court into a merely local or Calcutta court, nor the transference of any part of the jurisdiction of that court exclusively to the East India Company's courts in the Mofussil, but, on the contrary, to extend that jurisdiction, when the subject shall be brought for legislation; and to postpone the plans of the said Commissioners until there has been ample time for their discussion and consideration in India.

And your petitioners shall ever pray.

Appendix, No. 1.

To the Honourable the Commons of the United Kingdom of Great Britain and Ireland
in Parliament assembled.

Sess. 2, 1857.
App. No. 37.

The humble Petition of the undersigned British Subjects, residents in Calcutta and the Mofussil Districts of the Presidency of Fort William in Bengal, and not in the service of the East India Company,

Sheweth,

THAT your petitioners regard with deep anxiety and alarm the changes which it is proposed to make in the criminal courts of this country, in accordance with the recommendation of the Indian Law Commissioners.

That the Commissioners propose to abolish the Supreme Court, to which alone British subjects in this country have been criminally amenable, except in cases of petty assault, for upwards of 80 years, and where trial has been always, as in England, by an independent and trained judge appointed by the Crown, and a jury of 12 persons professing the same faith as themselves, and speaking the same language, and to substitute for the Supreme Court four new classes of criminal courts; firstly, the courts of session in which a Company's judge, holding office at the pleasure of the Government of India, shall sit to try the more heinous offences with a jury of not less than three, and not more than nine, taken from a class registered according to rules to be made by the Governor-general in Council; secondly, the magistrate's courts, where the magistrate is to sit alone and punish lesser offences summarily with imprisonment not exceeding two years and a fine of 1,000 rupees; thirdly, the subordinate criminal courts of the first class, the judges of which are to be first assistants to the magistrates and principal sudder ameen, and are to have power to sentence to one year's imprisonment and a fine of 200 rupees; and fourthly, subordinate criminal courts of the second class, the judges of which are to be second assistants to the magistrates and moonsiffs, and are to have power to imprison for three months and fine 50 rupees.

In other words, the Commissioners recommend that, as regards the numerous class of offences falling within the jurisdiction of the three last mentioned courts, your petitioners should henceforward be deprived of the right of trial by jury, and that functions hitherto discharged by the judges of the Supreme Court and a jury of 12, should be henceforward entrusted to single officials of the East India Company, European and native, and against such recommendation in all and every part, your petitioners most energetically protest as unwarranted, oppressive, and dangerous in the highest degree.

Your petitioners say, that to deprive them of trial by jury, is to deprive them of that which at all times and in all places under British rule, has been held to be the inalienable right and surest protection of every Englishman against injustice and error; and that to do so in this country, where the fabrication of evidence is a trade, and the common practice is to make all cases of disputed possession and other civil questions the subject of false charges of assault and robbery supported by perjury, forgery, and subornation, as the ordinary weapons of litigation, and where consequently the assistance of a jury is more necessary to the court, and its protection to the accused, than in any other part of the British dominions, is, your petitioners submit, an invasion of their constitutional rights, called for by no necessity and attended with the most serious consequences.

That whatever additional aggravation the loss of trial by jury is capable of is afforded by the inferiority and unfitness of the officials, whom it is proposed to put in the place of the judges of the Supreme Court, and to invest with such extraordinary powers over your petitioners.

Your petitioners say that the proposed judges of the three lower criminal courts, European and native, are all alike unfit for the office, as being servants of the East India Company, owing their appointments to, and holding them at the pleasure of the Government of India, and therefore wanting that independence and freedom from influence which it is impossible to contend, is not at least as necessary to a judge in this country as in England, and in that they are also all deficient in the necessary experience and legal knowledge and training; and further, as regards the native officers whom it is proposed to invest with such powers, your petitioners boldly and confidently assert that no class of natives is fit to be entrusted with criminal powers over Europeans, being wholly disqualified for the due exercise of such powers by antagonistic feeling, inveterate prejudices of caste and religion, and utter want of independence of mind and of freedom from improper influences of all kinds.

That the position of your petitioners in this country is, from the smallness of their numbers, in comparison to the native population, the antagonism of race, the insecurity of property, and the weak administration of law in the Mofussil, one of great difficulty and risk, and that to add to that difficulty and risk by subjecting them to the jurisdiction of the magistrates and native officials in the manner proposed, is to offer an invitation to the preferring of false charges against them, and to expose them in their property to utter ruin from error of judgment, incompetence, prejudice, corruption and perjury, and in their persons to sentences of imprisonment, which to Europeans in this country are equivalent to sentences of lingering death.

That the summary powers proposed to be given to single magistrates are unknown to the law of England, though there all courts are surrounded by the checks of publicity, and persons accused have also the benefit of the assistance of trustworthy advocates; and that to give such powers in this country, where the court is without such check, and the accused

without

without adequate assistance in his defence, where the only apparent corrective of injustice is the delusive one of an appeal, which can hardly ever be successful, if it be against the finding on facts, or if successful, will not in most cases be decided till the accused has lain some months in prison, is most intolerable and unwarrantable, and must inevitably lead to the great present depreciation of mofussil property, and to the discouragement of all European commercial enterprise in this country.

That the justice of your petitioners' objections to these courts, and their unfitness to deal with charges against Europeans, is fully admitted by the Commissioners when they propose, as they do, to exempt from the jurisdiction of these courts the members of the civil, military, and naval services of the East India Company, as regards all offences committed by them, whether as public servants or otherwise, and their unfitness to deal with any cases of any importance or difficulty whatever, is equally admitted by the proposed extension of that exemption to nazirs, darogahs, and others, native or otherwise, whose duty it is to receive or keep any of the property of Government, or to investigate or report on any matter affecting the pecuniary interests of Government, or to keep any document relating to those interests; your petitioners say that they are unable to understand on what grounds it can be proposed to assign to the body who represent the producing power and commercial wealth of this Presidency a status and importance in the eye of the law below that of the last arrived writer, or cadet, or a darogah of police charged with an abuse of authority, or a public office writer with making away with stationery, or any other native officer charged with the most trivial speculation. Your petitioners submit that they are not to be treated as outcasts and outlaws, on no other ground than their having come to this country, and engaged in lawful pursuits without having a voice in the legislature, or being numerous enough themselves to protect their own interests; that their importance politically is equal to that of the last-mentioned persons, and that therefore they are entitled to the same exemption and to equal justice with them, and upon all these grounds they protest against being in any degree subjected to the proposed jurisdiction of the three lower criminal courts.

As to the jurisdiction proposed to be given to the courts of session, to the displacement of the Supreme Court, your petitioners submit that it is incontestably clear that such change as proposed will give your petitioners a worse judge and a worse jury, and much increase the difficulty and expense of getting professional assistance for defence. The judge appointed by the Government from among their own servants, not on account of any experience he has had, or proof he has given of fitness for judicial functions, but because his time has arrived for promotion from some other branch of the civil service, his employment in which has by no means qualified him for the judicial bench, will almost always at his first appointment, have his new duties to learn. Being removable at the pleasure of Government, with everything to fear and hope from them, he cannot be and is not, as your petitioners' experience convinces them, independent of the influence of Government on him as a judge, and in any case must be exposed to imputation. The jury consisting of any number from three to nine, and the opinion of two-thirds prevailing, it is patent that the facility of corrupt practice and tampering is greatly increased, and in cases of prosecutions instituted by wealthy natives against British subjects, your petitioners' past experience leaves them no doubt that such practice will be largely resorted to, and with every probable success, if the jury shall consist wholly or chiefly of native jurors.

Your petitioners submit that no sufficient ground has or can be shown for a change so hazardous. Uniformity cannot be the object, as the proposed system starts by establishing distinctions all to the prejudices of your petitioners, and further uniformity in the administration of law can only be desirable, when it introduces tribunals all equally good, not when it places all alike in equal peril of suffering injustice. The argument from the alleged inconvenience found in bringing British subjects from considerable distances to Calcutta to be tried, if proved by facts which your petitioners question, may be a ground for bringing good courts within reasonable reach of the several mofussil districts, but can never be a reason for depriving Englishmen of their rights, or subjecting any body of men to the imminent peril of bad or partial law and corrupt juries.

Your petitioners submit that such an inconvenience, if it exist, can be fully and easily obviated by the establishment of Queen's courts presided over by judges appointed by the Crown, and independent of the Government of India, through all the principal districts of this Presidency, in which alone all British subjects and such other persons as the Legislature shall think proper shall be triable by a jury of their own countrymen on all charges affecting life or liberty. Such change, your petitioners submit, would not only remove the alleged inconvenience without introducing any other, except a curtailment of the patronage of the Government of Bengal, but would also establish through all this Presidency a higher order of judges, and a better standard and administration of law than it has hitherto enjoyed, on which ground your petitioners submit that if any change be considered necessary, it should be that of the establishment, all through the Presidency, of Queen's courts, with independent and competent judges, and not the abolition of the only court which at present possesses the confidence of this Presidency. Your petitioners submit that no considerations of economy or of loss of patronage should be allowed to prevent the adoption of such reforms if found necessary. But if the establishment of Queen's judges generally in India be found too burdensome to the East India Company, or too great an interference with the vested rights of the civil service, or otherwise impossible, and the subjecting of your petitioners to the jurisdiction of the court of session be considered indispensable, in such case your petitioners submit that it is the bounden duty of the Government of India to provide for those courts the best judges procurable in the civil service, and with that view

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to form and keep distinct a regular judicial service, and not, as now, to appoint their judges indiscriminately from the revenue or other judicial branches of the civil service according to a mere routine of promotion, and without regard to the fitness or unfitness of the individual, and that the judges so appointed should hold their office during good behaviour, and be in all respects independent of the Government of India; and that your petitioners are further entitled to demand as Englishmen, that they be subject to the jurisdiction in criminal matters of no lower court than the Courts of Sessions so reformed, and that they shall have there the protection of trial by a jury of their own countrymen.

Your petitioners would further remind your Honourable House that the Supreme Court which it is now proposed to abolish, was notoriously and avowedly instituted by the English Legislature to act, and has always, and lately on several occasions, acted as a check on the abuse of power by the Government of India and its officers; that the wisdom of the imposition of such a check has been yeavly proved, that there is nothing in the present day which leads your petitioners to believe that the Government of India or its officers stand less in need of that check or can be more safely trusted with uncontrolled authority than before, but much which leads to a contrary conclusion; and therefore your petitioners protest against the adoption of the Commissioners' report on the further ground, that while they recommend the abolition of the Supreme Court, they provide no other check, but, on the contrary, place the whole judicial power of the Presidency at the mercy of the Government, and leave the numerous questions which from time to time shall arise between the Government of India and individuals, to be tried in courts, of which the judges are either absolutely removeable, as in the Sessions and Lower Courts, or suspendible as in the High Court at the pleasure of Government.

Your petitioners therefore respectfully pray, that your Honourable House will be pleased to take this their petition into consideration, and to protect them from the attacks with which their liberties and properties are threatened by the said Report, and to secure them in the possession of those rights which as Englishmen they have hitherto enjoyed, at least as far as the maintenance of them is not shown to be prejudicial to the rights of others, and that your Honourable House will not allow the Supreme Court to be abolished, without at least providing some other sufficient check in its place on the Government of India.

And your Petitioners shall ever pray,

&c., &c.

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PAPERS delivered in by *William Theobald, Esq.*, 27 April 1858.

REVISED AFFRAY BILL and other Bills referred to in the Evidence of *W. Theobald, Esq.*

No. 1.—REPORT of the SECRETARY of the INDIGO PLANTERS' ASSOCIATION, on the Act IV. Bill and Revised Affray and Mochulka Bill, read at a Meeting of the Society on the 5th April 1855.

1.—Act 4 Bill.

THE original Bill for the prevention of Affrays has been divided into two Bills, one of which is confined to amending Act IV. of 1840, and is entitled, "A Bill to repeal Act IV. of 1840, and to amend the Law for giving Relief in Cases of Forcible Dispossession within the Presidency of Fort William in Bengal." The other is a substitute for the parts most objected to in the late Affray Bill; and besides, it proposes to repeal Act V. of 1848, the substance of which is to be re-enacted, with amendments. This Bill is entitled, "A Bill for the better Prevention of Offences against the Public Tranquillity, and to amend the Law regarding the taking of Bonds for keeping the Peace."

I may add, that these two Bills together embrace the objects of the late Affray Bill, which objects, however, as respects affrays, are proposed to be accomplished in a different manner.

These Bills have been brought up with reports of select committees, copies of which have been furnished to this society.

The first main feature to be observed is the division of the late Affray Bill into two Bills. The select committee of the Legislative Council have reported on this as follows:

"We have considered this Bill" (the late Affray Bill) "in connexion with the Bill for the taking of penal recognizances for the prevention of breaches of peace, and we think it will be better to include in the latter all the penal provisions that appear to us to be necessary for the prevention of affrays, confining this Bill to the provisions necessary for empowering the magistrate to maintain persons in the possession of immoveable property. We have prepared an amended Bill accordingly, which is annexed to this report."

From this plan it has resulted that the amendments on Act IV. of 1840 are entirely separate. The amended Bill differs in a very important manner from Act IV. The difference

difference between the Bill and the Act is indicated in the preamble of the Bill, which is as follows :—

“Whereas it is expedient to take from magistrates within the Presidency of Fort William in Bengal the power of instituting inquiries into cases of disputed possession when no act of forcible dispossession has occurred, and to amend the mode of procedure in cases of forcible dispossession.” And it is also alluded to in the report of the select committee as follows :—

“The Lieutenant-governor of Bengal strongly objects to giving magistrates authority to interfere in cases of threatened dispossession. He is of opinion that the reasonable and natural course for a magistrate to adopt in cases of disputed claims to property in and concerning lands, is to cause the apprehension and punishment of persons committing an affray, and to uphold and replace in possession the person forcibly attacked or dispossessed; and he considers it especially unnecessary to empower the magistrates to enter upon investigations into a dispute about possession, or into the fact of previous possession, before the occurrence of an affray.”

Accordingly, sections 2 and 3 of Act IV., which relate to disputes or claims as contradistinguished from dispossessions, are altogether omitted. The parts of Act IV. which are renewed in the Bill are only those which relate to forcible dispossessions actually perpetrated. The select committee have expressed their own opinion in favour of this change as follows :—

“The principle that there should be no magisterial interference where no dispossession has been effected, is, in the opinion of the committee, a sound one. The power of interference was first given to the magistrates by Section III, Regulation VI. of 1813, with the view of enabling them to remove at once the *origo mali*, by determining who is in actual possession, and thus to prevent a breach of the peace; but the committee think that this system of procedure tends to encourage persons who may have no right to the land, to use, or to threaten a recourse to force, by which means they gain the chance of the magistrate declaring the fact of possession (oftentimes a most difficult point to ascertain) to be in them; and that the object which the section has in view will be better secured by strengthening the district police, and by prescribing stringent penalties for assembling or conniving at the assembly of club men and other persons, whereby breaches of the peace are threatened. We therefore propose to strike out of the Bill (*i. e.* Affray Bill) “Sections II. III. and IV.”

The general principle being thus agreed, it is carried out in Section II. of this Bill, as respects land, watercourses, trees, crop, and the produce of land, all being of a corporeal nature, and it is carried out in Section VI. as respects rights of use connected with the land, being of an incorporeal nature; and I may add, it is not extended as was proposed by the original Bill to merely personal things.

The remaining parts of the Bill are secondary or subsidiary, and relate (1) to procedure; (2) to the offence of obstructing orders made under this Act; (3) to the jurisdiction of the different classes of magistrates; (4) to appeals.

The procedure enjoined appears to be a great improvement on Act IV. procedure, with, however, one drawback, presently to be noticed. The magistrate can only act on a complaint on oath or solemn affirmation, or supported by witnesses; and then, if the magistrate sees a *prima facie* case, he cannot make an order *ex parte*, but must issue a summons, returnable within 15 days; he is then to make proclamation of the complaint, which I presume is intended to increase the chance of the complaint and summons becoming known to the opposite party, who may defend the case in the ordinary manner; and then comes a provision that the magistrate may call for a report from the tehsildar or darogah of police, upon any point connected with the dispute. The committee remark in their report, that this intervention of the darogah is opposed both by this association and the British Indian Society. The committee states in support of it as follows:—“We have, as suggested by the Lieutenant-governor of Agra, empowered the magistrate to call for a report, after local inquiry, from the nearest tehsildar or police officer, upon any point connected with the dispute. We disagree with the Indigo Planters' Association, who object to the admission of such reports. The report of a native officer on the spot, made upon his official responsibility, is often of great value, as indicating where the truth of the case is to be sought.” This society objects to these reports being used in competition with regular evidence, on the ground especially of the general untrustworthiness and venality of this class of officers. In the end, if the magistrate be of opinion that the complaint is substantiated, he is to restore the person who has been ousted. The time is limited to within 15 days after the fact of dispossession for making the complaint to the magistrate.

The next provision in the Bill merely subsidiary to the main object, provides a punishment for whoever by force, or show of force, impedes the execution of an order of a magistrate. The punishment proposed is a fine of *Co.'s Rs. 500*. Under Act IV., as well as in the Affray Bill, it was fine and imprisonment, both or either, and this Bill was to have been committed last Saturday, but was postponed at the instance of Mr. Peacock, who thought the punishment proposed too mild;—a question which the committee would be competent to deal with.

With respect to the jurisdiction of the magistracy, it is limited as follows :

All officers exercising the full powers of a magistrate are to have jurisdiction; and magistrates may refer cases to any assistant who is vested with special powers, and to any deputy magistrate who is vested with special powers; but the magistrate may also recall any case which he has referred to an assistant or deputy.

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The provisions respecting appeals are as follows :—

“ An appeal is to lie from the assistant or deputy magistrate to the magistrate within 15 days from the date of the order; from a magistrate's original order an appeal is to lie to the sessions judge; and a special appeal from both original and appellate orders of magistrates, and from the appellate orders of sessions judges to the Sudder, on the same grounds as in other cases of special appeal; the time of appealing being limited in each case to 15 days from the date of the decision appealed against. Lastly, the Bill is to apply to all persons, without distinction of birth or descent.

Such is the Act IV. Bill of which the society has to form an opinion. It stands for committal on Saturday week.

2.—*The New Affray Bill and Mochulka Bill.*

This Bill consists of 32 sections, which are of two kinds, the distinction between them being indicated in the title of the Bill: one set of sections, the first 15, they are for the better prevention of offences against the public tranquillity: the last 17 are to amend the law regarding the taking of mochulkas or penal recognizances; these sections are Act V. of 1848, with amendments. The first part of this Bill is entirely new. In moving the first reading of it, Mr. Elliot thus characterised the first nine sections :—

“ Their intention is, he said, to deter men from assembling, and from instigating others to assemble, in bodies under circumstances which might reasonably excite apprehensions of a serious disturbance of the public peace, in pursuance of the objects of the assembly; and most of them would be necessary to render any code of criminal law and procedure complete. He meant, he said, those comprised in the first nine sections.” Having heard this statement from the lips of the mover of the Bill, I suspended my judgment until I could look for the code containing corresponding sections. The first section is a type of all the rest.

“ When five or more persons assemble together under circumstances which may reasonably excite apprehension that it is the object of such assembly to overawe any public servant in the exercise of his lawful powers, or to resist the execution of any law, or of any legal process, or to commit any assault or mischief, or trespass, or to put any person in fear of hurt or assault, or unlawfully to take forcible possession of any property, the assembly shall be deemed a riotous assembly, and every member of it shall be deemed guilty of the offence.”

The result of my inquiries is, that I can find no code containing such provision. There was one celebrated code, the work of a man who combined the triple qualification for making a code, of a man of large experience in the world, a lawyer and philosopher, and not only of great learning, but of a generous regard for the public interests. I refer to the code of the penal law prepared by Mr. Livingstone for the state of Louisiana; and I mention it because it was extensively used by Mr. Macaulay in preparing the Indian penal code. In the Livingstone Code, there is a title “ of Offences against the Public Tranquillity,” and a chapter “ on Unlawful Assemblies and Riots,” but there is no such section as the section I have read. The analogous, not corresponding, section of the Louisiana Code is as follows :—

“ If any three or more persons shall assemble, with intent to aid each other, by violence, either to commit an offence, or illegally to deprive any person of the enjoyment of a right, such assembly shall be called an unlawful assembly.” This goes as far as any code ought on the subject of suspected and unarmed assemblies. The being armed is an aggravation, which is afterwards provided for; and proceeding from a purpose to overt acts, is also afterwards provided for; but in this code it is not made an offence punishable with fine or otherwise to be merely suspected.

From the Livingstone Louisiana Code I turned to the Macaulay Code, and there I find not this section, but what may be regarded as the rudiments or germ of it. But the Macaulay Code is not a passed code, and the Bethune Code, which is a revise of it, but was never published, also is not a passed code; and I know of no extant code containing such as the first and eight following sections, as respects constructively riotous assemblies and constructive rioting.

Failing to find an authority or precedent for such legislation, I will proceed to a short examination of its merits. The offence created by this section appears to me to belong to the class of offences by construction. Laws for making constructive offences, constructive treasons, constructive felonies, constructive misdemeanors, are known to the history of bad times, but are almost unknown to extant practical law; they are dangerous to the innocent, and are very generally regarded as traps and snares for them. Read the section. The abuse of terms is palpable. It is a perversion of the English language to designate an assembly a “ riotous assembly,” which has done no overt act of riot, and no violence whatever. An assembly may be an unlawful assembly, by reason of having an unlawful purpose; and in the code of Louisiana, assemblies for unlawful purpose are so designated. An unlawful assembly may be a light misdemeanor, or an offence of great gravity; but the term “ riotous ” confounds facts, and all degrees of culpability, and such an application of it is practically venomous. Obviously it has a tendency to establish an unworthy prejudice in the minds of the magistrates who will have to apply the law, and by means of that prejudice a further tendency to undue severity; and last, but not least, to arouse the aversion of the people for the magistracy and the law.

Next, the offence and conviction are not made to depend on the criminality of intention, purpose, or object on the part of the assembly, but on the apprehensions of the persons who

bring

bring forward the charge, or are the informers. Conviction may ensue under this section, where in fact there has been no unlawful purpose or criminal object. The informer who makes the charge has only to show circumstances which might reasonably alarm him, or (in the words of the Act) excite his apprehensions. Lawful and unlawful purposes are thus confounded. The man who stands on the defensive as to his right, exhibits in his conduct much the same circumstances as the man who is the wanton aggressor; and yet those circumstances which may be essential to the preservation of his person or property may bring him under the penalty of this section. Suppose a charge following the words of the Bill:—That five persons, the servants of Mr. Mills, on such a day, at such a place, excited the apprehensions of Khadir Bux, police peon, then on duty, that their object was to take or maintain forcible possession of such a field; and Khadir Bux is supported in this view by Mudho, police peon, and Bulwunt Jemadar, as witnesses. They invent the circumstances, and swear to their excited apprehensions. The magistrate might convict on this case, and refuse to hear a defence on the ground of the absence of all unlawful purpose. Indeed this practical view of the operation of the clause agrees with the opening speech of the gentleman who moved the first reading of the Bill. It is perfectly clear that persons having a lawful purpose, and being on lawful business, may still be punished under this section for being five together, if a peon or jemadar chooses to be excited with apprehensions of any assault, or mischief, or trespass. This goes beyond the Macaulay Code, the words of which apply only to assemblies whose object is any assault, mischief, or criminal trespass.

Again, it is well known what precaution is taken in most regular systems of penal law to provide against abuse and misapplication, by well considered forms and rules of procedure. Thus the Livingstone Code provides that in every charge against a person for being at an "unlawful assembly," the charge must state the purpose which constituted its illegality and brought it within the criminal law. There is no such requirement in this Bill; not even the circumstances which, in the absence of an illegal purpose, excited the apprehensions of the informer, are required to be stated, but the utmost generality is therefore, according to practice, permitted.

I have referred to the Macaulay Code as containing the germ of the present Bill. It is in section 127, and is as follows:—

"An assembly of 12 or more persons is designated as a riotous assembly, if it is the object of that assembly to overawe the Legislature or Executive Government of India, or the Government of any Presidency, or any public servant, in the exercise of the lawful powers of such public servant, or of such body; or to resist the execution of any law; or to commit any assault, mischief, or criminal trespass; or wrongfully to restrain any person; or to put any person in fear of hurt, or of assault; or wantonly to insult or annoy any person; or if that assembly is attended with circumstances which may reasonably excite apprehensions that its object is one of those aforesaid."

I know not whether by some verbal hair-splitting refinements, the last two lines above may be distinguished from the first section of the present Bill, but they are its germ. I do not believe that any enlightened Legislature would pass them, nor that Mr. Macaulay would have added them to the rest of the section, which is unexceptionable, if he had been a practical lawyer, and had understood their operation, and seen what sort of offences (offences by construction) he was creating. I will proceed to the second section.

The first section having given to assemblies suspected by the police, whether riotous or peaceable (for that is the effect of it), the designation of riotous assemblies, the second provides the punishment, a fine not to exceed Rs. 200 on every person whose offence is designated "rioting," which is the same abuse of terms as in the first section. Besides this, I may observe there is a great want of feeling for human nature in thus branding with an odious name a man whose offence may be a very light one, and not at all rioting.

The third section makes it an aggravation for these assemblies to be armed, with no exception in favour of those parts of the country where by custom and habit all persons carry arms.

The next seven sections, which I must pass over for want of time to comment on them in detail, are open all to the above objections.

I proceed to section 10. This section makes zemindars, talookdars, or other owners or occupiers of land, punishable with a fine of Rs. 1,000, in case of their or their agents or servants not proving that he or they gave the earliest possible notice to the police of the fact of such assembly taking place, and that he or they used all the means in his or their power to prevent it.

In support of this section, the select committee who prepared the Bill observe, "We have thought it expedient to provide specially for the imposition of a penalty upon the owner or occupier of land or premises upon which a riotous assembly takes place, if he fail to give notice to the police of such assembly, and to use all the means in his power to prevent it." But what if he does not know of the assembly, how is he to give notice of it? Besides, a "riotous assembly," be it recollected, is not necessarily an assembly engaged in riot or actual violence, nor necessarily an assembly having even an unlawful purpose, but it may be merely a suspected assembly, an assembly which has excited the apprehensions of Buxoo, Mudhoo, Bulwunt, police peons, and such persons we know will indulge in any amount of apprehensions if they are paid for them, and will justify those apprehensions by any necessary amount of perjury. Obviously, the main tendency of this law is only to create new occasion for, and new forms of bribery; and thus it would aggravate the domi-

Appendix, No. 2. nation of a venal and corrupt police, and tend further to embitter the difficulties of capital in the Mofussil and of the propertied classes.

Suppose another case; one not merely of a constructively riotous assembly, but of an actually riotous assembly. Two zemindars, say, are at feud with one another, and some of their servants or retainers in crossing the country meet, either designedly or not, on the land of a third zemindar, and a fight ensues. This section establishes a presumption that this third zemindar is as guilty as the two others, and renders him *primâ facie* liable to a fine of Rs. 1,000; he may be in Calcutta, they in Gya; he may even have no establishment for many miles within the site of the disturbance, and yet he must prove that he or his servants gave notice to the police or used means to prevent the conflict on his land, or the liability will attach upon him.

The 11th section applies to the case of a breach of the peace by a riotous assembly on behalf of, or in the interest of, an owner or occupier, and for this case a penalty is provided, which can be warded off, only under conditions, which can rarely be complied with; hence here we have accumulated penalties, which will be severely felt by the propertied classes.

In the 12th section power is given to the chief police officer of the nearest police station to command these so-called "riotous assemblies," that is, these riotous, constructively riotous, but in fact not riotous assemblies, to disperse; to arrest them whether they are in the act of committing violence or not; and to command the aid of not only all persons present, but the zemindar or owner of the land. This power of arresting persons, because they are five together, and because a police peon may regard them as riotously disposed, or riotous by construction, when they have done no act of violence, is of a highly dangerous kind; it may be used greatly to the injury and annoyance of the population, and in the hands of the mere chief police officer of the nearest police station it will be sure often to be a grievous oppression.

To crown the whole, magistrates are empowered to tender pardon to rioters, with the view to obtain conviction.

As this Bill is intended for all the Presidencies, three months must be given after a second reading, to advertise it, which will be ample time for the further consideration of it. My report is confined to its chief traits, and is confined to the first part of it, which is new. On the subject of the second part, which is a repeal and re-enactment of Act V. of 1848, with some alterations, the Mofussil members of this society have a good deal of experience, and I reserve my report for a record of their opinions.

W. Theobald, Secretary.

The above Report having been read and the draft Bills discussed, the meeting came to the following Resolutions:—

"Resolved, That this meeting cordially approves of the separation of the Act IV. part of the late Affray Bill from the rest of that Bill. (2.) That this meeting also cordially approves of the principle of the new Act IV. Bill just read and reported on, which confines the jurisdiction of magistrates to cases of forcible dispossession actually perpetrated. (3.) That this meeting approves of the procedure proposed in the Bill, excepting the admission of reports of police darogahs. (4.) That this meeting is of opinion that 15 days—the proposed limit for making complaints of forcible dispossession—is too short for persons living at a distance, and that a month should be allowed in all cases as under Act IV. (5.) That this meeting is also of opinion that 15 days—the proposed limit for appeals—is too short, and that one month should be allowed and be substituted in the Bill for 15 days wherever that period is mentioned. (6.) That this meeting disapproves of the delegation of the powers of the magistrate to his assistant in any case, on the ground of the early age at which special powers are given in the present day to assistants, and this meeting is of opinion that jurisdiction under this Bill should be exercised only by magistrates and deputy magistrates vested with the full powers of a magistrate. (7.) That the appeal from the deputy magistrate should be to the sessions judge. (8.) That under protest against jurisdiction being conferred on assistant magistrates, yet if conferred, the appeal from them should be to the sessions judge.

Resolved, That a short petition to the above effect be prepared and presented to the Legislative Council at its next sitting, with a prayer that the Bill may be passed as early as possible.

With reference to the Bill for the better prevention of offences against the public tranquillity,

Resolved, That this meeting regards the tenor of the said Bill with great alarm as dangerous to all classes of persons, and particularly the propertied classes; and that the further consideration of it be postponed till it shall have been circulated among the members.

Resolved, That the Report prepared by the secretary on both Bills be printed, and a copy sent to every member.

To the Honourable the Legislative Council.

Appendix, No. 2.

The humble Petition of the undersigned Members of the Indigo Planters' Association, on behalf of themselves and the Association,

Sheweth,

THAT at a meeting of the central committee and members generally of the said association, held on the 6th of this present month of April, the Bill entitled, "A Bill to repeal Act IV. of 1840, and to amend the Law for giving Relief in cases of Forcible Dispossession within the Presidency of Fort William in Bengal," was read, and taken into consideration, the matter thereof being, as your Honourable Council is aware, of deep concern to the members of this association, and having already been the subject of a previous petition to your Honourable Council; and the said meeting recorded their opinion on the said Bill, in the following Resolutions:

[For the Resolutions, see the two first Resolutions above.]

Your petitioners therefore humbly pray your Honourable Council to take the said opinion in the above resolutions contained into your most serious consideration, and to give effect to the same.

And your petitioners shall ever pray, &c.

No. 2.—REPORT of a Meeting of Europeans to complain of Disorders in the Dacca District, through the Inefficiency of the Deputy Magistrate.

INDIGO PLANTERS' ASSOCIATION.

5, Bankshall-street, July 25.

AT a meeting of the Central Committee held this day,

Read a letter concerning the state of Manickgunge, a sub-division of the Dacca district, and the consequent danger to life and property. The writer says,—

"All the head sirdars that the former deputy magistrate put in gaol are now out, and revenging on those unfortunate men that gave evidence against them. I send you a list of all the principal lateeals under the deputy magistrate of Manickgunge, Hooshar Sirdar: he keeps a large body of men; he came out of gaol three months ago, and every day he has had a fight with Bishoo Sircar. On the 10th May Hooshar was taken prisoner, and the Elinga Takoors released him by paying a large sum to Bishoo. The Bettoor Takoors came out of gaol some time ago, and looted a large village of Mahajuns, belonging to the millionaire of Dacca. Every way you may hear of fighting, looting, &c. &c. The head sirdars, with a lot of their men, are to be seen at every haut. Hundreds of petitions against these men go to the deputy magistrate, but nothing will rouse his indolence, and the poor ryots are suffering. The zemindars will do nothing but tell them to wait; it is of no use to go to the deputy magistrate. The following is a list of head sirdars, and those keeping lateeals: Hooshar Sircar, just out of gaol; Bishoo Sircar, ditto; Tossootoklala, ditto; Donook Sirdar, and Mumeen-deen, Kakoo Sirdar, the Molong Sirdars, Bettoor Takoors, Elingu Takoors. Any of the above sirdars will bring into the field, within four or five days' notice, 1,000 or 1,500 men." After speaking of his own losses, through the bad manner in which justice is administered, he proceeds as follows:—

"The policemen often come and tell me, 'Sir, what can we do; we do our best, and report the same, but as the charges are against the Takoors, and people that can pay, we get nothing but budnamee (abuse); besides, we have all been beaten by the rascals, and had no redress; so it is better to get a few rupees, and say nothing, and let them lootkar (plunder) all the country, as they have already commenced; perhaps Gunny Meah Sahib will put them (the Takoors) to rights, and if he does not, why then the Takoors must govern the country; they will be the magistrates, judges, &c. Gunny Meah Sahib is a wealthy native merchant of Decca. The writer states his life is not safe, his property is sacrificed, and he concludes by asking for advice, and what steps he should take. The secretary said the advice he gave was, Hold your own as well as you can; the tide of wrong and injustice is evidently set in, and fast rising, and the Government must soon help you to save themselves, and meanwhile the Association will do all it can to hasten a change. The secretary said he had another letter from the same part of the country, which, after giving a character of the local authorities, concludes with observing, 'If the whole truth came out, or even half of it, you would be astonished and surprised that the whole machine does not come to a complete standstill.'"

A member remarked that Oude was annexed for no worse state of things.

Appendix, No. 2.

Read a letter from Messrs. Mackay, Barry and Co., Serajgunge, covering report of proceedings of a meeting of the residents of that great European mart, and a petition, both for presentation to the Lieut.-Governor of Bengal, and requesting the committee to undertake the presentation.

Mr. Barry was present and said, Serajgunge is a sub-division of Dacca, 80 miles long from north to south, and 65 broad from east to west; he did not know its total population, but it has 2,000 villages and only three thanas; there are usually between 3,000 and 4,000 boats of large dimensions at Serajgunge for loading and unloading, and the population in the town and afloat is between 90,000 and 100,000. The trade of the place is 150 lakhs (half million sterling) per annum, and there is only a deputy magistrate for the town and sub-division. He is totally unfit for his office. The European residents complained of him 12 months ago, and he got up a counter representation with native signatures. Those who signed, when asked why they had done so, answered, "He told us; what could we do?" and many denied that they had signed. The Lieut.-Governor replied to their former petition in a conciliatory tone, but did nothing, and the man had been emboldened by impunity. The Lieut.-Governor spoke of the difficulty of finding fit persons for these appointments, but he could enumerate a great many assistants to magistrates, some of them with special powers, and many of them were at places of far inferior importance to Serajgunge.

The secretary suggested that there must be half a score or more offices in Calcutta held by civilians which could be just as well filled by the professional and mercantile classes of this city, and these would be a relief if sent to the mofussil.

A member said he remembered when there was first a talk of employing Europeans as deputy magistrates, and he knew several young men who went to great trouble and expense to qualify themselves by study of the languages, but the appointments were either not worth their having, or no prospects were held out to them. Plenty of persons would qualify if they were paid properly and treated properly, but as things were now, a person who had any self-respect would hardly take an appointment.

The secretary said he knew formerly two very able men who were deputy magistrates and had quitted the service in disgust from want of prospect and pay and being subordinated often to civilians whose conduct towards them was disagreeable.

Mr. Barry said the pay of deputy magistrates was originally 400 rupees per month, but the last 20 that had been appointed had only 200, and the consequence was, the Government could get only a very inferior description of persons; of this batch there were very few who could read or write properly; and none, he believed, could pass the prescribed examination.

The petition and proceedings having been read, it was resolved, That this committee will forward the same to the Lieut.-Governor, with the expression of a strong opinion that the prayer of the petition ought to be complied with, and that such conduct as was imputed to the deputy magistrate ought not to be passed over without investigation.

W. Theobald, Secretary.

No. 3.—REPORT of MEETING of INDIGO PLANTERS' ASSOCIATION, respecting an Outrage on an European in the Jessore District.

13 May 1857.

PROCEEDINGS of a Special Meeting of the Central Committee of the Indigo Planters' Association, held this day at the rooms of the association.

The secretary opened the meeting by stating, that it had been called for the purpose of taking into consideration the particulars of an outrage lately committed in the Jessore district, in which a factory had been burned, and the European Assistant in charge, Mr. Oram, had been unmercifully beaten and wounded in five places by spears.

Mr. J. P. McKilligin was voted into the chair.

Sir Albert Larpent then read the following extract of a letter to his firm from Jinger-gatchee dated the 9th instant:

"At the very time I was despatching my letter, of the 4th instant to your address, another attack was made upon the Mutrapore factory belonging to Gudghat concern by the retainers of the Nuldangah rajah, and ryots of some villages in league with them; when the factory was burned down, and Mr. Oram, the Assistant, with five spear wounds on his body, and otherwise most unmercifully beaten, carried off. The magistrate, however, having had timely notice, and acting upon the spur of the moment, managed to follow up the parties carrying him off, was able to release him. Mr. Oram is now under the doctor of the station, and though in a precarious state may, I hope, get over the cruel treatment to which he was subjected.

"I was upon the spot next day by daylight, and have since been taken up in following up proofs against the instigator of the parties engaged in this most unusual and uncalled for attack. The rajah and most of his followers are now in hiding, and hardly a ryot to be seen in any of the villages implicated in the late attack."

Mr.

Mr. Goodenough also read an extract from a private letter from a friend in the neighbourhood, to the following effect :

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" I am delighted to hear that Larpent intends moving with a will in that infamous case of the attack on Gudghat. Living as we do 15 miles from an European neighbour, we can be murdered and all trace of us gone long before the magistrate could even hear of it, and it was only a chance that saved poor Oram from being cut to atoms and given to the fishes, and it is truly the duty of men for whom we work in the mofussil, to leave no stone unturned to preserve us from these murderous attacks, and if this case of Oram's is allowed to sleep any of us may be made away with without a soul knowing anything about it."

The matter was then fully discussed, and the following resolution proposed by Mr. Brown, and seconded by Mr. Goodenough, was carried unanimously :

" That this committee consider the outrage to be so flagrant as to call for an immediate representation to the Government, in order that a Special Commissioner may be appointed to inquire into and deal with the case, and that a letter be addressed to the Right Honourable the Governor-general of India, praying that such Commission be granted."

The secretary then drew up a letter to the Governor-general, which was approved of, and he was requested to write this letter forthwith.

The secretary then produced and read to the meeting the following extract from a letter, addressed to Messrs. W. Moran & Co. by Mr. J. W. Foggo, who has lately been the victim of an outrage almost as flagrant as the attack on Mr. Oram ; Mr. Griffiths stated that he thought this meeting a good opportunity for bringing this outrage also to the notice of the association :

" I am sorry to inform you I have met with an accident of rather a painful nature.

" On the 12th instant I rode over all the ryottee cultivation of Turruff Nucher, extending along the Bargalee river some five miles. I ordered the elephant to be in waiting a few miles to the north of the factory, intending to return home on it. While doing so leisurely, and examining some lands at one of the villages not in my elakah, but belonging to the nine annas shareholders, with whom I have several cases in court (the greater number of which have been decided in my favour), I was waylaid and surrounded on all sides by about 150 men, and was maltreated most unmercifully. I have nearly lost the sight of my right eye, and write you this with difficulty. To give you some idea of the manner in which I was paid off, I annex a copy of the medical gentleman's report to the magistrate. By the promptness of Mr. Jackson, the magistrate, who was at my factory within six hours after the case had occurred, he was enabled to seize one of the principals and several others concerned within 24 hours nearly. This was wholly an unprovoked attack, as I have not taken a single step, but through the courts, to recover our rights. As the energy of the magistrate is wholly praiseworthy, I have no doubt he will soon have all concerned apprehended. As the case goes on, I will keep you informed. I am glad to say I am recovering pretty fast, and hope to return to Sreeakundy in a few days.

" P. S.—The ezardar and tussildar of the nine annas of Nucher, who made the attack upon me, together with 17 of their head ryots, have been committed to jail for six months, and fined from 200 rupees to 50 rupees, together with labour commutable to a future fine in lieu of labour."

This communication was also discussed. Thanks were then voted to the chair, and the meeting separated.

No. 11, Strand, Calcutta,
13 May 1857.

W. H. Abbott, Jun.,
Acting Secretary to the Indigo Planters' Association.

No. 4.—PETITION and REPORT on Mr. J. P. Grant's Bill to give better Security to Under-tenures.

THE PETITION:

To the Honourable the Legislative Council of India.

The humble Petition of the undersigned members of the Central Committee of the Indigo Planters' Association, on behalf of themselves and the said Association.

SHEWETH,

That the said Committee have had under consideration the Bill now before your Honourable Council, entitled " A Bill to improve the Law relating to sales of Land for arrears of Revenue in the Bengal Presidency," and have been in correspondence with Mofussil members, with a view to ascertain their opinion respecting it, and which Bill, as your petitioners learn on a comparison thereof with the existing law, has been brought in, chiefly with a view to narrow the penal operation of the Revenue Sale Law, and better to secure shares in Zemindaries and valuable under-tenures to their proprietors against forfeiture under the said law.

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That as respects these, the essential objects of the said Bill, your petitioners regard it with the greatest satisfaction and gratitude, as fraught with benefit to all classes, not only capitalists and Zemindars, but, in the opinion of your petitioners, the cultivating classes also.

Your petitioners beg to remark, that besides the under-tenures created immediately by Zemindars, and for which protection is provided by the said Bill, there are others of great value, which are of the same nature, such, for example, as durputnees, dur-izarahs, &c., and it would be a great improvement in the said Bill if the same protection were extended to them also, and your petitioners pray that they may be included in the said Bill.

Your petitioners observe that a very elaborate and complicated procedure is provided by the Bill for the attainment of its objects. Many of the details of this procedure appear to your petitioners open to objections, and in the view which your petitioners take of them, they tend to impair the value of the proposed protection.

Your petitioners therefore earnestly desire a reconsideration of the details of the said Bill. They annex to this petition a Report on the said Bill, with extracts of correspondence, and submit the same in the hope that they may be found to contain some useful suggestions.

That subject to such alterations in the details of procedure as may on consideration appear better conducive to the objects of the Bill.

Your petitioners pray your Honourable Council early to pass the said Bill into a law, with an extension of its benefits to all such other under-tenures besides those already provided for, as fall within the principle of the said Bill.

And your petitioners shall ever pray.

REPORT of the SECRETARY of the INDIGO PLANTERS' ASSOCIATION to the CENTRAL COMMITTEE on Bill brought into Council by the Honourable Mr. J. P. Grant, entitled "A Bill to improve the Law relating to Sales of Land for Arrears of Revenue in the Bengal Presidency."

THIS Bill has been for a very considerable time before the Legislative Council and under discussion, and should in the usual course have been reported upon by me much earlier, but few materials for forming a report have been supplied to me, and they have come slowly. I have endeavoured to supply the want of written communications by personal inquiries of members, and in the result I still remain not free from difficulty. Both in the written and personal communications it appears to me, the objects of the Bill are very generally approved and much desired; but on the other hand, the details of that mode or system of procedure on which the attainment of the objects depend, are much distrusted, and by some regarded as unfit for the purpose.

In the course, also, of my inquiries, I have had reason to think that the Bill is not equally acceptable to those whose chief interests are as zemindars; and this has led me to consider whether on any and what grounds the zemindars are entitled to oppose the measure.

Though not necessary for the information of members, it is necessary, for the orderly treatment of the Bill, that I should premise a short statement of what is the present operation of the Revenue Sale Law, and how it is proposed to be altered.

By the Revenue Sale Law of the Lower Provinces the permanently settled revenue is assessed on zemindaries; a default of payment makes the zemindary peremptorily liable to sale, and a sale sweeps away all but a few specially excepted under-tenures. A zemindary is often held by several persons in common tenancy, and sometimes there are sharers in it whose shares consist of distinct integral parts, but the Revenue Law takes no notice of these divisions of interest. This Bill proposes to recognise, as separate interests, shares of a zemindary, whether held by several in common tenancy or consisting of distinct and integral parts of the zemindary, and to allow a separate account to be opened in the Collector's books of revenue to be paid by each sharer; the advantage to the sharer will be that in case of default of any sharer, not the whole zemindary will be put up for sale, but only the share of the defaulter. And with respect to under-tenures created by the zemindar, it proposes to protect them against the consequences of a sale of the zemindari, the effect will be, that the purchaser of the zemindari will take it, not, as now, freed from, but subject to the under-tenures.

Abstractedly considered, these proposals are highly beneficial to sharers in zemindaries and the under-tenure holders. They will be relieved of a great risk, saved much trouble in securing their property, and the tendency of the measure in both cases is to enhance the value of that property.

The two cases of the shares of zemindaries and under-tenures rest on distinct grounds, and must be considered separately. As respects the former, the measure lies solely between the Government and the zemindari-sharers. The Government simply proposes to modify the security which it now has for the realisation of its land revenue, in favour of this class of proprietors. It does, however, reserve to itself, in case of need, the power which it has at present over the whole zemindari, so as to be secure, in every event, against a loss of revenue. Obviously it is a measure of concession, with perfect liberty to those to whom it is proffered not to avail themselves of it. The advantages are too obvious to need minute description. By dividing the revenue and distributing the burden in the same proportions

as

as the right of property and interests, it facilitates payment. If one sharer falls into arrear the consequence is confined to that one. It thus brings within the most narrow limits practicable the penal operation of the Sale Law; and this is an advantage to the entire agricultural community, zemindars, holders of under-tenures, and ryots, for the latter are great, if not the greatest sufferers by a sale of the zemindari under the present Revenue Sale Law.

The case of the under-tenures is less simple. The parties concerned are the Government, the under-tenure holder, and the zemindar. There is no connexion between the Government and the under-tenure holder; the only interest which the Government has is in the revenue, but its policy, on the plea of revenue, has been deeply injurious to the under-tenure holder. Its principle ought to be, that so long as the zemindari is of sufficient value to enable it, by a sale, to realise its revenue, it is indifferent what under-tenures have been created by the zemindar. Now it is the rents which constitute the value of the zemindari. That value would be impaired by under-tenures, on which only pepper-corn or nominal rents are reserved; and this appears to be the only danger against which the Government has to guard. Accordingly the Bill, at the same time that it proposes to relieve under-tenures from the present law, has precautions against admitting to protection those under-tenures on which insufficient rents are reserved. On the part of Government, therefore, the measure is simply a modification of policy in favour of this important class of proprietors, and the sole question which remains is, whether it can be objected to by the zemindars.

Now when I speak of objections, I mean objections founded on some principles of right or equity, and if such there be in this case, they will be found in the contract rights of the zemindar. The contract rights of the zemindar may easily be illustrated in the case of the putneedar (who for this purpose may be taken as a representative of under-tenure holders). The putneedar is a purchaser for a price, or valuable consideration, of a portion of the zemindari lands in perpetuity, with one condition attached, namely, payment to the zemindar of a rent, the equivalent, or supposed to be, of the revenue payable for the lands comprised in the putnee. It is this condition which constitutes the tenure, connects the putneedar with the zemindar, and the putnee lands with the zemindari; and except for the obligation which it contains, the putneedar would have an absolute and indefeasible estate, and would be entirely independent of the zemindar. The putnee rent, therefore, is the only interest which the zemindar has in the putnee lands, and therefore non-payment of that rent is the only ground on which the zemindar can claim any power over the putnee tenure, and it is equally clear, that if the putneedar makes no default, he is fully entitled by his contract to be as secure against the zemindar as the latter is against the Government, so long as he pays the Government revenue.

Now compare these principles with the present state of the law. The law at present is, that if the zemindar makes default in payment of the revenue, his zemindari shall be sold free from the putnee; and the putneedar is sacrificed, not because he has made default himself, but because the zemindar did not pay his revenue. What is proposed is, simply that the putneedar shall not in future be sacrificed, and that the purchaser at a revenue sale shall take the zemindari subject to the putnee (and all other under-tenures), except when the putneedar himself is a defaulter, in which case the putneedar forfeits the benefit of the new law. In this proposal I confess I cannot find the smallest flaw in point of equity, and it is perfectly consistent with all the contract rights between the zemindar and putneedar. The only excuse which could be made for any longer continuing the present state of the law would be the necessity of it for the realisation of the revenue; but Government by this Bill denies the necessity.

Few zemindaries comparatively are brought to sale in the present day for arrears of revenue, and of these, except in impoverished parts of the country, a small proportion from the inadequacy of the rents to meet the Government revenue, the rest are put in arrears for fraud, and not unfrequently for the advantage offered by the Revenue Sale Laws. They are sold by the Collector, and often bought for the defaulting zemindar benami. The inducement to the fraud is indeed great. For example, a zemindari is put up for sale for an arrear of revenue, say of 5,000 rupees, and would be worth half a lac of rupees, if the purchaser were to take it subject to the under-tenures, but taking it free of those tenures (as he does) he will give double that sum for it. This enhancement of price, not needed to satisfy the revenue, swells the surplus after deducting from the proceeds of the sale the amount of revenue due, and is paid over to the zemindar, or if the zemindar is himself the purchaser benami, he gets the profit by creating more under-tenures. The sacrifice of the putnee-tenure, therefore, is no advantage to the Government, but is a clear gain to the zemindar; and it is notorious, that zemindaries are wilfully put in arrear by the zemindars for the sake of this and similar advantages, which can only be obtained through the medium of a sale for revenue. But if the case is free from this fraud, and the zemindar unintentionally falls in arrear, the injustice is not the less to the putneedar, nor the profit less to the zemindar; the under-tenure is annulled, the value of the zemindari is enhanced, and the enhanced value goes to the zemindar. He thus gets twice paid for the same thing; first, for a putnee on its creation, and next, at the auction of the putnee-lands, perhaps much enhanced in value by improvements made by the putneedar.

I have taken the case of the putnee holder, but the same reasoning applies to every other valuable tenure, and the evil only differs in degree.

In extenuation of the existing state of the law, it has been said the putneedar purchases his putnee subject to the risk, and has estimated it. It may equally be said he purchased with the chance of an improvement of the law; and of all men the zemindar cannot be

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permitted to object to the removal of the risk by a better law; for, that risk can never become a loss if the zemindar performs his duty; I refer to the obligation which he is under towards the putneedar to pay the revenue.

These remarks will be sufficient, I trust, for the limited purpose for which they are offered, namely, to show that the zemindar has no right to object to the proposed protection to under-tenures.

Having explained the objects of the Bill and defended its principles, I will proceed to examine the details, and the manner in which it is proposed to effect those objects. The provisions respecting sharers of zemindaries are contained in the 10th, 11th, 12th, 13th and 14th sections. By these, "recorded sharers" alone are entitled to the intended protection, and it has been suggested that it should be extended to those who are sharers in fact, but not recorded. But it has been fairly replied, that those sharers who are not recorded may get themselves recorded, and so become in a position to avail themselves of the new law.

The mode prescribed for sharers is to make an "application" to the Collector; for the application of a sharer of a joint estate in common tenancy, no particularity is prescribed by the Bill; indeed, it is obvious from the nature of his interest what must be the form, and that the form would be very simple. But respecting the application to be made by a sharer whose share consists of specific or separate portions of land, the Bill requires that it should specify the land by metes and bounds, and the amount of Sudder jumma paid [contributed] by the applicant. This latter form is subject to the same remarks as hereafter will be made on a similar requirement in the case of the under-tenures, and to those remarks I beg to refer.

The Bill having prescribed the "application," next provides for objections to it, and recognises the following:—

(1) That the applicant has no right to the share; (2) That the interest is less than he claims; (3) That it is of a different nature from that claimed by him.

And upon these objections, when made, the Collector is to institute a summary inquiry "into the fact of possession." And in the case of an applicant whose share consists of a separate portion of land, the further objection may be made, that he has not stated his jumma correctly, and on that objection the Collector is to inquire whether the alleged jumma has been recognised by the other sharers, and according to the result of his inquiry, to admit or reject the application.

It has been remarked that recorded sharers have already established their title (*), and that they ought not to be put to the risk of a second inquiry which will, in many cases, operate as an invitation and inducement to dispute and litigation on a title which never was questioned before; and following up these views it has been suggested that the applicant who proves by a reference to the Collector's books that he is a recorded sharer, should *ipso facto* be entitled to have the separate account of his share opened.

It is to be hoped that this suggestion will be adopted; but if not, it is important to note what is the inquiry which the Collector is to make as the Bill now stands. The inquiry is to be "into the fact of possession." Such an inquiry would be a departure from the application. The application refers to grounds of title; possession may or may not go with the title. The question, therefore, of the fact of title or truth of the application, may be wholly different from the question of possession. If, indeed, unrecorded proprietors were to have the benefit of the Bill, there would be some reason for putting it on the ground of the fact of possession; but I can imagine none why this fact should be inquired into in the case of persons already recorded as having a title. Moreover, what shall constitute "possession" is not explained. There is no word in the whole vocabulary of the law which admits of a greater variety of application. Possession may be constructive, or direct and actual, by oneself, one's agent or servant, or constituted by facts which show an intention to possess, and merely no adverse claim to the possession by any other person. It has been common, I am informed, for European proprietors to have shares of zemindaries recorded in the names of their managers or servants. Who, in that case, the manager or the proprietor, is in possession? If the latter, is he to lose the benefit of the Bill by reason of his not being recorded, though in possession? One tenant in common may alone receive the rents, and pay their shares to other tenants in common; or a manager appointed by one may be in possession, not for one, but for all. Who, in these cases, is in possession? A mortgagee of a share may be in the receipt of the rents, while the mortgagor is the recorded sharer: is the recorded sharer not to have the benefit of this Bill, or is the possession of the mortgagee to be construed as his possession? This is but a small sample of the cases of no uncommon kind, in which the result of an application must be extremely doubtful if the right of the recorded sharer is to depend on the question of possession.

The Bill, also, as framed, appears to me to raise a very doubtful question, or, rather, leaves it very uncertain what is the question to be tried, in the case of a sharer of specific portions of land where the objection is to the amount of the jumma stated by him. The Bill requires the applicant to state "the amount of jumma heretofore paid by him;" and then it provides that, if the objection be that the jumma "alleged by the applicant" is not the jumma "which has been recognised as such by the other sharers," the Collector is to "make a summary inquiry into the fact." What fact?—that the jumma paid is the real jumma, or the fact of payment as alleged by the applicant, or the fact of recognition? And if

* See letter in the "Englishman," 22 May, signed J. R.

if of recognition, recognition of what?—whether of the payment in fact by the applicant, or of the amount as correct? And what will establish recognition? Will simple acquiescence in repeated payments amount to recognition? Will the acquiescence of one sharer preclude the others from objecting? If one sharer says, "True, the applicant has never paid more than the amount he states, and I and my co-sharers have paid such and such other sums making up the full amount, but we have done so only from the necessity, he having paid too little," is that plea to avail in proof of non-recognition?

I offer these purely as practical difficulties which will open a wide door to dispute and litigation, and will render the success of an application in a great many cases very doubtful.

The section relating to the under-tenures are the 35th, 36th, 37th, and 38th.

The under-tenures are classed under four heads:—

1. Istumraharee and mokurraree tenures, held at a fixed rent more than 12 years before the permanent settlement.

To these the new Bill appears to be a disadvantage. By the existing law they are absolutely protected (Act 1, 1845, s. 26, c. 1); but their future protection is to depend on, first, their being registered under this Bill; and secondly, after registration, the rents reserved on them being duly paid up at any time when the zemindari is liable to be put up for sale. If, as I am informed, the tenures of this kind were all ascertained and recorded at the time of the resumption proceedings, it is hard to impose on them the necessity of a new registration, which can be obtained only by means which will open a wide field for dispute and litigation, all the power and influence of the zemindar being arrayed against the applicant; and the tenure will be equally jeopardised after registration by the second condition, through the temptation which it will constantly hold out to deny the fact of payment.

2. Tenures existing at the time of settlement against which the zemindar has failed, or may fail, to prove his right to enhance the rents.

To these, also, the new Bill appears to be a disadvantage. They are protected by the existing law, but their future security is to depend on registration under this Bill, and their rent being paid up at the time when the zemindari becomes liable to sale. I have already stated, and therefore need not repeat here, the objections to which these conditions are open.

3. Tenures of whatever description, and farms for terms of years, which have been created since the time of settlement.

For these tenures this Bill first provides protection, on two conditions: first, their being registered under this Bill; and, secondly, their rent being paid up at the time when the zemindari becomes liable to sale. The observations already made on this second condition, in connexion with the two first classes of tenures, are here applicable; and I may now add, that, dangerous as this condition is in itself, the danger is aggravated by the want of all provision in the Bill for judicially ascertaining the fact of default of payment, and for any notification of it before the sale. If these defects in the Bill are supplied, the under-tenure holder might reasonably claim not to be more harshly treated for his default than the zemindar is by the Government. The zemindar has a latest day, beyond the proper legal period, and therefore, in fact, an extension of time for payment, before his zemindari can be notified for sale; so, by analogy, the under-tenure holder should have the power of curing his default, which, as in the zemindar's case, may sometimes be a default, not of his own, but of his servants.

There is also another qualification on the right of under-tenures of this third class to be admitted to registration. The Collector is, on receipt of the petition, to cause whatever measurement, survey, and local inquiry he may deem necessary for the security of the Government revenue. This provision is a cause of apprehension to members of great experience; they say "measurement survey and local inquiry" can be carried on only by an army of native amins and their assistants, in whose train follow the well-known and dreaded corruptions; and, following up the prospect thus opened, they apprehend the effect, though less extensive, will be similar to that of the resumption proceedings in unsettling titles and disturbing enjoyment, and from the lamentable fruits of which it is said property in some parts of the country is only just recovering. It surely will be wise to take heed on this warning. The members from whom it proceeds are not insensible to the highly beneficial character of the essential objects of the Bill, and would not willingly renounce them; and it may be hoped those objects may be secured by means free from those objections. Persons entertaining such apprehensions will, of course, not apply for the proposed protection, but some of the consequences may nevertheless reach them. To meet in a degree these apprehensions, it has been suggested that the Collector should have an unfettered discretion to act in each case according to its particular circumstances in directing or establishing the inquiry or survey and measurement.

It has been remarked that the Bill will protect only the original under-tenures:—

"As regards new tenures, putnees only will be benefited by this new Bill. They can be registered and made secure in the event of a sale of the parent estate for Government arrears. But dur-putnees and all other lower tenures cannot be registered, because the proprietor did not create those under tenures. By the 7th rule of section 36, it is pretty plain that only those tenures granted by the zemindar or proprietor of the parent estate can be registered." [Mr. E. Roberts.]

Appendix, No. 2.

This is a defect, and an inconsequential one. If the rent reserved on the original under-tenure is a fair proportion of the sudder jumma, and is paid up—for both of which the Bill provides, the lower tenures carved out of the original under-tenure are of no importance to the revenue, and their safety should be left dependent on that of the parent tenure, standing or falling with it, but in respect of their own interests the dur-tenure holders should have the means of preventing a forfeiture of the parent tenure.

After this enumeration of under-tenures, which are to be placed under protection, come, in sections 36 and 37, the means by which the proposed protection is to be obtained. It is ultimately by registration of the under-tenure, and this is to be obtained by petition to the Collector, the particulars of which petition are minutely described by the Bill. Notice of this petition is to be given to all parties concerned, and they are to have the opportunity of making objections; and then the case is to be heard on evidence. This procedure is regarded by different members with various degrees of apprehension, as a probable source of frauds, forgeries, and perjuries, the usual instrumentality of Mofussil litigation.

In reference to the application to be made by sharers of zemindaries, I have alluded to the difficulty of complying with the required form. The difficulty will be still greater of following up the required petition. More minuteness of detail could hardly have been required in the petition if it had been devised to satisfy an English lawyer advising for an unwilling purchaser on a title. The petition is to comprise particulars classed under no fewer than nine heads; (1.) the pergunnah or pergunnahs in which the tenure [land] is situated; (2.) the denomination of the tenure; (3.) the name or names of the villages whereof the land is composed; (4.) the area and boundaries in complete detail; (5.) the amount of rent cesses and duties payable; (6.) the date of the deed constituting the tenure, or date when the tenure was created; (7.) the name of the proprietor who created it, and name of (8.) original and (9.) present holder, and relation between those two, and manner in which the latter acquired it.

The first and third, and second and fifth, are perhaps unnecessarily separated. The first, second, and third standing, the fourth might be dispensed with. To establish the sixth, the deed or writing I should suppose must be produced and proved, which might alone be sufficient. The fourth requirement is regarded as in a great many cases impracticable, and the case is not provided for in which the deed is lost, probably not a rare occurrence in the case of the older tenures.

It is true there is this qualification, viz. that these particulars are to be given "as far as they are ascertainable," the rule therefore is open to exceptions; but what are the circumstances which may excuse compliance with the rule? It is true also that if no objection is made, the Collector is only to make "due inquiry," and to be "satisfied." There is, therefore, in *ex parte* cases great latitude, and a dispensing power in the Collector; but this also gives opportunity and scope for the arts of the amlah. Moreover, at any time within a year, "any party dissatisfied" with the award may institute a civil suit to set it aside; which, whatever may be the extent of the privilege, whether it is to be exercised only when the award has been made after a summary investigation or exercised generally, detracts from the value of the registration.

In the annexed extracts from correspondence will be found several other remarks and suggestions on the Bill, from members of great Mofussil experience.

The question remains, can the important objects of the Bill be attained with fewer checks and precautions, and on a simpler plan, consistently with the perfect security of the revenue which is provided, or intended to be, by this Bill? The latter part of the question raises another. If those parts of the plan of the Bill are abandoned, which are directed to the ascertainment whether fair rents have been reserved on the under-tenures, what security can the Government have in their place for the safety of its revenue? The following plan has been suggested: That the under-tenures should be registered in the office of the Collector on proof simply of the deed or writing by which they are created, an abstract of which should constitute the record, and that all tenures so registered should be protected. The protection, in the first instance, would be that the zemindary would be put up for sale, subject to the under-tenures. If the bid at the sale exceeds the arrears of revenue, no question arises to affect the under-tenures. If, on the other hand, the price offered falls short of the arrears of revenue, a few days should be given for an under-tenure holder to come in and pay the arrears, he being permitted to stand in place of a mortgagee, or at his option, a purchaser. There may be an under-tenure holder without means to avail himself of this privilege; in that case, by analogy to the Bill as it now stands, any under-tenure holder should have the opportunity of establishing the *bonâ fide* character of his rent and tenure. As an ultimate resource in the interest of the revenue, the zemindari might be liable to sale free, as now, from the under-tenures; but in that case the price realised being partly made up of the value of the under-tenures, should be regarded as clothed with a trust to compensate the under-tenure holders for their loss, and a liberal measure of damages should be legislatively established. The compensation should cover the price originally paid for the under-tenure and its improved value. If the surplus proceeds of the sale were retained till claims of this kind were satisfied, there would be an end of the common fraud of zemindars making default for the sake of the gain to be derived from a sacrifice of the under-tenures.

It

It has been suggested that there may be parts of the country where the plan proposed in the Bill could be extensively applied without the consequences apprehended by some members. And in this view, that plan with a few alterations might be retained, and some such plan as is above suggested be superadded to it. The Bill would thus become universally acceptable.

Appendix, No. 2.

W. Theobald, Secretary.

10 June 1856.

On the Original AFFRAY BILL, referred to in the Evidence of *W. Theobald, Esq.*

To the Honourable the Legislative Council.

The humble Petition of the undersigned Members of the Indigo Planters' Association, on behalf of themselves and the Association.

Showeth,

THAT the said association was formed in the early part of the present year, 1854, for the purpose (among other things) of watching the progress of legislation in all matters of concernment to the classes to which its members belong, of collecting information on the state of the country and placing it at the disposal of Government, and of promoting beneficial reforms; and it comprises among its members, planters, muscull dealers in produce, and merchants, many of them connected with the largest concerns in Bengal; indeed the advances of capital for indigo cultivation and other agricultural and industrial investment by the members of this association, and the class to which they belong, may be represented as amounting to some millions sterling, chiefly British capital.

That the Bill now before your Honourable Council, intituled, "A Bill for the more effectual Suppression of Affrays concerning the possession of Property," affects all kinds of interests connected with the land and its productions, as also the security of capital and value of property, and deeply concerns the interests of the members of the said association. The association and the undersigned have therefore carefully considered its principle and provisions. To nearly all its provisions they object (but not to its principle) for reasons which they have maturely weighed, and which are embodied in a Report subjoined, which, after having been carefully prepared by a committee, was adopted by the said association.

That your petitioners respectfully submit the substance of the said Report to the consideration of your Honourable Council. In the said Report it is remarked, that the said Bill has passed a first and second reading without previous report, note, warning, debate or speech of any kind, which your petitioners apprehend is true in fact, but your petitioners at the same time admit that the regular course of legislation, according to the standing orders, has been pursued, and your petitioners would by no means suppose that a Bill of such great importance would pass a third as well as a first and second reading without full report and deliberation thereon.

That, in the opinion of your petitioners, many of the powers given to magistrates by the said Bill are suited only to a state of great social disorder or disorganization, and therefore, if necessary, they should be limited to the emergency deemed to require them, and neither be passed as perpetual nor be extended to the whole of Lower Bengal; and from these principles it follows that such a Bill ought only to be passed on previous inquiry of the most formal, public and solemn kind, of which there has been none. And your petitioners beg to add their assurance that in any emergency requiring the establishment of extraordinary powers, your petitioners and the classes to which they belong would be found on the side and among the best supports of law, order and government, and they would welcome at all times the fullest inquiry into the state of the country, as sure to prove that the establishment of Europeans is productive of commercial and social effects which are beneficial to the population and conducive to order and improvement.

That, for the purpose of authenticating this representation on behalf of the said association, your petitioners beg to state, that the members thereof met after public advertisement for a general meeting, and passed the following among other Resolutions, viz., "That the Report just read" (being the Report subjoined) "has the warm and cordial approbation of this meeting, and that a Memorial to the Honourable the Lieutenant-Governor of Bengal and Petition to the Legislative Council be prepared in accordance with it, and that all necessary measures be taken to prevent the Affrays Bill passing."

That your petitioners, deeply impressed with the injurious nature of the said Bill, pray your Honourable Council to take this Petition and the said Report subjoined into your most gracious consideration, and not to pass the said Bill, and also that your Honourable Council will be pleased to hear counsel in support of this Petition and against the said Bill.

And your petitioners shall ever pray.

Appendix, No. 2.

REPORT of the Committee of the INDIGO PLANTERS' ASSOCIATION on the Draft Bill now before the Legislative Council, entitled, "A Bill for the more effectual Suppression of Affrays concerning the possession of Property," being the Report referred to in the above Petition.

THE Committee beg to report to the Association that the secretary has received from district committees and members in different parts of the Mofussil, communications on the subject of this Bill, all expressing the greatest alarm at its provisions, and urging the committee to take all possible means of preventing its passing into a law. The members of the committee also themselves can testify from a very extensive personal acquaintance in the Mofussil, that the feeling of alarm is very general, and the committee has the satisfaction of adding, that a considerable portion of the European community of Calcutta not immediately interested in the Bill, and many of their native friends also, sympathise with them, and this committee believe that if there had been time, a considerable body of persons, not members of the society, would have co-operated with them on the subject of the Bill.

For the purpose of reporting upon it, your committee have considered the Bill under the aspect, first, of its general character and principles, and, secondly, with reference to its apparent objects, and the powers which it contains for their accomplishment.

The committee approach these subjects under the disadvantage of not being furnished with any exposition of its motives or principles, no such exposition having been given either by the at present unknown author of the Bill, or by the Legislative Council. It has been brought in, and read a first and second time, without previous report, note, warning, debate or speech of any kind. The committee, therefore, beg first to record their sense of its very grave importance. It is locally limited to the Presidency of Bengal, but within that Presidency the whole agricultural community, and all kinds of interests connected with the land, are affected by, or are within the scope of its provisions.

It appears extraordinary to the committee, that a Bill of such extent and importance should have been brought to its present stage without some notice or some invitation for the expression of an opinion to some of the classes concerned; and to this fact the committee wish specially to direct attention, because it is obvious that no opportunity for the previous expression of opinion having been given, the society has really no alternative but that of embarking at once on a public discussion of the measure, and, according to their view of its merits, a public opposition.

The principle of greater part of the Bill appears to be the same as that of Act IV. of 1840, of which it purports to be an alteration and extension. The main principle of Act IV. was, and consequently of the present Bill is, unexceptionable—that of securing all actual *bonâ fide* possession against disturbance by violent means, and interposing the authority of the executive magistracy to prevent force where there is reason to apprehend it, or to deprive it of its advantages where it has been actually used and successful. This committee give their most entire approbation to these principles; and Act IV. of 1840 would indeed have been a boon and a blessing, if, resting on such principles in the abstract, it had given effect to them, but according to general opinion it has not, and the preamble of the Bill now under consideration in effect confesses it, and recites that the provisions of Act IV. have been found insufficient, and therefore that it is expedient to extend and alter the same.

It is obvious to remark, that if Act IV. had answered its purpose, its extension to new subjects would have been unobjectionable; or that if the alterations now proposed had remedied the defects of Act IV., or secured a proper administration of it, the amendments and extension would have made the present Bill acceptable. The question, therefore, arises, in what respect has Act IV. failed? and this may generally be described in a very brief proposition. Act IV. though intended to supply a simple procedure for the ascertainment of a very simple fact, or state of facts, that of actual possession or dispossession at a given point of time, has resulted merely in the establishment of a new and anomalous kind of litigation, in which the simple nature of the question to be decided is lost sight of, every variety of documentary evidence is received, as if the right were in question and not that of mere possession or dispossession, and most of the evils of a regular suit, such as forgery and perjury, have been let in. In short, Act IV. has been perverted from its main object of ascertaining summarily the simple fact of possession or dispossession, and it has been administered in a manner at variance with its spirit and principle. The committee has to add that the alterations made by the present Bill not only afford no correction in this respect, but aggravate the dangers and other ills which result from the abuse of Act IV., by cutting off the right of appeal.

2. The committee will now proceed to report on the details of the new Bill, and must bespeak patience and an indulgent consideration, in respect of the task being in a degree technical.

Section 1. Requires no further remark than that it repeals two sections only of Act IV. of 1840. Whether it be the intention that the rest of Act IV. should remain in operation, may be questioned; and what may be the eventual effect of thus repealing only part of the Act, and in the new Bill dealing with subjects included in the unrepealed parts of Act IV. in an altogether different phraseology, this committee is unable to say; but it is a feature in the new Bill, of sufficient importance to be reported to the society.

Section 2. Describes the kinds of property to which the executive and judiciary provisions of the Bill are intended to apply. On this description it may be remarked, that it includes all the kinds of property comprised under Act IV. and some others; whereas Act IV. extended only to disputes about actual corporeal possession of land and similar hereditaments, and was intended to quiet possession, properly so called, or to actual use, and was intended to secure the actual use, till the right to the possession or use, as the case might be, was ascertained; the new Bill extends also to mere money claims, which this committee thinks is of exceedingly doubtful expedience.

Section 3. Empowers the magistrate to attach (which means take possession) of the subject of dispute; but there is this important difference between Act IV. and this Bill, whereas Act IV. only authorized property to be attached after inquiry, and only in the case of magistrates being unable to ascertain what party was in possession, this section of the new Bill empowers the magistrate to attach the property before inquiry, in other words, on the mere receipt of intelligence, perhaps of the most vague kind, that there is a dispute and a breach of the peace probable. The Jessore committee have given some illustrations of the dangerous character of this provision; it appears to be regarded by the Jessore committee as striking at the foundation of property, and this committee regards it as of the most dangerous character.

Section 4. Appears to be an indirect mode of charging upon the agricultural community a portion of the necessary expenses of a public police force; and it is questionable in point of principle, and practically objectionable as being exceedingly likely to be abused.

Sections 5, 6, 7 and 8. Observations of some importance might be made on these sections, if the committee merely recommended amendments and alterations in the Bill; but as the committee are of opinion the Bill ought not to be passed at all, it would be a mere waste of time to discuss minute amendments.

Section 9. Takes away the right of appeal against any order of any magistrate or collector under the Bill. The committee have to observe, that the almost universal institution of the right of appeal is one of the peculiar features of the East India Company's judicial and magisterial system. In no other system is it found to such an extent. Its expediency in this respect has been the subject of much discussion, in which, it may be observed, the Indian Law Commission, and every authority having a deliberative voice in legislation have joined, and the result has been in favour of the universal right of appeal. The grounds are well known, and may briefly be stated to be the settled belief that it would not be safe for the public or right in the existing state of the Company's judicial and magisterial establishments to allow their orders and decisions to be final in the first instance, or without appeal. It could only be on these grounds of, if the expression may be permitted, a foregone conclusion of public policy, that Act IV. gave the right of appeal. This committee and the Mofussil committees and members generally attach the highest importance to this right of appeal, and their experience under Act IV. only serves to confirm their opinion of its essential importance, and that it is as important under Act IV. as in any other litigation. The Jessore committee says, "If suits of this kind could always be tried by officials of ability and experience, we allow that the first order should be decisive, and that no appeal should be allowed. But it often must happen that young and inexperienced men have to try such cases; men who, from being ignorant of Mofussil doings, are necessarily much in the hands of their amlahs. If it is known how important to indigo planters and to zemindars the Act IV. decisions are, it will at once appear how necessary it is that an appeal to a higher authority should be allowed." And indeed this really is confessed in the Bill, for though the right of appeal is taken away, the Sessions Judge may, on application of the parties concerned, call for the record, and require the magistrate to take further evidence, &c. The remarks of a very experienced and intelligent member (Mr. Forlong), in a letter to the secretary on this anomalous substitution of a proceeding, for which it is impossible to find a name in any system of jurisprudence, deserves also to be quoted: "No. 9, taking away the power of appeal from a magistrate, and giving the judge only the right to send back a case for further inquiry to a magistrate, who can be supposed guilty of denying any one a fair hearing, is something that will rather astonish the people of England, more especially when, as I said above, the magistrate may not only be deficient in experience, but put into his situation from no merits of his own, or any aptitude for the discharge of its important duties ever inquired into; and this perhaps in a district about four times the size of Lanarkshire, whilst Jessore adjoining has an area of 5,180 square miles, or within 500 miles, of the size of Yorkshire, and yet I have often heard a magistrate complain that he had little or nothing to do, arising solely from the people, seeing how utterly hopeless and expensive it was troubling him at all." It may also here be repeated, that the mere denial of the right of appeal, and the substitution of the discretion of the judge, is no true correction, nor so intended, of the mal-administration of Act IV., nor any restoration of its spirit or principle.

Section 11. It would not have occurred to this committee to take an objection to this section, which is of a merely supplementary kind; but the secretary has pointed out dangers which the committee quite apprehend. To make it an offence, as the section does, to use force in opposing a judicial order is just and expedient, and might well be part of the general law, and therefore unnecessary to be made the law by a special enactment of a limited kind; but this section also makes simple "threats" penal, without defining what kind of threats they must be, or to whom or in what place they must be made; so that it appears to the committee that mere idle words of heat and passion, spoken perhaps to a

Appendix, No. 2. darogah or chowkeedar under provocation, and at a great distance from the place in question, may bring on a person, whom the decision may really have wronged, the punishment of imprisonment with hard labour or fine. The same objection applies to the offence of "knowingly contravening" an order; it is not foreer, because that is already provided against; nor can it mean threats, for the same reason. What is meant? Clearly it is but one step removed from making "thoughts" punishable.

Section 12. It must be obvious on a careful examination of this section, that an important portion of it belongs rather to the general criminal law than to the proper subject of the Bill; the committee refers to that part of it consisting of general words by which it is made to apply, not only to breaches of the peace, but to other crime, that is, all kinds of crime. The Jessore committee, of course, not adverting to this feature of section 12, but regarding its reference merely to breaches of the peace in disputes about land, have made the following very pertinent and, this committee thinks, just observations:—"Section 12. If this be passed, a door will be opened for great oppression; nothing is more common than for ryots, whose intention it may be to evade their indigo contracts, or the payment of the rents to zemindars, to make a complaint that an indigo planter or zemindar has assembled gangs of men, with the intention of breaking the peace. This peechbundy petition, as it is called, requires few witnesses to substantiate it, and the magistrate might then, by the proposed law, send bodies of police to be quartered on the party thus fraudulently complained against. These men, who will be hangers on at the courts, people of worst character, are not likely to be satisfied with the legal charges they are entitled to. They will demand presents daily, or they will make false reports, which will in time force the unfortunate sufferers to their terms. The oppressions that will be caused in a hundred ways by this arbitrary law, are so well known to all who have any Mofussil experience, that it is surprising such a law could ever have been conceived. It looks like a law not to keep peace in the Mofussil, but to drive people from it."

Section 13. The committee finds from the correspondence and personal report of the secretary, that members differ in their opinion of this section. Probably those who approve it as a whole have not examined it in detail, and their approbation therefore is scarcely to be weighed against specific objections. Objections of considerable weight have been taken. The section, in the most general words, empowers the magistrate arbitrarily, that is, without reason assigned or apparent, to call for a list or report of all kinds of servants, except menial employed in a zemindary, factory, or other business establishment; and to call for such list as often as he pleases, and at any time; and not only of persons in the service at the time, but of discharged servants, and all who were in the service any part of the current year. The Jessore committee observe: "To this section 13, we see only one objection, namely, that fixed periods should be given for such reports to be forwarded. It would be very harassing that they should be called for continually by magistrates; but by the proposed law, it would appear that they have the power to do so;" and it may be added by this committee, that the section makes no exception of unintentional omissions of any names whatever from the list, omissions from oversight, or not recollecting, cases very likely to occur, as must be obvious on a consideration of this section.

Section 14. This section invests magistrates with a purely arbitrary discretion to require the discharge of any servant or retainer of any owner or occupier of land. The magistrate has only to "see reason to believe" that the servant is likely to commit a breach of the peace, and the magistrate may require his dismissal. The section appears to the committee to be without a parallel in all that they have heard or read of in the annals of legislation, in any part of the world. The master is to be no longer master, nor the head of his own establishment; but is to carry on his business, often of a very various kind, in subordination to a public officer, who has no interest in his concerns. A magistrate may require the discharge of a servant without knowing how essential his service may be, or what ruin would follow his dismissal, and that without previously calling either master or servant before him to defend himself from an unjust charge or unjust suspicion; but after having done it he must record his proceeding. Such a power belongs, in classification, to that extra legal kind which are sometimes assumed in extraordinary emergencies without being previously given, or if given, are given only in times of real public alarm and political danger, and a strict justification after the event is required from those who assume them. It has been remarked that the proposal of such law is a condemnation of the existing system of government. If the lower provinces of Bengal require such a law as in this and the connected sections, its condition might indeed justly be said to be fearful. If every zemindaree contained a small fort full of fighting men or club men, if every indigo factory was a focus of disorder and violence instead of being the home of European intelligence, a seat of commercial enterprise and industry, and the abode of capital, where success depends on economy and prudence, and no force generally is kept except for the purposes of necessary defence against dacoits and depredations, and to carry on business of a legal kind, the proposal of such a law would be barely tolerable. So far as European planters and other Mofussil Europeans are concerned, it casts, or may appear, where they are not known, to cast a stain upon them and their establishments, which, by their regard for their own fair name and fame, and their country's name, as British and Christian, gives them very great pain; and with reference to this, the committee have already sent to the press for distribution the opinion entertained by one of the most enlightened of Governor-generals of Europeans in India, upwards of 20 years ago, given in refutation of similar attempts to depreciate British people. Other measures of vindication will doubtless follow. To dwell therefore no longer on this painful view of this and the connected sections, the committee

committee report it as their opinion, that if such a law were passed, its immediate effect as respects indigo factories would be, that employment in them would be avoided by respectable persons, both Natives and Europeans; the existing proprietors would desire as early as possible to disengage their capitals; depreciation of the value of factory property would instantly take place, and this new law would have brought on new evils, the magnitude and importance of which cannot be foreseen.

It may be as well to quote from a very miscellaneous correspondence some of the remarks on section 14. The Dacca committee says:—"The committee view with alarm the Draft Act in substitution for Act IV. of 1840, it being their opinion that the magistrates have at present most ample powers for preserving the peace, and that the power of ordering planters or zemindars to dismiss their servants, with which it is proposed to invest them, and which would be attended with no beneficial results, is highly dangerous, especially in the hands of young men, from among whom magistrates are at present chosen. The experience of all our members is, that when the magistrate is a man of intelligence, temper and judgment, he can manage a district with the laws at present in force, but when otherwise, vesting him with higher powers would merely increase his means of doing mischief and creating discontent."

The Jessore committee says:—"We consider that the power to be given to magistrates (in section 14) is so totally opposed to the rights and interests of capitalists in the Mofussil, that it would tend to check all investment of capital therein. Let us suppose the common case of a factory gomastah through whom advances had been made at the commencement of manufacturing operations: thousands and thousands of rupees are given to this man, and upon him entirely depends the planter's reliance to work off his indigo plant; should this man be dismissed by a summary order of the magistrate, through perhaps a false complaint made by a private and secret enemy, the planter might be utterly ruined. Or suppose an assistant in charge of an important division of a valuable concern, which, from his having superintended it for years, he is well acquainted with, but for which a new assistant would for some months be useless. How easy it is to see the ruinous consequence that would incur from an order by a magistrate to dismiss the assistant, and it may be added, nothing could be more arbitrary and cruel. It would be thus to deprive a man of his very means of existence, for who would dare employ a man objectionable to the authorities? Another supposititious case might be given, changing the locality. Were the same power conferred upon a Calcutta magistrate, what would be the position of a mercantile firm were they ordered to dismiss their most valuable assistant, whether European or Native, at a moment's notice? When it is notorious that false charges are quite as common as true ones, and easily provided, such a law as is now proposed would cause incalculable injury. A factory might be closed, the collection of a zemindary might be stopped by a careless order of the magistrate."

Section. 15. The committee reports on this section with mingled feelings of surprise, sorrow, and indignation; surprise, because it appears to them to have reference to a supposed state of things which really has no existence. Where, the committee asks, are the "club men," the "fighting men," and "others," thus designated as a criminal population? It may be said if the offence supposed does not exist, the law will have no application. But it is eminently adapted for misapplication. This committee is not aware of the existence of any other clubs than the bamboo stick, in the native language a lattie, and in many districts it is the habit of the whole population to carry them; of necessity every concern has an establishment armed, so to say, with latties; therefore club men, therefore fighting men, and of necessity employed, because there is no public police which can in any degree be depended upon. In every agricultural and commercial concern in the Mofussil, the house and premises require a protective force, formerly a much greater force than at present; without private guards the property of various kinds, often a good deal of treasure, would not be safe; such is the state of the country, that no proprietor could safely send about the messengers or peons without a club or lattie for self-defence; such then being the case, how is this lawful employment of club men, to adopt the exaggerated phraseology of the Act, to be distinguished from the unlawful? How is the intent to employ them unlawfully to be established? It may be replied in the 14th section, the magistrate must "see reason to believe it." But the question returns, "see by what means and by what evidence?" And what is it that he is to see? "reason to believe" the existence of what? Of an "intent." Thus we have thoughts, imaginations, internal conceptions, in other words "intents" evidenced by nothing but the possession of a stick or lattie brought within the criminal jurisdiction of magistrates.

The penalty imposed by the 15th section has justly been animadverted upon, with a mixture of indignation and ridicule. For every person "engaged" with intent "to facilitate" riot, the employer or hirer is to suffer imprisonment not exceeding six months, or at the magistrate's discretion, a fine not exceeding 200 rupees, which might thus be made at the pleasure of an informer to amount to lakhs of rupees, or to imprisonment for a couple of centuries.

If any further means are necessary for the better prevention of affrays, this committee thinks the proper measures are indicated by Mr. Forlong. "The truth," says that gentleman, "however really is, that if there is a determination to put down the possibility of any breach of the peace in a district where European settlers are numerous, and large capital employed, a chief magistrate of never less than 15 years' standing in the service, and with a character for both energy and discretion, must be employed with powers much more extensive than magistrates have hitherto held, giving him a well paid European staff, and this would make an affray impossible, and could give reasonable offence to no one. Or, if

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this plan is too expensive, appoint such a magistrate as I have named, and give him the support of some of the best men in his district as justices of the peace, a simple and most inexpensive way of making the law more powerful; for every man who would accept such an office, and be sensible of the dignity conferred upon him, would be still more alive to the degradation and shame any improper or partial exercise of his duty would to a certainty entail, and such men may be had if they are sought for. At present, the whole machinery a magistrate has to depend upon is corrupt beyond belief; and to give more power without more experience to exercise it, and more truthful and active vigilance to detect all the tortuous chicanery and deceit with which he is surrounded, is about the most incongruous determination which any sane body of men ever yet arrived at."

Section 16. Obviously lays open the whole class of natives who are employed as burkundazes and peons, and in that capacity are a useful and necessary class of servants, to false charges of having taken hire or otherwise engaged themselves for unlawful purposes, when, in fact, they have only been employed in, or engaged for their proper occupations.

Section 17. By an Act passed in 1845 (Act 5), commonly called the Mochulka Act, powers, than which greater are difficult to conceive, were given to magistrates to take security against anticipated breaches of the peace, and this committee is of opinion, that that Act is sufficiently comprehensive to embrace all cases in which the security of a Mochulka should be required to be given. This section appears chiefly intended to abolish the necessity or practice of calling at least for some evidence as a ground for requiring security to be given, and in the place of evidence it puts the report of a police officer as credible information. The credit given judicially to the reports of darogahs, is one of the peculiar features of the East Indian Company's system, and a source of the greatest bane to the population. On those who can pay, they are used as the means of systematic extortion, and on the poor, of oppression. To give further effect to police reports is only to aggravate an evil, the enormity of which can be understood only by those who have actual experience and are within the sphere of its influence.

Under the Mochulka Act it is not legal, this committee believes, to arrest in the first instance; but this section authorises the arrest in the first instance, without notice or summons. The Jessore committee remarks:—"With reference to the power to be given to magistrates, to issue a warrant for arrest, even before an answer is asked for, we can only say that the law will be a most arbitrary and harsh one, which no civilised people should be subjected to, and certainly most unfit for Englishmen." This committee entirely concur in this observation. Without wishing to make any distinction to the disadvantage of native proprietors and other natives in the Mofussil, it is obvious that in case of criminal or unlawful intention, the native, if he chooses to avail himself of them, has opportunities which are not possessed by an European. For example, the European is the head of a large concern, or of some known branch of a large concern, and generally his presence at his place of business is indispensable; the native establishment cannot go on without him. There is no place of pilgrimage to which he can go, a couple of hundred or a thousand miles off, as may suit his fears, his devotion, or his inclination, and where he may be lost in the multitude of his countrymen, or become sacred in their estimation, while a grave suspicion or charge is hanging over him,—no such place is open to the European. His property also, whether his own or managed by him, is known; by habit he is indisposed, by the English law which applies to him he is incapacitated, to put it into the name of a third person, or convert it into a benami, as the native may, and in that shape secure it from attachment. These peculiarities in the condition of the European are considerable, and with reference to them this committee think that a discretionary power to arrest in the first instance, for the mere purpose of requiring security, ought not to be given; and that in any case the conditions under which an arrest may be made should be expressly stated and strictly defined, whether in respect of natives or Europeans.

Section 18. Gives the power of pardoning accomplices in cases of riot and affray, and thereby only multiplies the opportunities, already too numerous, of perjurers in the Mofussil to sell their services, by offering to confess being accomplices in an affray which never in fact happened, and thus they may at once get up and prove a charge of an offence altogether unreal. This is only one of many consequences likely to flow from this extension of the power of pardon. Besides, in the opinion of this committee, it is not the interest of society thus to make light of the prerogative of pardon, even if great abuse of it were not probable.

Section 19. Applies in terms "to persons who may be proved to be in the habit of engaging themselves for the purpose of aiding the commission of riot or affray," and extends to them an old regulation regarding budmash, &c., which has already placed the rural population much in the power of the police, and has been perverted to great oppression.

A case has been reported to the Secretary for the purpose of illustrating the operation of the regulation referred to. A factory chowkeedar, known by his employer to be a steady and good man, was reported by the darogah from some motive of spite, probably of some third person, and through the inducement of a bribe, to be a budmash, and the magistrate, solely on the credit of the darogah's report, required him to give security for 100 rupees, with one surety, which of course a man whose wages were only 2-8 per month, and all his possessions not worth 10 rupees, could not do; on default of this he was imprisoned for one year; at the end of which he was again required to give security, which he could not do, and

and on report of this default he was further ordered to be imprisoned for two years. To this second imprisonment the sanction of the judge was necessary, and was given as a mere matter of course, such cases never being dealt with judicially. Without entering therefore into any detailed criticism, the committee regards section 19 as open to the most serious of all objections, viz., that it increases the power of darogahs and other police over the population. It empowers a darogah to report a man whose occupation is the lawful one of a chowkedar or burkundaz or durwan to be a person proved to be employed for the commission of riot or affray, and the man is ruined, taken from his wife and children, who of course are thrown abroad to swell the ranks of pauperism or crime.

Your committee has now rapidly reviewed the several clauses of the Bill. From the haste with which this task has unavoidably been performed, many of its defects have doubtless escaped them, but enough appears to induce them to put on it their most unqualified condemnation in all its parts and as a whole. Has Act IV. failed to confer the benefit for which it was certainly designed and apparently adapted? Undoubtedly it has, and that it has is confessed on the face of the Bill. Why has it failed? Certainly not from any limitation contained in it on the powers conferred by it on the magistracy: yet the chief remedy which this Bill affords is the aggrandizement or increase of the powers of the magistracy. Why, then, the committee repeats the question, has Act IV. failed? Certainly not from the too narrow and restricted limits of the criminal code of the East India Company: yet another chief remedy of this Bill appears to be the bringing into the category of crime things never brought under criminal judicature before. And while the Bill thus extends the definition and enlarges the catalogue of crime, it in a still greater degree extends the power and influence of the native police, which is notorious for the abuse of power. This committee therefore is of opinion that the present Bill will aggravate all the ills which it may be designed to prevent, will create new ones, and the committee recommend that the Society take all the means in its power to prevent its passing, and that with this view a Petition should be addressed to the Legislative Council, and a Memorial to the Honourable the Lieutenant-Governor of Bengal, and that deputations should wait on the Governor-General and Lieutenant-Governor to the like end.

W. Theobald, Secretary.

The above was communicated to the Bengal Chamber of Commerce; and was acknowledged by the Secretary of the Chamber in the following letter:—

Sir,

28 October 1854.

I AM instructed by the Committee of the Chamber of Commerce to acknowledge the receipt of your letter of the 25th instant, accompanied by a printed abstract of proceedings of a meeting held on the 20th instant, to receive a Report of a Special Committee upon a Government Bill "for the more effectual Suppression of Affrays concerning the possession of Property."

The proceedings of that meeting have been observed by the Committee with no ordinary interest, and I am desired to assure you that its co-operation shall not be wanting upon any occasion where its services may be called for, and can be rendered available to obtain the abandonment of a legislative enactment restricting the liberty of planters and others, and conferring dangerous powers upon Government officers of inadequate experience.

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FORT WILLIAM—HOME DEPARTMENT.

REVISED RULES for the Examination of Assistants in the Lower Provinces of the Bengal Presidency.

EXTRACT from a DESPATCH from the Government of India to the Honourable the Court of Directors in the Home Department, dated the 23d December, No. 95, of 1853.

Revised Rules for the examination of assistants in the Lower Provinces of the Bengal Presidency. Home Cons. 28 Sept. 1853, No. 1 to 8. 7. In continuation of our letter, No. 89, dated 2d December, we have the honour to forward copies of certain revised rules passed by the Government of Bengal, for the examination of assistants in the Lower Provinces of the Bengal Presidency.

8. Copies of these rules have been furnished to the Local Governments and to the Foreign Department.

EXTRACT from the PROCEEDINGS of the Most Noble the Governor-General of India in Council, in the Home Department, under date the 23d September 1853.

Nos. 1 to 3.

(No. 1618.)

From the Under Secretary to the Government of Bengal, to the Officiating Under Secretary to the Government of India, Home Department; dated Fort William the 29th August 1853.

Sir,

General.

In continuation of the papers which were submitted to the Government of India with this office letter, No. 881, dated the 21st April last, I am directed by the Most noble the Governor of Bengal, to forward the enclosed two printed copies of the revised rules for the examination of assistants in the Lower Provinces.

I have, &c.

(signed) W. G. Young,

Fort William, 29 August 1853.

Under Secretary to the Government of Bengal.

REVISED RULES for the EXAMINATION of ASSISTANTS.

(No. 4.)
Enclosure.

I. *Half-yearly Examinations of Assistants.*—A half-yearly examination of assistants, liable under these rules to examination, shall be held in each division in the months of March and October of each year. The examinations shall be held at the station which is the head-quarters of the Commissioner of the division; or, subject to the permission of Government, at any other station in the division which that officer, on each occasion, may appoint.

II. *Two Qualifying Standards.*—At these half-yearly examinations there shall be two standards of qualification, according to one or other of which the assistants shall be examined. An assistant must be examined and found qualified according to the first standard, before he will be vested by Government with the special revenue powers described in section 21, Regulation VIII. of 1831, or the special judicial powers described in clause 3, section 2, Regulation III. of 1821. An assistant who has been found, at some previous examination, qualified according to the first standard, must be found qualified according to the second standard before he will be considered by Government capable of holding the full powers of a Joint Magistrate, or the full powers of a Deputy Collector.

III. *Effect of passing by each Standard.*—An assistant who has passed according to the first standard of examination, and who has been six months at a station as an assistant, will usually be vested with the special powers when recommended for such powers, in the usual manner; but an assistant, though passed according to the second standard, will not be vested with full powers until he shall have been, at least one year, exercising the special powers of an assistant in the Judicial Department.

IV. *Assistants with full Powers must pass.*—The Government will promote to a joint magistracy and deputy collectorate of the second grade no assistant of those who have been already vested with full powers, who shall not have been examined under these rules,

rules, and found qualified according to the second standard. All assistants will be promoted, under ordinary circumstances, in the order of their passing the examination now prescribed, according to the second standard of qualification.

V. *What Assistants are to be examined.*—All assistants who have not passed according to the first standard of qualification fixed by the present rules, and who have been more than six months at their stations as assistants, shall be subjected to half-yearly examination. And all assistants who have passed according to that standard, but have not passed according to the second standard, and who have been more than two years at their station as assistants, shall be subjected to half-yearly examination. All other assistants, who have not passed according to the second standard of qualification, may be examined at any half-yearly examination, with the special permission of the Commissioner of their division previously obtained. Assistants examined under these rules will draw the usual travelling allowance to and from their respective stations.

VI. *Central Examination Committee.*—The Government will constitute a committee, to be called the Central Examination Committee, by whose instructions the Commissioners shall be guided, and with whom they shall correspond on all matters connected with these half-yearly examinations. The Central Examination Committee will consist of one judge of the Sudder Court, who shall be president thereof, and of one member of the Board of Revenue, both nominated by Government; also the registrar of the Sudder Court, the secretary to the Board of Revenue, and such other members as the Government from time to time may appoint; a secretary to the Committee will be nominated by Government.

VII. *Duty of the Central Examination Committee.*—It shall be the duty of the Central Examination Committee to fix on every occasion the half-yearly examination days, which shall be the same for every division. But, subject to the direction of the Government, the station at which the examination is to be held shall be left to the determination of the Commissioner. It shall be the duty of the same committee to prepare beforehand for each examination sets of questions, to be put to the assistants under examination, a sufficient number of copies of each of which sets shall be forwarded to each Commissioner in a sealed packet, not to be opened until the moment of examination. The Central Examination Committee from time to time shall lay down such rules as may appear to them best for the guidance of the Divisional Committees, in order to ensure a fair and uniform method of fixing the degree of attainment upon each point of examination which the several assistants examined may reach.

VIII. *Divisional Examination Committees.*—At the station in each division where the examination is to be held, the Commissioner of the division shall constitute on each occasion a committee consisting of public officers, to be called the Divisional Examination Committee, whereof he shall be president, and the judge of the station, if not absent on leave, shall be a member.

IX. *Duty of the Divisional Examination Committees, and Reports of the Examinations.*—The examinations shall be conducted by the Divisional Examination Committees, who, after due deliberation, in respect of each assistant examined, will record the result, stating their opinion as to whether the standard of qualification has been attained or not, which result, in case of difference of opinion, will be determined by a majority, and shall deliver the record to the Commissioner. The Commissioner shall transmit the record to the Central Examination Committee, with his own report, wherein he shall state his agreement or disagreement with the Divisional Committee in each case. The Commissioner will be responsible for the fairness, impartiality, and proper strictness of the examination. The written answers of the assistants, and the other papers written by them either in the vernaculars or in English, shall be forwarded with the record. The Central Examination Committee, after taking all the reports into consideration, and perusing any of the examination papers that it may seem to them proper to peruse, shall report to Government the names of such assistants as, in their opinion, have proved their qualifications according to one or other of the standards in force, noticing especially, in the order of their merit, any assistants who, with reference to the length of their residence in India, may have passed with great distinction.

X. *Principal Object of the First Standard.*—The principal object of the first standard of examination shall be to test the proficiency, for practical purposes, of the assistant, in the vernacular language of his district. For this purpose, at least, three papers which he has never seen before, taken from official records very much at hazard, and written by different persons in a plain running hand, must be read aloud by the assistant correctly, and without great difficulty; and after being read aloud, their contents must be correctly explained by him in English. An English judgment, or other official paper, to be furnished by the Central Committee, must be translated by him into the vernacular without assistance. The translation must be substantially correct in meaning, and intelligible to a native; tolerably correct in grammar and spelling, and free from any very bad errors of idiom. He must dictate off-hand, with some fluency, the translation into the vernacular of an English report, or other official paper, also to be furnished by the Central Committee, whereof the translation will be written down exactly as dictated. The dictated paper must in like manner be intelligible and substantially correct. He must then be tested in conversation with two or

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three natives, in such manner, and to such extent as shall suffice to satisfy the Committee as to the degree of his power of understanding natives of different classes, and of making himself understood by them, both in common conversation and in the usual course of catcherry business. An assistant must pass successfully through every step of this branch of the examination, in order to qualify according to the first standard.

XI. *Second Object of the First Standard.*—The next object of the first standard of qualification shall be to test the assistant's general acquaintance with the leading principles of the systems of revenue administration and criminal justice, and especially with so much of the laws and rules of procedure as it is necessary for an officer to know, in order to exercise properly an assistant's special powers in both departments. For this purpose, a revenue and a judicial set of questions shall be furnished by the Central Committee. These questions should be so framed as not to involve points of difficulty or rare occurrence, and to show rather the possession or the want of a general and intelligent acquaintance with the subjects of examination, and the fundamental laws applicable thereto, than of a knowledge of a string of points of detail, and dates of orders, which may be soon learned for the occasion, and are generally as soon forgotten again. These questions must be all answered without book.

XII. *Third Object of the First Standard.*—The next object of the first standard of examination shall be to test the power which the assistant may have acquired to deal with conflicting arguments and evidence, in actual cases. For this purpose, two decided cases, with the final proceeding in each withdrawn, which the assistant has never before seen, one from the Collector's and one from the Magistrate's office, of the nature of cases made over to assistants with special powers, shall be given to the assistant. The papers may be read over to him by a native officer, and the explanation of any difficult word or phrase may be asked for and given in the vernacular, the circumstance being on each occasion noted. The assistant may now refer to all his books, and may take his notes as the case is read over. At the conclusion of each case, he must write in English a brief but precise description of the case, and a decision upon the question or questions at issue, with a sufficient statement of the grounds on which it is founded.

XIII. *Fourth Object of the First Standard.*—The last object of the first standard of examination shall be, to ascertain how the assistant has been employed, and how he has done his duty at his station. For this purpose, the Collector and the Magistrate under whom he has been employed, shall furnish the Committee with a report upon these points. It shall be the duty of such officers, who may have an assistant without special powers under them, to make over to him frequently cases for report which are beyond his competency to decide. The reports shall be written in English, on one side of a sheet of paper, and after the case is decided, the officer who decides it shall note, on the other side of the sheet, his remarks upon the report. These reports, with the notes thereon, shall be submitted to the Divisional Examination Committee. Such officers shall also require their assistants to make English minutes of the cases given to them for decision, which minutes also shall be submitted to the same Committee; but these reports and minutes need not be sent up to the Central Examination Committee. The opinion formed of them by the Divisional Committee, however, shall be entered in the record submitted to the Central Committee.

XIV. *Provision for enabling all to acquire Bengallee.*—Assistants who have not passed according to the first standard in Bengallee will not be returned in a Hindoostanee district more than a year. Assistants in Orissa may pass according to either standard, either in Bengallee, or in the cognate Oorya language, at their option.

XV. *Second Standard.*—The second standard of examination shall be similar in its nature to the first, but more difficult in degree. In the vernacular portion of it, the reading of a common office running hand must be tolerably ready; the papers selected as tests should be of a more difficult description of office papers; the translation, dictation, and conversation should be fluent, generally correct, and readily intelligible, and the assistant should be tested in his power of explaining himself clearly, and with sufficient propriety, in the vernacular, in an argument or topic of some difficulty, such as may occur in official business. In this examination it will be necessary for the assistant to pass in both vernacular languages, Bengallee and Hindoostanee. The test here described shall be strictly enforced in respect of the language of the district where the assistant is stationed at the time of examination. But an allowance will be made for want of familiarity in the other language. In that other language, however, the first standard of examination must be decidedly surpassed at this examination. The questions of law and practice should be selected from the whole field of the duties of a Magistrate and Collector, but they shall be arranged in two classes, one class comprehending important and leading points, in answering which no books shall be allowed; and the other class, comprehending less general, and less common points in answering which assistance of books shall be allowed. No guides, digests or summaries, however, shall be permitted to be used, the assistant being confined to the original laws, circular orders and constructions. The object of this class of questions is to test the assistant's knowledge of where readily to find the law or practice on the less common points that arise in business. In preparing these questions, nice and difficult points should be avoided, the object being not to evoke subtlety or ingenuity, but only to ascertain whether the acquisitions and capacity of the person examined are adequate to enable him to perform fitly the important functions of an Indian Magistrate and Collector, or not. The trial cases should

should be selected from those possessing enough of complexity to test the assistant's ability to master all ordinary difficulties, and especially to test his power of minute attention to, and just appreciation of evidence.

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XVI. *Object of the Second Standard.*—It shall be the object to make this second standard such that a man who has passed a college examination, being of ordinary understanding and capability, who fairly applies himself with proper diligence to his business, and makes it his daily object to familiarise himself with the languages of the country, may pass it after two or three years of successful experience.

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PAPER put in by Captain *John Ouchterlony*, 15 June 1858.

Appendix, No. 4.

LETTER from *H. Williams, Esq.*, to the Rev. *F. A. Dawson*.

My dear Mr. Dawson,

Jubulpore, 3 May 1858.

Your very kind letter of the 19th March only reached me last evening, and as the mail leaves to day at 4 P.M. I have but a very short time indeed to answer the questions therein put regarding the resources of these territories. The principal articles of export are cotton, lac, hemp, wheat, gums, iron, and gall-nuts.

Cotton.—About 100,000 maunds leave this annually for Mirzapore, where it is again sold to the agents of Calcutta houses. I have never dealt in the articles myself, as the cotton grown in these territories fetch a lesser figure in the Calcutta market than that grown about Calpee, Bandah, &c. Not that the cotton itself is in any way inferior, but because the natives never take the trouble to pick the cotton from the tree, but they allow it to ripen and fall to the ground; and when they see a good deal lying there, they sweep it up into bags, and send it into this for sale. In ordinary seasons cotton sells for about six and seven rupees per maund of 80 lbs; at present it is very high, the rebellion having put a stop to the cultivation.

3,571 tons.

Stick-lac.—I do not know the exact quantity of this article collected annually in these territories, but it must be very large. As the Mirzapore lac-dye makers draw nearly the whole of their supplies from this and Raepore, on the Nagpore territories, I should say that 50,000 maunds was a low estimate of the export.

1,780 tons.

Hemp.—Along the foot of the ghats large quantities of hemp is grown annually, and the cultivation could be carried to any extent. In 1849 Messrs. Thompson & Co, the ropemakers in Calcutta, wrote to me to purchase and send them a supply. At that period I had difficulty in getting 500 maunds. Since then I have extended the cultivation, and last year I sent 14,000 maunds* to Calcutta for sale. With sufficient capital, and enterprising agents, hemp sufficient for the whole consumption of England could be grown within the Saugor and Nerbudda territories. Dr. Royle, Messrs. Harton & Co., Thompson & Co., and others, pronounce the hemp equal to the best Russian. Some bales I took to England with me in 1853 were sold by Messrs. Remie & Co., London brokers, for, I think, 28 l. or 30 l. per ton. The principal thing required to make the hemp trade a large and profitable one, is capital to advance the growers, and good European assistants to sort the hemp. Mr. Wilkes, the broker of Liverpool, told me that the low figure all Indian fibres fetched in the English market was in consequence of the careless way in which the bales were put up, long and short fibres being mixed indiscriminately; and that he was certain if only the same care was taken in sorting and picking the hemp as that adopted by the Russian Government, that the hemp grown in these territories would realise an equal value in the English market. If supplied with a capital of 50,000 l. I would undertake, in three years, to turn a dividend of 25 per cent. upon it, by the cultivation of export of hemp alone. My present agents in Calcutta sell the hemp to the European ropemakers there at eight and nine rupees per maund. Having devoted 10 years to the cultivation, cleaning, and exporting of hemp, this is the only branch of business that I should like to connect myself in any way with.

* (of 80 lbs.) = 500 tons.

Wheat.—What can I say about this? At this present moment the finest wheat in the world, worth in Mark-lane 60 s. per quarter, is selling here at six "coorahs," or 120 lbs. for a rupee. Why should a man work, say the natives, when he can earn sufficient in 10 days to feed him and his family for a month. Unfortunately, carriage is not procurable to export grain in any quantities; and, until railways are made, grains of all kinds must remain cheap.

About 1½ bushels for 2 s., or any 12 s. per quarter.

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Gums, Wax, Gall-nuts, &c., are all procurable in large profusion throughout the length and breadth of the land, for collecting.

Iron.—It would require a month to draw up a memo. only of the mineral resources of these territories. Iron, coal, copper, plumbago, and emery are known to exist in abundance, but only iron has been worked to any extent by the natives. There are about 1,200 smelting furnaces at work round Jubulpore; but as the furnaces are small, and worked by hand-bellows, the quantity turned out is only sufficient for the consumption of the country within a radius of, say, 50 miles. The iron itself is considered by competent judges equal to the best Swedish iron. Messrs. Hunt & Emsley applied to Government for a lease of the iron mines near here, with the intention of erecting large foundries for the casting of chairs for the railroads, but the rebellion appears to have put a stop to this also, as I have not heard anything of it of late. I am just now sending specimens of the different iron ores to Mr. Graham, of the railway department at Nassick. Reports by different officers during the last 20 years on the iron and coal mines in these territories, are lying in the commissioner's office here. The best plan to make the resources of these territories available would, in the first instance, be to raise a capital by forming a small company. By sending out three steady men to commence first with the hemp, one a secretary, bookkeeper and manager, one on, say, a salary of 20 £. per month, a sorter of hemp, who would continually superintend the sorting, picking, and packing of the hemp, and one man to proceed to the different districts during the season, to make advances, collect the hemp, and send it into Jubulpore. These two latter men ought to have salaries of, say, 100 rupees each per mensem. This would make the expenditure 500 £. per annum for European supervision, and about 500 £. more would be required for native establishment, tentage, &c. First year they would get 500 tons, and every year it ought to double in quantity, and improve in quality, if men of persevering and business habits were sent out, and men who had been brought up in ropewalks and hemp-brokers' establishments. Europeans could carry on any description of business in Central India, but only as overseers of natives. Europeans cannot work in the sun, at any manual labour, for six months in the year; and they would do a great deal more good by superintending what the native does, and trying to engraft into the native system any European experience they may bring out with them, than in attempting to do anything in the way of manual labour themselves.

Until railroads are made from this to Bombay, all produce must find its way to England *viâ* Calcutta, as the land carriage *viâ* Bombay is too expensive. But when the railway to the latter-mentioned place is completed, of course Bombay will be the outlet for all the produce of these territories, it being so much nearer England itself, and the dangers of the river Hooghly navigation being avoided. Mr. Graham, of Nassick, writes me that the contracts for the railway to Jubulpore are out, so that it is more than possible that in three or four years we shall have a line running from Bombay to this, as the ground from here to Candeish, they say, is a dead level, with little or no engineering difficulties.

You must kindly excuse this hurried epistle. I would have drawn out a report with care had ample time been allowed, but to meet your wishes this cannot be done, so I send it rough, and trust it will answer the purpose for which it is intended.

Believe me, &c.

(signed) *H. Williams.*

Appendix, No. 5.

PAPERS put in by Captain John Ouchterlony.

Appendix, No. 5.

STATISTICAL MEMOIR of a SURVEY of the NEILGHERRY MOUNTAINS.

THE soil of these mountains,* speaking of course chiefly of the plateau, is for the most part exceedingly rich and productive, a circumstance for which the observer would not be prepared on witnessing the granitic or sienitic base upon which it rests, since it is usually seen that granitic districts are bleak and barren, owing to the resistance to decomposition offered by the silicious materials of which it consists.

This advantageous contrariety may perhaps be accounted for by referring the formation of so much rich soil to the existence of the numerous dykes of rock whose decomposition is more favourable to its production, especially those of trap and hornblende, the decomposed particles of which, mixing with the quartzose and clayey products of the granite, result in the formation of a soil peculiarly adapted for cultivation.

The great mass of the hills also has evidently been under grass, and undisturbed by the plough or the mamotie † for ages, and as the frosts which occur at the close and beginning of the year in most parts kill the grass down to the roots, all this decomposed vegetable matter, washed in by the succeeding rains and mixing with the subsoil, continues and has continued season after season to increase its richness, and cause it to penetrate further and further into the poorer sub-soil, until the extraordinary depth of rich black mould, which is often observed in the cuttings of a new road, is produced.

The finest patches of land are naturally found on the lower slopes or second steppes, in situations where the conformation of the country has favoured the accumulation of soil washed from the hills above, and especially where forests have aided to retain that soil from further denudation by their roots, and have for ages nourished it by their leaves. The chief agricultural tribe on the hills, the burghers, seem well aware of this, and the consequence is, that in all parts where they cultivate, the face of the country is entirely clear of wood.

The chief defect of the soil of this district is the absence of lime, but a very minute quantity of which enters into the composition of the greater part of that under general cultivation at the present time, and as it is too costly an article to be brought up from the plains to be applied as a dressing to the land, considerable deterioration must be going on in its productive capacity. I have remarked that the finest fields are those which are situated near any considerable mass of hornblende rock, and hence it is to be inferred that the superiority of the soil is due to the lime which it receives from its decomposition. Specimens of this hornblende reduced to powder and digested in dilute nitric acid, give a copious precipitate with oxalate of ammonia, showing upon estimate (for I had not the means of collecting and weighing the precipitate) a proportion of at least 8 to 9 per cent. of lime entering into the composition of the rock. Want of lime.

The extensive and numerous swamps which occur on the Neilgherries also, when drained, furnish most valuable soil, either for cultivation *per se*, or for top dressing for poor land. But in this latter form it is never used by the hill cultivators, who are very backward in the knowledge of the uses and properties of particular manures, as will be treated of under an ensuing head; viz., "Modes of Cultivation." Drained swamps.

The Neilgherry mountains constitute one of those singular features presented in the physical geography of Southern India, of comparatively isolated masses upreared amidst the vast plains which extend over the surface of the country, pointing either to foci or points of ancient volcanic eruption by which they have been formed, or to evidences of the wearing agency which has reduced the surrounding tracts to their present remarkably uniform level state; while mountain masses, forming a core of tougher substance, and of material less prone to decomposition, have resisted the corroding action, and have been thus left in the form of isolated and mural precipices, towering above the surrounding country. Natural aspect.

The summit or plateau of these mountains presents a most varied and diversified aspect. Although the land extends over its limits in ceaseless undulations, approaching in no instance to the character of a champagne country, and frequently breaking into lofty ridges and abrupt rocky eminences, it may yet, speaking in general terms, be pronounced smooth and practicable to a degree seldom indeed, I believe in no instance, observed in any of the mountain tracts of equal elevation which occur in the continent of India.

On all sides the descent to the plains is sudden and abrupt, the average fall from the crest to the general level below being about 6,000 feet on all sides, save the north, where the base of the mountains rests upon the elevated land of Wynaad and Mysore, which, standing

* The Neilgherries.

† A native hoe.

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standing between 2,000 and 3,000 feet above the level of the sea, form as it were a steppe, by which the main fall towards the sea is broken. From both of these elevated tracts the Neilgherries are separated by a broad and extensive valley, through which the Moyaar river flows, after descending from the hills by a fall at Neddiwuttum, in the north-west angle of the plateau; and the isolation of this mountain territory would be complete but for a singular sharp and precipitous ridge of granite peaks which projects out from the base of a remarkable cone, called Yellamullay, on the western crest of the range, and taking a west-by-north course towards the coast, unites itself with the hills popularly called the "Western Ghauts."

The Koondahs.

In the south-west angle of the Neilgherries a singular mass of mountains rises, called the Koondahs, which though in point of fact a portion of the great hilly region, are so completely separated from the "Neilgherries proper" that they merit the distinct appellation they have received. Spurs from this secondary range run to the southward to a considerable extent, almost as far as the Ponany river, and it is in the innumerable vallies bounded by these ridges that the magnificent virgin (forest) land is found, of which I made mention in a former memoir, and which, as being eminently well suited for the purposes of coffee and other cultivation, will, I feel convinced, shortly be the means of rendering this district one of the most valuable and important under the Presidency.

Remarkable scarcity of forest.

The Neilgherries, or rather the plateau formed by their summits, are by no means densely wooded, the forests occurring in distinct and singularly isolated patches, in hollows, on slopes, and sometimes on the very apex of a lofty hill, becoming luxuriant and extensive only when they approach the crests of the mountains, and run along the vallies into the plains below. This absence of forest in a region in which from its position between the tropics, from the abundance of moisture, and from the great depth and richness of the soil, the utmost luxuriance in this respect would be looked for, is very remarkable, and leads me to conclude that vast tracts of primeval forest land must have been cleared to make room for cultivation at no very distant period.

Dodabetta range.

This belief is strengthened by the fact, that in all parts of the hills, which are exclusively the resort of Todars, such as the elevated land to the north and west of the Pykara river, the whole of the Koondahs, the north-eastern portion of the plateau, called Kodanaad, and other tracts where no cultivation is at present carried on, extensive forests are found. The principal internal range on the Neilgherries is a lofty mass, situated in the heart of the district, and running north-west and south-east, the great mountain called "Dodabetta," the highest on the plateau (being 8,610 feet above the level of the sea) being the apex, and from it all the minor ridges and spurs which form the undulating land of the Neilgherries may be said to take their rise, with the exception of the "Koondahs" which have a distinct origin, and of a singular elevated tract forming the north-west portion of the hills, which is distinctly connected with the Koondahs by a narrow ridge under Makoorty Peak. From the Dodabetta range to the eastern foot of the Koondahs the land falls continuously, when these mountains, abruptly rising, obtain an elevation very little below that of Dodabetta itself.

Atmosphere and climate.

Owing to the great elevation at which the inhabited summit of the Neilgherries stands, and the consequent rarefaction of its atmosphere, aided doubtless in some degree by the beneficial influence of the luxuriant vegetation which clothes them, the district, although distant only 11 degrees from the equator, enjoys a climate now famed for its great salubrity and remarkable evenness in its seasons, with a temperature which falls in the coldest month of the year to the freezing point, and seldom in the hottest reaches 75° in the shade. In stating this, I of course refer to the general circumstances of temperature which prevail, for seasons have of course occurred during which, from particular atmospheric causes, the mercury may have risen occasionally above this estimate. The coldest season is during the months of December and January, and the hottest about April and May, though this latter season is not so certain, depending mainly upon the character and time of setting in of the rainy or south-west monsoon. The hottest period of the day is about two o'clock or 2h. 40m. p.m., and the extreme range of temperature from sunrise to that time averages most commonly 16° throughout the year. The variation is of course the greatest at the time of frost, viz., January and December, when the extreme radiation which goes on during clear nights produces excessive cold towards sunrise, after which the sun's rays shining, with great fierceness through the rarefied atmosphere, speedily restore heat to the earth, and the temperature of the air rises in proportion. Similar causes, reversed in their action, necessarily produce sudden and great cold after sunset, rendering the climate at this season (and indeed at all seasons, more or less) one in which the most healthy residents, and especially those who have recently come under its influence, stand in need of caution in their mode of encountering its vicissitudes. For the reasons alluded to, I would venture to remark that very early and very late parades, according to the practice of the plains, will be found injurious to European troops located on these hills, and especially to those men whose constitutions have been worn by long residence in a tropical climate.

Coldest months, December and January.
Hottest months, April and May.

Ootacamund, 7,300 feet above the level of the sea.

The chief station, Ootacamund, from its superior elevation (7,300 feet above the level of the sea) is more exposed to this unfavourable action than the two minor stations, Coonoor and Kotergherry, which are each 6,000 feet above the level of the sea; although these latter are by no means exempt from the same influence, especially during the cold season, as will be seen by the tables appended to this memoir. A very great advantage enjoyed by the Neilgherries as a sanitarium exists in the means which are afforded to an invalid to select

Choice for invalids of three distinct set-

select.

select the peculiar kind of climate which best suits the malady under which he is suffering; by the existence of three settlements, each under medical charge, situated in different parts of the range, each having a different aspect, and each a climate peculiar to itself; that of Ootacamund being the coldest, but most damp, Kotergherry the next in the scale, and that of Coonoor the warmest. Thus an invalid whose habits or state of constitution render the change from the torrid heat of the plains to the penetrating cold of Ootacamund too great and sudden, has the opportunity and option of acclimatising himself at either of the minor stations before exposing himself to the vicissitudes of climate which await him on the highest level.

lements, enjoying each a different climate.

The climate of the Jakatalla valley, which I had occasion to recommend to the Most Noble the Marquis of Tweeddale for the site of the projected barracks for a European regiment of infantry, and which has, I believe, been approved of by Government, will, I think, be found a happy medium between those of the chief and lesser stations. It is well sheltered from the dry, cutting northerly winds, which cause so much sickness in Ootacamund during the months of March and April, by the high Dodabetta range which bounds the valley to the northward; and the rains of the south-west monsoon, though they of course visit this part of the hills, are by no means so incessant or accompanied by so much driving mist as is experienced during the same season at Ootacamund. This monsoon (the south-west) sets in on the hills during the month of June, and is ushered in on the western side, including Ootacamund, by heavy rain and violent gales of wind. The station of Coonoor gets the monsoon at the same time, but with less rigour, owing to the clouds which come charged with rain from the westward being attracted to the earth, and induced to discharge their contents by the opposition offered to their flight by the high spurs which run out from the Dodabetta range, and interpose between the west and Coonoor.

The Valley of Jakatalla well sheltered.

Enjoys a very even and temperate climate.

The Kotergherry station is also very favourably protected from the violence of the south-west monsoon by the Dodabetta range itself, which stands out like a huge wall to screen it. The average fall of rain, the chief part of which occurs on the hills during this monsoon, cannot be called excessive, especially when compared with the visitations in this respect experienced in the neighbouring province of Malabar.

Kotergherry sheltered and healthy.

The constant shifting of abode from spot to spot which the duty of conducting a survey necessarily entails, has prevented me from keeping a register of the actual amount which has fallen in every month of the year, except in 1847; but from such observations as have been made when opportunity offered, I am led to believe that about 60 inches is a fair quantity to assign as the average fall of rain throughout one year at Ootacamund, 50 inches at Kotergherry, and 55 inches at Coonoor. The north-east monsoon sets in generally in the beginning of October, and is often accompanied by rain, more or less, all over the hills, but especially on the east side and at Kotergherry, which, from its position, is exposed directly to its force. The month of December is generally very stormy, and often fatal to a large extent to the lives of the hill cattle, and to the bullocks and other beasts of burthen employed to bring produce from the plains. The cold easterly wind blowing through the light rain which is continually falling, and striking upon the wetted skins of the animals, produces a degree of intense cold, which soon destroys them, and by these means serious inroads are yearly made upon the herds of the hill inhabitants, by whom their loss is not readily replaced. Annexed to this memoir are various tables extracted from the Meteorological Register kept in the Survey Office at Ootacamund and Kotergherry, which will show all particulars regarding the changes of temperature, the fluctuations and oscillations of the mercury in the barometer, as shown at the hours of maximum and minimum pressure (9 h. 50 m. a. m. and 4 p. m.) temperature of wet bulb, direction of the wind, aspect of the sky, &c.

The Neilgherries are occasionally, but by no means frequently, visited by violent storms or hurricanes, so rarely indeed, as to excite surprise and speculation as to the cause of this exemption, when its isolated and exposed situation in the Peninsula is considered. Upon this and other points of interest connected with the meteorology of these hills, much light will doubtless be thrown by the observations now regularly conducted in an observatory recently erected on Dodabetta, under the auspices of Mr. Taylor, the Honourable Company's astronomer at Madras, in which an instrument for measuring the force of the wind, and other valuable adjuncts to a meteorological observatory, have been placed.

Hurricanes very rare on the Neilgherries.

During the prevalence of the south-west monsoon the atmosphere is almost continuously charged, more or less, with dense mist, enveloping chiefly the mountain tops, but descending into the inhabited vallies as the warmth of the day passes, and spreading in heavy and impalpable fog in all directions. When not under this influence, the atmosphere overhanging these mountains is brilliantly clear and cloudless, and especially so on the eastern side of the range.

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TABLE showing the AVERAGE TEMPERATURE, &c., throughout the Year, on the Neilgherry Hills.

	MONTH.	MEAN TEMPERATURE.			* Mean Range of the Thermometer.	Rain in Inches.	REMARKS.
		At Sunrise.	At 2h. 40m. P. M.	At Sunset.	Sunrise to Sunset.		
		Deg.	Deg.	Deg.	Deg.		
At OOTACAMUND, 7,300 feet above the level of the sea.	January	42	63	58	21	1	Cold north-easterly winds prevail.
	February	44	65	60	21	1	Ditto - ditto - ditto.
	March	49	68	63	19	2	Ditto and dry ditto - ditto.
	April	54	68	63	14	5	And dry - ditto - ditto.
	May	54	68	63	14	6	Commences to vary to south-west.
	June	53	64	59	10	8	South-west monsoon sets in; strong wind.
	July	52	62	57	10	7	South-west and west winds blow.
	August	52	62	57	10	6	Wind begins to vary to west and north-west.
	September	52	62	56	10	7	Wind north-west, and, towards end, north-east.
	October	51	62	56	10	9	North-east and easterly winds prevail.
	November	49	61	55	12	5	North-east winds blow, fresh, clear.
	December	45	60	55	15	3	North-east winds blow, often violently.
TOTAL - - -						60	Inches of rain.
At KOTERGHERRY, 6,100 feet above the level of the sea.	January	51.5	66	60	15	2	North-east and north-west winds prevail.
	February	52.5	67	63	15	3	North-east and north-west winds; rain very uncertain.
	March	54	67	63	13	6	Winds variable, north-east to south-east.
	April	56	68	64	12	10	Winds variable, north-east to east and south-east; rain uncertain.
	May	56.5	68	64	12	2	Winds from north-east to north-west and west.
	June	58	69	65	11	2	Winds from north-west to south-west; rain variable.
	July	60	70	65	10	4	South-west monsoon winds, but light and variable.
	August	60	71	65	11	2	North-west winds prevail in this month.
	September	59	69	64	10	2	North-west winds, veering to west.
	October	58	68	63.5	12	10	North-west winds, light and variable.
	November	54	67	61	13	2	North-east winds, veering to north-west.
	December	52	66	60	14	5	Wind generally from the north, gusty.
TOTAL - - -						50	Inches of rain.

* From want of a maximum and minimum thermometer, I have not been able to record the extreme range of the thermometer during the 24 hours.

The

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Productions.

The resources of this highly-favoured region are as diversified and valuable as they appear easy of attainment, and comparatively inexhaustible. With a climate and soil such as have been described, great productive powers in the vegetable kingdom, and a proportionately high development of them, would naturally be looked for. That the latter is wanting to a lamentable degree is to be accounted for by the wretched system of husbandry pursued by the agricultural tribes who have settled upon the Neilgherries, as also possibly in some degree by the absence of that encouragement which would be produced by the institution of some channel through which the products of their industry might reach a ready, certain, and ever-demanding market.

I commence the long list of productions which the Neilgherries are capable of supplying with wheat, as one of the most important, and as one, moreover, which the Honourable Court of Directors appear at the present time to be much interested in collecting data regarding, from all districts in India capable of producing it.

Wheat.

In making up the returns of the gross quantities of grains of all sorts produced in the district, I have taken the totals of each from the Seebundy accounts of 1847, or fusly 1257, as rendered orally in the cutcherry. From these it appears that in 1847, 70 "vullums" of land were cultivated for wheat, each vullum producing on the average 400 "kolagums." This "kolagum," which is a measure peculiar to the hill tribes, contains 226 cubic inches, and hence the quantity produced was 3,000 bushels, or 375 quarters. The weight of a kolagum of average wheat (husked) is, I find, 7 lbs., hence the bushel of Neilgherry wheat weighs 68½ lbs., or a quarter 548½ lbs., avoirdupois. A "vullum" of land is equivalent to 2 cawnies, 21 grounds, and 864 square feet. Hence the total quantity of land cultivated for wheat at the present time is 202 cawnies, or 267 acres, and the produce is 14½ bushels per cawny, or 11½ bushels per acre. The return in moderately good land cultivated for wheat is 40 to 1, or 40 bushels reaped for 1 bushel sown.

That the quantity of wheat at present produced on the Neilgherries could be very greatly increased there cannot be a doubt, provided a better system of husbandry were introduced, and better seed imported from Europe and distributed amongst the agricultural tribes; and as recent distressing circumstances in Great Britain appear to have directed the attention of the Home Government to colonies which are thought capable of producing this grain in sufficient quantity to assist in relieving the mother country from her present hazardous position of dependence upon foreign States for her supply, I shall venture to offer a few further remarks, before closing my notice of this important item in the chapter of natural productions.

The whole of this hill district, including the Koondah mountains, is eminently well suited in point both of soil and climate for the production of wheat, but as the last-mentioned tract is not yet surveyed, it must at present be lost sight of, although I feel confident it will be found on examination to furnish a very important addition to the gross amount of land estimated as suitable for the cultivation treated of, and which at present lies totally waste and useless.

Neilgherries and Koondahs well suited for the growth of wheat.

The quantity of land thus lost to the State I calculate to amount to no less than 200,000 acres, as is shown by the following statement:—

	Square Acres.	Square Acres.
Total content of the geographical surface of the Neilgherries	-	268,494
Of this quantity there are now under cultivation, including lands lying fallow - - - - -	31,434	
Pasturage to be reserved for the cattle of the Todars at the exaggerated rate of 200 acres per 100 head (less than 40 per 100 being allowed by the Revenue authorities in the calculation for assessment), for an average of 2,000 head of buffaloes will be - - - - -	4,000	
Pasturage to be reserved for the cattle of the burghers, consisting of buffaloes and bullocks, averaging 8,000 head, at 100 acres per 100 head - - - - -	8,000	
Land occupied by the cantonment of Ootacamund, future barracks, roads, &c. - - - - -	6,000	
Village sites, sacred groves, &c. - - - - -	2,060	
Tracts of rocky ground, morasses, and other land not immediately fit for cultivation (although these might well be considered as compensated by the gain of surface introduced through the undulations of the land) - - - - -	17,000	
Deduct - - - - -	68,494	
And there is a remainder of - - - - -	200,000	

200,000 acres of land lying waste on the Neilgherries, exclusive of the Koondahs.

acres entirely unoccupied and waste, being either covered with forest, or lying under grass not required for pasturage.

Under a better system of cultivation, also, it would not be necessary to suffer so large a proportion of the Burghers' cultivated land to lie fallow at one time as is at present in that condition, amounting, in round numbers, to 17,000 acres, out of a total of 31,500 acres of cleared and arable land.

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Of the forest land every acre is of course peculiarly well suited for wheat, and, being virgin soil, it should produce, under proper management, large crops of the very finest grain.

The same may be said of swamps, when drained; but as potatoes are found to thrive well in the soil which their drainage produces, such land in a farm would naturally be reserved for stock produce, and an allowance has therefore been made for this in the estimate.

Making, however, exaggerated deductions on all accounts, there yet remain no less than 200,000 acres of unallotted and unemployed land, of which, at the very lowest estimate, one-half, or 100,000 acres, may be taken as fit for the production of wheat, under a proper system of husbandry, allowing a sufficiency of well prepared manure, an occasional dressing of lime, and exercising proper judgment in allowing it to lie fallow, or changing crops, according to its condition and composition of soil.

It has been already stated that the Burghers obtain from their wheat lands a quantity of grain equivalent to $11\frac{1}{2}$ bushels per acre, but as the depth to which they plough their fields never exceeds seven inches, and for the most part is barely six, and as they give them only the most meagre allowance of sun-dried and exhausted manure, never exceeding (as far as I have been able to ascertain by counting the baskets brought, and measuring spaces of land dressed with it) half a ton per acre, and this not ploughed well into the ground, but merely scraped into the surface furrows, and as they never supply the land with what from the composition of the soil it so much needs, viz. lime, it may be safely assumed that under a proper system of tillage this amount of produce could be at least trebled, or at a very low estimate four quarters of wheat could be obtained from one acre.

I may therefore safely affirm that this district is capable of furnishing for export to Europe from 400,000 to 500,000 quarters of wheat of a quality far superior to that which is at present raised, and at a cost sufficiently low (the distance to the nearest shipping port being only 110 miles, 36 miles of which are performed by water) to admit of large profits being realised by the growers, even when the price in England is so low as 65 s. a quarter.

The following is an estimate of the cost to the Burghers of the cultivation of wheat per English acre, ascertained with as much exactness as circumstances and the deceitful character of the people, who seldom adhere to the truth in any of their statements, have admitted of:—

ESTIMATE.

Estimate of the expense of cultivation of wheat to the burghers.

	Rs.	a.	p.
Ploughing: five ploughs, with two bullocks and one driver, in three days' plough, one vullum of land (= $3\frac{1}{2}$ acres). The keep of the bullocks costs nothing, as they get nothing but grazing; the expense is therefore the hire of 15 men per vullum, or four per acre, at two annas - - - - -	-	8	-
Collecting weeds and grass, and burning them, two boys at one anna	-	2	-
Bringing and spreading five baskets of manure, one man at two annas - - - - -	-	2	-
Sowing seed and turning the soil, five ploughs to one vullum or six men, which is one and a half men per acre, at two annas - -	-	3	-
Seed wheat, two and two-thirds kolagums, at two annas and eight pice per kolagum - - - - -	-	7	-
Repairing fences and clearing channels to carry off rain, one man	-	2	-
Reaping and thrashing: the expense of the first is covered by the straw, and the last costs nothing, as it is performed by the bullocks, which are driven round and round a post to tread out the grain.	-	-	-
Assessment, at the highest rate - - - - -	-	14	9
Cost per Acre - - - Rs.	3	-	9

RETURN.

	Rs.	a.	p.
105 kolagums of grain, which are sold at two annas eight pice - -	17	8	-
Deduct cost of cultivation - - - - -	3	-	-
Profit to the cultivator, per acre - - - Rs.	14	8	-

It is true that out of this we must take the "goodoo," or tribute which they give to the Todars, and which may be considered in the light of rent for the land; but this is not much; they profess to give two-fifths, but I have reason to believe, both from the statements of the Todars and of the Burghers themselves, that what they actually make over as "goodoo" is not above one-half of this proportion, if even so much, especially in the item of wheat, which is so profitable to them.

It may not be considered out of place to introduce here a statement of the expense of keeping horses and cattle, and of carrying on farming operations generally on the Neilgherries.

Horses

Horses cast from the artillery and cavalry, when castrated, might answer very well for the plough; they may be purchased at from 100 to 200 rupees.

Two horses would require one horsekeeper, at seven rupees per mensem - - - - -	Rs. a. p.
And (until the farm yielded hay) two grass cutters, at four rupees per mensem - - - - -	7 - -
Food: gram, two seers per day for each horse 4 x 30 = 120 seers -	8 - -
barley, two - ditto - ditto 4 x 30 = 120 ,, -	7 - -
Shoeing, one rupee each per mensem - - - - -	4 - -
Halters, cumblies, salt, medicines, &c., one rupee per mensem -	2 - -
	2 - -
Total per mensem - - -	Rs. 30 - -

Plough horses.

which is 18 l. per annum per horse.

A cooly can dig in one working day in new meadow ground about 25 to 30 square yards, one foot deep, his pay being two annas; children employed to weed receive one anna per day; native farm servants, gardeners, &c., receive five rupees a month; herdsmen for cows, goats, &c., four rupees a month; keepers for bullocks, employed to bring supplies or carry produce to the coast or to market, receive five rupees a month, at the rate of one keeper to every five head of cattle; a good carpenter receives half a rupee a day; a good bricklayer receives half a rupee a day.

Spade husbandry.

Lime in an unslaked, caustic state, can be delivered on a farm on an average of distance from the high roads, at the rate of 12 annas per bullock-load of about two bushels.

Lime.

Bones could be obtained from the low country for the cost of collecting in the villages and conveying up the passes.

Bones.

Next in importance in the class of productions is barley, the quantity of which raised during the past year far surpasses that of wheat. In 1847 it amounted to 1,419 vullums, each vullum producing on an average 400 kolagums, making a total of 60,388 bushels, or 7,548 quarters, taking the imperial bushel, as before, at 2,218 cubic inches, and the kolagum, by my measurement, at 226 cubic inches. The barley grown on the Neilgherries is divided into two kinds by the Burghers, the first and best being "sheemey ganjee," or English barley, so called from its being the degenerate produce of English seed, given to the head burghers many years ago by, I believe, Mr. Sullivan, when Collector of this district; and the other, "malley ganjee," or hill barley, which they describe as indigenous to the hills. The quality of both sorts is very poor, nor is this much to be wondered at when their defective mode of cultivation is witnessed, and the great deterioration of the grain which naturally results from the constant employment of the same seed in the same land over and over again, without any change or any attempt at the introduction of imported or mixed seed. The weight of a kolagum of ordinary barley is 5 1/2 lbs., which gives 54 lbs. for the weight of a bushel, and 432 lbs. for that of a quarter. The return in moderately good ground is 50 per cent. under that of wheat, being only 20 measures of crop for one measure of seed.

Barley.

The yield per cawny is 14.7 bushels, or per acre, 11.12 bushels; and the total amount of barley cultivation is, in cawnies, 4,109, or, in acres, 5,433.

Before quitting the subject of barley, I cannot refrain from adverting to one immediately connected with it, and which I deem of so much importance, that although I am not sanguine in my hopes that Government may be induced by any representation made by me to institute experimental proceedings with a view to test the feasibility of the scheme, I still consider it my duty to place on record in this memoir the results of experiments which I have had favourable opportunities of making, under the impression that a time must sooner or later come when this, amongst many other valuable resources of these hills, will be fully developed and taken advantage of.

Beer.

I allude to the subject of fermented malt liquors, which can be made on the Neilgherries with the greatest facility in all the details of the process, and at a cost so trifling as to enable the commissariat to supply the European troops at the three stations more immediately in the vicinity of the hills, viz., Bangalore, Trichinopoly and Cannanore, with both ale and porter, at a rate, calculated on an extreme estimate, not exceeding 10 annas per imperial gallon, delivered to the men from the cask in the canteen, or 2 1/2 annas per quart, equivalent to 3 1/2 d. per pot.

Can be made and sold at Bangalore at 2 1/2 annas per quart.

Independent of the importance, both in a moral and economic point of view, of supplying to the troops a liquor which, from its goodness and cheapness, will induce the majority to prefer it to ardent spirit, the subject becomes still more entitled to consideration, from the advantages which must result from its successful issue when the projected measure for the permanent location of a regiment of European troops on the Neilgherries shall be carried out; for, as the chief item in the estimate of cost is the carriage from the brewery to the station in the plains, beer will be supplied to those resident on the spot at a greatly diminished rate.

A very favourable opportunity will also be offered for bringing the project into practical operation when a regiment is stationed on the hills, because amongst the men many brewers and maltsters by trade will no doubt be found, and by the practical knowledge of these men many difficulties in the details of the process, which experimentalists like myself encounter,

Malt.

Appendix, No. 5.

Temperature well suited for malting and fermenting.

Average temperature of the Neilgherries, 62°

Quality of barley very inferior.

Sugar cheap and good. ✓

Good beer has been brewed on the hills by the writer of this Memoir.

Samples sent to the Commissary-general.

No answer received.

Estimate of the expense of manufacturing malt liquors.

Estimate for brewing.

will be speedily overcome. An inspection of the tables of temperature, given in the Appendix to this Memoir, will at once show that the first part of the process of the manufacture of beer, viz, the conversion of barley into malt, can be carried on here as well as in any part of Great Britain; for although the range of the mercury may appear so great as to endanger the success of the process by causing the germination to proceed too rapidly, this evil can be readily averted by placing the malting floors in buildings with thick stone or even mud walls, covered with thatched roofs elevated considerably, so as to deflect the rays of the sun, and preserve an even and low temperature throughout the day. The temperature found most suitable to malting in England is about 60° to 62°, and this degree of heat could be maintained without excess in malting sheds on these hills throughout at least nine months in the year.

I must observe, however, that the barley grown here is so poor in quality, so light in the grain, and containing in a given measure so large a proportion of husk in excess of what the same quantity of English barley would produce, that the malt made from it yields in the mash but a very disproportionate quantity of saccharine matter, rendering it necessary to employ raw sugar as an adjunct to produce a wort of sufficient strength. But this, which might elsewhere be considered an objection on the score of expense, is here of easy remedy, since in the immediate vicinity of the Neilgherries, viz., in Mysore, excellent sugar is manufactured in great abundance, and at a rate so low that at this present time, February 1848, it is being sold in the bazar of Ootacamund at Rs. 3. 12. per maund of 25 lbs. weight, being equivalent to 33 s. per cwt. Formerly, a prejudice existed against the employment of sugar in the manufacture of beer, but as it is now seen that the permission to introduce it into breweries in England, which has been recently granted by the Legislature, is regarded by the public as a signal boon, it must be self-evident that since this important article is, comparatively speaking, indigenous to the spot, cheap, excellent and abundant, and as the climate is in all respects eminently well adapted for carrying on the process of vinous fermentation as well as that of malting, that beer and porter can, under proper management, be produced on the Neilgherries in every respect as wholesome and good as that now imported from England; and at a cost less by one-half, even including cartage to the station where it is to be consumed.

I beg leave to observe, that in advancing these remarks, I do not base my expectations and assurances on mere surmise or theoretical views of the subject, but upon the results of actual experience, as I have now brewed several casks of beer without a single failure in the principal parts of the process, viz., malting, fermentation, and fining, while its quality has been much approved of by many persons who have tasted it, amongst whom I may enumerate Mr. Drury, the senior member of the Board of Revenue; Captain Bell, secretary to the Board; Major-general Kennett, Lord Gifford, General Gibson, with many others. In consequence of the success which attended my early experiments, in conducting which I employed malt prepared by myself from hill barley, with hops and dried yeast imported from England, and my confidence in the success of the scheme, if entered into by Government, I addressed a letter to the Commissary-general upon the subject, communicating such details as seemed of interest, and offering to carry on further trials on a small scale, at my own expense, if a copper could be supplied to me temporarily on indent from the Commissariat stores. I also sent samples of some beer which I had brewed, but which had an unpleasant taste communicated to it, owing to my having employed "gour" or "raw jaggery" in the brewing in place of refined sugar, without taking the precaution of cleansing it from the dirt and gummy matter with which this article is generally contaminated. I was not so fortunate as to receive a reply to this letter (beyond a message through a third party), and this absence of encouragement prevented me from following the matter further; but I may add, that for my own use I continue the manufacture with a success which convinces me that it is only necessary to extend the scale upon which my operations are carried, and to secure practical knowledge in the more important details of the process, to ensure the most complete realisation of my anticipations regarding the vast benefits to be derived by this item in the list of productive resources of the Neilgherries.

The following is an estimate of the cost of ale brewed here, from actual experiment. In England to make a hogshead (60 gallons) of strong ale intended for export to the tropics, the brewers use 6 bushels of malt and 6 lbs. of hops. Now it has been ascertained, since the introduction of sugar into British breweries, that 180 lbs of moist sugar are equivalent to 1 quarter, or 8 bushels of malt. If, therefore, both malt and sugar are employed in equal proportions, the hogs-head will require 3 bushels of malt and 72 lbs. of sugar; considering the hill malt to be 100 per cent. inferior to English malt, I made use of 6 bushels of malt and 72 lbs. of sugar.

ESTIMATE.

	Rs.	a.	p.
6 bushels of barley, or 60 kolagums, at 12 kolagums per rupee	5	—	—
72 lbs. (3 maunds) of sugar, at 4 rupees per maund	12	—	—
7 lbs. of hops imported from England	7	—	—
Fuel for kiln-drying malt, and boiling	1	4	—
Proportion of labour in steeping barley, turning malt, drawing water, brewing, &c.	2	—	—
Sundries	1	4	—
Cartage to Bangalore (1 cask a load)	9	—	—
TOTAL	37	0	—

A hogshead

A hogshead should run 60 gallons of clear beer, hence Rs. $\frac{37}{80}$ = 10 annas per imperial gallon for the gross cost. Appendix, No. 5

This estimate might be reduced in many of its items if a Government brewery were established here upon an extended scale. In the first place, all the yeast produced would meet with a ready sale in Ootacamund, for the bakeries which are now dependent on the low country for a supply of toddy, with which bread is fermented all over India, and which, having to travel a considerable distance before it reaches the settlement, is often found to have passed into the stage of acetous fermentation, rendering it either unfit to make bread with, or causing the bread to have an unwholesome and bad taste. A large quantity of yeast would also be daily required for the bakehouses of the European regiment located here. The estimate for hops, at 1 rupee per pound, delivered here, is far too high, as, if sent out by the Home Government in quantity, they could not possibly stand in at the brewery at so high a rate; and the cost of labour would be diminished if a large quantity of beer were brewed daily.

Yeast much wanted on the hills for making bread.

I would further beg leave to dwell upon the importance to this district of the establishment of such a manufacture upon a large scale in a revenue point of view, which, from the great demand it would create for barley, would soon lead to the reclamation of the greater part of the waste but rich lands, which are now left untouched through want of stimulus to the industry of the hill tribes, and also, as it appears to me, in some measure to the want of hands to till them; a deficiency which would, however, be speedily remedied by immigration from Mysore and the plains around. In fact, were it not for the assumption of absolute right over all the lands, waste and cultivated, which are situated on the plateau of these hills, by the Todas, burghers and Kothers, there is no doubt that many low-country people who came up here seeking employment as coolies, would form settlements, and permanently locate themselves wherever they could obtain possession of land to bring under cultivation. Should Government at any future time see fit to create an establishment on these hills for the manufacture of beer, it would be very advisable, and indeed in the first instance, almost indispensable, to connect with it a Government farm to serve as a model for the introduction of improvements in husbandry, both in regard to ploughing and dressing the land, and in the preparation of good manure, a department of the farmer's profession of which the hill agriculturists appear to have no knowledge whatever. Good seed must be sent from England and distributed amongst the burghers, upon whose exertions the stimulus of a premium, in the shape of a higher price for barley of a superior description, would doubtless soon produce a beneficial effect, while imitation of the system pursued by the employes of Government in the management of the farm lands would also, it is to be supposed, lead to the adoption of more civilised notions and practice of agriculture than are now to be found prevailing in any part of this rich but ill-appreciated hill tract. In this climate Europeans might, with perfect safety as regards their health, go through all the out-of-doors labour which falls to the lot of farming men in England. They do so in New Zealand and Port Adelaide, where the climate is unquestionably less temperate than here; and as on the Neilgherries the actual exertion of European bodily strength would only be required at particular seasons of the farming year, such as in the direction of the plough and the use of the scythe, while superintendence and instruction of the native labourers would alone be required on the part of a European in conducting the minor details of a farm, I cannot but think that in many respects a far finer field is offered on these hills to the emigrant farmer from home than is met with by the many who flock to the Australian settlements.

The revenue improved by the increased demand for barley for malting.

Advisability of establishing a Government farm for the purpose of promoting and improving the cultivation of wheat and barley.

Europeans can labour in the daytime on the Neilgherries.

Here cool labour is very cheap, 2 annas or $2\frac{1}{2}$ d. a day being the regular rate of pay for a working man who can perform any duty pertaining to spade husbandry, and undertake all the duties of a farm which in England fall to the lot of the common labourer, such as hedging and ditching, trenching, hoeing, reaping, stacking, thatching, &c. &c. A shilling a day or half a rupee is the pay of a bricklayer or carpenter; men to look after two horses receive 14 s., or 7 rupees a month; cowherds 4 s. or 5 s., and all other labour in proportion. These advantages, coupled with those presented by a ready and ever demanding market for such articles of produce as wheat, barley (oats if raised), clover, hay (of which article an immense quantity would be consumed in Ootacamund, if it was procurable), turnips, potatoes (Ceylon offering a very favourable market for this vegetable), butter, eggs, and stock of all descriptions, both for butcher's meat and for salting for ship use, would surely, it is to be supposed, tempt many indigent farmers to this hilly region whose necessities impel them to emigrate from the mother country, but whose steps are stayed by the warnings uttered by the many hundreds of their unfortunate fellow-countrymen who have hurried heedlessly out to the Australian colonies, only to meet with disappointment and ruin.

Labour cheap; two annas per day.

Should circumstances ever induce Government to establish a farm on these hills for the purpose of encouraging the growth and extending the cultivation of wheat and barley, I should recommend two sites for its location; one on the elevated tract of land to the westward of the Pykara river, commencing at the north-west angle of the plateau near Neddiwuttum, and extending southward to "Makoorty Peak," the whole of which may be said to be uninhabited, there being only seven small Todar munds situated in it, and these not all occupied, while the soil is, for the most part, excellent, pasturage abundant, and the land covered in many parts with fine forest, rendering the tract (which contains about 12,000 acres) admirably adapted for the purpose which I venture to suggest.

Site recommended for a Government farm. To the westward.

Appendix, No. 5.

Kodenaad.

The other site is a fine tract of land, forming a sort of promontory in the north-east angle of the plateau of the hills called "Kodenaad," which is equally uninhabited, having only three occupied Todar munds within its limits; the soil good, and forest abundant, many fine wooded valleys extending through it, and offering a most eligible locality for a farm. The tract contains about 7,000 acres.

Other dry grains produced.

The other grain productions of the Neilgherries are ragghee, samee, koralle, tenney, buttacuddoley (a kind of peas), shanungee (a kind of gram), garlic, onions, kudagoo (mustard seed), vendium, opium and potatoes. Almost all the grains enumerated are raised solely for home consumption; and, excepting korallie, for which about 1,200 vellums of land are cultivated yearly, the quantity of each which is produced is insignificant.

I may, therefore, refer for further particulars regarding them to the accompanying "Statement," in which is set forth the total quantities of land cultivated and of grains produced, the ratio of return of crop to the seed sown, the selling prices of each, and the rates of assessment. The information upon which the Table has been formed is derived from the revenue accounts for 1847, and although the average of produce and return is rather a high than a low one, it may I think, generally speaking, be pronounced as correct as it is possible to make a return of its description in a district where the site of cultivation is so perpetually shifting, as is the case on the Neilgherry Hills. From the data given in the Statement, it will be apparent that where the cost of labour is so low as it is here, considerable profits must be realised by the cultivators.

Profit per acre to the growers on potatoes, wheat, poppy, barley.

In the items of potatoes, wheat, poppy and barley, we find that, after deducting the assessment and the cost of seed, there remains respectively as profit, and for repayment of the expense of cultivation—

					<i>Rs.</i>	<i>a.</i>	<i>p.</i>
On one acre of Potato land	-	-	-	-	54	3	3
" Wheat "	-	-	-	-	16	-	-
" Poppy "	-	-	-	-	8	10	-
" Barley "	-	-	-	-	5	13	7

These are estimated upon the prices obtainable on the hills.

STATEMENT of the AGRICULTURAL PRODUCTS of the NEILGHERRIES, in 1847—Fusly 1256.

NAME OF PRODUCTION.	Quantity of Land Cultivated.			Produce.		Ratio of Return of Crop from Seed.	Gross Amount Produced.			Average Selling Price.			Rate of Assessment.						
	In Vullums.	Equivalent.		In Kolagums per Vullum.	Equivalent in Bushels per Acre.		In Kolagums.	Equivalent.		Per Kolagum of 2 Seers.	Equivalent.		For Good Land.			For Inferior Land.			
		In Cawnies.	In Acres.			In Bushels.		In Quarters.	Per Bushel.		Per Quarter.	Per Vullum.	Equivalent.		Per Vullum.	Equivalent.			
												Per Cawny.	Per Acre.	Per Vullum.	Per Cawny.	Per Acre.			
Wheat	70	202	267	400	11.12	40 to 1	28,000	2,978	372	Rs. 2 8	1 9	12 8	3 8 5	1 3 6	14 9	2 5 7	12 9	9 10	
Barley	1,419	4,109	5,433	400	11.12	20 „ 1	567,600	60,388	7,548	1 1	10 2	5 1 4	3 8 5	1 3 6	14 9	2 5 7	12 9	9 10	
Raggee	105	803	400	400	11.12	80 „ 1	42,000	4,468	568	not brought to market			2 - 11	11 5	8 8	14 1	4 10	3 8	
Samee	364	1,052	1,391	300	8.4	60 „ 1	109,200	11,617	1,452	-	-	-	2 - 11	11 5	8 8	14 1	4 10	3 8	
M Koralley	1,289	3,724	4,924	200	5.6	10 „ 1	257,800	27,425	3,425	-	-	-	2 - 11	11 5	8 8	14 1	4 10	3 8	
M Tenney	102	294	385	300	8.4	30 „ 1	30,600	3,255	407	-	-	-	2 - 11	11 5	8 8	14 1	4 10	3 8	
Buttacudaley	83	240	317	200	5.5	40 „ 1	16,600	1,766	221	2 8	1 9	12 8	2 - 11	11 5	8 8	14 1	4 10	3 8	
Shanungee	55	159	210	300	8.4	30 „ 1	16,500	1,755	220	2 8	1 9	12 8	2 - 11	11 5	8 8	14 1	4 10	3 8	
Garlic	132	381	504	600	16.8	48 „ 1	79,200	8,425	1,053	- 10	8	4 -	3 8 5	1 3 6	8 8	2 14 7	12 9	9 10	
Onions	81	90	141	700	20	56 „ 1	21,700	2,308	288	1 1	10 2	5 1 4	3 8 5	1 3 6	14 9	2 5 7	12 9	9 10	
Mustard seed	122	352	491	300	8.4	150 „ 1	36,600	3,893	487	- 10	8	4 -	3 8 5	1 3 6	14 9	2 5 7	12 9	9 10	
Vendium	67	194	256	200	5.6	100 „ 1	18,400	4,425	178	1 -	9 5	4 11 4	3 8 5	1 3 6	14 9	2 5 7	12 9	9 10	
Poppy seed	-	-	-	100	2.8	100 „ 1	9,800	990	124	4 -	2 5 7	-	3 8 5	1 3 6	14 9	2 5 7	12 9	9 10	
and Opium	93	269	353	2½ lbs. per Vullum.		-	242 lbs. Avoirdupois.			8 -	per seer=Rs. 5 per lb.		included with the seed in the assessment.						
Potatoes	49	141	186	600 Maunds per Vullum.		15 „ 1	29,400 Mds.=Cwt. 6,562			6 -	per Md.=R.1.,11p'lb.		7 -	2 6 9	1 13 4	5 -	1 11 8	1 5 -	
	3,981	11,510	15,220	Acres of land under cultivation.															

ON COLONIZATION AND SETTLEMENT (INDIA).

Appendix, No. 5. for produce; but if potatoes and wheat were exported, a much larger profit would be realised. Hence another promising opening to emigrants, in the form of an establishment for breeding and salting pork for ship use, as, since potatoes and barley can be produced at so low a rate, and a herd of cows kept for nothing but five shillings a month for a herdsman, with a per-centage to cover interest on outlay and casualties, it cannot be doubted that the meat cured in this climate would both prove of excellent quality, and return, by its sale at Bombay or other shipping ports, a considerable profit to the breeder and salter. Under any circumstances larger profits must be realised than those returned from the same market to the exporter from Europe, who has to breed his stock under all the disadvantages of dear food and labour, and cost of freight to its destined port of sale.

Hides. Amongst the productions of the Neilgherries may be enumerated hides, both of the buffalo and ox, the former of which are especially prized in the low country for making soles of shoes, traces, and other articles requiring a strong and durable leather. The hide of the bull buffalo is considered far superior in value to that of the cow. I have not been able to ascertain what quantity of hides are annually collected and cured here for export, but it cannot at present be very considerable, as it will be seen by the returns in the Appendix that the total number of buffaloes and bullocks herded on these hills is, comparatively speaking, by no means large.

Opium. Opium is produced on the Neilgherries to a small extent, and it appears that the burghers who cultivate the poppy pay more attention to the collection of the seed (which fetches a very remunerative price as an article of food in the bazaars) than to the extraction of the drug from the capsules of the plant. The total quantity produced last year was under 200 lbs. avoirdupois; but I have no doubt it could be increased very greatly if other cultivators could be introduced on the hills, as the burghers, slaves to habit, prejudice, and the love of ease, oppose themselves to any change or improvement which involves additional trouble or personal labour.

Poppy fields require some care, both in preparing and well manuring the ground before sowing, and in hoeing and irrigating it whilst the plants are young. Hence this kind of cultivation is only carried on in the immediate vicinity of their villages, where the fields can be attended to by the women and children, and where manure, such as it is, is more readily and with less trouble collected.

Neilgherry opium of very fine quality. The opium extracted by the burghers from their poppies appears to be of exceedingly fine quality, and meets with a ready sale in the bazaars of Octacamund amongst the Mysore and Malabar coolies, and others in better circumstances, by whom it is eaten in its raw state, but never, as far as I can learn, smoked.

Having thus reviewed the more important articles of agricultural produce, I am induced, before concluding the subject, to hazard the remark that I cannot but consider that the lands comprising the plateau of these hills, so valuable from their capacity for producing grains, which cannot be cultivated in the low country which surrounds them, and which are so much needed for the public good, are, under the exclusive system which at present prevails, both misappropriated in their partial cultivation and wastefully neglected, inasmuch as that there is not drawn from them that full amount of benefit to the community which nature has so eminently qualified them to contribute. On looking at the "Statement of productive resources," it will be seen that out of 11,500 cawnies at present under actual cultivation, only 4,300 cawnies are devoted to the production of wheat and barley, while on all the rest of the land grains are reared which, with only one or two exceptions, are grown just as well, and far cheaper, in the plains below, and would be brought up and bartered for wheat to any extent, could this much-wanted grain be procured on the hills in greater quantity. It will scarcely be credited that this district, so peculiarly well adapted for the cultivation of wheat, actually does not produce enough to supply the bakeries of the principal settlement, for the use of which large quantities of a very inferior description of grain are imported from Mysore; while the minor settlements of Coonoor and Kotergherry are supplied with bread from Coimbatore.

The Neilgherries misappropriated and neglected.

Hill wheat certainly finds its way to the low country by being bartered by the burghers with the traders for cloths and other articles, but the quantity thus exported is insignificant, and bears no comparison with that imported from Mysore.

Silk. There remain yet a few articles of plantation produce to be noticed, the oldest of which in the agricultural history of the Neilgherries is silk. There are several plantations of mulberry trees in various parts of the hills, for the breeding of the silkworm, with establishments for preparing and winding the cocoons, the silk produced by which has, I understand, been pronounced in London to be of a quality very far superior to any produced in the plains, either in Bengal or other parts of India, and what has been sent to England appears to have realised very high prices. The quantity produced, however, has hitherto been very insignificant, and I confess, as far as I am able to judge, the scheme appears a complete failure. The mulberry trees do not shoot out fresh leaves with that redundant luxuriance which distinguishes all other descriptions of vegetation on these hills; the weeding, watering, and pruning which they require involves much expense, the worms require the most delicate treatment, both in regard to food and temperature, any mismanagement of which entails destruction on myriads, and the quantity of cocoons produced is not in a sufficiently large proportion to allow the superior quality of the silk reeled from them to secure a profit to the planter.

Already one extensive plantation and worm and silk house at Coonoor has been given up, and I should think it will not be found that this description of cultivation will be extended by future settlers.

Numerous plantations of coffee trees are scattered about the hills, principally situated on the slopes descending to the plains where the elevation suitable for the growth of this shrub can be obtained. Until within the last two or three years coffee plantations were only found on the eastern side of the hills, but representations of the excellent quality of the berry and of the advantages attending its cultivation on the Neilgherries having been made in Ceylon, the attention of the skilful planters of that island was attracted in this direction, and the result has been the opening of several plantations where I ventured to predict in a former memoir that this description of cultivation would sooner or later be introduced, viz., on the western slopes of the hills, where advantages are offered to the planter eminently superior to those the possession of which has of late years so greatly enhanced the value and importance of the neighbouring island.

The chief of all is the cheapness of labour, a cooly receiving even on distant plantations in the "Koondahs" four rupees a month, while in Ceylon, eight, nine, and even ten are given; while in the pay of artisans, such as carpenters, sawyers, masons, &c., a still greater disparity exists in favour of this district. Second to this is the abundance of labour which can always be commanded here, the neighbouring provinces of Malabar, Mysore, and Coimbatore, supplying coolies in sufficient numbers to meet all demands and at all seasons of the year, while in Ceylon the utmost difficulty is experienced in most parts to obtain labourers when urgently required, and at all times the supply of coolies is extremely precarious. Planters here have also the advantage of a good public road passing through the heart of the forest land of the "Koondahs," and affording ready means for obtaining supplies, machinery, &c., or of sending away produce for shipment by a route of which less than 30 miles are by land, and 36 by water to the port of Calicut. One estate which was opened about two years ago near "Wallahkadoo," half way down the Koondah Ghaut, by the late Archdeacon of Ceylon, and Mr. Hutson, also of that island, and which I had an opportunity of inspecting recently on my way up from the western coast, is in a very flourishing condition, and has every promise of turning out most successfully. In its neighbourhood are tracts of virgin forest land of immense extent, stretching away over the innumerable spurs and valleys into which the koondahs are broken as they slope downwards towards the Ponany River, all eminently suitable for coffee planting, having the proper elevation, a good and rich soil, and enjoying a climate particularly favourable to the nourishment of this peculiar shrub. If the success which is looked for crowns the exertions and adventure of the first speculators, there can be little doubt that when the Koondah coffee appears regularly in the market as a production of this district, the attention of capitalists at home will be directed to it, and the western portion of this mountain tract become a source of great increase to the revenue of the country, while it will afford employment and subsistence to the many indigent people in the neighbouring provinces who at the present time suffer such privations from the want of it between the seasons of sowing and reaping the crops in the plains, and indeed for more than three-quarters of the year.

The other, or what may be called the old plantations in the other parts of the hills, but principally on the north-eastern slopes, are insignificant in point of size, but remarkable for the peculiarly fine flavour of the coffee produced, which is considered to be owing to the high elevation at which most of them are situated. Some plantations near Coonoor and Kotergherry are 5,000 feet above the level of the sea, but it seems to me that the advantage derived from this superiority of flavour is more than counterbalanced by the general want of vigour and luxuriance of the coffee trees, which evidently do not thrive in this latitude so well at an elevation above 4,500 feet, as between that and 3,000 feet. It is not easy to estimate the amount of land at present under actual cultivation for coffee on the Neilgherries, as in most cases the coffee fields are so mixed up with the mulberry-grounds, that it is difficult to arrive at the precise extent of each, but it may be pronounced not to exceed 280 acres on the eastern side, and 300 acres on the western. The general return of those on the eastern side, which are the only ones at present in bearing, is on an average about six to seven cwt. per acre, which is a remunerative rate under the prevailing circumstances of cheap labour; but the trees require manure to keep them up to this rate of bearing, and more care in pruning and managing than is bestowed upon them. Salt provisions may be mentioned as an article of produce of the Neilgherries, though the preparation of them is not carried on in an extensive way. Hams, bacon, salt pork, &c., are cured in the settlements, and sold at a cheap rate; some cured by European settlers being of excellent quality. I am informed that the Bombay Government were anxious some time since to enter into a contract for the supply of the Indian navy with salt provisions in lieu of those prepared for Government use in the unsuitable climate of Bombay; but the opportunity of establishing this branch of productive industry on a firm and regular footing was lost, owing to there being no person on the hills who could be induced to undertake the responsibility of so extensive an engagement. The feeding of stock, if connected with a proper farm on which to raise dry food and support cattle, could be carried on most economically here, especially as regards pigs, whose chief food, potatoes, is raised on the hills out of almost any soil, and with a most profitable return. There might be more difficulty in fattening oxen for the salting-tub, because the pasturage on these hills, though for the most part luxuriant, is rank and fibrous, and does not appear to produce fat or flesh in ruminating animals, except in the case of the hill buffalo, which alone thrives upon it; but as mangel wurzel has been tried, and seems to take very kindly to the climate and soil, this difficulty might be overcome by its introduction. A good English grazier also would soon exterminate the bad grass out of his land, and replace it by grass from good mixed seed from home, which experience (on a small

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Coffee.

Cheap labour, 4 rupees a month.

Western slopes of the Koondahs well suited for coffee cultivation.

Plantations at Coonoor and Kotergherry too high.

Salt provisions.

Stock for salting could be fed economically.

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scale) has shown to thrive well on these hills. Clover and lucerne also flourish here, especially on lands not more than 6,000 feet elevated above the level of the sea; in fact, under a proper system there never could be any want of dry as well as green food for fattening stock, felt in this district.

Fuel likely to become scarce on the hills.

There is another subject which before closing this chapter I am anxious to draw attention to, and that is the supply of firewood obtained from the woods with which the surface of the hills is dotted. This may at a casual glance appear comparatively inexhaustible, but I am satisfied it is not so, and that to preserve in localities where it may be called available for general use a provision for future years some measures of conservation should be adopted, more especially should European troops, with the host of natives who will follow them, be permanently located on the Neilgherries. At present while hundreds of trees are being felled daily, not one is planted, and it is reasonable to anticipate that unless some system is adopted to conserve and renew the woods, particularly in the neighbourhood of the projected barracks, Government will before long be put to a heavy expense in supplying the troops with this necessary of life from a distance.*

Modes of cultivation.

The modes of cultivation adopted by the agricultural hill tribes have been already so frequently adverted to in the preceding chapter on productions, that it will be only necessary here briefly to review them. I have described their system of agriculture as radically bad, and it is so for these reasons: First, because the land is not properly ploughed. Secondly, because it is not properly manured and dressed; and, Thirdly, because no change is ever made in the seed which they sow in it, not even to the extent of bringing it from neighbouring villages, the burghers sowing the same seed over and over again in the same soil, until an inevitable deterioration takes place in the product.

Ploughs very bad.

The plough used is a most wretched implement, the share being almost invariably a piece of pointed wood of a tough description, hardened in the fire, and not shod with iron or any other metal. Owing to this, and to the clumsy form of the plough which gives the man at the tail but little power over the instrument; the land is not furrowed or turned up beyond a depth of six inches, and consequently fresh and unworked soil is never worked up to the surface, but the top soil is alone made use of. The consequence of this and other causes is, that they can take but one crop off their lands of wheat and barley, and are then compelled to let them lie fallow always for two, and generally for three years before they are again brought under the plough. Attempts were I believe made some time back to introduce cast-iron ploughs amongst the burghers, but of course without success, first, because of the obstruction which their prejudices opposed to the introduction of the novelty, and, secondly, because there were no Europeans to show them how to use them, or how to team their little diminutive cattle so as to enable them to drag them. It would be useless, therefore, to attempt to make them use a better description of plough until the means for instructing them in its use could be commanded; and here again we see the advantages which a model Government farm would present in the facility with which all such innovations upon their old vicious system could be practically illustrated and made available for those for whose improvement it was introduced. At present, instead of making one plough perform the work of furrowing the ground to the required depth, six or seven ploughs are employed, each following precisely in the track of its predecessor, the spike of the one deepening the small trenches scraped by the other until when the last has passed it has been made what they consider deep enough, when they turn and form a new one. The ground is then worked chiefly by boys and women, with a small hand hoe (for they have no harrows or any other farming implement besides the plough), and the grass and weeds collected with the hand into small heaps and afterwards burned. Manure is then thrown over the fields and slightly worked in, and it is then considered fit for the seed. The wretched quality of the manure which they use next requires notice.

After one crop of corn, fields lie fallow for two and three years.

The hill agriculturists waste and destroy all their manure.

They have no knowledge whatever of the way to produce or manufacture, if the term may be used, manure, by heaping the dung of their cattle, and covering it in with alternate layers of soil and vegetable substances, but merely take the dung which has been lying exposed to the sun and weather for months, the whole of the nutritious gases having escaped, and its fermentation being long since over, and apply it in its dry and hard, and all but useless state, to the land. The consequence, of course, is, that the soil derives but little or no benefit from the manuring; no heat is communicated to it to encourage the seeds to germinate, or to stimulate and invigorate the growth of the young plant, and the grain produced is small, light, and poor. There is no doubt, as I have already remarked, that lime is the manure most needed to improve the general soil of the Neilgherries; but the expense of this material of course deters the native cultivators, whose ideas cannot be carried beyond the prospects and returns of the current year, from using it. But this expense, under a proper system of farming, would be found light, as in all probability about 40 bullock loads, or two tons of lime per acre, applied once in five years, would be found sufficient to produce a very great and remunerative improvement in the crops raised.

Lime dressing for the soil.

Expense, 25 rupees per acre, once in five years.

This quantity would cost, for lands situated within two or three miles of any of the passes or ghauts, about 25 rupees, and as the lime-burners are always glad to receive hill produce in barter for their commodity, for the sake of keeping their cattle employed, the cultivators would not be called upon to find capital to invest in this part of their farming operations.

A most

* Since this memoir was written, peat has been discovered in extensive deposits in all parts of the Neilgherries, costing about 3s. per ton.

A most essential point on which the hill cultivators stand in great need of instruction is the preparation of manure, for which the climate, with its sharp sun heat in the day and its cold dewy nights, so favourable to the promotion of decomposition, and the abundance of vegetable matter, rich in alkali, such as the fern, which is to be found all over the hills, affords great facilities. Every Burgher and Kother village has a large herd of cattle attached to it, which are penned during the night in a large circular pen, surrounded with stone walls, and allowed to graze over the country during the day. They are never littered at night, and their ordure is allowed to accumulate and lie exposed to the sun in the pen, until it becomes an inconvenience to the cattle, when it is removed and thrown outside, and left as before, uncovered and exposed, to waste away. Now, if a few trusses of fern were to be strewed occasionally over the pen, and all the collections, down to the scrapings of the soil, removed frequently, and laid in layers, with soil, weeds, fern, or other green vegetable matter alternately, the nutritive gases of the dung would be retained, the decomposition of the mass would proceed by slow fermentation, and by continually adding to the heap, or forming new ones, every village would have ready for use at the time of sowing, which is as soon as the frosts have ceased, a large stock of the very best and richest manure, instead of the small quantity of almost useless stuff which they now employ. I believe it has been ascertained in England that this system of covering in the layers of manure with soil adds 50 per cent. to its value, both because the gaseous matter is retained thereby, and because by its action the earth laid on becomes impregnated with ammoniacal and other salts, and forms an adjunct to the dung when worked up with it. It is not, therefore, too much to say, that by the introduction of a better system of preparing manure, or rather by the introduction of a system where none now prevails, the produce of the lands cultivated by the hill tribes would be increased by 50 to 100 per cent., and it would moreover enable them to bring more land under the plough, and avert the necessity which they find or consider to exist, for allowing their corn lands to lie fallow two or three years for one year of crop. Indolence, combined with apathy, is, however, the prime cause of their deficient system of agriculture, for I firmly believe that were fine manure heaps prepared in this way for their use, they would, avaricious as they are, prefer letting a field, capable, if sufficient manure were applied, of producing a crop of wheat, remain fallow through the year, to carrying the manure to it, if it lay at the distance of a mile or so off.

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Preparation of manure.

They never use carts to carry manure to their fields, or to bring produce home, everything being carried on their heads, although in many parts of the hills the features of the ground would admit of the light bandy of the country being employed very advantageously. Such an innovation would, however, never be dreamed of. Thus it is that this fine district, capable of being turned to such great account, is perverted in its use, and undeveloped in its resources; grains which can be produced in almost any soil, and in the sultry climate of the plains, raised on its lands, because they require no manure, or but little, to nourish them, and because their culture and future management involve no great labour or trouble to the holders of the soil. A striking contrast in respect of agricultural industry and a desire to improve is presented by the system pursued by the emigrant natives from the plains who have settled in various parts of the hills, principally in the vicinity of the European stations, and employ themselves in cultivating small patches of land for potatoes, turnips, and other European vegetables. These men, having had the value of the soil pointed out to them, are now commencing in various parts to drain and reclaim the bog lands, and raise upon them crops of the very finest potatoes, with a very small outlay. Their enterprise is, however, circumscribed by the absence of an extensive demand, and by the want of dealers, who might buy up the surplus stock in the settlements, and send the commodity either to Ceylon, where a highly remunerative market would be found, or to the several large stations in the plains, where the demand is always active.

No carts employed on farms.

Native emigrants from the plains more industrious than the burghers.

Wheat, barley, and most of the other kinds of grain produced on these hills, are sown generally in April, when the frosty weather has entirely passed away, and the crops are cut, if the season has been favourable, in July. Poppy seed, however, is sown in October, and the drug collected in January, as it is found that the opium exudes more freely and of greater consistency and richness in frosty than in warm weather. For potatoes no particular time is observed, the sets being put in the ground in any month, except the most frosty ones of December and January; and as soon as one crop is taken up, which is in three months from the time of setting, the lands manured, dug, and hoed, and fresh sets put in without any delay, so as to ensure three full crops during the twelve months.

Wheat, barley, &c., sown in April, and reaped in July and August.

Three crops of potatoes raised annually from the same land.

The prices of all the grains produced on these hills have been already given in the table at page 273; it is, therefore, only necessary here to particularise those productions which have not found a place in that return.

Prices of principal products.

Coffee.—The average price of coffee in the bazaar is five rupees per maund of 25 lbs.; but it fluctuates much, being at the present moment not more than four rupees a maund owing to the anxiety of growers to get rid of their crops, picked in November and December on the spot, to avoid the expense and risk of sending them to Madras or to the western coast for shipment.

Silk.—For this article there is no sale on the Neilgherries.

Hides.—These are to be obtained, but in limited quantities. Buffalo hides are sold at two rupees each, and ox hides at nine annas.

Building Materials.—(At Ootacamund) Bricks per 1,000, 2 rupees; tiles per 1,000, Rs. 1. 12; teakwood and chunam are brought, the one from Seegoor, and the other from the province of Coimbatore.

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Salt Provisions.—Hams are sold at five annas per lb. ; bacon at four annas per lb.*Butter*—Fresh, one rupee per lb.*Jungle Wood.*—The best description is the “bastard cedar,” which is now extensively used for flooring, planks and doors, shelves, &c., in house building. The price is about seven annas per 12 square feet of one inch thick. Rafters, lintels, beams, &c., in proportion.*Bees Wax*—Unbleached, is sold by the eurelars and coorumbars at one quarter rupee per seer.*Castor Oil*—Of very excellent quality is expressed here, and is sold at three annas per quart bottle, or about one rupee per imperial gallon.

The prices of these articles, of course, differ at each of the three settlements; but the difference is slight, and not worth recording in this statement.

Tenure and occupation.

Land is held on the Neilgherries by European settlers under a putteum or grant from Government, leasing it to them in perpetuity* so long as the regulated assessment is paid. In the cantonment of Ootacamund grants are made of the land without any fee being exacted; but beyond its limits, as every spot, whether utterly barren and incapable of production or only untilled waste, is laid claim to by either the todars, the burghers, or the kothers, the land has to be purchased from one or other of these tribes, who exact such price as they think fit. After such purchase has been effected, it is necessary to apply to the Collector of the district for a putteum or acknowledgment of right to occupy and cultivate, though this may be considered a matter of mere form. The tenure of land by the various hill tribes will be more fully entered on in describing each separate race of people; it will, therefore, only be necessary to record here, for the sake of reference, the general circumstances which rule it.

Tenure of the todars.

The todars hold their land, which they consider to extend over the whole plateau, by right of immemorial occupation, alleging that their ancestors came to the Neilgherries before there were any kings or sovereign rulers in Southern India, and never paid tax or tribute to any one.

Tenure of the burghers.

The burghers hold their land, which, if their vague claims are to be allowed, may be stated as comprising two-thirds of the whole hill plateau, nominally by permission of the todars, to whom they pay, in acknowledgment of the proprietary right of the latter a “goodoo” or tribute (being synonymous with the word “yomeah” in Hindustani), which ought, according to the claims of the todars, to amount to one-sixth of every description of grain produced by the cultivators. This “goodoo” is, however, evaded to a great extent, the burghers giving to the todars just what quantity of grain they think fit to part with, and of those descriptions which they can the most readily spare; while some refuse to give anything at all, until compelled by the todars. This system, in its enforcement without the direct sanction of Government, naturally leads to much wrangling and confusion, and may hereafter be productive of mischievous consequences as the sentiments of the burghers change, and they view, as they already, I think, begin to do, this “goodoo” in the light of an illegal and unauthorised impost. They admit that before the days of the East India Company they used to pay one-sixth of their produce to the todars, but that was when their number was small; and when more of their tribe came from the north country to join them, and when they began to imbibe notions of independence from the Europeans, they reduced their tribute until it has arrived at its present footing, that of a “yoemeah,” or voluntary contribution.

In speaking of the collection of the “goodoo” by the todars, the burghers speak of the Collectors as “peecharur” (which means “beggars”), a term sufficiently explanatory of their view of the question of right on the part of the todars to demand the tribute.

Tenure of the kothers and eurelars.

The kothers hold their lands under the same terms.

The eurelars hold the patches of land which they cultivate, and which are all situated to the eastward, near Rungaswamy Peak and the Kotergherry Pass, independent of the todars, who profess not to assert any proprietary right over the lands which extend below the actual summit or plateau of the hills. The eurelars have a loose kind of tenure of their land, holding it at pleasure so long as they pay the assessment. But they cultivate so little, that it is scarcely worth noticing.

Modes and rate of assessment.

The assessment on lands on the Neilgherries is divided into two classes, one applicable to those held by the native agriculturists, and the other to those occupied by European settlers.

It is levied on the former according to the measurement of fields actually bearing crop, estimated in “vullums” (pronounced sometimes “bullahs”), each vullum being equivalent to two cawnies, 21 grounds, and 864 square feet; or in English measurement, 1 vullum = 3 $\frac{1}{2}$ acres, the rate of assessment being fixed according to the nature and abundance of the crop which the land is bearing at the time of measurement. When harvest-time approaches, the ghomastahs and curnumms proceed to the different villages, and form an estimate of the probable out-turn of the crop on each field from its appearance, rating it as first class if it promises to be abundant, and as second class if otherwise.

The

* Within the limits of the cantonment the grants of land are for 99 years.

The highest rate levied is on lands cultivated for potatoes, which pay 7 rupees per vullum for first class ground, and 5 rupees per vullum for second class ground. Appendix, No. 5.

The next rate in the scale of assessment is applied to lands bearing

	Rs.	a.	p.
Wheat, which pay for first class ground - - -	3	8	5
and for second " " - - -	2	5	7
Barley, which pay for first class " " - - -	3	8	5
and for second " " - - -	2	5	7

per vullum, and the same for poppy, vendium, mustard seed, garlic and onions.

The lowest rate applies to raggee, samee, koralley, peas, shanungee and tenney, all of which pay Rs. 2. 0. 11 per vullum for first class land, and for second class, Rs. - 14. 1. per vullum.

For further particulars regarding these rates of assessment and their equivalents per cawny and per acre, I may refer to the table at page 273.

Lands held by Europeans, whether by grant of Government within the limits of the cantonment, or purchased from the Hill people in more distant localities, pay assessment as follows:

	Rs.	a.	p.
For ground occupied as sites of buildings - - -	5	4	- per cawny
* For ground appropriated for gardens and general agricultural purposes - - -	1	2	4 "

The description of people available on the Neilgherries as labourers differs according to the situation of the land on which they are required to work. Labour employed, and its remuneration.

Thus in, and about the settlement of Ootacamund, the coolies employed are all emigrants from the plains of Canara, Malabar and Coimbatore, or from the Mysore territory; the Canarese and Mysoreans being the most numerous.

Their remuneration is commonly 2½ annas per day, or 3½ d.

In the vicinity of Burgher villages, and especially about Coonoor and Kotergherry Burgher, labour is available in abundance at the rate of 2 annas per diem, and they are extensively employed by settlers to cultivate their gardens and to work on plantations. Carpenters and bricklayers are mostly people from Paulghat in Malabar, or from Coimbatore; their rates of pay vary according to their expertness, from 8 annas a day to 6. Stone-cutters work by the piece, receiving on an average for smoothed granite slabs, steps, coping stones, &c., 8 annas per running foot, of about 1 foot by 6 or 8 inches, breadth and depth; sawyers in like manner work by the piece, at the rate of about 2½ rupees per 100 feet of surface cut. It is difficult to obtain the services of this class of artizans on the hills, as they all resort to the Teak forests at Museum Coil and Tippacadoo, near Seegoor, where they always find abundant employment.

Brickmakers and tilemakers work, of course, by contract, at the rates already specified under the head "Prices of principal products."

There are several tolerable blacksmiths, silversmiths, and abundance of tailors settled in Ootacamund and the minor stations; while, on the eastern side of the hills the Kothers are generally employed as artizans for rough smith's and carpenter's work.

These hills possess a great advantage in regard to labour, which is, and always must be, abundant; because as soon as the seed is put into the ground in the adjacent low country, the poorer class, or labouring men, are thrown out of employment until harvest time is past, unless some extensive public work happens to be in progress, and therefore come to the Neilgherries for work in preference to wandering away to Ceylon and other parts to search for it, whenever a demand exists here for their services.

The common rate of pay to all such labourers employed on plantations is 4 rupees a month, and for this sum they labour contentedly for nine hours a day, performing work which, though it cannot be compared with Negro labour, must nevertheless be pronounced cheaply remunerated at the rate quoted above.

CITIES.

THE only town on the hills, properly so called, is "Ootacamund," and even this term can only be applied legitimately to the native portion of the settlement, since the residences of Europeans are too widely dispersed along the slopes of the valley in which the station is situated, to admit, at present, of its further extension. So rapidly however is the number of houses increasing and keeping pace with the increased resort of Europeans to these hills from almost all parts of India, while at the same time a consequently augmented demand for supplies for the European community is daily drawing more native merchants and traders to the place as permanent settlers, and thus swelling the size of the bazaars beyond

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all bounds, that before long the term "town" will not be inappropriately applied to the whole settlement, while that of "cantonment" will be transferred to the valley of Jukatalla, where the European barracks are about to be built. The houses of the European inhabitants of the settlement are for the most part substantially built; the walls are usually of burnt brick set in clay, and pointed or plastered with lime, roofs of tiles, or pukka terraced, and rarely of thatch, while all the timber work of the roof, doors, floors, &c., &c., is of teak, which is brought at a great cost up the Seegoor pass from the forests on the borders of Mysore. There are, however, many excellent and durable descriptions of house building timber to be procured on the hills at one quarter the cost of teak, but a prejudice exists against their use, because roofs constructed with hill-grown timber have, in some instances, been found to decay with great rapidity, and hence its employment has been condemned by builders who have overlooked the real cause of its decomposition, which is, its being put together and covered in before it has been sufficiently seasoned. As an instance of its efficiency, if attention is paid to this important point, and the wood properly selected, I may mention that the present survey office has a roof made entirely of jungle wood cut on these hills, which has been standing more than 20 years, and which, on a recent examination, was found to be perfectly sound. All other building materials (except lime) are procured on the spot, abundance of tolerably good brick clay being found in every part of the hills.

Much good timber for building to be obtained on the hills.

Bricks and tiles very bad.

Lime dear.

Clay used as cement for walls.

The bricks and tiles made are however very inferior, but this is owing to the wretched way in which the clay is worked and moulded. A labourer mixes a little water with it with a mamotie, treads it for a few minutes with his feet, and then pronounces it tempered, and carries it to the moulder without further preparation. Bricks can be contracted for in Ootacamund, delivered at the kiln at two rupees per thousand; and tiles, one rupee twelve annas per thousand. Lime, as I have elsewhere observed, does not occur, or at least has not yet been found on these hills; and hence, having to be brought on bullocks from the plains, it forms the most expensive item in building estimates. Its use is economised as much as possible in house architecture by using mud as a cement to set the bricks in, in constructing walls, reserving lime only for use in turning arches, ridging the tiles in the roof, flooring, and either pointing or plastering the walls outside, with which protection brick and mud walls are found to answer very well; especially if the roof over them is kept tight, and their surfaces screened from the beat of the rain against them by a verandah. In the bazaars of Ootacamund, which are called "the bazaar" and "caundle bazaar," the houses are of all descriptions, both pukka and cutcha. The streets are wide and well kept by the police authorities, by whom a tax, varying from one anna to one and a half on each house per mensem, is levied to support the scavenger establishment, the residue being paid into the public treasury; and if good regulations are enforced, as regards the laying out of future quarters of residence, already fast extending, the town, which the bazaars will constitute, will become a very cleanly and compact one; and hence, doubtless, healthy also. It has the advantage of being bordered by the lake or tank, which adds, of course, materially to its means of preserving cleanliness.

The following is a RETURN of the European and Native Population of the Three Settlements, taken in February 1848, and although many present Inhabitants, with their Servants and Followers, will have left the Hills before the Year ends, the Total Numbers may yet be taken as a pretty correct Average of those usually residing, as of course the place of those removing is soon occupied by fresh comers from the Plains:—

	EUROPEANS.				EAST INDIANS.				HINDOOS.				MUSSULMAUNS.				PARIAHS.				Number of European Houses.	Number of Native Houses.
	Adults.		Children.		Adults.		Children.		Adults.		Children.		Adults.		Children.							
	Male.	Female.	Male.	Female.	Male.	Female.	Male.	Female.	Male.	Female.	Male.	Female.	Male.	Female.	Male.	Female.						
Ootacamund - -	98	97	57	66	38	34	22	23	935	828	431	601	341	238	130	143	1,642	1,506	732	752	146	1,743
Kothengherry - -	9	5	4	4	6	6	11	12	49	49	17	20	7	5	3	1	56	55	22	24	15	98
Coonor - -	5	2	-	-	1	1	-	-	80	65	32	29	9	9	8	7	50	60	20	19	15	131
Aravungand* - -	-	-	-	-	-	-	-	-	3	3	2	1	-	-	-	-	6	7	4	4	-	12
Total Population -	342 Souls.				154 Souls.				3,045 Souls.				901 Souls.				4,941 Souls.				176	1,984

* A small native settlement in "Sappers' valley," between Kaitce and Coonor.

The settlement of "Ootacamund" is situated in an extensive open valley, almost in the exact centre of the hills, open to the westward, but bounded on the north, east, and south by the great Dodabetta range, or spurs projecting from it westward.

The settlement of "Coonoor" is situated on the crest of the hills in the south-east angle of their summit, the residences of the Europeans, including an hotel, being placed on the rounded tops of a range of hills, which runs from a high mountain called "Coonoor-betta" towards the top of the pass, while the bazaar or native residences are in the hollow below, and adjacent to a masonry bridge which spans a wide stream flowing from the Jakatalla valley and descending the hills at this point in a large volume of water.

The settlement of "Kotergherry" which with that of "Dimhuty," which is contiguous to it, is the oldest on the hills, is situated in the north-east angle of the plateau, immediately overlooking the low country, and at the head of the Kotergherry Ghaut. The bazaar, which is increasing considerably in size, is built on the same range, with the residences of the Europeans.

"Dimhuty" cannot now be called a settlement, since there is but one habitable residence existing there, all the bungalows built long since by Government for the accommodation of invalids, having gone to ruin and become unfit to occupy or repair. The temperature is warmer at this place than at any of the other three settlements, and hence it is very rarely resorted to by Europeans. Under this head may be enumerated the public bungalows and chettrums, or caravanserais, for the accommodation of travellers, native and European, and which are under the control of the officer commanding the Neilgherries, and kept in repair by him at the public expense.

List of Places of Accommodation for Travellers.

Accommodation for travellers.

	For Europeans.	For Natives.
At Ootacamund - - - - -	None.	1
" Coonoor - - - - -	1	1
" Kotergherry - - - - -	None.	None.
" Neddiwuttum - - - - -	1	None.
" Pykara - - - - -	1	None.
" Kulhuty (Seegoor Pass) - - - - -	1	None.
" Nunjanaad (Koondah Road) - - - - -	None.	1
" Avalanche (ditto) - - - - -	1	1
" Burliar (Coonoor Pass) - - - - -	None.	1
" Kaitee (Coonoor Road) - - - - -	None.	1
* TOTAL on the Neilgherries - - - - -	5	6

POPULATION.

Appended to this Memoir will be found tables furnishing all particulars of the several tribes, constituting the body of aboriginal settlers, on these hills and of the European and other inhabitants of the three settlements. The following is the summary.

Numbers of people of different descriptions.

	Souls.	Souls.
Europeans including Children - - - - -	- - - - -	342
East Indians ditto ditto - - - - -	- - - - -	154
Hindoos ditto ditto - - - - -	3,045	
Mussulmauns ditto ditto - - - - -	901	
Pariahs ditto ditto - - - - -	4,941	
		8,887
HILL TRIBES.		
Todars ditto ditto - - - - -	337	
Burghers ditto ditto - - - - -	6,569	
Kothers ditto ditto - - - - -	307	
Eurelars ditto ditto - - - - -	461	
		7,674
TOTAL Population of the Neilgherries - - - - -		17,057.

Deducting from the total area of the plateau, that portion lying to the westward of the Pykara, or Moyaar river, which I have elsewhere described as almost entirely uninhabited, there remains a space of 420 square miles over which this population is distributed, giving a proportion of 40 souls to one square mile.

For

* Exclusive of the Koondaha.

Appendix, No. 5. For the reasons already stated under the preceding head, no place or number can be assigned to the tribe of Coorumburs in this statement. Their number must however be very insignificant, probably not above 200 or 300 souls. With the exception of the Todars, who pass their days in utter idleness, all the aboriginal tribes, or mountaineers of the Neilgherries devote themselves to agricultural pursuits. With these duties the Kothers alone combine those of the artisan in a humble way, as will be treated of in describing the people of that tribe.

The Todars, or Todawars.
Total number, 337 souls.

This remarkable race differ in almost every essential respect from all other tribes of the natives of Hindostan, and their singular characteristics and strange habits have given rise to much speculation as to their origin and history. As no clue has however yet been discovered either in the form of monuments, coins, or even in their own traditions, by which research could be directed, all theories broached upon the subject cannot be otherwise than vain and illusory, especially those which have been based upon the assumption that the images, bones, and other relics which are found in the remarkable " Cairus " discovered in such numbers all over the hills, belonged to the ancestors of the Todars.

Personal appearance very striking.

That these are not relics of the founders of their race is proved by the present people denying all knowledge of the history of the Cairns, even by tradition, and by their looking on at their desecration with as much curiosity and indifference to the sacrilege, as is displayed by the antiquarian explorer whom they have perhaps guided to the spot. In form and countenance the appearance of the Todars is remarkably striking. Tall, well proportioned and athletic, their bold independent carriage, and finely moulded and sinewy limbs attest that they can be sprung from no effeminate Eastern race, while their aquiline nose, receding forehead, and rounded profile, combined with their black bushy beards and eyebrows give them so decidedly Jewish an aspect, that no beholder can fail to be impressed with the idea that they must in some way, however remote, be connected with one of the lost and wandering tribes of the ancient Israelites. Their dress is as peculiar as their habits and appearance, consisting of one single cloth, a sort of toga, which they wear after a fashion well calculated to set off to advantage their fine muscular form, being disposed about their person like the plaid of a Scottish Highlander. They have no covering for the head of any kind, but never allowing knife or scissors to approach their hair they suffer it to grow into a mass so thick and bushy as to form a most effectual protection from the inclemency of the weather. The women are rather fair in complexion, the hue being a dull copper colour in both sexes, and are generally handsome in feature as well as in person, which is tall and well shaped like that of the men, their attire being equally simple and peculiar. The little occupation which the Todars permit themselves to engage in, is solely of a pastoral kind. Considerable herds of buffaloes are attached to each mund, and to milk these, convert their milk into ghee, drive them out to pasture in the morning and home at night, and to keep their huts and the walls of their cattle pens in repair constitute the sum of their employment, from year to year of their useless existence. Their food consists of curds, milk and ghee mixed with whatever grains they can obtain from the agricultural tribes in the shape of "goodoo" or tribute for the lands which the latter cultivate, and over which the Todars assert an imaginary proprietary right. I observe that the Honourable Court in their despatch express a hope "that in course of time they may be induced so far to change their habits as to bring the lands in the vicinity of their munds into cultivation." I fear, as long as this practice of receiving their grain from the Burghers and Kothers remains in force there is but little chance of this desire being realized, and the only inducement, in my opinion, by which they would ever be brought to condescend to yoke their powerful buffaloes to a plough and take the handles in their hands, would be that promoted by the stoppage of their supplies by the removal of the "goodoo" imposition, and their consequent reduction to the primitive state of life which, by their own account, their forefathers led before the Burghers came to settle on the hills.

Dress peculiar; the toga worn.

Revenue Department, No. 18 of 1843, para. 11.

Traditionary history.

Institution of the "goodoo."

Their own idea of their history is that "their ancestors came from nowhere;" that they were created on these mountains, and that for ages no other living soul approached them: that their dress was of leaves and their food the produce of their cattle and the roots and fruits of the forest. That at length some Kothers found their way to the neighbourhood of their munds and craved permission to cultivate land and build their huts, which was given on condition of their making offerings to them (the Todars) of a portion of their produce. That soon after this, some Burghers or "Buddaghars" came up the hills, and observing the success which had rewarded the adventure of the Kothers, asked permission to settle also, and obtained it on condition of the payment of the "goodoo" or tribute of one-sixth of their entire harvest. More Burghers soon followed the first comers, the amount of the "goodoo" became extensive, the habits of the Todars changed, the cotton embroidered toga took the place of the mantle of leaves, and messes of grains of many descriptions pampered the appetites of beings who were before as primitive in all things as their native hills. With increase of numbers however the deference of the Burghers for them diminished, and with it the amount of the "goodoo," which received a great acceleration in its decline by the coming of Europeans to the district, when the Burghers observing their indifference to the alleged claims of sovereignty of their hitherto feudal landlords, gradually assumed the position of donors of the "goodoo" of free will and as a charity, and hence reduced its amount as the circumstances of an abundant or poor harvest, or their own wants and inclinations directed. Upon this footing, as far as I have been able to arrive at a right understanding of the question, the "goodoo" appears at present to rest. The Burghers profess not to desire to be relieved

relieved from it as a tax, because to give it as a donation to the Todars has become with them a time-honoured custom, which their prejudices forbid them to break through—but it seems to me evident that they are not disposed to admit the absolute right of the Todars to demand it, and hence their allotment of the quantity of the produce which they are to bestow under the name of "goodoo," according to their means, their own wants, or fancy. Anything more utterly useless, or unproductive in the social scale than the life led by the Todars, it is impossible to conceive. Endowed with great physical strength and capacity to endure fatigue and vicissitudes of weather, and hence eminently fitted for a life of agricultural industry or other active employment, this fine race, instead of legitimately developing the powers which have been given to them, devote their lives to the unprofitable end of herding a number of buffaloes, the only use of which is to produce the small quantity of milk required for the use of the few families which congregate together in each mund, and to furnish sacrifices to the manes of any one of their male proprietors who dies.

Appendix, No. 5.

Unprofitable and idle life led by the Todars.

Their herds are a nuisance and a pest to the district, for being exceedingly wild and ferocious, especially to Europeans, they frequently attack persons travelling on the high roads when not attended (as is generally the case) by a herdsman, and serious accidents occasionally result. Whatever may have been the attributes of the Todars when Europeans first became acquainted with them, they appear at the present time to be decidedly as indolent, mercenary, and sensual as any of the worst tribes in the plains; and, but for the meretricious interest which attaches to them through their singular mien, costume and habits of life, and the mystery in which their history is enveloped, they would be deemed a perfect cumbrance to the soil. Their religion is, of course, Pagan, and engenders the usual superstitions and prejudices. They have no distinct "samees" houses or places of idol worship, but devote to this purpose the dairy or hut in which they keep their milk, ghee, &c., and in which they offer, by libation, to their deity such milk as is not consumed in the daily use of the tribe. Their domestic rites are as strange and barbarous as is all connected with this singular people. The wife of one amongst several brothers is common to the whole circle, and every woman besides her husband has a certain number of gallants, who reside with her at pleasure and by turns. To such practices as these it is, doubtless, to be attributed that this race does not increase in numbers, and is evidently deteriorating in physical endowments.

Religion, Pagan.

The great mass of the Todars inhabit the vallies and woods to the westward of the plateau, being confined, with the exception of five inhabited munds in Parunganaad, and two in Meykenaad, to the division called Todanaad; and it will be seen by the map that in this portion of the plateau their munds are principally congregated to the westward, apart from the villages of the Burghers, only a few in the neighbourhood of Ootacamund and to the northward being interspersed amongst their cultivated lands.

And to this portion of the hills, viz., to the extreme westward, it would be highly desirable that the whole tribe should be restricted, as they would have the benefit of abundance of excellent pasture land for their cattle, and being there entirely apart from the other inhabitants of the hills, would be free to carry on their rites and superstitious observances without hindrance from others, and without the possibility of causing annoyance to the rest of the population. It has been distinctly stated to me by the Todars, Burghers, and the talook civil authorities, that the Burghers, whose villages are situated in Todanaad, have to support, by payment of the "goodoo," all the Todars who occupy munds in that division, without aid from the Burghers of the other two naads, who are only bound to maintain the Todars who actually reside within their respective limits. Hence an apparently palpable injustice to the Burghers of Todanaad, since, as will be seen by the census returns, the tribe are pretty equally distributed throughout the three naads; whereas, out of a total of 337 souls, of which the tribe of Todars at present consists, only 42 are located in Parunganaad and 10 in Meykenaad, while all the rest, amounting to 285, are located in Todanaad. This seeming difficulty in equalising the infliction of the "goodoo" impost is overcome in the following manner. As soon as harvest is over, and the "goodoo" collected in Todanaad, the Todar men of that division pay visits to the munds in Meykenaad and Parunganaad, and take up their abode with the women of the community (to the temporary exclusion, as is their custom, of the legitimate husband). They then pay visits to the surrounding Burgher villages, and demand, in their right as temporary husbands of women of the naad, the "goodoo," which, strange to say, is paid; and thus the same man, perhaps, who has laid a whole village in his own naad under contribution, goes the round of the other two naads, appropriating the fruits of the Burghers' labour and industry, and carrying off enough grain to support his whole community in idleness and plenty until the arrival of the next year's harvest time, and to produce by sale in the nearest bazaar sufficient money to pay the tax or "pillooverry" which is levied yearly on their tribe. I should have refused credence to such a statement had I not received it on the best authority, that of the tahsildar of the district.

Desirable if possible to restrict the Todars to the western confines of the hills.

Levying contributions on the Burghers.

The habits of the Todars are migratory, almost every community or particular group of families consorting together, having two or more munds or villages belonging to them, between which they divide their time according to custom, fancy, the state of the weather, or other circumstances, such as the death of one of their body, upon which occurrence they immediately migrate to another mund. The grass upon which they pasture their buffaloes is of a coarse rank description, fit only for those hardy and powerful animals; but by burning it down, as is their practice, just before the rains set in, when they are about to migrate to another mund, a fine tender young grass, highly nutritious as pasture, has replaced the

Migrate from mund to mund.

Appendix, No. 5. ashes of the old grass by the time they return to the mund round which they had run their fires.

Fine breed of buffaloes decreasing.

According to their own statements, the fine breed of buffaloes, which seem peculiar to the district, is rapidly decreasing, murrain and other diseases having of late years carried them off in far greater numbers than are bred to supply their places. Doubtless the system of perpetual inbreeding aids in their deterioration. There are some Todar munds on the "Koondah" mountains, but as that range is not in this talook, no information relating to them can be gained until the survey has been extended in that direction. While speaking of the Todars' buffaloes, I should mention that a few only of the small calves brought forth by their cows are preserved for perpetuating their stock, and all the rest killed while young and eaten by the Todars themselves. If these calves were castrated and reared, they would be most admirably suited, from their great strength, to drag proper iron ploughs over the steepest and most difficult ground. The Todars pay an annual tax to Government of 9 annas and 5 pice per head on all the female buffaloes herded by them, the bulls being exempt from tax; and in addition to this they pay a small assessment on grazing land, called "pillooverry" or grass tax, at the rate of one-quarter of the sum fixed as the lowest class assessment for cultivated land per vullum, the quantity of land which they are called upon to pay being estimated according to the number of buffaloes herded at each mund, at the rate of about 10 vullums per 100 head of cattle. The amount of revenue collected from the Todars in 1847 was—

Tax paid by the Todars to Government.

On account of tax on buffaloes - - - - -	Rs.
Ditto - ditto - pilloverry - - - - -	960
	400
TOTAL - - - - -	Rs. 1,360

The Kothers.

The Kothers rank next to the Todars, according to common tradition, in seniority as occupants of the Neilgherries.

Six villages; 307 souls.

They are of low caste, equivalent to that of the pariah in the plains, and consequently are always found dwelling by themselves in isolated villages, of which there are only (six) 6 on the plateau of the hills, and generally called after the race "Kother-gerry." Around each village they have lands, considered and admitted by their Burgher or Todar neighbours to be exclusively their own, no disputes about boundaries or the right to certain tracts occurring amongst them at any time, so far as I can learn. The Kothers are an exceedingly industrious and useful race. They give all their time to husbandry when the land calls for their care, but when the seed is in the ground, and their time disposable, they employ it in all sorts of mechanical avocations, repairing the ploughs of their own and the neighbouring villages, as well as bill-books, mamoties, and all other farming implements, and executing a great variety of smith's and carpenter's work.

Industrious.

Iron smiths, carpenters, and basket-makers.

It is by these people that the buffalo and other hides of hill cattle, which are so much prized by the workers in leather in the plains, and which should form a very important item in the export list of the district, are dressed and prepared for the purposes of commerce, the Kothers being very expert curriers.

In common with the Burghers they pay "goodoo" in grain to the Todars of their naad, in acknowledgment of their feudal proprietary right over the land which they till, and which it appears the Todars, in spite of their own purity and the uncleanness and low caste of the Kothers, do not hesitate to receive and eat, though no Burgher would touch grain so polluted. The Kothers are not extensive cultivators, bringing only land enough under the plough to yield the quantity of grain required for the use of the village, with a small surplus, which they barter with the low country traders for iron to carry on their forges.

Hence by far the greater part of the land to which they lay claim in the vicinity of their villages remains waste, and is likely to do so as long as the present proprietary system continues in force. In some parts of the hills this land is of a very fine description, which, according to their explanation, is to be ascribed to their having come to these hills the first of all the agricultural tribes, and thus enjoyed the privilege of selecting the best land.

Their religion is of course idolatrous. Their marriage customs and ceremonies are not very dissimilar to those observed amongst the people of the pariah caste in the plains, and they have no plurality of wives or of husbands. They are impure and dirty in their habits, eating the flesh of cattle which die by the roadside of disease or in the jungle; hence their neighbours, the Burghers, though living ostensibly on amicable terms with them, account it pollution to eat with them, or associate with them in their households.

They breed small cows and bullocks, but no buffaloes, and they have a singular and wasteful practice of never drawing the milk from the cow, and allowing the whole to go to the calf, which they kill and eat on feast days.

The total number of Kothers on the Neilgherries, up to 31st December 1847, was found to be—

Males - - - - -	157
Females - - - - -	150

Total - - - 307 souls,

including children of both sexes.

The

The Burghers, or "Vuddaghurs," signifying literally "people of the North," are supposed to have emigrated to the Neilgherries from the northern part of Mysore or Canara, during a season either of famine or political persecution, and finding their soil and climate good, and their pre-occupiers peaceable and disinclined to molest them, they settled on them, and meeting with success in their early agricultural operations, they soon induced others of their countrymen to follow them, and thus formed the nucleus of the numerous tribe now recognised as the chief and most important portion of the hill population.

Appendix, No. 5.

The Burghers.

Their villages, which have been already described under another head, are scattered all over the plateau of the hills, excepting the portions to which I have already adverted as inhabited exclusively by the Todars, viz. the northern and western parts of the "Todanaad" division, and the north-eastern angle of the "Parungenaad," called "Kodanaad;" and with the exception of these tracts, a small extent of pasture land in the vicinity of four Todar-munds which occur near Coonoor and Hoolicull, and the lands in the possession of the Kotheres, they may be said to arrogate to themselves a right of direct proprietorship over the whole of the lands comprising the hill plateau. They admit the fact of their holding it under tribute to the Todars, and render to them the "goodoo," or free-will offering, in acknowledgment of the feudal possession of this tribe; but at the same time they consider the land so far alienated from their possession, that they, its present holders, are empowered to dispose of it to strangers by sale, gift, exchange, or otherwise, which they accordingly do.

They pay the "goodoo" to the Todars resident in their respective "naads," or divisions, who, according to their statements, pay an annual visit, after the harvest is gathered, in to the various Burgher and Kother villages, and demand the contribution in kind, which is rendered according to the circumstances of the inhabitants, the owner of a rich house giving usually 1 cundagum = 20 kollagums; and those less opulent from $\frac{1}{2}$ to $\frac{3}{4}$ cundagum, according to their means. Sometimes the offerings of the poorer inhabitants are not considered sufficient, and sometimes they refuse to give anything at all, when confusion ensues, the Todars, according to statements made to me by some of the Burghers, entering their houses, and laying them under contribution by force. If such occurrences really do take place, it seems likely that the interference of the civil authorities of the district will before long become necessary, either to legalise the exaction of the "goodoo," or to put a stop to it, since, as the law seems at present to stand, a Burgher from whom a Todar might attempt to enforce its payment would have a clear right to the protection of the police, who would be bound, on an appeal being made, to treat the Todar as a trespasser.

Goodoo often extorted by the Todars.

Government interference seems called for.

Such contradictory statements, however, are made by the Burghers, some asserting that they are quite contented to contribute the "goodoo," and have no desire to be relieved from it, while others murmur against its imposition, in addition to that of the Government assessment, that it is most difficult to discover what their real sentiments upon the subject are, or, indeed upon any other in which their interests are, however remotely, concerned.

I may remark, in connexion with the question of the "goodoo," that when the Burghers make transfers of land within the limits of what they term their territory, to European settlers and others, no stipulation is ever made for a contribution to the Todars of a portion of whatever produce may be raised by the purchaser; nor do the Todars themselves ever come forward to urge such a claim, or to remonstrate against such alienations of their rights and property.

Transfers of land by the Burghers.

Many of the Burghers are said to be (for natives) very wealthy, and this circumstance, perhaps, has induced amongst many of them habits of sloth and sensuality, inimical to their moral or physical improvement; but nevertheless, when viewed in comparison with other tribes of Hindoos, they cannot be pronounced pre-eminently indolent or degraded in their habits. They are utterly illiterate, and their ignorance of the accomplishments of reading and writing are transmitted to their children, since schools for their education are unknown amongst them. Their religion is Hindoo, and they are of the Siva sect, their principal deity however being Rungaswany, whose temple is situated on the summit of "Rungaswany's Peak," the easternmost point of the Neilgherries, and in addition to whom they also worship many other inferior divinities, male and female.

The burghers, Hindoos of the Siva sect.

There are several subordinate sects amongst the Burghers, the chief of which is that of the "Aroovurs," who assume to be Brahmins, and wear the sacerdotal string over the shoulder; next the Sivacharies, the Wodiars, Kunukars, Burghers, and Toriars, the last being the lowest caste amongst the tribe, and generally the poorest. Their ceremonies of marriage and burial do not differ essentially from those observed amongst the Hindoo tribes in the plains, and such differences as exist are only under the first head, and are chiefly remarkable for their indelicacy, and not worthy of notice. The Burghers are a most superstitious, timid race, perpetually filled with the dread of evil spirits hovering around them, and ever haunted with fear of the "Coorumburs" (a tribe to be hereafter described), to whose necromancy and demoniac influence they attribute all accidents and infirmities which befall themselves, their families, cattle, or crops. To such an extent is this feeling carried, that murders of the most brutal description have been known to be perpetrated upon the unfortunate Coorumburs, for which, although in general it is found difficult to obtain evidence to convict the perpetrators, Burghers have been tried and executed, much to their indignation and astonishment, since the principle inculcated amongst them appears to be, that to sacrifice a Coorumbur (and in some cases whole families of them), through whose preternatural agency disease has been brought into a village or murrain amongst their cattle, is the only way in which the evil can be averted, and the anger of the deity of destruction appeased. Yet, notwithstanding this intuitive horror of their influence over the common affairs of their lives, they regard the

Very superstitious and timid.

Stand in great awe of the Coorumburs.

Appendix, No. 5. Coorumburs with the utmost consideration in many other respects, looking upon them as priests, or rather enchanters, whose favour must be propitiated to secure their intercession with the geniuses of good and evil in their favour.

For example, in the spring, when a field is ready for the seed, the work of husbandry cannot proceed until a Coorumbur has been summoned, a kid sacrificed to a goddess equivalent to Ceres, the soil blessed, and the first handful of seed scattered over it by him. In like manner a Coorumbur must drive the first plough a few paces before their work of tillage commences, and at harvest time not a grain or ear is reaped until a small sheaf has been cut by a Coorumbur. For these offices the Coorumburs receive gifts in money and produce, and finding their interest in the existence of these superstitions, doubtless encourage them by all the means in their power which they can safely employ. The Burghers seem to live in great harmony amongst themselves, ruled by their head men and elders. They are fond and careful of their families, and pay great respect to the aged; but in character they appear deceitful, ungrateful, and false.

Their women and children all labour in the fields at the time of harvest, as well as in preparing the ground for seed, and by this combination of industry it is easy to foresee to what a successful extent their farming operations might be carried if a better system of husbandry could be introduced amongst them. The total number of Burghers resident on the Neilgherries in December 1847 has been found by the census to be as follows:—

Males	-	-	-	-	-	-	-	-	3,346
Females	-	-	-	-	-	-	-	-	3,223
Total									6,569 souls,

including children of both sexes, viz. :—

In Todanaad	-	-	-	-	-	-	-	-	2,039
In Parungenaad	-	-	-	-	-	-	-	-	2,377
In Meykenaad	-	-	-	-	-	-	-	-	2,153
Total									6,569 souls.

The Eurelas.

The number of this singular tribe is small, amounting only to—

Males	-	-	-	-	-	-	-	-	225
Females	-	-	-	-	-	-	-	-	236
Total									461 souls,

including children of both sexes. They are found principally in the eastern part of the hills, where they cultivate the lower slopes, forming the broad deep valleys which run in the vicinity of Rungaswamy's Peak towards the plains. They raise crops of raggee, koralle, shamee, and mustard seed chiefly, but to no great extent, being very improvident in their arrangements, and eating up all their produce at once, without laying any by for the rainy season, when they subsist chiefly on plantains, jack, and other fruits, which they cultivate in patches near their villages, and which thrive in consequence of the lower level on which the Eurelars are mostly settled. They also work occasionally as coolies on plantations, preferring employment in the jungle to working in the field, and being expert fellers of trees, hewers of planks, rafters, &c. They worship Rungaswamy and some other inferior deities, and enjoy the high privilege of tending the temple and idol on "Rungaswamy's Peak," where two or more of their number officiate as priests at the period of the great festival in August and September, when thousands of Hindoo pilgrims flock to the sacred peak from all parts of the adjacent country, with offerings of all descriptions of produce, and occasionally money. They pay kist to Government, according to the nature and quantity of their crops; but they make no offerings to the Todars in the shape of "goodoo," probably from their occupying land rather below the plateau to which the Todars lay claim. When driven to extremities for food, the Eurelars betake themselves to the jungles on the slopes of the hills, and seeming to have no fear of wild beasts, hunt and destroy sambré, spotted deer, jungle sheep, and other game with great expertness. They also search for bees' wax, which finds a ready sale in the plains; but many lose their lives in this pursuit, through the bears, which are numerous in the eastern part of the hills, and whose fondness for honey often brings them into contact with the collectors of wax.

Are priests of Rungaswamy's temple, on the Peak.

The Coorumburs.

The Coorumburs are not, strictly speaking, a tribe of mountaineers, since many sects of the same people are found in various parts of the plains, especially towards the southward, and those who do frequent the Neilgherries inhabit the lowest slopes, and are perpetually migrating from spot to spot, erecting their little huts usually on grassy patches in the midst of the densest and most wild forests. Those who are met with on the eastern side of the hills are called "Mooloo-Coorumburs" implying "thorny" or jungle Coorumburs, to distinguish them in some degree from the Coorumburs of the west country.

They

They are small in stature, and their squalid and uncouth appearance, and wild matted hair, might seem to give some cause with so timid a race as the Burghers, for imputing to them the fiendish and preternatural powers with which their superstition invests them. If a Burgher meets a Coorumbur, not summoned at seed or harvest time, in his path, he will fly from him as from a wild beast, and if too close to escape his dreaded glance, he will return home and resign himself to a fate which he deems inevitable, often in fact inducing sickness by the prostration of body and mind which is thus supervened. I may here mention, that a popular belief exists that the Coorumburs have an equal proprietary right in the soil of the Neilgherries, having come to them at a period coeval with or antecedent to the migration to them of the Todars. The Coorumburs cultivate some land on the lower slopes of the hills, and raise small crops of dry grain, but they depend for their supplies chiefly on the fees in kind which they receive from the Burghers for the offices performed by them in consecrating their crops and seed, as has been already described in treating of the Burghers. Those, however, who are met with in the forests on the western slopes of the Neilgherries are more industrious, employing themselves chiefly in felling timber for the sawyers and contractors, in making baskets, and, to a small extent, in cultivation.

These Coorumburs appear, for the most part, to come from Malayalum, where they exist in a state of slavery to opulent natives, who claim their persons as their property, a claim, however, not much regarded. The Coorumburs, from their almost always residing amongst the forests, have a considerable acquaintance with the properties of medicinal herbs, gums and roots, and hence often effect cures of simple diseases amongst the Burghers and others, when called in to disenchant a member of a family supposed to be bewitched. This success is of course attributed to preternatural agency, and a failure in their mode of treatment of a disease is usually set down to its baneful exercise, a result which often leads the officiating Coorumbur into trouble. As has been already remarked, it has been found impossible to obtain any return of the number of this tribe, but it must be very inconsiderable.

In the preceding description of the different tribes inhabiting the Neilgherries, their habits have been sufficiently set forth to explain the nature of the employment or occupation which each pursues. Following, however, the argument of this synopsis, it may be necessary under this head briefly to recapitulate them.

Their occupation is purely pastoral, their only manual labour being the milking of their buffaloes and converting portions of the milk into butter and ghee. They let their herds loose during the day to wander about, almost always unattended by a herdsman, to the annoyance of travellers on the public roads, and but for the caution observed in approaching these animals, to their great danger.

The life they lead is eminently a most idle and useless one, involving the performance of no offices, and the undertaking of no duties, which tend in any way to the benefit of the community at large. Especially marked by nature as a race upon whom labour demanding great physical exertion and bodily prowess should devolve, they are found abjuring the performance of manual labour of any kind, subsisting upon the hard-won earnings of others, and acting no part in the great work of social duty and improvement which society demands that all its members should co-operate to advance.

Their occupation is both agricultural and mechanical.

They are tolerably good workers in iron, and execute carpenters' work in a rough way. They tan ox and buffalo hides, and make baskets; and their women manufacture the only earthen pots or chatties produced on the hills.

Their occupation is solely agricultural, and their numbers having of late considerably increased, there is always a superabundance of hands available for employment, as carrying coolies and out-of-doors labourers, when their own crops are either in the ground, or reaped and stored, which constitutes them the most really useful tribe on the hills.

Their employment is agricultural, and also in a measure vagrant, since, lacking sufficient energy or industry to draw from the soil the utmost of its productive powers, they subsist between harvest and harvest upon whatever they can extract from the natural resources of the forests through which they wander.

The Neilgherries being situated within the limits of the Coimbatore district, Tamil is the language employed in the public departments, and in the bazaars and other resorts of the natives from the low country; but amongst all the hill tribes, Canarese is the colloquial. The Todars have a language peculiar to themselves, but they communicate with the Burgher and other tribes in Canarese. The Todar language has a singular accent, and a quaint original style, and seems to bear no analogy whatever to that spoken by any other race of natives in Southern India. The Coorumburs have also a peculiar dialect of their own, but it seems to be based on the Canarese.

Under this head a very favourable report may be made, as with the exception of the two inferior tribes, the Eurelars and Coorumburs, who from their improvident and vagrant mode of life are often in a state of great destitution, all the hill tribes live in comparative comfort and affluence. This is as to their physical condition; but in regard to their moral state the aspect is not so favourable. The accomplishments of reading and writing seem almost entirely unknown amongst them, while their morals are tainted by the arts of dissimulation, cunning, and falsehood, which seem to be instilled into their minds at an early age. Super-

Appendix, No. 5.

Health and diseases.

Small-pox a prevalent disease.

stitious to a degree almost incredible, and prejudiced against all innovation and improvement, I fear they offer but a barren field to the German missionaries who have established themselves on the Neilgherries to labour amongst the hill tribes, and who are endeavouring to form village schools, in the hope of inducing parents to send their children to them for instruction in their own tongue. Upon this point it is not easy to obtain correct information, as all the natives have an insurmountable aversion to entering a hospital, and though they value and respect the opinion of a medical officer, they are not found to come voluntarily forward to seek assistance and advice. From observation in their villages, and of the coolies and others who come to the houses of European residents for employment, we are led to conclude that all classes of natives located on these hills, whether of high or low caste, aborigines or modern settlers, enjoy the most robust health, showing that the pure atmosphere and invigorating climate have the same genial effect upon the native as upon the European frame and constitution. The most prevalent diseases amongst the Burghers, who may be considered the mass of the hill population, are small-pox, occasionally fever, and an affection of the eyes resembling ophthalmia. The first of these is however the only one which can be called common amongst them, and is the greatest scourge by which they are visited, and as vaccination is not practised, the disease often commits fearful ravages in their villages, carrying off whole families in a brief space of time. There is no doubt that the mountaineers would willingly take advantage of the existence of a vaccine depôt, if one were to be established on these hills; and as the disease certainly seems local, and peculiarly virulent on them, and as it is totally impossible for two medical officers stationed in Ootacamund to quit the scene of their constant and extensive duty amongst the sick officers and their families resident there, to introduce and practise vaccination in the Burgher districts, it would be a great blessing to the district if such an institution could be formed in it, and be the means unquestionably of saving many lives.

Health and diseases of troops, with the presumed causes of healthy or diseased state, and the treatment (not strictly medical) found to be useful.

The impending measure for the location of European troops on these hills will, it is to be hoped, before long furnish striking and favourable evidence upon this subject. At present it can only be inferred that the beneficial and renovating effect which even a few months' residence on them produces on the enfeebled constitutions of officers, must in an equal degree be exerted on the condition of the private soldiers who may be sent to them; and that not only physically, but morally, since the constant out-of-doors employment and recreation which they would be enabled during the greater portion of the year to find and enjoy, would remove them from the influence of that most demoralising of all agencies, the dull, monotonous irksomeness of the almost constant confinement to barracks, and of the life of utter idleness which they are compelled to in the plains. To the unfortunate wives and children of the European soldiery the effects of this wise measure will produce incalculable benefit, for it needs only to consult the tables of mortality in the records of almost any European regiment serving in the plains to perceive that upon them, and the latter especially, the hardships and sufferings of a barrack life there fall with aggravated cruelty. Under the discipline of a good school, and with constant employment found for them, relieved by the healthful exercise which will always be within their reach, it is not too much to say that hundreds of lives may be annually saved, many too, possibly, to be devoted to the service of the State in the persons of useful and well educated servants. I think that on the first arrival of fresh troops on the hills, much care and attention will be necessary to adapt the habits of the men to the entirely new climate (comparatively speaking) in which they will find themselves, avoiding very early and very late parades, and making all guards and sentries put on great coats before sunset, and wear them till after sunrise, and generally keeping the men out of the influence of the night air as much as possible. The site which I have had occasion to recommend for the new cantonment, in the valley of Jakatulla, is situated at an elevation of 6,100 feet above the sea, and enjoys a most temperate and agreeable climate; but the rapid change of temperature which follows the withdrawal of the sun's rays there, as in all other parts of the hills, demands care and precaution, especially in the case of men whose constitutions, and liver especially, have become injured by long residence in the low country.

Men suffering from dysentery will, with care, do well in Jakatulla, at all events in the dry weather, if too much exposure to the sun and to the dry easterly winds is avoided. Indeed there appear to be few diseases contracted in the plains which are not, unless too far advanced, speedily cured here, speaking of the hills generally, with the exception of liver complaint, which, if abscess has already formed, usually assumes a more aggravated form, through the cessation of the action of the skin, after a short residence, and compels the patient to proceed to sea as the only alternative.

C O M M E R C E.

Manufactures.

There are no manufactures carried on on the Neilgherries, unless a few earthen pots made by the Kothers, and principally at a village near Soloor, to the westward of Mootenaad, may be called by that name. From the great command, however, of water power all over the hills, and especially near the summits of the passes or ghauts, many of the products of the plains requiring to be wrought by heavy or steadily-driven machinery, such as cotton for yarn, oil seeds, &c., might, no doubt, be profitably converted from the raw state on the Neilgherries, or on their lower slopes. The wheat raised on them might also be ground into

into flour by machinery turned by water very economically; and it seems strange that at the present time, although a large quantity of flour is consumed in the settlements, and considering how many Europeans, who must have some knowledge of ordinary machinery, are resident on the hills, not one flour-mill is in existence, all the wheat being ground by manual labour in the common ancient native mill of two circular stones, the lower fixed, and the upper one revolving.

No capital to any extent is invested at the present time, except in mulberry and coffee plantations, the amount of which I have no means of ascertaining, and in house building in the cantonment, which is not considerable. The return on the latter investment appears to be about 15 per cent.

The following articles are imported into the hill district from the adjacent provinces of Malabar, Mysore, and Coimbatore: cotton cloth, salt, tobacco, sugar, turmeric, oils, arrack, salt fish, cocoa nuts, almonds, dried fruits, sheep, bullocks, poultry, gunpowder, sulphur, lime, furniture, artificer's tools, gram, raggee, chollum, betel nut, ghee, spices, limes, native peas; and of European articles, wines and spirits, wearing apparel, cambrics, woollens, flannels, muslins, shoes, books and stationery, earthenware and glass, hardware, groceries, beer and porter, candles, and all kinds of supplies for the table.

To this list, strange to say, is to be added wheat, which is imported to some extent from Mysore, where it is cultivated on the higher steppes of the table land. The bakers buy it because it is cheaper than the hill wheat, although not nearly so good, and mixing it with the corn purchased from the burghers, turn it to profitable account. There is generally a difference of three to four seers per rupee in the prices of the Mysore and of the hill wheat in favour of the former, in spite of the extra cost of transit to the cantonment market up to the Seegoor Ghaut, a circumstance which tends to support the idea of the misappropriation and mismanagement of this district through the ignorance and apathy of the hill cultivators.

The exported articles are coffee, silk, potatoes, barley, hides, opium, wax, dammer or resin, and wheat, which, being bartered by the burghers for low country necessaries with the itinerant traders, thus becomes an article both of import and export.

No statement can be furnished of the quantities of the above-mentioned goods which are imported or exported, since, in consequence of the transit duties having been abolished, they pass through no office in which their amount might be registered.

Money is readily obtainable for bills on Bombay or Madras from the native merchants, who, having disposed of their goods on the hills, are anxious to remit the proceeds for re-investment. Hence cash on such bills is generally obtained at par, or at the utmost at 1 per cent. discount. No other exchange operations are carried on in the settlement, all business with England being transacted through agents at Madras or Bombay.

The weights in use in the bazaars of the three settlements are, the maund of 25 lbs. avoirdupois, the viss of 2 lbs. ditto, the pound of 40 rupees or tolas weight, the seer of 25 rupees or tolas weight.

The burghers sell all their produce by measure, excepting opium, which they rate at so much per seer of 24 rupees' weight, being one rupee under the seer of the bazaars.

The bazaar measures are the seer, half seer, and quarter seer in use all over the country. The burghers sell their grain by the "kolagum," the contents of which, when heaped up, is about 226 cubic inches, or somewhat more than two seers.

The coins issued from the Honourable Company's mint are the only monies in circulation on the hills, viz., rupees, half and quarter rupees, two annas, quarter and half annas, and pice.

It is supposed that a good deal of coin goes out of circulation in the district, owing to the burghers and others either hoarding it by burying, or getting it converted into ornaments.

A bank was recently established in Ootacamund, but it failed in consequence, I believe, of the ignorance and want of standing of the managers. But considering that there is almost always a large community of Europeans, chiefly in the service of Government, congregated at the station, together with a not inconsiderable number of native traders possessed of capital, it seems obvious that, if conducted upon proper principles, and by parties of mercantile respectability and intelligence, such an establishment could not fail to prosper, and to prove a source of great convenience and benefit to the public.

Money is lent in the bazaar amongst the natives at the usual usurious rate of interest, 2 per cent. being given for loans, with security of jewels or other convertible property, per month, and 3 per cent. per month for money lent on personal security only.

The Neilgherry district communicates with the neighbouring provinces by means of six passes or ghauts, the roads in which have been cut and kept in repair at the public expense, with the exception of one, the "Manaar" or Soondaputty Ghaut, which has gone out of general use. The only one of these passes which is ascended by wheeled conveyances is the "Seegoor," the mode of transit on all the others being by bullocks, coolies, and, to a small extent, by asses. By the "Seegoor" Ghaut, however, cart loads of 1,000 lbs. weight, or two cundies, are brought up, an additional pair of bullocks being required to help the cart over the steepest parts of the ascent.

Capital employed.

Imports.

Exports.

Exchange.

Weights.

Measures.

Coins.

Banking operations.

Lending and borrowing.

Modes of transit and communication.

1. By land.

Appendix, No. 6.

Appendix, No. 6.

PAPER delivered in by Rev. J. Mullens, 8 July 1858.

PETITION of PROTESTANT MISSIONARIES residing in or near *Calcutta*.

To the Honourable the Legislative Council of India.

The Petition of the undersigned Protestant Missionaries residing in or near *Calcutta*.

Respectfully Showeth,

THAT your petitioners desire to express to your Honourable Council the satisfaction and gratitude with which they observed the introduction into your Honourable Council, on the 22d December 1855, by the Honourable J. P. Grant, of a Bill to improve the law relating to sales of land for arrears of revenue in the Presidency of Bengal; and their earnest hope that the leading principles and provisions of that valuable and important measure may be speedily embodied in a law.

2. That your petitioners beg leave to submit to your Honourable Council their views on the evils which that Bill is designed to meet; and generally, on the position of the cultivating classes in this Presidency; and they respectfully but earnestly solicit the favourable consideration of your Honourable Council to their representation of the claims of those classes of the community who are unable effectually to plead for themselves.

3. That your petitioners recognise in the perpetual settlement an important boon to the whole Presidency, in its limitation of the land tax, and they regard that settlement as the probable foundation of great national prosperity. But in the practical operation of the system, your petitioners observe two distinct classes of evils.

1st. The under-tenures are insecure; the rents of the cultivating classes are capriciously varied; and the interests of those classes are virtually unprotected.

2d. The zemindars are armed with extraordinary and excessive powers.

4. That your petitioners believe it to be notorious that the intentions of the laws for securing leases to the tenants, for securing them receipts on their payments of rent, for limiting within just bounds the rents reserved in leases, and for checking the custom of exacting *abwabs* and other arbitrary additional charges and cesses, are commonly frustrated and defeated. On the other hand the power of the zemindars (as recognised in Regulation VII. of 1799, Section 15, Clause 8) to compel the personal attendance of their tenants, for the adjustment of rent and other purposes, is practically, in many parts of the country, a substitute for the regular and ordinary processes of the law, and is virtually the subjection of the tenants to a state of slavery. And, further, this evil is in many instances greatly aggravated by the estates being held in co-tenancy, so that several shareholders, who are often in a state of conflict, equally exercise an arbitrary and unrestrained authority.

5. That while this law thus presses severely on the tenants, your petitioners observe that, from the increased cultivation of the soil, and the greatly increased value of its produce, the zemindars, who were primarily regarded simply as collectors of the land tax or farmers of the revenue, entitled to a fair profit on the returns, derive now a revenue greatly in excess of the revenue which they pay to Government. And thus, contemporaneously, while the zemindar has been rising in wealth and power, the tenant has been sinking into penury and dependence, subject to illegal and exhausting exactions, harassed by contending proprietors, and oppressed by the exercise of extra-judicial powers.

6. That your petitioners submit that this result was neither designed nor contemplated by the perpetual settlement. By that arrangement certain great advantages were secured. A moderate assessment was levied on the land in substitution for uncertain and unlimited demands; and an important class in the community, who were regarded as foremost in intelligence and influence, were placed in a position of responsibility, usefulness, and honour. But these zemindars have, since that time, not only acquired by law the power of enforcing their demands by *ex parte* proceedings, commencing with the arrest and imprisonment of the tenants, but have also received the sanction of the law, as already stated, to their custom of enforcing the personal attendance of their tenants at their pleasure; and both these powers, but especially the latter, your petitioners believe, they often greatly and shamefully abuse.

7. That

7. That in the practical and extended development of this system, it is manifest that the tenants suffer from a lax administration of laws passed for their protection; that they are oppressed by the execution of other laws, which arm the zemindars with excessive powers; that they do not share with the zemindars in the advantages derived from the development of the resources of the country; that the profits thus monopolised by the zemindars are already incalculably valuable; and that, year after year, the condition of the tenants appears more and more pitiable and hopeless.

8. That your petitioners are compelled to add that other evils increase the wretchedness of the condition to which a tenant is thus reduced. The village chowkeydars are the servants of his landlord; the Government police are corrupt, and he cannot vie with his landlord in purchasing their favour; the courts of justice are dilatory and expensive, and are often far distant from his abode, so that he has no hope of redress for the most cruel wrongs; and he is frequently implicated in affrays respecting disputed boundaries, in which he has not the slightest personal interest. Ignorant of his rights, uneducated, subdued by oppression, accustomed to penury, and sometimes reduced to destitution, the cultivator of the soil in many parts of this Presidency derives little benefit from the British rule, beyond protection from Mahratta invasions.

9. That your petitioners believe that, under these circumstances, the interference of your Honourable Council is urgently demanded by justice and benevolence; and they view the present sale bill as an important step in the right direction.

10. That the objections of the zemindars to the measure appear to your petitioners entirely futile. It appears to your petitioners unquestionable, that your Honourable Council may justly protect the tenant, provided only it leave the zemindar ample means of paying the Government revenue, and a fair profit on his collections. The elevation of this zemindary class, by extraordinary protective and fostering measures, is not a policy that can be wisely or equitably pursued, to the sacrifice of the great mass of the people.

11. That your petitioners confidently submit to your Honourable Council, that the zemindars have not fulfilled the just expectations of the State, or the conditions connected with the perpetual settlement. The extension of cultivation in Bengal, for which they claim credit, your petitioners ascribe, not to the enterprise, capital, or public spirit of the zemindars, but to the great increase of population during the last hundred years of domestic peace. Far from accelerating the progress of the country, either in civilization or material prosperity, the zemindars have generally checked the accumulation of capital by their tenants. They have not stimulated exertion by their own example, nor encouraged confidence by generosity and kindness. On the contrary, by arbitrary exactions, they have repressed the industry of their tenants, and by the exercise of their excessive powers under the Regulation VII. of 1799, they have destroyed every vestige of their independence.

12. That your petitioners are well aware of exceptions. They know that there are powerful middle-men, indigo planters and others, who have resisted and struggled with the zemindars, and against whom it is impossible to enforce the extraordinary powers which are mercilessly wielded against the poor. But your petitioners desire to be understood as speaking of the great mass of the cultivating classes constituting a large proportion of the entire population; and on these your petitioners believe that the oppressions of all the various grades of superiors, both middle-men and zemindars, have been practised, and are still practised, with lamentable effect, partly with legal sanction, and partly without it, but entirely, in nearly every case, without the slightest hope on the part of the tenant of legal redress.

13. That, in respect of the exactions of the middle-men, your petitioners believe that a considerable part must be ascribed to the uncertain tenures of that class. Having no permanent interest in the soil or the people, they are seldom the protectors of their dependent cultivators. If fixity or permanence of tenure were established, then immediately, as your petitioners believe, the tendency would be to establish just relations between the landlord and the tenant from the highest to the lowest; and that principle, your petitioners therefore earnestly desire to see adopted and carried out. At present, it is infringed, in the first instance, by the right of the Government to sell the land for arrears of revenue, and thereby avoid the under-tenures with some few exceptions; and then, still more, by the entire absence of protection to the tenants, and the undefined relations of landlord and tenant throughout the Presidency.

14. That in connexion with this subject, the Calcutta Missionary Conference, in the year 1852, requested one of its members, well acquainted with the subject, to prepare a paper on the redemption or commutation of the land tax, and that document was published and circulated both in India and in England. Subsequently, the Missionaries of Calcutta, in their petition to Parliament in the same year, prayed for a measure having the redemption of the land tax for its object, with the view at once to induce capitalists to invest in land, and to enable small holders to acquire permanent freehold rights.

15. That your petitioners have annexed to this petition, a copy of the paper referred to, and respectfully submit its statements and arguments to the attention of your Honourable Council.

Appendix, No. 6.

16. That your petitioners now find, with great satisfaction, that the Board of Revenue have unanimously approved of the 15th Section of the present Bill, which provides that any recorded proprietor or co-partner of an estate, may, by deposit of Company's paper, secure his estate from sale for arrears of land revenue; and have distinctly recognised the expediency of permitting the complete redemption of the land tax.

17. That your petitioners anticipate, from the adoption of the principle involved in that Section, a powerful stimulus to exertion for the purpose of securing freehold rights; and as the result of the possession of those rights, the creation of that spirit of freedom which has always been the spring of enterprise, emulation, and social progress.

18. That your petitioners submit that the terms of the 15th Section may be safely extended, by a provision for the payment of a definite rate of purchase money, (which your petitioners apprehend might be 20 years' purchase of the recorded land tax,) in consideration of which, that tax might be held to be absolutely redeemed for ever; and your petitioners further suggest, that certain encouragements to such redemptions might be granted, in the form of partial remissions of arrears; an official survey of every estate redeemed, with an official certificate and record of boundaries; and a public notification, in the *Government Gazette*, of the names of all who avail themselves of this law.

19. That your petitioners believe that it is the interest of the Government both to facilitate and to encourage such redemptions, not only because an immediate saving will follow in respect of a reduction of the establishments for collecting revenue, but also because they will introduce a new and highly beneficial element into the landed system.

20. That your petitioners desire to express their conviction of the necessity for the provisions contemplated by this Bill, for the protection of under-tenures by registration.

21. That, in respect of ante-settlement tenures, your petitioners submit that the security provided by the Bill is simply an act of justice and good faith, required by the perpetual settlement; and that, as the proposed registration will be voluntary on the part of the talookdars, no satisfactory objection can be urged to it.

22. That, in respect of some tenures (both ante-settlement and post-settlement tenures), your petitioners apprehend that they largely partake of the character of English copyholds, but with additional disadvantages attending them; and your petitioners submit that all the principal reasons which have been stated for the enfranchisement of those tenures in England, apply with greater force in support of the proposition for protecting and fixing tenures of the same nature in Bengal.

23. That, in respect of post-settlement tenures, your petitioners understand that the intention of the Bill is to protect, by registration, all which have been, or may be hereafter created *bonâ fide*; that is, on which the rent reserved is fairly and duly apportioned to the entire land tax of the estate.

24. That it is objected to this proposed law, that the inquiry into this apportionment will be attended with impracticable difficulties.

25. That your petitioners acknowledge that such might be the case, were the total land tax of the estates exactly, or nearly exactly, equivalent to their total rental. But, in fact, it is notorious that the rental of zemindaries is ordinarily more than double their total land tax or sudder jumma; and in all such cases it appears that it would be difficult to err. Any careful collector inquiring into a lease could, in such circumstances, form a sufficiently accurate estimate of the fairness of the rent reserved—the sole object of his inquiry being its proportion to the sudder jumma or land tax of the estate, and the aggregate value of the estate being, as already stated, so great, as to afford a large margin to cover all probable mistakes. Placing the case on the lowest ground, your petitioners submit, therefore, that fraudulent leases, sanctioned and registered by the collector (created, too, in the face of the provision which renders them liable to be annulled and avoided, at any time within 60 years, on the ground of fraud), are not likely to be so numerous as seriously to endanger the Government revenue.

26. That your petitioners feel it to be unsatisfactory to argue the question on this ground, or to consider, in detail, the probable number of such frauds, or their united ultimate effect on the aggregate land tax. They respectfully submit that your Honourable Council may be expected to rely, for the security of the land tax payable to Government under the perpetual settlement, not on the exact accuracy of the collectors and ameens, but on the gradual improvement of the country and development of its resources. In most parts of Bengal the assessment was originally moderate; the progress of the country has rendered it light; and, with a further advance of society and a further rise in the produce, the fixed Government revenue will be trifling, compared with the value and extent of the cultivated soil. A country which, like Bengal, already feeds upwards of 40,000,000 of people, already exports annually produce to the value of at least 15,000,000 sterling, and already receives annually upwards of 5,000,000 sterling in bullion, as the balance of its trade, after paying the greater part of India's tribute to England, and in which there are still boundless resources undeveloped, cannot long feel as a burden a land tax of three millions and a half.

27. That

27. That your petitioners believe that no part of that tax will be lost through the operation of the present bill; but if some hazard is inevitable, they respectfully inquire, if fear lest part of this tax may possibly, under this Bill, be sacrificed by some fraudulent leases remaining undetected in their creation, and undisturbed during the whole succeeding 60 years, should be regarded as a sufficient bar to the enactment of a measure which not merely gives fixity and permanence to all under tenures, old and new, and immediately encourages all improvement, but also affords the promise of an accelerated progress in wealth and prosperity, in the course of which all landlords may be expected to liberate their land altogether, without loss to the Government?

28. That when your petitioners inquire for the alternative if this Bill be rejected, they find a proposition to establish and fix under-tenures, but subject in the ultimate contingency of a Government sale to disturbance and re-settlement, a proposition which, in their judgment, differs from this Bill entirely in spirit and effect. The one condition and qualification annexed to this proposed amendment, must, they fear, check the operation and expansion of the system which they desire to see established, and tend to perpetuate the plague of doubt and hesitation, which is now effectual in restraining the investment of capital in land and development of the resources of the country. It interposes a possible partial loss of the Government revenue in a doubtful contingency, as an impediment to the destruction of a vicious system, which is ruinous to a large portion of the population and crushes them into degradation and misery.

29. That your petitioners regard another objection to this Bill, namely, that it will tend to the multiplication of small holdings as altogether illusory. The existing system certainly has that tendency, because it checks the accumulation of capital in the farming classes; but the system contemplated by this Bill, if liberally expanded and carried out, will tend to the increase of wealth, and this, with other civilising causes, must lead to the investment of continually larger amounts of capital in land, and thereby to the consolidation of estates and the absorption of improvident and pauper proprietors.

30. That with these views your petitioners look with anxiety and earnest desire for the enactment of this proposed measure, but they are bound to state that they wish also to see additional measures carried with it.

31. That your petitioners believe that they have truly and accurately represented the condition of the cultivating classes. Your petitioners believe it to be true that, superadded to the evils they endure from a corrupt and inefficient police, and an administration of civil and criminal justice which confessedly requires extensive improvement, they are liable to be constantly harassed by the conflicting and unsettled claims either of contending shareholders of joint estates, or of contending neighbouring proprietors; by the severe laws of distraint and arrest; by the power of their superior landholders, whether zemindars or middle-men, to compel personal attendance at their pleasure; by illegal exactions; by the unfixed nature of their tenures; and by the prevalent custom of refusing both leases and receipts.

32. That for this class your petitioners believe themselves called upon to speak. Your Honourable Council receives petitions from many of those who consider their interests affected by this and other measures, particularly zemindars and indigo planters, and their representations reach the British Parliament. But the mass of the people, the cultivators of the soil, and those directly or indirectly dependent on them, are usually unheard and unrepresented. Yet your petitioners believe that the case of these numerous classes is such as urgently to demand consideration; and your petitioners, influenced by the desire that the British Government may be honourably distinguished in the blessed work of "showing mercy to the poor," and affected by a deep sense of the social wretchedness prevalent in the land, and the fearful obstacles which it presents, alike to the progress of enlightenment and truth, and the advancement of the material interests of the country, are constrained to appeal earnestly to your Honourable Council; and to entreat your Honourable Council so to legislate, as to afford hopes of new and better days; to secure, with the blessing of God, the public tranquillity, which is now endangered through the sufferings and the irritation of the people; and to lay the foundations of general prosperity and freedom.

33. Your petitioners therefore pray your Honourable Council to pass the Bill to improve the law relating to sales of land for arrears of revenue in the Presidency of Bengal, and to pass such other measures as shall be necessary for the emancipation and protection of the cultivating classes.

And your petitioners will ever pray.

(signed) *Alexander Duff.*

And 20 other Signatures.

On the desirableness of Commuting the Government Land Tax.

It has long been the settled conviction of many missionaries labouring in Bengal, that the present condition of the rural population of that province is not only a great impediment to the diffusion of Christianity in general and to the development of a Christian character on the part of converts in particular, but also a social and political evil of great and growing importance, which, unless checked in time, must ultimately result in the universal prevalence of pauperism, servility, duplicity, and indolence. The causes to which the misery and degradation of the peasantry must be attributed are manifold; such as the long continued prevalence of Hindoo idolatry and Muhommadan oppression, of early marriages and the prejudices of caste; also the innate defects of the national character, and the density of the population. Causes like these cannot well be remedied by legislative enactments; but there is another which appears to admit of such a remedy, namely, the mutual relation between the zemindars and the ryots, to which the alarming deterioration of the peasantry must be in a great measure attributed, whilst at the same time it places the zemindars in a position which is calculated to prolong the evil to an indefinite period, without any prospect of improvement.

It would, no doubt, be an injurious as well as a difficult undertaking to attempt an abrupt and total abolition of the present zemindary and ryot system. The best means of providing a remedy for the actual state of things appears to be the application of a new principle to the tenure of land, a principle of such a nature that it should operate gradually and almost imperceptibly, and yet produce a beneficial change in the public mind, by leading the rural population to hope for that amelioration of their circumstances, of which at present they can see no prospect. It has long appeared to some men who have attentively considered the subject, that the principle of freehold tenure would be of such a nature, and that it might be introduced gradually, if an Act passed, allowing the commutation of the land-tax; in other words, permitting capitalists to purchase estates, as opportunities might present themselves, by paying down, once for all, the capital which is represented by the Government land-tax; with the understanding that estates, thus purchased, should never again be subjected to the land-tax. The rate at which the capital might be calculated could easily be fixed by a legal enactment. Supposing, for instance, that the land-tax represents an interest of five per cent., the capital would be equal to 20 years' purchase. Or should it be thought that five per cent. is too low a rate of interest for India, the capital might be declared equal to the amount of 16 years' purchase.

The capital represented by the land-tax of Bengal is immense, amounting to more than a hundred millions sterling; and the number of capitalists ready to avail themselves of the contemplated arrangement would naturally be very small, especially at first. It is clear, therefore, that the operation of such an arrangement would be very gradual, and could not be productive of dangerous consequences.

The benefits would probably be considerable. The *bonâ fide* proprietors of freehold estates would naturally take a deeper interest in the profitable cultivation of the land and the general improvement of the neighbourhood, than can be expected of zemindars, whose tenure of estates is always more or less precarious, because if ever they fail to make the quarterly payment at the collector's office within the appointed time, the estate is put up to auction the next day, and disposed of to the highest bidder. The relation between *bonâ fide* landlords and tenants would be much less complicated, and therefore much less productive, of animosities and disputes, than that between zemindars and ryots. Long leases might be given by a landowner, or portions of the estate sold out and out; and thereby a manly spirit of independence infused into the peasantry, to which at present it is an utter stranger. And if the boundaries of an estate, when thus sold out and out, were clearly defined by competent authority, the principal plea now advanced by zemindars in defence of their system of keeping up a body of clubmen would be neutralised; for they generally profess to hire these men, in order to settle, by physical force, the boundaries which the law has hitherto left unsettled in many parts of Bengal.

It is very probable that a class of landholders, of a much better character, would be brought into existence.* At present, to become a landholder or zemindar is tantamount to involving

* The circumstances under which the writer originally drew up this paper, compelled him to confine his remarks exclusively to one subject. But he embraces the present opportunity for throwing out a few hints on some collateral topics. If Government really wish to encourage honest and conscientious men, and especially Europeans, to purchase estates in Bengal, the following improvements, among others, will be indispensable:

1. A comprehensive system of registration, the working of which should be entrusted to really able men. All documents relative to landed property should be registered; and when thus registered they should be regarded as authentic. Such a system has long been contemplated, but, in order to be efficient, it should be accompanied by—

2. A thorough survey of the country, especially for the purpose of ascertaining the numberless disputed boundaries of estates. An able Government officer once remarked, in a conversation with the writer, that "the reason why the lower provinces are called settled, must be, because everything in them (concerning boundaries) is unsettled, just as *lucus* is so called a *non lucendo*."

3. A "statute of frauds" should be enacted, declaring the prevalent practice of *benami* (anonymous or pseudonymous) possession to be illegal. The ostensible owner should be treated by the law as the real owner.

involving one's self in endless litigation, besides running a great pecuniary risk. The purchaser of an estate must be prepared to contest numerous law suits with his neighbours, to keep in his pay a body of clubmen sufficiently powerful to overawe theirs, and to make two or three quarterly payments to the collector, before the estate has yielded him any income. It is owing to these difficulties that so few English capitalists have laid out their money in the purchase of land in Bengal, and that the few who have done so do not differ more in their character from native zemindars. These difficulties, again, have proved a great obstacle to persons who have wished to form Christian settlements, and from the nature of things they must continue a great hinderance to such designs. It is supposed that the introduction of the principle of freehold tenure would be very beneficial in this respect.

A commutation of the land tax would not deprive the Government of any part of its revenue. The capital paid into the Treasury by purchasers might be laid out in a number of ways equally productive. It might be applied to the reduction of the public debt, or to the construction of canals and railways, on which tolls might be levied; not to mention ordinary roads and bridges, in which Bengal is still so lamentably deficient.

There would, probably, be found some difficulties, at first, in the working of such a plan as that which is here suggested, but it is supposed that these would not prove very serious, much less insurmountable. The greatest difficulty, perhaps, would be that of dealing justly with the fair claims of those ryots, who hold what is called *patrik* (ancestral) land. It would perhaps be desirable to fix a rate at which such ryots might redeem their land from the zemindars.

Whatever may be thought of this particular proposal regarding the commutation of the land tax, the following considerations will show that a change in the present system is desirable, or rather imperatively required.

The rent or land tax which the ryots have to pay to the zemindar amounts on an average to about two rupees per beegah, or taking the beegah to be one-third of an English acre to about 12s. per acre. Those who hold only *patrik* land are more favourably circumstanced, because the rent for that does not generally exceed one rupee per beegah. But most of those ryots who hold *patrik* land also hold land of a different description, for which they have to pay at the higher rate. And the rent for land which is fit for gardening or for being built upon, is higher than two rupees; so that this rate may fairly be considered as the average. It constitutes about 40 per cent. of the gross return in a good year. A beegah of land in a favourable year yields about five rupees. If the two rupees for rent are deducted, there remain three, which the ryot can call his own. It is believed that 12 beegahs is about the average amount which a Bengali ryot holds. The proceeds of that, after deducting the rent, amount to 36 rupees per annum. Out of this sum he has to provide food and clothing for himself and family, to keep his houses in repair, and to maintain the necessary stock of cattle and implements, besides paying for extra labour during the seasons of ploughing and reaping. Now, it is barely possible for him to provide food and clothing with three rupees a month; but the means of meeting all other expenses must be derived from other sources, such as fishing or job-work of various descriptions. All such sources are precarious and almost invariably insufficient. The consequence is that the ryot is compelled to incur debt. The most common rates of interest at which he can borrow money from the zemindar or the money lender, are three and four pice for the rupee per month, which are respectively an annual interest of 56 and 75 per cent. When about to plough his land, he is usually under the necessity of obtaining an advance of seed corn from the zemindar, to whom he has to re-pay it at the season of harvest with 50 per cent. interest; or for the twelve month with 80 per cent. interest. In this way he becomes more and more deeply involved in debt. And yet the basis of this calculation, five rupees as the gross return of a beegah, is, if anything, too high rather than too low. In the majority of years the amount realised is considerably less; for storms, and inundations, and droughts, and murrain among cattle are calamities of frequent occurrence in Bengal; and seasons of sickness in the family are an additional source of difficulties.

The position in which the ryot stands to the zemindar is disadvantageous to both parties; but certainly more detrimental to the former than to the latter. The payment of rent for the current year, or of arrears, the repayment of advances of various kinds, and the payment of interest, constitute so many different heads of accounts between the two parties. Many estates are the joint property of a number of zemindars, of whom one may be entitled to one-half, another to a quarter, a third to the twelfth or sixteenth part of the proceeds. In such cases it is the usual practice for each shareholder to maintain a separate agency, and to keep separate accounts, so that every ryot has transactions with a number of landlords.

owner to all intents and purposes. The system of secret trusts, now prevalent, is a gigantic fabric of iniquity and fraud, to which the world probably cannot furnish a parallel.

4. The village police should be reformed. Its present state is infinitely worse than a state of utter inefficiency; it is so bad that one can scarcely venture to describe it.

A subdivision of the judicial districts is required. The scantiness of the means of communication throughout Bengal greatly increases the obvious disadvantages arising from the overgrown size and population of the present districts. Thousands of villages are situated at a distance of two or three days' journey from the magistrate's or judge's office.

The writer believes that the introduction of all these and similar reforms would be facilitated, and their efficiency increased, by the commutation of the land-tax.

Appendix, No. 6. lords. In the majority of districts the zemindars give written receipts for the rent; but even there the ryot does not always find it an easy matter to obtain such receipts; and in some localities the zemindars never give them. It must be acknowledged that in innumerable cases the ryots are not only backward, but positively unwilling to pay; and the multiplicity or intricacy of their accounts, together with the fear (frequently well-founded) of being overcharged, constitutes an additional and very prolific source of disputes, which most commonly terminate in favour of the zemindar, although it is not denied that they occasion considerable loss to him also.

The position assigned to zemindars by the law is very peculiar. They are neither *bonâ fide* landowners, nor *bonâ fide* fiscal officers appointed to collect the land-tax. Perhaps the nearest approach to a correct description of their position would be to say that they are landowners, whose estates are mortgaged to Government, the mortgage being liable to be foreclosed, as soon as they fail to make their quarterly payments. They are almost all, however, in the habit of treating their ryots not merely as their tenants, but as their serfs. They call themselves rajahs or kings, and the ryots their subjects. They almost universally either claim more than their due, or else they claim it in an improper manner, for it is not easy to determine what really is their due. They exact contributions from their ryots when a marriage, or a birth, or a death takes place in the family. They exact contributions for the avowed purpose of observing funeral rites in commemoration of their dead ancestors, and of celebrating the annual heathen festivals. These practices are almost universal. In numerous localities they exact from the ryots gratuitous labour in the field or at the oar; and compel the poor people to allow them, without payment, the use of their cattle or of their boats, if they possess any. It is not unusual, especially at a considerable distance from the civil stations, for zemindars to go still further in the abuse of their power, by inflicting imprisonment and torture upon any ryot who may have incurred their displeasure.

It is true that there exist laws of a most praiseworthy nature, which are intended to protect the ryot against unjust ejection from his tenure and against oppression generally; but these laws remain, to a great extent, a dead letter. Not to dwell upon the well-known fact that witnesses who will swear to anything can always be had in this country by the highest bidder, the ryot has very little money to spare for law suits. The advance which must be paid into court as a guarantee for the appearance—or *de facto* for the maintenance—of witnesses; the expense of a journey to the civil station, and of his own support, and that of his witnesses during their stay there, and the serious loss which such a stay must, at certain seasons, occasion to his property, and particularly to his crops: these are formidable obstacles to the ryot. He cannot, generally speaking, afford single-handed to contest a law suit with his zemindar, who possesses greater pecuniary resources, greater influence at head quarters, and greater experience in legal proceedings.

The powers with which the collector is armed, in order to enforce payment on the part of recusant ryots, are so great that they are a source of terror to the rural population. Some of the Government regulations, in which those powers are defined, are best known by the numbers which they bear. As an instance, that regulation which is usually called the seventh or hufum, may be mentioned. The enforcement of this regulation conveys to the Bengali ryot the same uncomfortable impression which is usually connected with the idea of being "quartered" or "decimated." When he sees that he is about to be "septimated," he makes every effort in his power to escape from his fate by flight, thereby risking the loss of all he possesses in the world. If these regulations were only enforced in those cases to which they were originally intended to apply, the evil would not, perhaps, be very great; but the zemindars frequently succeed in prevailing upon collectors (by false representations) to enforce them in cases to which they ought not to be applied at all.

In many cases the zemindars themselves are not aware of all the misery which is inflicted in their name upon the ryots by the agents whom they employ in collecting the rent. These middle-men are, in truth, the greatest tyrants. And as such middle-men would have to be employed by Government in case the ryotwari system should be substituted for the zemindari system, it is clear that such a change would not be of any great advantage to the ryots, probably of none at all. It is well known that the middle-men employed by humane European indigo planters, are in many cases as oppressive as those employed by native zemindars. What is wanted is that the ryot should have direct access to his landlord, and that the interests of both should be the same. And this object would probably be accomplished, in process of time, if by legalising the commutation of the land-tax, the prospect of becoming freeholders was opened to capitalists.

It appears, therefore, desirable that the subject of the zemindari system should be examined into by the Committee now appointed by Parliament, and that this aspect of it should form a special topic of inquiry. The zemindars have taken measures to bring their grievance to the notice of Parliament; but it is greatly to be feared that the grievances of ryots, which even in this country are not extensively known to Europeans, will be passed over in silence, unless special attention is directed to them. The contemplation of them has often caused the hearts of missionaries to bleed, and often led them to ask whether it is possible, in the present social condition of the majority of the population, for Christianity to take deep root in this country, and to produce those fruits of veracity, industry, prosperity, disinterestedness, generosity, and nobility of character, by which the Gospel is intended to become a blessing to mankind at large.

Appendix, No. 7.

LEGISLATIVE COUNCIL.

Appendix, No. 7.

SALES OF LAND FOR ARREARS OF REVENUE (BENGAL).

MR. GRANT moved the first reading of a Bill "To improve the Law relating to sales of Land for arrears of Revenue in the Bengal Presidency." He said, in presenting his Bill on this important subject, he would not attempt to discuss the difficulties of the question, for he thought that they could not be discussed with much advantage until Honourable Members should have the printed papers in their hands. He intended simply to draw the attention of the Council to the chief points in which he proposed to amend the present law.

The first important point in which it was proposed to amend the present law was the dispensing with that provision which requires the previous sanction of the Board of Revenue to the sale of every estate which it is necessary to put up to sale for arrears of revenue in the province of Cuttack. Honourable Members were aware that there were two systems in force for the recovery of arrears of revenue. In Bengal, where the districts were permanently settled, the only process was the process of sale. It was the first and the last process; and the revenue was collected under it without vexation or difficulty. In the provinces not permanently settled, it was different. There the revenue was collected by a system of dustuks, tullubana, arrest of person, sale of personal property, and attachment of land. This process, under which sale was the last coercive measure resorted to, was supposed to be peculiarly adapted to those provinces; whilst in Bengal, as he had observed, the process of sale as the first and the last process was found to work most satisfactorily, and rarely in practice to require to be resorted to. Cuttack was the only Regulation Province not permanently settled under the jurisdiction of the Bengal Board of Revenue, and the only one in which any part of the North Western process of enforcing payment of revenue was in force by law. Within the last few years, there had been a great deal of discussion between the Bengal Government, the Board, and the local authorities in the Cuttack districts, regarding the process that should be adopted there. The weight of authority greatly preponderated in favour of placing Cuttack—that is to say, the whole of that portion of Orissa not permanently settled—on the same footing in this respect as the permanently settled districts. The Bengal Government recommended this measure, and he had adopted it in his Bill. But he thought, if this change were made, it would be quite necessary altogether to rescind Regulation X. of 1818, which, accordingly, he proposed to do. The preamble of that Regulation said:—

"Whereas it is deemed expedient, with the view to ensure for the future the more punctual collection of the public revenue from zemindars, talookdars, and other actual proprietors of land, and farmers of land in the district of Cuttack, the pergunnah of Puttaspore, and the several places dependent on it, to assimilate the system of collection in the said district and pergunnah and places more nearly to that pursued in the Western Provinces, the following rules have been accordingly enacted."

As the avowed object of the alteration of the law to which he was now adverting, namely, the dispensing with the previous sanction of the Board of Revenue, was to assimilate the system of collection in Cuttack to the system of collection in Bengal, which was entirely different from that pursued in the Western Provinces, he thought it would not be right to leave upon the Statute Book a Regulation intended to enforce the opposite system.

The next point in which it was proposed to alter the present law was not suggested in any of the papers which he had seen, but had occurred to himself as apparently an improvement in the law. By the present law, the holder of a lien on an estate, if he fears that the estate may be sold for arrears of revenue, is entitled to deposit the amount of the arrears with the collector, and if, before sunset of the latest day of payment, the arrears are not paid up by the proprietor, the deposit of the mortgagee is carried to the credit of the estate in liquidation of the arrears, and so the estate, with the lien upon it, is saved. But when this is done, the mortgagee has nothing more to look to for the recovery of the money he deposited than the personal security of the defaulting proprietor. He (Mr. Grant) thought that this was hard and unjust; and he had therefore provided in the Bill, that the mortgagee should have the same security over the estate for his deposit that he had by his original lien. If, in the discussion of this Bill by the Council hereafter, any valid objection should be found to exist to the giving of this new security to mortgagees, of course the plan could not be carried out. At present, he was not aware that any such objection existed; and if so, he could not doubt that the new security ought to be given.

The next proposed important alteration in the law had been recommended by the Board of Revenue. It was that each sharer in an estate, whether a sharer in a joint estate held in common tenancy, or the holder of a specific portion of the land of an entire estate, should

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have the means of acquiring the privilege of protecting his share by paying up his own portion of the Government revenue, whether the other sharers paid up theirs or not. He believed that nobody had doubted—he thought that nobody could doubt—that, if this privilege could be given, it was a simple act of justice to the honest and solvent sharer to give it to him, and so to secure him from being made the victim of the fraud or neglect of his co-sharers. He had therefore adopted, in the main, provisions which had been prepared by the Board of Revenue for this purpose, and formed part of a draft Act for the improvement of the law of Butwarrah or partition of estates, proposed by that authority. It was unnecessary to explain how such a provision had found place in a Butwarrah law; the proper place for it undoubtedly was the Sale law, and therefore it had been adopted in this Bill. The Bill provided that, when a recorded co-sharer desires to pay his portion of the Government revenue separately, he may submit to the collector a written application specifying the nature and extent of his interest in the estate. The collector will cause the application to be published; and if, within six weeks from the date of the publication, no objection is made by any other recorded sharer, the collector will open a separate account with the applicant, and will credit separately to his share all payments made by him on account of it. If any recorded proprietor of the estate, whether the estate is held in common tenancy or not, objects to the application, the collector will institute a summary inquiry, and will, after such inquiry, reject or admit the application. The award of the collector will be subject to the usual appeal to the higher revenue authorities, and to reversal by a regular suit in the civil court, provided such suit be brought within one year from the date of the final award of the revenue authorities.

If a sharer whose share has been separated as above, should fall into arrears of revenue, and his share should be put up for sale, it might happen that no bid would be offered equal to the amount of the arrears. In such a case the Board of Revenue proposed that 10 days should be allowed to make good the arrear; and that, if the money were not paid on the expiration of that time, the whole estate should be put up for sale. Now, he thought it was quite necessary for the security of the public revenue that the whole estate should continue liable, and should be put up for sale, whenever any portion of the revenue due upon it continued unpaid; but he did not think it was necessary to do what the Board of Revenue recommended. In the first place, he did not think it expedient to allow the defaulter a second period for the payment of the arrears due from him, after the latest day of payment had passed. By universal admission, one of the most excellent provisions of the Sale law of 1841, which was followed in the Sale law of 1845, was that which insisted upon the payment of arrears of revenue before a certain fixed date, and allowed no subsequent payment to stop a sale. He should be sorry in any way to break in upon that principle. In the second place, he thought the requisite security of the revenue could be ensured in a manner more fair to the co-sharers whose shares of the revenue had been duly paid. He had provided in his Bill that, where the highest offer for a share exposed to sale for arrears of revenue should not be equal to the amount due upon it, the collector should stop the sale, and should allow 10 days to the other shares, within which time they should be at liberty to purchase the defaulter's share by paying to Government the whole amount due upon it. This would inflict no injustice upon the defaulting sharer, for he would obtain more than the market value of his share, as that market value had been tested by public auction; and it would be doing no more than justice to the innocent co-sharers, who, without loss, would thus be able to preserve their own property. This provision would also prevent the not uncommon fraud of a wealthy sharer wilfully making default, in order that the whole estate may be put up for sale, and that he may purchase it all himself.

The Bengal Government had proposed that the benefit of separate payment should not be extended to any share the revenue of which does not exceed 50 rupees. He had not thought it right to adopt that proposal. The object was the security of the sharer in his just rights, by the protection of his property when there is no default on his part. This is but justice, whatever the value of the share may be. A share paying 40 rupees might be of as much concern to a poor man as the estate of the Rajah of Burdwan, paying 40 lakhs, is to the rajah. The property of both should be justly protected.

The next proposed change in the law was another point which had not been suggested in the papers, but which had struck him as a material improvement. It occasionally might happen, especially in the case of an absent proprietor, that a man's property might be sold for arrears of revenue which accrued from no intentional default, and no negligence on his part, but from some accident, or from the neglect of an agent. Now, the property might be very valuable, and, if put up for sale, it might sell for a sum very disproportionate to its value to its proprietor. To enable proprietors to secure themselves if they choose from any such risk, he had provided that every zemindar paying revenue directly to Government on an entire estate, should have the power of lodging with the collector a sum of money, or Company's paper, for the purpose of being applied to the payment of any arrear of revenue that might remain due upon his estate, after sunset of the latest day of payment. This, if the deposit were made equal to one or two instalments of revenue, would secure the estate from the possibility of being sold, even if the proprietor were living in England. The deposit might be made in Government securities sufficient in amount to pay the revenue from the interest, whereby the estate might be permanently secured from sale for arrears of revenue;—a provision which might be of use for peculiar properties which, from buildings having been erected upon them, gardens or orchards having been planted

planted upon them, or from other like causes, were of great value in proportion to the revenue assessed upon them.

He now came to the most important question of all—the question of under-tenures. The Bill, as he had prepared it, would enforce the registration of under-tenures. There were two classes of under-tenures—under-tenures which existed before the permanent settlement was made, and under-tenures which were created after it. Those that existed before the permanent settlement was made, continued to hold good after the sale of the parent estate for arrears of revenue. But the contrary, as Honourable Members were well aware, was the case with under-tenures created subsequently. Under this Bill, as it was now prepared, holders of under-tenures of either description would be obliged to register them. The time allowed for the application to register was three years from the date of the passing of the Act. Within that period the Bill provided that the holder of an ante-settlement under-tenure, who desired to secure it against all risk whatever, should petition the collector for registration; and the collector, if he should be satisfied that the tenure was truly an ante-settlement tenure, would allow the registration. The award of the collector for registration might be contested by a civil suit, if such suit should be brought within one year from the date of the award, otherwise the tenure would stand for ever freed from being subject to any question as to its validity.

The question of the propriety of enforcing the registration of old under-tenures was one which was, doubtless, open to much discussion. He had prepared the Bill in this manner partly with the view of inviting such discussion. But he apprehended that, as to the propriety of enabling the holders of old under-tenures to register, and so to secure themselves against all possible suits to destroy their titles, there could be no difference of opinion. The absence of anything like effectual registration in all our districts, was the cause of constant litigation; for every holder of an under-tenure was liable to answer to the regular suit of every successive purchaser of the parent estate; because every successive purchaser of the parent estate enters with all the rights of the person with whom the settlement was originally made, and, by the force of those rights, can put the holder of the oldest under-tenant to the proof.

He now came to the case of new under-tenures. This had been admitted by all who had taken any part in it, to be a question of great difficulty; and certainly he, who had given a great deal of thought to it, was entirely of opinion that its difficulty had not been exaggerated. It had been under discussion for 12 years between persons who were of all the most competent to determine any such question. A project had been sent up by the Bengal Government in connexion with it, which he, at one time, had strongly approved as being a great step in advance. It was that all under-tenures in an estate, without exception or inquiry, should be allowed to hold as good against an auction purchaser as they were against the former proprietor, as long as the parent estate should be saleable at a price that would cover the arrears of revenue due from it; but that, as soon as the parent estate should fail to be saleable at such a price, it should be forfeited to Government, and the whole of the past settlement under-tenures should be annulled; whereupon Government should proceed to form a new settlement of the land.

Upon this plan, he would remark that the forfeiture could not be carried out, because whatever sum was offered at the sale for the estate, though it might be less than the amount due for revenue, was the due of the zemindar, who would have a right to insist that it should be carried to his credit, and that the amount of the arrears payable by him should be reduced *pro tanto*. That, however, was not a substantial objection to the main feature of the plan. But there were other objections to the plan which he thought were substantial. In the first place, the plan did not profess to give complete security to under-tenants holding under honest titles at fair rents. It did not, therefore, profess to do what it ought certainly to be the object of the Legislature to do. The object of the Legislature ought to be to give security to the under-tenant, with the view of encouraging him to lay out capital in the improvement of his land; and certainly so long as his tenure was liable to be taken from him for no default of his own, on the forfeiture of the parent estate, so long would he be discouraged from laying out his good money upon that land. The discouragement would, doubtless, be lessened by the adoption of the ingenious plan proposed by the Bengal Government; but it would by no means be removed altogether. For example, suppose that there were two talookdars, or holders of under-tenures, in one estate; one of whom having increased the value of his talook by a large expenditure of capital, had raised his rents to double their original amount; and the other, having allowed his talook to deteriorate, had reduced his rents by one-half; suppose that, in this state of things, the entire estate is put up for sale for arrears of revenue, and that no one comes forward to bid to the amount of the arrears, the estate would thereupon be forfeited; the Government would enter into possession, and the collector would make a ryotwarry settlement under Regulation VII. of 1822. Now, the collector would make a perfectly fair settlement for the land of the estate, for he would make it with reference to the assets of the estate as he should then find them; but he could not make, and could not pretend to make, a fair settlement for the talookdars. He could not pretend to ascertain how much money any one talookdar had spent upon his talook in the course of the last 60 years. He must fix the revenue of every beegah according to its existing value; and thus the consequence would be that the meritorious talookdar would be fined by an enhancement of his jumma for having improved the value of his share at his own expense, whilst the talookdar who had allowed the value of his land to deteriorate, would be rewarded by a reduction of his jumma. There was another objection to this plan, which he believed to be a sound one, and which he knew

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was felt strongly by the zemindars themselves. If this measure were introduced, there was no doubt that it would open a door to fraud. There was no doubt that many zemindars would create benamee and other talooks on their estates at inadequate rents, or would pretend to have created such talooks. Their estates might be purchased by persons in ignorance of the fraud, who would ultimately discover that they had bought a losing concern, or a bag of lawsuits; and the consequence of frequent bad bargains of this sort would be that the auction value of all zemindarees, even of those in which no such frauds had been really committed, would be diminished. He had no doubt that such fictitious tenures would be created in many cases, and he believed that a general reduction of the value of zemindaree property would be the consequence.

On the whole, therefore, he had come to the conclusion that this plan, which would be a half-measure at best, must be abandoned, and that the difficulties of the question must be fairly met in an endeavour to attain the object completely. He had been told on good authority, that two-thirds of the land in Bengal were held under talookdaree tenure. If so large, or anything like so large a proportion of land in this Presidency was held under that description of tenure, surely it was worth the while of this Council to make the tenure as secure as it was possible to make it. This is what he had attempted to do. He proposed that, when the holder of a new under-tenure—that is to say, of any tenure created since the settlement—should apply for the registration of his tenure, the collector should immediately cause the talook to be measured and surveyed, at the expense of the talookdar; provided that, in the case of tenures created after the passing of the Act, no such application should be received, unless it was submitted within one month from the date of the deed constituting the tenure. If the revenue authorities should be satisfied that the rent of the talook is fully sufficient to afford its share of the jumma of the estate, the tenure should be registered in complete detail, and this registry should secure it in all time coming, whatever might become of the parent estate. It would be an easy thing, after the survey of the talook, where the revenue survey had been passed over a district, for the collector to satisfy himself whether its rent were or were not such as would *pro tanto* risk the public revenue; for the revenue survey showed the precise area of every entire estate; the only difficulty was, to get at the assets of the particular talook, and to ascertain approximately the value of the rent of the land of the entire estate, which last point, when the area is known, would not, he hoped, be very difficult for all practical purposes. He believed that the cost of a special survey of the talook would not be large. It would not exceed, he was led to suppose, 4 rupees per 100 biggahs. A person, therefore, having a talook of 1,000 biggahs might have to pay 40 rupees for a special survey; and if the talook was worth anything at all, it was surely worth that to secure the property for ever. Where the revenue survey had not passed over a district, the process would be more expensive; but this was unavoidable. When the rent of the talook was ample, it ought not to be very difficult, after the survey of the talook, to prove the fact to the satisfaction of the revenue authorities.

He had now explained how he proposed to amend the sale law. He had given his best attention to the subject, but he did not pretend to have prepared anything like a perfect measure. He was sensible that his Bill would be found far otherwise. All he hoped was, that it might be found to be such as the united wisdom of the Council, with the aid which they would be sure to derive from the revenue authorities, and from the public, might work up into a law which would completely carry out the important objects contemplated; these objects being the security of honest titles, and the general encouragement of agricultural improvement.

The Bill was read a first time.

SALE LAW IMPROVEMENT BILL (BENGAL).

Read a first time on the 22d December 1855.

A BILL to improve the Law relating to Sales of Land for Arrears of Revenue in the Bengal Presidency.

Preamble.

WHEREAS it is expedient to discontinue the practice of obtaining the previous sanction of the Board of Revenue to sales of estates for arrears of revenue or other demands of Government in the province of Cuttack: and whereas it is just that a person having a lien upon an estate, and paying the money necessary to protect it from sale for arrears of revenue, should be reasonably secured: and whereas it is expedient to afford sharers in estates who duly pay their shares of the sudder jumma of their estates, easy means of protecting their shares from sale by reason of the default of their co-sharers: and whereas it is expedient to afford landholders, particularly absentees, facilities in guarding against the accidental sale of their estates for arrears of revenue by reason of the neglect or fraud of their agents: and whereas it is expedient to enforce the registration of dependent talooks existing at the time of settlement, and to give absolute security to such talooks when so registered: and whereas it is expedient to protect the holders of under-tenures created in good faith, not resumable by the grantors or their representatives, and held at rents fully sufficient for the security of the public revenue, from loss by the avoidance of their tenures

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on the occasion of a sale of the superior estate for arrears of public revenue, for which such holders may not be in any degree responsible, and it is therefore proper for the above and other purposes to improve the law relating to sales of land for arrears of revenue in the Bengal Presidency; it is enacted as follows:—

I. Act I. of 1845, except in so far as it repeals other laws, and except in regard to sales made or advertised, suits commenced, and acts done under authority thereof; Regulation X. of 1818, and Sections XV., XVI., XVII., and XVIII., of Regulation XIV. of 1793, are hereby repealed.

Laws repealed.

II. If the whole or a portion of a kist or instalment of any month of the era, according to which the settlement and kistbundee of any mehal have been regulated, be unpaid on the first of the following month of such era, the sum so remaining unpaid shall be considered an arrear of revenue.

What is an arrear of revenue.

III. Upon the promulgation of this Act, the Board of Revenue at Calcutta shall determine upon what dates all arrears of revenue and all demands which, by the Regulations and Acts in force, are directed to be realised in the same manner as arrears of revenue, shall be paid up in each permanently settled district under their jurisdiction, and in each of the districts not permanently settled in the province of Cuttack; in default of which payment the estates in arrear in those districts, except as hereinafter provided, shall be sold at public auction to the highest bidder. And the said Board shall give notice of the dates so fixed in the official "Gazette," and shall direct corresponding publication to be made, as far as regards each district, in the language of that district, in the office of the collector, or other officer duly authorised to hold sales under this Act, in the courts of the judge, magistrate, (or joint magistrate, as the case may be,) principal sudder ameens, sudder ameens, and moonsiffs, and at every thannah station of that district; and the dates so fixed shall not be changed except by the said Board, by advertisement and notifications, in the manner above described, to be issued at least three months before the close of the official year preceding that in which the new date is, or dates are, to take effect.

Latest day of payment in permanently settled districts and in Cuttack.

IV. In the province of Benares, and in districts not permanently settled, with the exception of the districts in the province of Cuttack, no sale shall take place for arrears of land revenue or other demands of Government, without the special sanction of the Board of Revenue previously obtained in each several case of sale. Provided that the said Board, at the time of authorising such sale, shall fix the latest day on which in each case such arrears or demands shall be received.

Latest day of payment in other districts.

V. Provided always, that no estate, and no share or interest in any estate, shall be sold for the recovery of arrears or demands of the descriptions mentioned below, otherwise than after a notification in the language of the district, specifying the nature and amount of the arrear or demand, and the latest date on which payment thereof shall be received, shall have been affixed for a period of not less than 15 clear days preceding the date fixed for payment, according to Section III. or Section IV. of this Act, as the case may be, in the office of the collector or other officer duly authorised to hold sales under this Act, in the court of the judge within whose jurisdiction the land advertised lies, in the courts of the principal sudder ameens and sudder ameens of the district, and in the moonsiff's court and police thannah of the division in which the estate to which the notification relates, or a part of it, is situated, the same to be certified by the receipt of the officer at whose office such notification may have been affixed; and also at the cutcherry of the malgoozar or owner of the estate, or at some conspicuous place upon the estate, the same to be certified by the peon or other person employed for the purpose.

Proviso in the case of certain descriptions of arrear.

First. Arrears due from estates in the province of Benares.

Secondly. Arrears due from estates, not permanently settled, other than estates in the province of Cuttack.

Thirdly. Arrears other than those of the current year, or of the year immediately preceding.

Fourthly. Arrears due on account of estates other than that to be sold.

Fifthly. Arrears of estates under attachment by order of any judicial authority.

Sixthly. Arrears due on account of tuccavee, poolbundee, or other demands not being land revenue, but recoverable by the same process as arrears of land revenue.

VI. The collector, or other officer duly authorised to hold sales under this Act, shall, as soon as possible after the latest day of payment fixed in the manner prescribed in Section III. or Section IV. of this Act, issue notifications in the language of the district, to be affixed in his own office, and in the court of the judge of the district, and to be published in the official "Gazette," specifying the estate or estates which will be sold as aforesaid, and the day on which the sale of the same will commence, which day shall not be less than 15 or more than 30 clear days from the date of affixing the notification in the office of the collector or other officer as aforesaid. And, except as hereinafter provided, all estates so specified shall, on the day notified for sale, or on the day or days following, be put up to public auction by and in the presence of the collector or other officer as aforesaid, and shall be sold to the highest bidder. And no payment, or tender of payment, made after sunset of the said latest day of payment, shall bar or interfere with the sale, either at the time of sale or after its conclusion.

Notifications of sale to be issued, and no tender after latest day of payment to stop the sale.

Appendix, No. 7. **VII.** Whenever an estate is notified for sale as provided by Section VI. of this Act, the collector or other officer as aforesaid shall affix a proclamation in the language of the district, in his own office, and as soon thereafter as may be in the moonsiff's courts and police thannabs within which the estate or any part of it is situated, and also at the catcherry of the malgoozar or the owner of the estate, or at some conspicuous place upon the estate, forbidding the ryots and under-tenants to pay rent to the defaulting proprietor from the date of the day after that fixed for the last day of payment, on pain of not being entitled to credit in their accounts with the purchaser for any sums paid after the date aforesaid.

Claims against Government not to invalidate a sale. **VIII.** No claim to abatement or remission of revenue, unless the same shall have been allowed by the authority of Government, and no private demand or cause of action whatever, held or supposed to be held by any defaulter against Government, shall bar or render void or voidable a sale under this Act; nor shall the plea that money belonging to the defaulter, and sufficient to pay the balance or part of it, was in the collector's hands, bar or render void or voidable a sale under this Act, unless such money stand in the defaulter's name alone and without dispute, and unless after application in due time made by the defaulter, or after the written agreement provided for in Section XV. of this Act, the collector shall have neglected, or refused on insufficient grounds, to transfer it to the credit of the estate.

Deposits receivable from persons not proprietors. **IX.** The collector or other officer as aforesaid shall, at any time before sunset of the latest day of payment, determined according to Section III. or Section IV. of this Act, receive as a deposit from any person not being a proprietor of the estate in arrear, the amount of the arrear of revenue due from it, to be carried to the credit of the said estate at sunset as aforesaid, unless before that time the arrear shall have been paid by a defaulting proprietor of the estate. And in case the person so depositing, whose money shall have been credited to the estate in the manner aforesaid, shall be a party in a suit pending before a court of justice for the possession of the same or any part thereof, it shall be competent to the said court to order the said party to be put into temporary possession of the said estate or part thereof, subject to the rules in force for taking security in the cases of parties in civil suits. And if the person so depositing, whose money shall have been credited as aforesaid, shall prove before a competent civil court that the deposit was made in order to protect an interest of the said person, which would have been endangered or damaged by the sale of the estate, or which he believed in good faith would have been endangered or damaged by such sale, he shall be entitled to recover the amount of the deposit, with or without interest as the court may determine, from the proprietor of the said estate. And if the party so depositing, whose money shall have been credited as aforesaid, shall prove before such a court that the deposit was necessary in order to protect any lien he had on the estate, the amount so credited shall be added to the amount of the original lien.

Separation of shares held in common tenancy. **X.** When a recorded sharer of a joint estate, held in common tenancy, desires to pay his share of the Government revenue separately, he may submit to the collector a written application to that effect. The application must contain a specification of the extent and nature of the interest held in the estate by the applicant. The collector will then cause to be published in his own catcherry, in that of the judge, magistrate, (or joint magistrate, as the case may be), principal sudder ameens, sudder ameens, and moonsiffs, and in the police thannabs in whose jurisdiction the estate or any part thereof is situated, as well as on some conspicuous part of the estate itself, a copy of the application made to him. If, within six weeks from the date of the publication of these notices, no objection is made by any other recorded sharer, the collector will open a separate account with the applicant, and will credit separately to his share all payments made by him on account of it. The date on which the collector records his sanction to the opening of a separate account, shall be held to be that from which the separate liabilities of the share of the applicant commence.

Separation of shares consisting of specific portions of land. **XI.** When a recorded sharer of a joint estate, whose share consists of a specific portion of the land of the estate, desires to pay his share of the Government revenue separately, he may submit to the collector a written application to that effect. The application must contain a specification of the land comprised in his share, and of the boundaries and extent thereof, together with a statement of the amount of sudder jumma heretofore paid on account of it. On the receipt of this application, the collector will cause it to be published in the manner prescribed for publication of notices in the last preceding section. In the event of no objection being urged by any recorded co-sharer within six weeks from the time of publication, the collector will open a separate account with the applicant, and will credit separately to his share all payments made by him on account of it. The date on which the collector records his sanction to the opening of a separate account, shall be held to be that from which the separate liabilities of the share of the applicant commence.

Summary inquiry by the collector. **XII.** If any recorded proprietor of the estate, whether the same be held in common tenancy or otherwise, object that the applicant has no right to the share claimed by him, or that his interest in the estate is less than, or is of a different nature from, that claimed by him, the collector will institute a summary inquiry into the fact of possession, and if he be satisfied that the applicant is really in possession of the share as claimed by him, he will open a separate account for his share, as directed in one or other of the last two preceding sections. If, in the case of a claimant of specific land, the objection be that the jumma alleged by the applicant to be the separate jumma of his specific share of the lands of the estate is not the jumma which has been recognised as such by the other sharers, the collector will

will make a summary inquiry into the fact, and will reject or admit the application. The orders of the collector under this section shall be subject to appeal to the higher revenue authorities in regular course, and shall be subject to reversal or alteration by a regular suit in the civil courts, provided that such suit shall have been instituted within one year from the date of the final award of the revenue authorities, but not otherwise.

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XIII. Whenever the collector shall have ordered a separate account or accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of revenue, the collector in the first place shall put up to sale only that share, or those shares, of the estate from which, according to the separate accounts, an arrear of revenue may be due. In all such cases notice of the intention of excluding the share or shares from which no arrear is due, shall be given in the advertisement of sale prescribed in section VI. of this Act. The share or shares sold, together with the share or shares excluded from the sale, will continue to constitute one integral estate, the share or shares sold being charged with the separate portion or the aggregate of the several separate portions of jumma assigned thereto.

Sale of separate shares.

XIV. If in any case of a sale held according to the provisions of the last preceding section, the highest offer for the share exposed to sale shall not equal the amount of arrear due thereupon to the date of sale, the collector shall stop the sale, and shall declare that the entire estate will be put up to sale for arrears of revenue at a future date, unless the other recorded sharer or sharers, or one or more of them, shall within ten days purchase the share in arrear by paying to Government the whole arrear due from such share. If such purchase be completed, the collector or other officer as aforesaid shall give such certificate as is provided for in Section XXVII. of this Act, to the purchaser or purchasers, who shall have the same rights as if the share had been purchased by him or them at the sale. If no such purchase be made within ten days as aforesaid the entire estate shall be sold, after the notification and in the form prescribed in Section VI. of this Act, in the same manner as if the entire estate had been in arrear after the latest day of payment.

Entire estate may be sold under certain conditions.

XV. If any recorded proprietor or co-partner of an estate shall deposit with the collector money, or Government securities endorsed and made payable to the order of the collector, and shall sign an agreement pledging the same to Government by way of security for the jumma of the entire estate, and authorising the collector to apply to the payment of any arrear of revenue that may become due from that estate the whole or any portion of the said money or securities that may be necessary for that purpose, then in the case of any arrear of revenue due from the said estate not being paid before sunset of the latest day of payment fixed under Section III. or Section IV. of this Act, the collector shall apply to the payment of such arrear the said money or securities, or such part thereof or of any interest due on the said securities as may be necessary; and for this purpose the collector shall first apply any money that may be in his hands, and any interest that may be due upon such securities. And so long as any money or securities as aforesaid shall remain and be available as aforesaid, the estate for the protection of which the said deposit was made shall be exempted from sale for arrears of revenue.

Deposit for the protection of an estate from sale.

XVI. It shall be competent to the person making a deposit under the provision of the last preceding section, or his representative or assignee, at any time to withdraw the deposit, and to revoke the pledge of the same; and from the date of such withdrawal and revocation the estate shall be subject to the ordinary rules relating to sales for arrears of revenue.

Withdrawal of the deposit.

XVII. No estate shall be liable to sale for the recovery of arrears which have accrued during the period of its being under the management of the Court of Wards; and no estate the sole property of a minor or minors, and descended to him or them by the regular course of inheritance duly notified to the collector for the information of the Court of Wards, but of which the Court of Wards has not assumed the management under Regulation VI. 1822, shall be sold for arrears of revenue accruing subsequently to his or their succession to the same, until the minor or minors, or one of them, shall have attained the full age of 18 years. And no estate held under attachment by the revenue authorities otherwise than by order of a judicial authority, shall be liable to sale for arrears accruing whilst it was so held under attachment. And no estate held under attachment by a revenue officer, in pursuance of an order of a judicial authority, shall be liable to sale for the recovery of arrears of revenue accruing during the period of such attachment, until after the end of the year in which such arrears accrued.

Estates under Court of Wards or attachment.

XVIII. It shall be competent to the collector at any time before the sale of an estate shall have commenced, to exempt such estate from sale; and in like manner it shall be competent to the Commissioner of Revenue at any time before the sale of an estate shall have commenced, to exempt such estate from sale by a special order to the collector to that effect in each case; and no sale of an estate shall be legal if held after the receipt of an order of exemption in respect to such estate. Provided, however, and it is hereby enacted, that the collector or Commissioner shall duly record in a proceeding the reason for granting such exemption; and provided also, that an order for exemption so issued by the Commissioner shall not affect the legality of a sale which may have taken place before the receipt by the collector of the order for exempting it from sale.

Estates may be specially exempted from sale.

Proviso.

XIX. Sales shall ordinarily be made by the collector in the land revenue catcherry at the sudder station of the district, provided, however, that it shall be competent to the Board

Sales where to be made.

- Appendix, No. 7.** of Revenue to prescribe a place for holding sales other than such cutcherry whenever they shall consider it beneficial to the parties concerned.
- Adjournment of sales.** XX. In case the collector shall be unable from sickness, from the occurrence of a holiday, or from any other cause, to commence the sale on the day of sale fixed as aforesaid, or if, having commenced it, he be unable, from any cause, to complete it, he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of Revenue, and announcing the adjournment by a written proclamation stuck up in his cutcherry; and so on, from day to day until he shall be able to commence upon, or to complete the sale; but, with the exception of adjournments so made, recorded, and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid.
- Order of selling.** XXI. On the day of sale fixed according to Section VI. of this Act sales shall proceed in regular order; the estate to be sold bearing the lowest number on the towjee or register in use in the collector's office of the district being put up first, and so on, in regular sequence; and it shall not be lawful for the collector or other officer as aforesaid to put up any estate out of its regular order by number, except where it may be necessary to do so on default of deposit, as provided in Section XXII. of this Act.
- Deposit on account of purchase-money.** XXII. The party who shall be declared the purchaser of an estate at any such public sale as aforesaid, shall be required to deposit immediately, or as soon after the conclusion of the sale of the estate as the collector may think necessary, either in cash, Bank of Bengal notes or post bills, or Government securities duly indorsed, 25 per cent. on the amount of his bid; and in default of such deposit, the estate shall forthwith be put up again and sold.
- Full payment of purchase-money.** XXIII. The full amount of purchase-money shall be made good by the purchaser before sunset of the 30th day from that on which the sale of the estate bought by him took place, reckoning that day as one of the 30; or if the 30th day be a Sunday or other close holiday, then on the first office day after the 30th; and in default of payment within the prescribed period as aforesaid, then and afterwards as often as such default shall occur, the deposit shall be forfeited to Government, the estate shall be re-sold, and the defaulting purchaser shall forfeit all claim to the estate, or to any part of the sum for which it may subsequently be sold, and in the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the difference shall be leviable from him by any process authorised for realising an arrear of public revenue, and it shall be so levied and credited to the defaulting proprietor of the estate sold; and if default of payment of purchase-money shall have occurred more than once, the defaulting bidders shall be held jointly and severally responsible for such difference to the extent of the amount of their respective bids. Provided always, that every such re-sale shall be made after notification and in the forms prescribed by Section VI. of this Act; and that such notification shall not be issued until the expiration of three clear days after the day on which the default shall have occurred. Provided also, that payment, or tender of payment, by or on behalf of the proprietor, of the arrear for which the estate was first sold and of the arrear which may have subsequently become due, if such payment or tender of payment be made before sunset of the day preceding the day of the notification of re-sale and after the defaulting purchaser shall have made the deposit required by Section XXII. of this Act, shall bar such re-sale.
- Proviso 1st.**
- Proviso 2d.**
- Appeals.** XXIV. It shall be lawful for the Commissioner of Revenue to receive an appeal against any sale made under this Act, if preferred to him on or before the 15th day from the date of sale, reckoning as in Section XXIII., or if preferred to the collector for transmission to the Commissioner, on or before the 10th day from the day of sale, and not otherwise; and the Commissioner shall be competent, in every case of appeal so preferred, to annul any sale of an estate made under this Act, which shall appear to him not to have been conducted according to the provisions of this Act, awarding at the same time to the purchaser a payment from the proprietor of any moderate compensation for his loss, if the sale shall have been occasioned by neglect of the proprietor, such compensation not to exceed the interest, at the current rate of Government securities, on the amount of deposit or balance of purchase-money during the period of its being retained in the collector's office; and the order of the Commissioner shall, in such cases, be final.
- Annulment of sale in special cases.** XXV. It shall be competent to the Commissioner of Revenue, on the ground of hardship or injustice, to suspend the passing of final orders in any case of appeal from a sale and to represent the case to the Board of Revenue, who, if they see cause, may recommend to the local Government to annul the sale; and the local Government in any such case may annul the sale, and cause the estate to be restored to the proprietor on such conditions as may appear equitable and proper.
- Sales when final.** XXVI. All sales, of which the purchase-money has been paid up as prescribed in Section XXIII. of this Act, and against which no appeal shall have been preferred, shall be final and conclusive at noon of the 30th day from the day of sale, reckoning the said day of sale as the first of the said 30 days. And sales against which an appeal may have been preferred, and the appeal dismissed by the Commissioner, shall be final and conclusive from

from the date of such dismissal, if more than 30 days from the day of sale, or if less, then at noon of the 30th day, as above provided. Appendix, No. 7.

XXVII. Immediately upon a sale becoming final and conclusive, the collector or other officer as aforesaid shall give to the purchaser a certificate of title in the form prescribed in Schedule (A.) annexed to this Act. And the said certificate shall be deemed in any court of justice sufficient evidence of the title to the estate or share of an estate sold being vested in the person or persons named from the date specified; and the collector shall also notify such transfer by written proclamation in his own cutcherry, and in those of the moonsiff and darogah of the jurisdiction within which any part of the estate or share of an estate sold shall be situated, and also at the cutcherry of the malgoozar or owner of the estate, or share of an estate, or on some conspicuous place on the estate, or share of an estate. Certificate of sales.

XXVIII. The collector shall apply the purchase-money, first to the liquidation of all arrears due from the estate or share sold upon the latest day of payment; and secondly to the liquidation of all outstanding demands debited to the estate or share of an estate in the public accounts of the district, holding the residue, if any, in deposit on account of the late recorded proprietor or proprietors of the estate or share of an estate sold, to be paid to his or their receipt on demand in the manner following: to wit, in shares proportioned to their recorded interest in the estate or share of an estate sold, if such distinction of shares were recorded, or if not, then as an aggregate sum to the whole body of proprietors upon their joint receipt. Provided that, if before payment to the late proprietor or proprietors of any surplus that may remain of the purchase-money, the same be claimed by any creditor in satisfaction of a debt, such surplus shall not be payable to such claimant, nor shall it be withheld from the proprietor, except under precept of a civil court. Application of purchase-money.

XXIX. If a sale made under this Act be annulled by a final decree of a civil court, execution of such decree must be obtained before six months after the date thereof, otherwise the party obtaining the decree shall lose all benefit therefrom. And when execution of such a decree is duly obtained, the party obtaining it shall not be restored to possession, until any amount of surplus purchase-money that may have been paid away by order of a civil court be repaid by him, with interest at the highest current rate of Government securities. And if such party shall neglect to pay any amount so recoverable, within six months from the date of such final decree, he shall lose all benefit therefrom. Effects of annulment by decree of court of sales under this Act.

XXX. Any suit brought to oust the certified purchaser as aforesaid, on the ground that the purchase was made on behalf of another person, not the certified purchaser, or on behalf partly of himself and partly of another person, though by agreement the name of the certified purchaser was used, shall be dismissed with costs. No suits on the ground of benames purchase.

XXXI. The annulment by a Commissioner or by Government of a sale made under this Act shall be publicly notified by the collector or other officer as aforesaid, in the same manner as the becoming final and conclusive of sales is required to be notified by Section XXVI. of this Act; and the amount of deposit and balance of purchase-money shall be forthwith returned to the purchaser, with interest thereon at the highest rate of the current public securities. Notification of annulment of sale.

XXXII. The party certified as the proprietor of an estate or share of an estate by purchase under this Act, shall be answerable for all instalments of the revenue of Government which may fall due subsequently to the latest day of payment aforesaid. Liability of purchaser.

XXXIII. No sale for arrears of revenue or other demands realisable in the same manner as arrears of revenue are realisable, made after the passing of this Act, shall be annulled by a court of justice, except upon the ground of its having been made contrary to the provisions of this Act; and no such sale shall be annulled upon such ground, unless such ground shall have been declared and specified in an appeal made to the Commissioner under Section XXIV. of this Act; and no suit to annul a sale made under this Act shall be received by any court of justice unless it shall be instituted within one year from the date of the sale becoming final and conclusive as provided in Section XXVI. of this Act; and no person shall be entitled to contest the legality of a sale, after having received any portion of the purchase-money. Provided, however, that nothing in this Act contained shall be construed to debar any person considering himself wronged by any act or omission connected with a sale under this Act, from his remedy in a personal action for damages against the person by whose act or omission he considers himself to have been wronged. Jurisdiction of civil courts in suits to amend sales.

XXXIV. In the event of a sale being annulled by a final decree of a court of justice, the purchase-money shall be refunded to the purchaser by Government, together with interest at the highest rate of the current public securities. If sale annulled purchase-money to be refunded.

XXXV. The purchaser of an entire estate sold under this Act, for the recovery of arrears due on account of the same, in the permanently settled districts of Bengal, Behar, Orissa, and Benares, shall acquire the estate free from all incumbrances which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all under-tenures, and forthwith to eject all under-tenants, with the following exceptions:— Rights of a purchaser of permanently settled estate sold for its own arrears.

First. Istemrree or mokurrere tenures which were held at a fixed rent, more than 12 years before the permanent settlement, which have been duly registered under Section

Appendix, No. 7. **XXXVI.** of this Act, and whereon no arrear of rent was due on the latest day of payment of revenue as fixed under Sections III. and IV. of this Act.

Secondly. Tenures existing at the time of settlement, which have not been or may not be proved to be liable to increase of assessment on the grounds stated in Section LI. Regulation VIII. of 1793, which shall have been duly registered under Section XXXVI. of this Act, and whereon no arrear of rent was due on the latest day of payment of revenue as fixed under Sections III. and IV. of this Act.

Thirdly. Tenures of whatsoever description, and farms for terms of years, which have been created since the time of settlement, which have been duly registered under Section XXXVII. of this Act, and whereon no arrear of rent was due on the latest day of payment of revenue as fixed under Sections III. and IV. of this Act.

Fourthly. Lands whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk.

And such a purchaser as is aforesaid shall be entitled to proceed in the manner prescribed in Sections IX. and X. of Regulation V. of 1812, for the enhancement of the rent of any land coming within the fourth class of exceptions above made, if he considers the same to have been held at an unfair rent, and if the same shall not have been held at a fixed rent, equal to the rent of good arable land, for a term exceeding 12 years, but not otherwise.

Proviso.

Provided always, that nothing in this Section contained shall be construed to entitle any such purchaser as aforesaid to eject any khodkasht kudeemee ryot, or any resident hereditary cultivator having a prescriptive right of occupancy at fixed rents, or at rents assessable according to fixed rules under the regulations in force, or to enhance the rent of any such ryot or cultivator otherwise than in the manner prescribed by the laws in force, or otherwise than the former proprietor at the time of settlement may have been entitled to do.

Registration of old talookdaree tenures.

XXXVI. The following rules for the registration of talookdaree tenures forming the first and second classes excepted in the last preceding section, shall be observed :—

First. The holder of the under-tenure shall be at liberty to apply for the registration of his under-tenure, by petition presented to the collector of the district in whose jurisdiction the parent estate is situated, within three years from the date of the passing of this Act. The application shall contain the following particulars as far as the same are ascertainable :

1. The pergunnah or pergunnahs in which the tenure is situated.
2. The denomination of the tenure.
3. The name or names of the village or villages whereof the land is composed, or wherein it is situated.
4. The area of the land comprised in the tenure, with its boundaries in complete detail.
5. The amount of rent and cesses payable annually for the tenure, and the duties, if any, required to be performed on account of it.
6. The date of the deed constituting the tenure, or the date when the tenure was created.
7. The name of the proprietor who created the tenure.
8. The name of the original holder of the under-tenure.
9. The name of the present possessor, and if he be not the original holder, his relationship to that person, and the mode in which he succeeded to the tenure, whether by inheritance, gift, purchase, or otherwise, and whether he holds jointly or solely.

Secondly. The collector on receipt of such application shall serve a notice on the recorded proprietor of the estate in which the tenure is situated, with a copy of the application, and shall also cause a notice, with a copy of the application annexed, to be published at the places and in the manner prescribed by Section VI. of this Act, requiring the proprietor or any party interested, within 30 days from the date of the issue of the said notice, to file any objection he may have to the registry of the tenure, or to any statement contained in the application. In the absence of any objection, the collector, if after making due inquiry he is satisfied of the applicant's claim, shall register the tenure. If any objection is made, he shall require both parties, within a reasonable time, to produce their respective proofs, and shall fix a day, by notification in his cutcherry, for the summary investigation of the case. If after such summary investigation he shall be of opinion that the applicant has failed to establish his claim, he shall reject the application. If after such investigation he shall be of the contrary opinion, he shall forthwith register the under-tenure in the provisional registry book. Any party dissatisfied with the collector's award may, within one year from the date of the award, but not afterwards, institute a suit in the Civil Court for the reversal of the same, and after the final decision of the Civil Court, the tenure shall be dealt with according to such decision. If the decision be in favour of the claimant of the tenure, on his producing an authenticated copy of such final decree, the tenure shall be transferred from the provisional registry to the permanent registry book ; but if the final decision

decision be otherwise, on the proprietor producing an authenticated copy of the same, the tenure shall be erased from the provisional registry book.

Appendix, No. 7.

XXXVII. The following rules for the registration of talookdaree tenures and farms, forming the third class of tenures excepted in Section XXXV. of this Act, shall be observed :—

Registration of new talookdaree tenures and farms.

All the rules prescribed in the last preceding Section shall apply to this class of tenures also, with the following additional rules :

Immediately upon receipt of the application, the collector shall cause whatever measurement, survey, and local inquiry he may deem necessary for the security of the Government revenue, to be made. When no objection on the part of the proprietor of the parent estate, or of any other party interested is filed; or when, if such objection is filed, the collector after summary investigation may be of opinion that the applicant has established his claim so far as the rights of the proprietor and other private parties are concerned; before registering the tenure the collector shall satisfy himself that it was created in good faith so far as the interests of the Government revenue are concerned, and that the rent payable by the holder is not less than is fully sufficient to afford a fair proportion of the revenue assessed upon the parent estate. If the collector be not satisfied upon this point, he shall reject the application. If he be satisfied upon this point, he shall register the tenure in the provisional registry book under the rules prescribed in Section XXXVIII. of this Act. Provided always, that in the case of such tenures created after the passing of this Act, no application for registration shall be received, unless the same be submitted within one month from the date of the deed constituting the tenure.

XXXVIII. Talookdaree tenures for the registration of which application shall be made within the prescribed time shall, in case of the sale of the parent estate for arrears of revenue, be protected pending the summary investigation of the collector, and shall be protected eventually by provisional or permanent registration, if the award of the collector upon such application be in favour of the applicant, or in case of that award being against the applicant, if that award be reversed by the final decision of a civil court.

Protection of under-tenures provisionally registered.

XXXIX. The awards of collectors passed under Sections XXXVI. and XXXVII. of this Act, shall be open to appeal to the superior revenue authorities in usual course.

Appeals from collector's registration awards.

XL. No civil court shall be competent to interfere with any award of any revenue authority passed under Sections XXXVI. and XXXVII. of this Act, founded upon any consideration regarding the good faith in which a tenure may have been created so far as the interests of the Government revenue are concerned, or the adequacy of the rent for the security of that revenue.

Restriction of jurisdiction of civil courts.

XLI. After the expiration of one year from the date of registration in the provisional registry book, the collector shall transfer the registration to the permanent registry book, unless it be shown that a civil suit has been filed to annul the registration; in which case he shall suspend registration in the permanent registry book pending the final result of such suit. The entry in the permanent registry book shall be an effectual protection of the under-tenure so registered, unless within 60 years from the date of registry a decree be passed at the suit of Government by a civil court, pronouncing the registration to have been obtained by fraud, to the injury of the Government revenue.

Protection of under-tenures permanently registered.

XLII. The purchaser of an estate sold under this Act for the recovery of arrears due on account of the same in districts other than those mentioned in Section XXXV. shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with ryots or the like settled or accredited by the first engager or his representatives, subsequently to the last settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter, or renew, saving always and except *bonâ fide* leases of ground for the erection of dwelling-houses, or buildings, or for offices thereunto belonging, or for gardens, tanks, canals, watercourses, or the like purposes, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect. Provided, that nothing in this Act contained shall be construed to entitle any purchaser of land at a public sale to demand a higher rate of rent from any persons whose tenure or agreement may be annulled as aforesaid than was demandable by the former malgoozar, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, in consequence of abatements having been granted by the former malgoozars from the old established rates by special favour, or for a consideration, or the like, or in cases in which it may be proved that, according to the custom of the pergunnah, mouzah, or other local division, such persons are liable to be called upon for any new assessment, or other demand not interdicted by the regulations of Government.

Rights of a purchaser of an estate not permanently settled sold for its own arrears.

XLIII. Excepting shares in estates under butwarrah who may have saved their shares from sale under Sections XXXIII. and XXXIV. Regulation XIX. of 1814, and those who have done so under Section X. or Section XI. of this Act, any recorded proprietor or co-partner who may purchase in his own name or in the name of another the estate of which he is proprietor or co-partner; or who by re-purchase or otherwise may recover possession of the

Rights of a purchaser being a sharer in any estate.

- Appendix, No. 7.** the said estate after it has been sold for arrears under this Act; and likewise any purchaser of an estate sold for arrears or demands other than those accruing upon itself, and due for the current or last preceding year, shall by such purchase acquire the estate subject to all its incumbrances existing at the time of sale, and shall not acquire any rights in respect to under-tenants or ryots which were not possessed by the previous proprietor at the time of the sale of the said estate.
- And of a purchaser of an estate not sold for its own arrears.**
- Recovery of arrears due to defaulters.** XLIV. Arrears of rent which on the latest day of payment may be due to the defaulter from his under-tenants or ryots, shall, in the event of a sale, be recoverable by him after the said latest day, by any process except distraint which might have been used by him for that purpose on or before the said latest day.
- Punishment for contempt.** XLV. Any collector or officer exercising the powers of collector in respect to sales, shall be competent to punish any contempt committed in his presence in open cutcherry or office for the time being, by fine, to an extent not exceeding 200 Company's rupees, commutable, if not paid, to imprisonment in the civil gaol for a period not exceeding one month; and the magistrate to whom such an offender may be sent by a collector as aforesaid, shall carry his sentence into effect. Provided, that an appeal from any order passed under this Section shall lie to the Revenue Commissioner, whose decision shall be final.
- Default in making deposit to be considered a contempt. Government may purchase at a sale.** XLVI. A default to make good a bid by making the deposit required by Section XXII. of this Act shall be held to be a contempt.
- Fees and charges demandable by collector.** XLVII. When an estate is put up for sale under this Act for the recovery of arrears of revenue due thereon, if there be no bid, or if the highest bid be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the collector may purchase the estate on account of the Government, in which case the Government shall acquire the property, subject to the provisions of this Act.
- Regulations VII. 1822, and IX. 1825, to be in force in certain estates.** XLVIII. The collector on the part of the Government shall be entitled to demand from applicants under Sections X. or XI. or Sections XXXVI. or XXXVII. of this Act, fees and expenses not exceeding the rates specified in Schedule (B.) to this Act annexed, which Schedule shall be taken as part of this Act; and applications under the said Sections shall not be received unless the said fees and charges are tendered therewith.
- Interpretation.** XLIX. The provisions of Regulation VII. of 1822, and Regulation IX. of 1825, shall be in force in every estate in any part of which a measurement, survey, or local inquiry may be made under this Act; and in every estate purchased on account of Government under Section XLVII. of this Act.
- Application and commencement of this Act.** L. In the construction of this Act the word "Collector" shall include a deputy collector, or other officer exercising by the authority of Government the powers of a collector or deputy collector.
- LI. The operation of this Act shall be confined to the provinces and places in the Presidency of Fort William, in Bengal, which are or shall be subject to the general regulations of that Presidency; and this Act shall commence to have effect on the 1st of May 1856.

SCHEDULE (A.)

I certify that A. B. has purchased under Act No. _____ of _____ the mehal (or share of a mehal) specified below, standing in the towjee of the district of _____, and that his purchase took effect on the _____ day of _____ (being the day after that fixed for last day of payment).

(signed) D. E. Collector.

SPECIFICATION.

(If of an entire Mehal.)

Towjee number.
Name of mehal.
Name of the former proprietor.
Sudder jumma.

(If of a share of a Mehal.)

Towjee number of the entire mehal.
Name of the entire mehal.
Sudder jumma of the entire mehal.
Description of the share sold.
Subordinate towjee number of the share sold,
Name of the former proprietor of the share sold.
Sudder jumma for which the share sold is separately liable.

SCHEDULE (B).

FEES.

For filing an application under Section X. or Section XI. for opening a separate account for a share of an entire estate :

If the annual jumma of the share do not exceed 500 rupees - - - - - Rs. a. p.
10 - -

If the annual jumma of the share exceed 500 rupees and do not exceed 2,000 rupees, at the rate of two per cent. upon the jumma.

If the annual jumma of the share exceed 2,000 rupees - - - - - 100 - -

For filing an application under Section XXXVI. or Section XXXVII. for the registration of an under-tenure :

If the annual rent of the under-tenure do not exceed 500 rupees - - - - - 25 - -

If the annual rent of the under-tenure exceed 500 rupees and do not exceed 2,000 rupees, at the rate of five per cent. upon the rent.

If the annual rent of the under-tenure exceed 2,000 rupees, at the above rate up to 2,000 rupees, and at two per cent. upon all above that amount.

CHARGES.

For measurement, survey, and local inquiry under the provisions of Section XXXVII., If the district in which the entire estate is situated has been officially surveyed, at the rate of for every 100 beegas comprised in the under-tenure.

If the district in which the entire estate is situated has not been officially surveyed, at the above rate according to the extent of the under-tenure, with an additional charge at one quarter of the above rate according to the extent of the entire estate.

Fees and charges under this Schedule must be tendered according to the terms of the application. After the disposal of the case the account will be adjusted according to the result of any survey that may be made. Any balance due upon this adjustment shall be recoverable as an arrear of revenue.

ANNEXURE to BILL to improve the Law relating to Sales of Land for Arrears of Revenue in the Bengal Presidency.

STATEMENT OF OBJECTS AND REASONS.

THE Government of Bengal has recommended certain important improvements of the law for the recovery of arrears of revenue by the process of sale in the Bengal Provinces. The object of this Bill is to improve the law in the points which the Bengal Government has noticed as requiring improvement, according to the spirit of the recommendations of that Government; and this opportunity is taken to amend the law in other points in which it has been found, or is believed to be defective, so that the new law may be a complete sale law in itself, embodying all the amendments which experience and discussion show to be desirable.

2. The Bengal Board of Revenue and the Bengal Government recommend that the previous sanction of the Board of Revenue to sales of land in the province of Cuttack be dispensed with, in order that the process for the recovering of arrears of revenue in that province may be entirely assimilated to the process in force in the other Regulation Provinces under that Board. The papers in which this point has been discussed will be found in No. 1 of the Appendix of this statement. The successful working of the existing sale law in Bengal is admitted by every one; and the general opinion of the revenue authorities is that the 30 years' settlement of the province of Cuttack has made it advisable to adopt wholly in that province the simple and effectual process which is found to work so well in Bengal. This object is carried out by new provisions in Sections III. and IV. of this Bill; and by repealing Regulation X. of 1818, the intention of which was to enforce in Cuttack the system for the recovery of arrears of revenue adopted in the North-Western Provinces, which intention, however, has not been for many years attempted to be carried into effect in practice.

Appendix, No. 7.

3. The Bengal Government recommended the enactment of certain provisions prepared by the Board of Revenue in connexion with a proposed new Butwarra law, having for their object to enable a sharer in a joint estate to open a separate account for the revenue due upon his share, and to secure that share from sale by paying up his portion of the public dues, so long as the other shares in the estate paid their portions, or were saleable at public auction for the amount of their own arrears. This provision has been adopted in Sections X. to XIV. of this Bill. I have added a provision enabling the sharer or sharers not in arrear to purchase the share in arrear, when no bid equal to the amount of arrear is made for it, and thereby to preserve the whole estate from sale. The papers relating to this point form No. 2 of the Appendix.

4. The Bengal Government recommended provisions whereby all under-tenures, though created since the settlement, and at whatsoever rents, should hold good so long as the parent estate should prove to be saleable at public auction for an amount equal to any arrear of revenue that might accrue upon it; and that, whenever this should cease to be the case, the parent estate should be forfeited to Government, who would thereupon make a re-settlement of the whole of it. The discussions on this subject are printed in a separate volume, whereof copies will be circulated with the present papers.

5. I have not adopted this plan. I have substituted for it a system of registration after summary inquiry and survey, which, in all cases in which the tenure is such that it may fairly be upheld both as against the zemindar and as against Government or the auction purchaser, will secure it permanently, whatever may happen to the parent estate. These provisions form Sections XXVI. to XLI. of the Bill.

6. Of the remaining proposed alterations in the law, which have not been suggested in the papers laid before the Council, it will be sufficient to notice the following.

7. By Section IX. of the Bill, it is proposed to give a mortgagee who deposits money in order to save from sale, to the extinction of his lien, the estate over which his lien extends, when his deposit is applied for that purpose, the same lien for the amount thereof that he had originally over the estate thereby preserved from sale.

8. Section XV. of the Bill enables a proprietor of an estate, by the deposit of money or Government securities, to preserve his estate from all risk of sale by reason of any accident or neglect on the part of an agent.

9. Section XXIX. of the Bill obliges a former proprietor, whose estate has been sold for arrears of revenue, and who has obtained a final decree of Court annulling the sale, to execute that decree within six months after obtaining it, under the penalty of losing all benefit therefrom. The evils of prolonged instability of possession, and prolonged liability to mesne profits, are obvious; and a case is known to have occurred in practice, in which the decree-holder, for his own purposes, designedly postponed the time of re-entering upon his estate for several years.

J. P. Grant.

22 December 1855.

APPENDIX No. 1.

No. 880.

REVENUE

From the Secretary to the Government of Bengal to the Officiating Secretary to the Government of India.

Sir,

Home Department,
dated Fort William, 24 October 1853.

IN 1850 the Board of Revenue proposed to discontinue the practice of realising arrears of revenue in the province of Cuttack by means of dustucks, or written demands served upon defaulters by peons or other servants of the Collector's office.

2. It was represented that the system supported no less than 1,400 peadahs, and that the authorised fees realised by them during the year 1848-49 amounted to 12,952 rupees; and, on the assumption that each peadah is not content with less than five rupees a month, it was confidently conjectured that the amount actually levied on the zemindars in that year may have been 84,000 rupees.

3. It was further represented that the issue of these dustucks is after all ineffectual, as the payment of revenue is not finally enforced until the estates are lotted and advertised for sale, insomuch that the lists of advertised estates sent in 1850 to the Board, with application for permission to sell, "embraced nearly the whole province."

4. Instead of this plan, the Board recommended the adoption of the system of periodical sales in force in Bengal. The Cuttack districts have now been settled for 30 years, and the settlements have been made precisely on the principle of the Bengal settlement, except its permanency.

5. All

5. All the local authorities agreed in recommending the change, and some of the zemindars themselves petitioned for it; but the Board were divided in opinion as to whether it could be effected without a change in the law.

6. When the question came before the late Deputy Governor, doubts were felt as to the propriety of the change, and a letter was written to the Board by Mr. Secretary Grant, of which the following are extracts—

“Originally, by section XXXVI. Regulation XII. of 1805, the Bengal process of collection generally was introduced into Cuttack; and practically in Cuttack, as in Bengal, the process of sale became the only coercive process resorted to. The result in Cuttack was very unsuccessful. A great proportion of the estates in the province changed hands; much fraud and abuse were practised, and the collections were not punctually realised. In 1817 a rebellion broke out in the province. In 1818, at the recommendation of the officer who restored the province to order, Regulation X. of that year was passed, the object of which was to remedy the evils above-mentioned by introducing into Cuttack the process generally, by which arrears of revenue are recovered in the Ceded and Conquered Provinces. The change was found very beneficial; and to this day the law for the recovery of arrears of revenue is nearly the same in Cuttack as it is in the Ceded and Conquered Provinces.

“It is most reasonable that the law should be similar in all these provinces, because they are all alike in not being settled in perpetuity. They are also all alike in being now settled for long terms of years.

“The essential distinction between the two processes in the permanently settled and temporarily settled provinces is that, in the former, sale is the first, and in the mass of cases, the only process, and it follows the default of the zemindar as a matter of course; and, in the latter, sale is the last process, in the mass of cases not resorted to at all, and in no case resorted to otherwise than as a special necessity after special inquiry; issue of dustucks at the defaulter's charge, arrest and imprisonment of his person, sale of his personal property, attachment and khas management of his lands, and farming out his lands, being resorted to instead. It follows that the spirit in which the two laws are administered should be very different. In Bengal the revenue is collected mechanically, without trouble to the Collector; in the unsettled provinces the collection of the revenue, punctually, and not oppressively, is a main part of a Collector's duty, and a field for the unceasing exercise of his discretion. It is very evident, that if in any district a Collector should attempt to work the law of the temporarily settled provinces in the spirit in which the law of the permanently settled provinces is legitimately and successfully worked, that is to say, if he should sit still and let the law take its full course in every case indiscriminately, the practical result must be very bad. Yet this bad result would not be attributable to the law.

“Hence it appears to the Deputy Governor that it may be assumed that, if the result of the procedure is good generally, but under the same law and under the same circumstances it is bad in some two or three districts, there is a strong presumption that it is the administration, and not the procedure, that is to blame. Now, this appears to be the present case. The process in the three Cuttack districts is complained of as working ill, whilst, so far as this Government is aware, the process in the North Western Provinces is not so complained of.

“These observations his Honour feels called on to make, because it is not to be concealed that the real effect of the change of procedure in Cuttack, which the Board now recommend, although it may be carried out without any change of law, will nevertheless practically be equivalent to the avowed reintroduction into Cuttack of the Bengal process for the recovery of arrears of revenue. For although the provision of the law would be observed, whereby the previous sanction of the Board is necessary before an estate not permanently settled can be ordered for sale for arrears, it is not proposed that this sanction should be otherwise than indiscriminately given for all estates reported to the Board unless the arrear is paid by a given date; nor, although, to meet the letter of the law, that report to the Board must be a detailed report of estates recommended *nominatim* for sale, is it proposed that it shall be other than an indiscriminate list of all estates in arrear. If the Board's recommendation be adopted, although the law in appearance would remain the same as the law in the Upper Provinces, it would be, in reality, only the Bengal law in an awkward shape. Wherever sales are indiscriminately made, there essentially is the Bengal law in force.

“The grounds on which the Board make their recommendation, are the great evils of the present system in respect to the issue of dustucks and the sale of personal property. It is represented that the authorised and unauthorised expense in peons falls as a heavy and useless addition to their assessment on the smaller zemindars; that dustucks are quite useless, sales being the only practical inducement to the payment of revenue; that the sale of a zemindar's personal property is a violation of his home without being at all effectual as a means of obtaining the dues of the state; and that altogether the system opens a wide door to roguery and abuses of many sorts.

“Here is ground of complaint enough. But the question arises is it the procedure or the administration that is to blame?

“That the procedure does not necessarily involve all these evils in any very high degree seems clear. For to pass by the example of the North Western Provinces where the same law of procedure is administered, if his Honor be not greatly misinformed, without being open to such complaints, it is admitted by Mr. Ricketts, and is maintained by Mr. Mills, that some years ago these objections to the process were not discoverable in Cuttack. It

Appendix, No. 7. is admitted in short that the discrimination, and the exercise of discretion which the process requires, and with which it used to be administered in Cuttack, are now disregarded.

“In looking at the papers before him, the Deputy Governor sees no lack of proof of this. He is told of there being no list of the dustucks peons engaged; of no account of peons' tullubana being kept, so that no correct return of the tullubana authorisedly levied can be made; of peons serving dustucks being allowed to obtain their pay directly from the zemindars whom they are sent to apprehend; and of dustucks issuing without the knowledge of the Collector; and the number of serving peons being increased, with no higher sanction than the pleasure of a nazir. He finds no mention of the attachment of an estate for arrears, and he finds that every estate in arrear on a certain date is entered mechanically in the list to be reported for sale, and that the sale of every estate reported is sanctioned, as a matter of course, unless the arrear be paid by another given date.

“Here then, to repeat a passage above written, is an ‘attempt to work the law of the temporarily settled provinces in the spirit in which the law of the permanently settled provinces is legitimately and successfully worked;’ the Collectors ‘sit still, and let the law take its course in every case indiscriminately;’ and the result is such as is reported in your letters now before Government.

“The Deputy Governor can only account for the change of practice which is admitted, by the supposition that lately sufficient pains have not been taken to inculcate upon the collectors of Cuttack the difference of the revenue system, as it is by law established in Cuttack, from that of Bengal where they have been brought up.

“The Deputy Governor, however, entirely agrees with the Board and the local officers in opinion that, if it is to be recognised as a principle that sale is to be the only effectual proceeding for enforcing the payment of the revenue in Cuttack, then certainly all the harassing intermediate processes of dustucks, arrests and sales of personal property should be abandoned. If these vexatious personal processes are ineffectual for the recovery of arrears, they must be purely noxious.

“But in the present state of his information, and above all in the present state of the law, the Deputy Governor must hesitate to recognise that principle in Cuttack; and he must even doubt the propriety of the practical recognition of it, which the present system of indiscriminate sales affords.

“His Honor is of opinion that, before proceeding further in the matter, the Board should put themselves into communication with the Agra Board; forwarding to them copies of these Cuttack reports; asking them how the evils here experienced are avoided under their jurisdiction; and requesting them to give a description of the system of recovering arrears of revenue now in force in the North Western Provinces. The Board and the Government here will then be in a position to judge fairly between the two systems.

“The Deputy Governor does not mean to pronounce that, where an equal and moderate settlement for a long term of years exists, a simple and generally unbending sale law may not be the least vexatious process of realisation, and the one most conducive in the end to the respectability and welfare of the zemindars. But with the recollection of what led to the enactment of Regulation X. of 1818; with the knowledge that under the excellent administrations of Mr. Ricketts and Mr. Mills in Cuttack, no evil was discovered in that law; and with Mr. Mills' adverse opinion before him; he cannot hastily authorise the fundamental change recommended.

“His Honor thinks that the change of system, if introduced, should be accompanied by a law empowering the zemindars to sell, by summary process, mokuddamee tenures under them, and it is admitted by the local authorities that sales operate hardly, in the present state of the law, in the case where only one sharer, or a portion of the sharers in an estate, makes default. At all events, his Honor is of opinion that, if an indiscriminate sale system is to be recognised by authority as the only practical process of realising the revenue in Cuttack the law should be openly changed. He does not think it would be right to make a change so contrary to the explicit purpose of the existing law as the introduction of the Bengal process into Cuttack, by administering the law in a manner contrary not only to its spirit, but to its express direction. The preamble of Regulation X. of 1818, says that it is expedient to assimilate the system in Cuttack more nearly to that pursued in the Western Provinces; whereas the avowed object of the present recommendation is to do the reverse. The enacting clause of this law directs that the process which it is proposed in every case to omit, shall be gone through before sale ‘in ordinary cases,’ and sale without such intermediate processes is ordered to be made an exceptional case. The law also directs that in all cases Collectors, on an arrear occurring, shall be particularly careful to inform themselves of the real cause of the default; but the proposal is, that he shall recommend for sale in every case of arrears, as a matter of course.

“It is not to be denied that the papers now before Government tend to show that in practice the spirit of this law is neglected already, and sale is now regarded as the sole effective process. But this so far as His Honor is aware, is not an authorised system, and appears to have been introduced of late years.

“In

"In only one point is the Deputy Governor aware that the revenue officers in Cuttack are at a disadvantage as compared with their brethren in the Upper Provinces; but that point, he admits, is a very important one. It is the absence of pergunnah tihseeldars who are in the Upper Provinces one of the most useful and most respectable classes of public servants. The great advantage of the tihseeldaree system is that it affords a trusty officer to every small circle of villages. The want is not remedied by what is apparently the equally expensive system of having a large number of deputy collectors under Regulation IX. of 1838, and uncovenanted officers in charge of the abkaree, because these officers, being mostly at the sudder stations, though they relieve the Collector personally of a great deal of the proper duty of a Collector, are of no use in facilitating his management in the interior of his district, and of no convenience to the people remote from the sudder station. Where the tihseeldaree system exists, a Collector has as good a hold over the revenue administration of the most distant pergunnah as he has in his sudder pergunnah; and the smallest malgoozar pays his jumma as conveniently to himself in the one as in the other.

"As the Deputy Governor believes that the system of tihseeldars can be introduced into Cuttack with a saving of expense, and he sees no reason why Cuttack should not enjoy the advantages allowed to all other districts not permanently settled, he will be very ready to consider of its adoption, if the Board are aware of no solid objection to it. He is enabled to say that Mr. Mills, to whom the plan has been mentioned by way of suggestion, approves of it."

7. To this letter the Board replied in their letter No. 622, dated the 9th December 1851, a copy of which with its enclosures is now submitted for the consideration of the Government of India.

8. There is in fact very little real analogy between Cuttack and the North Western Provinces. The settlement in the former is a zemindaree settlement, the rights of all under-tenants and ryots being fixed during the whole period of its duration. In the latter, the settlement is made in detail with all those having a proprietary interest in each village. The dustuck system, which is truly described by Mr. Currie to be a necessary evil, even in the North Western Provinces, is a source of pure mischief in Cuttack, being ineffectual for its object, and recourse having almost always to be had to sale as a final measure of coercion. It was adopted in Cuttack when there was no proper settlement and when the revenue was very unequally assessed. Its abolition is nothing more than the complement of the very perfect zemindaree, though terminable settlement, that has since been effected.

9. The location of officers in the interior of districts, with criminal and fiscal powers, is a measure of which the utility is not confined to Cuttack; but it may be doubted whether, under a zemindary settlement, temporary or permanent, it would be wise to entrust to such officers the duty of collecting the revenue, and thereby to divert their attention from other objects on which it may be far more usefully and beneficially bestowed.

10. It does not appear to his Lordship that any alteration of the law is necessary for the discontinuance of the practice of issuing dustucks. So much of Regulation X. of 1818, as prescribes the issue of dustucks as a necessary preliminary to sale, was repealed by Clause 2, Section II. Regulation XI. 1822; and though the provisions of the former regulation have ever since been acted on, they have not been compulsory but permissive. There can be no necessity for a law to authorise the abandonment of a process which, the law says, may be resorted to or not at the pleasure of the executive. It is only necessary that the Board should give notice in the province that, after a certain date, the process of recovering of arrears by dustuck will no longer be resorted to. To this effect the Board of Revenue have been instructed.

11. The 4th section of the law of 1845, which requires a reference to the Board in each instance before a sale can be held, might be repealed, as regards Cuttack, by a short Act for the purpose (such as that transcribed in the margin)* or, as suggested in my letter No. 775, dated the 15th ultimo, the occasion of revising the sale law as respects under-tenures, and the payment of the dues of joint shareholders on separate account, might be taken to pass a new sale law, embodying all the alterations which experience has shown to be necessary.

I have, &c.

(signed) Cecil Beadon,
Secretary to the Government of Bengal.

* Act No. — of 1858.—Whereas it was enacted by Section IV., Act No. I. of 1845, that in districts not permanently settled no sale shall take place for arrears of land revenue or other demands of Government, without the special sanction of the Board of Revenue previously obtained in each several case of sale; and whereas it is not expedient that such sanction should be obtained to the sale of land for such arrears or demands in the temporarily settled districts of the province of Orissa, it is enacted as follows:—So much of Section IV., Act No. I. of 1845, as enacts that in districts not permanently settled no sale shall take place for arrears of land revenue, or other demands of Government, without the special sanction of the Board of Revenue previously obtained in each case of sale, so far as the same relates to the province of Orissa, is hereby repealed.

Appendix, No. 7.

No. 622.

From the Officiating Secretary to the Board of Revenue, Lower Provinces, to *J. P. Grant*, Esq., Secretary to the Government of Bengal, Revenue Department, dated Fort William, the 9th December 1851.

Sir,

In reply to your letter of the 21st February last, No. 266, communicating the observations of his Honor the Deputy Governor of Bengal on the Board's proposition for the abolition of the dustuck system in the Cuttack province, and the substitution in lieu thereof of a tullub chittee followed by sales to be held on certain fixed dates twice in the year, I am directed by the Board of Revenue to submit herewith copies of the Minutes of the Members as per margin,* as well as the correspondence† with the local and other officers on the subject.

LAND REVENUE.

Present:—*E. M. Gordon* and *E. Currie*, Esquires.

* MINUTES.—*Mr. Ricketts'* Minute, dated 27th August last. *Mr. Gordon's*, dated 25th September. *Mr. Currie's*, dated 22d ultimo.

CORRESPONDENCE.—Secretary to Sudder Board of Revenue, North Western Provinces, to Secretary to Board of Revenue, Lower Provinces, dated 23d May last, No. 79, with enclosures. Commissioner of Cuttack to Board, dated 29th May, No. 1000, with enclosures. Ditto to ditto, dated 18th June, No. 1136, with enclosure. Ditto to ditto, dated 18th August, No. 1590, with enclosures.

2. In accordance with the desire intimated in paragraph 16 of your letter, the Board forwarded the report of the local officers to the North Western Board, and requested information respecting the system in force in the North Western Provinces, and the mode in which the evils described in the Cuttack reports had been there avoided. A copy of the reply of the secretary to that Board, No. 79, dated the 23d May last, and of the observations of the Cuttack officers thereon, submitted with the Commissioner's letter of the 18th August last, No. 1590, will be found with the correspondence now forwarded.

3. The Board, it will be seen from the minutes, are of opinion that no attempt should now be made to work out the provisions of Regulation X. of 1818, and adhere to their recommendation that the dustuck system be abolished, and that periodical sales be held for the realisation of the revenue. In accordance with his original proposition, *Mr. Ricketts* advocates half-yearly sales; but the other members concur in the suggestion of *Mr. Forbes*, the Collector of Pooree, that three sales in the year would be better.

4. *Mr. Ricketts* does not consider that any change in the law is necessary in giving effect to the proposed change of system; but his colleagues are of opinion that Regulation X. of 1818 must be altered if not abrogated, and that it should be declared, in modification of Section IV. Act I. of 1845, that the previous sanction of the Board is not necessary to the sale of estates in the province of Cuttack.

5. Although opposed to the introduction of the tubseeldaree system of the North Western Provinces, the Board are favourable to the location of revenue officers at a distance from the Sudder station in the manner suggested by the Commissioner in his letter, dated the 29th May. These officers would try all summary suits in their respective jurisdictions, and should be empowered to receive the revenue of such of the smaller zemindars as might prefer paying at their culcherry to making payments at the Sudder station. The duty of issuing tullub chittees and sale notices to all such parties would devolve upon them, and the establishment of peons necessary for that purpose would form a sufficient guard for the custody and conveyance of the small amount of treasure which would pass through their hands. These deputy collectors might also very properly, the Board think, be entrusted with the management of the abkaree within their respective jurisdictions.

6. With reference to paragraph 24 of your letter, the Board are opposed to the alteration there proposed in the appointment of the Pooree and Balasore Collectors.

I have, &c.
(signed) *A. C. Bidwell*,
Officiating Secretary.

MINUTE by *Mr. Ricketts*.

IN 1817 the European officers were inefficient; the omlah were corrupt and nearly all foreigners; the estates were disproportionately assessed; there was no confidence in the administration. Things are entirely changed. The European officers understand their duties; the omlah are for the most part, if not exclusively, natives of the province; estates are all assessed in proportion to the assets. It is almost impossible to imagine a more complete change than that which has taken place in Cuttack since Regulation X. of 1818 was enacted.

Mr. Forbes, who has been employed in the North West Provinces, explains that the settlement of Cuttack is very unlike the settlement of Western India. "They have not a single point in common. In the North Western Provinces the settlement proceeded from the aggregate to the details, which are generally mutable and uncertain and dependent on the arrangements of the proprietors. In Cuttack the settlement proceeded from the minutest

† This correspondence was not among the papers sent up by the Government of Bengal.

minutest details to the aggregate, and the former have been made fixed and certain by the delivery of pottahs to the resident ryots, and have thus become immutable for the whole period of the settlement." In short, Cuttack has been really settled; the interests of each party in each field have been ascertained and recorded; there is no reason now why a spendthrift zemindar should not be sold out. It is evident when the Western Board ask what checks there are "to prevent the Government from suffering loss from the fraudulent and collusive distribution of the revenue over the various shares of the subdivided villages," that they are entirely ignorant of the complete system under which the land revenue has been assessed in Cuttack. Indeed, it is in Cuttack alone that the theory of a settlement has been completely carried into effect.

The orders of the Government, dated the 21st February, criticising with some severity the plan I proposed, having been communicated to the local officers, two out of the three, and these two gentlemen who for talent and efficiency are considered inferior to none now employed under the Board, have notwithstanding reported that they consider it well suited to the disposition of the people and the condition of the province.

Messrs. Allen and Forbes.

The 6th paragraph of the orders of Government says that the system I proposed will be the avowed re-introduction into Cuttack of the Bengal process for the recovery of arrears of revenue. Such is not the case. No discretion that has existed since 1818 is taken away; no privilege which has existed since 1818 is abrogated. On the contrary, it recognises the indulgence peculiar to the province which virtually has long existed; the demand of revenue is to be strictly enforced twice a year only; while it combines the considerate provisions of the local law, and that provision of the Bengal law which all parties applaud as having prevented sales. The tullub chittee will convey the warning, and afford the zemindars the pretext for being urgent in their own demands which all agree is so necessary; while the last day on which payment will be received being fixed, the Cuttack zemindars will learn to know that, by the day fixed, arrangements for payment must be made, and their besetting failing of procrastination and encouragement of hopeless anticipations of assistance or indulgence will be checked as it has been in Bengal. Instead of "the Bengal law in an awkward shape," it will be the Bengal law suited to the habits, customs, and wishes of the Oorissas.

In paragraph 18 of the orders of Government it is said that the system I proposed omits the process of which the law directs the observance previous to sale. This is another mistake. I proposed that a tullub chittee should be issued before the estate is lotted for sale, and, when sale has been sanctioned, that notice shall be given of the last day fixed for payment. Mr. Allen writes: "I am strongly in favour of Mr. Ricketts' proposition. I have diligently endeavoured to ascertain the sentiments of the landholders upon this question, and am thoroughly satisfied that a vast majority of them are favourable to the abolition of dustucks, and to fore-known and fixed days for last payments and sales. The duties proposed by Mr. Ricketts have, I find, given very general satisfaction. The tullub chittee would be a sufficient warning to careless and thoughtless zemindars, though, in my opinion, forgetfulness of the obligation is but rarely the cause of default."

Mr. Forbes writes: "I have perfect confidence in the stability of the settlement of the land revenue of this province, if the people be only protected from the extortion and rapacity of Government officials. If Government in 1818 were compelled to enact the extraordinary law, it has since, at the vast cost incurred in making a detailed settlement of the land revenue of the province, done the utmost to make amends for the barbarous policy it was then compelled to pursue; and all that the province, in my opinion, now requires, is to be relieved from the last remnant of the barbarous policy of A. D. 1818. This may best be done by adopting the plan for the realisation of the land revenue proposed by Mr. Ricketts."

Mr. Forbes, as well as Mr. Allen, see in my plan the welfare of the people, and the punctual realisation of the public dues, and as, though the plan has been known for above six months, not a single objection has been preferred against it, I think we may conclude that Mr. Allen is right when he says it will be acceptable to the people. With the local authorities and the people on my side, I cannot for a moment doubt that the plan would be successful. In fact it embraces no great change. It would merely systematise existing arrangements, and prevent abuses. I can see no occasion for a law when, as I have shown, there is nothing in the existing laws to prevent its introduction.

I hope and believe that the abuses which the local authorities represent to have existed of late years, did not exist when I was in Cuttack either as Collector or Commissioner. Doubtless much may be done to prevent them; but I greatly prefer the introduction of a plan under which such abuses cannot be, than to continue a system the successful working of which avowedly depends entirely on the character and habits of the officers employed to carry it out.

I say it without intending the least disparagement of the officers of the present day, that the spirit of the management of former days is not to be restored; and a great many, perhaps a majority, would say it should not be restored. We may write, and exhort, and blame, and encourage, and explain, it will I fear be all to no purpose. If I were to take charge of the Collectorship again, and do the things I used to do, consult the convenience and recognise the necessities of the rent payers, issue dustucks against some and not against others, what would the Commissioner and the Board say? I apprehend there would be grave lectures touching indiscretion, and so forth; but I collected the revenue with approved punctuality, and to the best of my recollection, during an administration of eight years, sold but one considerable estate.

Appendix, No. 7.

We may write that "in all cases the Collector, on an arrear occurring, shall be particularly careful to inform himself of the real cause of the default;" but the real cause of default is not to be learned. But, unless we can restore the habits of 1835, the activity, the inclination to serve the people, we shall write in vain. The intimate acquaintance with the people which then existed is now unknown, and I fear cannot be restored in this part of India. It cannot be expected of an assistant that he should devote all his time to become acquainted with the people of a district from which he may be at any moment removed; and officers now become Collectors at a time of life when such habits as used to prevail in Cuttack, in the times alluded to by Mr. Grant, cannot be acquired. For years my camp was my home. What would any Collector or Commissioner now under us say if ordered to pass the months of June and July in a hill tent, 10 feet square. We were young and were used to it; the present race of Collectors is old and unused to it; and the management of those days will not come back at our beckoning, unless we can also beckon back the pay and early promotion which in those days we received.

I would alter nothing in the plan I have proposed. If that cannot be—if dustucks must continue—then I think much of the Western Province system may be adopted with advantage. That there, dustuck bearers do not pilfer because they are paid servants of the Government, I do not believe. Assuredly in this part of the world it is the paid servants of the Government who always pilfer most. The muskooree peon might be satisfied with a dotee; the paid servants of the Government would certainly demand a fare, but the uniform payment appears very desirable. At present the penalty for default is regulated by the distance from the Sudder office. The nazir's share of the tullubana has not been recognised by our code as regards collectorships as far as I can ascertain; and in many respects it certainly is most objectionable that this officer should be permitted to benefit according to the increase in the number of processes issued; but on the other hand, if he is not liberally paid, he will pilfer; and I have great doubts whether an alteration in the system, so far as to allow the nazir no share of the tullubana, will not increase, rather than decrease, the burthens of the people. Supposing a fund to be provided, as it appears to be in Western India, by the imposition of a tax on default, and the nazir to be paid from the tax, still he will demand a gratuity from each peada to whom he gives a badge; and the peada, either in cash, food, or clothing, will levy this payment from the people, who will have to pay very much what they now pay, and the tax besides.

As to the employment of tuhseeldars in Cuttack. What are they to do? There is already a tuhseeldar at Budruck, half way between Cuttack and Balasore, who receives the revenue paid by such small landholders as are unwilling to travel to Balasore. I am very unwilling to scatter officers over the province with the powers of Magistrate and Collector, unless the officers employed be persons whose integrity and independence are beyond all doubts. Moreover the Commissioner in his estimate has made no provision for providing the deputy collectors to be stationed in the Mofussil with treasures and guards which would be necessary.

On vacancies occurring, I think the pay of the Balasore and Pooree officers may be reduced, but not to 1,500. It is the pay, of all others, I would not give them. It is most desirable that an officer should remain in Cuttack for several years. The language, the system, are both peculiar to the province. An officer is not efficient for the first year of his employment in the province. An officer on 1,500 rupees is always in expectation of promotion to a collectorship. There would be a change every second or third year. If 2,000 rupees is allowed, the best of the revenue officers will always be available, and they will remain in Cuttack till entitled by standing to judgeship.

The responsibility connected with the salt agencies must not be forgotten. Besides the work connected with the Aurungs, the salt agent of Balasore has the superintendency of two long double lines of salt chokies, one line to prevent the introduction of salt from the Aurungs into the district, and another line to prevent salt being smuggled from the district into Midnapore and the tributary mehals; while at Pooree the Collector has the management of the extensive Khoordah khass mehals. 2,000 rupees per mensem is the least that should be allowed.

Were there always a covenanted assistant with the powers of a joint magistrate at Balasore, either the deputy collectors under Regulation IX. of 1833, or the abkaree superintendent might be dispensed with; but the place is unhealthy and is often without a covenanted officer of that grade. I would not for the present alter the establishment.

27 August 1851.

(signed) *H. Ricketts.*

MINUTE by Mr. Gordon.

THE provisions of Regulation X. 1818 have never been strictly, and in all their parts, carried out; and for many years past have been openly departed from. One implied part in the machinery of the above law, the existence of an organised establishment of tuhseeldars, has always been wanting. To collect the revenue in the districts of Cuttack, literally and strictly, under the provisions of the above law is an impossibility. The law requires that, on the occurrence of a balance, the cause of that balance should be immediately ascertained; and no good reason for its existence appearing, the realisation of it should be enforced by the detention or imprisonment of the defaulter, and the attachment, if necessary, of his estate, and the distraint and sale of his personal property.

2. It is obvious that, unless the Collector were possessed of ubiquity, he could not himself fulfil all these requirements of the law. Neither could one man make all the necessary inquiries, if it should be found that the parties who had contracted to pay the Government revenue, did not voluntarily and with punctuality fulfil that contract. Doubtless, without the aid of *tahseeldars*, great differences would be found in the administration of different Collectors. A man of activity and energy, a man conciliatory yet firm, and who, by always moving about the district, should become acquainted with nearly every one in it, would of course collect the revenue; but it would be found that even he would not collect it with the exact punctuality required by the law. It seems plain, then, that the law, in all its parts could never have been literally carried out; and latterly—that is, for the last ten years—its provisions have been openly departed from in the matter of sales.

3. After the passing of Act XII. of 1841, Mr. Commissioner Mills, in sending up lotbundees, and soliciting the special sanction of the Board to bring to sale, for the recovery of arrears of revenue, the estates enumerated therein, writes as follows, in his letter dated the 23d March 1842:—

“The officiating Collector of Cuttack, when forwarding his lotbundee, remarks as follows:—‘That the greater number of these proprietors will pay up the balances before the day of sale, I have not the slightest doubt; but it is difficult for me to state which will prove the defaulters; I have therefore included all, as the threat of sale under the new Act will have a very salutary effect upon the zemindars, who are too prone to defer payment until the last moment.’”

4. Mr. Mills proceeds to say—“It has always been found necessary to resort to the extreme measure of sale twice a year in the Cuttack province. The threat of a sale is sufficient to enforce payment, and seldom or ever is a sale actually made; but the zemindars are too fond of procrastinating the payment of their dues; and the other processes for the recovery of arrears having failed, we are obliged to have recourse to the one and only strong means, namely the lotting of the estates for sale.”

5. Now it appears to me that, whether Regulation X. of 1818 had been well or ill administered up to that time, the above is a plain admission that, by means of the above law, the revenue could not be collected; for it was unquestionably contemplated by that law, that a resort to sale should be the exception, not the rule.

6. To say that the advertisement to sell was a mere threat is, in my opinion, to say nothing to the purpose. In no other district of Bengal, any more than in Cuttack, is a threat to sell followed by an actual sale. The sales are few everywhere, the threat to sell being sufficient for the realisation of the Government revenue.

7. Ever since Mr. Mills wrote the above letter, a list of estates lotted for sale has been submitted twice a year for the Board's sanction, and the bulk of the revenue of Cuttack has been realised by a resort to the threat of a sale.

8. But the great question is, what is to be done now? Is an establishment to be organised, so that the provisions of Regulation X. 1818 shall be strictly carried out, or is a departure from that law to be openly avowed and sanctioned? The first thing observable is the apparent ease with which the revenue is collected on the threat of resorting to a sale. All must allow that the system of issuing dustucks has been loosely administered. But if, by means of a sale law, it is found that the revenue is collected, we naturally ask why such a system should not at once be adopted?

9. Similarity of circumstances between Cuttack and the North Western Provinces, seems to have been assumed by the Legislature, when Regulation X. of 1818 was passed. The nature of the landed tenures in the North Western Provinces is exceedingly complicated; and speaking for myself, I doubt whether I could ever thoroughly understand that subject from the printed accounts of it. Local and practical knowledge, I take it, would be necessary to make me master of the system; yet this much is clear from the published accounts of the system, that often a very large number of persons have an interest both in what is paid to the state and in the surplus profits that remain to be divided amongst that large number after the demand of the state is satisfied, that disputes about those interests are constantly occurring, and that generally the nature of the interest is recorded at the time of settlement. Two conclusions may be drawn from this state of facts; one is, that to enforce the joint responsibility of all the proprietors for the payment of the Government demand, without any inquiry into the liability of the proprietors separately, would be a very harsh measure; the other is, that the adjustment of the disputes by means of the settlement record, and the knowledge of the local officers, is a matter of comparative ease. Thus the collection of the revenue by means of *tahseeldars* becomes absolutely necessary, both with reference to the claims which the proprietors may justly lay to the adoption of such a system, and to the sound policy of preserving contentment amongst the agricultural classes.

10. In Cuttack the system is very different now, whatever it may have been when Regulation X. of 1818 was passed. From those in that province who best deserve the name of proprietors, namely, the ancient ryots, and the holders of tenures under different denominations at fixed rents, the Government officers do not collect at all. What each of all these has to pay is fixed with reference to the quantity of the land, and the rate of rent that may prevail in the neighbourhood for that quality of land at the time of settlement.

Appendix, No. 7. The aggregate of all these separate fixed demands forms the gross rental; from this gross rental a deduction of from 30 to 40 per cent. is made, and the remainder is the Government demand, the right to contract for which has been acknowledged to exist in certain parties, and whose profit is mainly the deduction allowed from the gross rental.

11. This being the state of facts, one naturally asks, why the estate should not be sold, if these men who have entered into agreements to pay the Government demand for a term of years fail to do so, and why a cumbrous system of local officers must be organised to ascertain what shares these men have to pay?

12. A sale, it will be observed, does not deprive those above described as proprietors, of any of their rights. The purchaser can only enforce the terms of the settlement. On the other hand, a shareholder in the settlement made with Government, that is one of those who contract to pay the Sudder jumma, can, by applying for a separation of his share under Regulation XIX. of 1814, secure himself from the injustice of his brother shareholders. It is now under the contemplation of the Board to propose to the Government that a law be passed, rendering a shareholder amongst Sudder malgoozars liable, in the first instance, for revenue only to the amount of his share, the whole estate being still liable for the Government demand, if the price fetched by the sale of the share of any defaulting shareholder be insufficient to cover the arrear. I have under preparation the draft of such a law, which heavy current business alone has prevented me from completing. If such a law were passed, and facility given to the Sudder malgoozar to recover from his tenants, by a law of the kind recommended by Mr. Forbes, the Sudder malgoozar or zemindar of Cuttack would have little reason to complain, and there would be little work for the proposed tuhseeldars to perform.

13. It must be borne in mind, as stated by Mr. Collector Forbes, that in all cases of real calamity, such as the occurrence of inundations and serious deficiency of crops, extensive and careful local inquiries are instituted, and suitable suspensions or remissions of the Government demand made.

14. The only case that occurs to me, as showing the convenience of local tuhseeldars, and by consequence of local treasuries, is that in which the Sudder malgoozars or zemindars of small estates, situated at a distance from the Collector's treasury, are very numerous. I scarcely suppose that the subdivision by inheritance amongst the zemindars of petty estates in Cuttack has become so minute as of itself to warrant the location of a number of separate treasuries in the interior of a district. Besides it must be remembered that these zemindars voluntarily assume the responsibility of contracting for the payment of the demands upon their estates, and probably find the dignity inherent in the character of a zemindar a sufficient compensation for any inconvenience that may be incidental to such a position. In all such cases, too, the periods of payment are limited in number.

15. It will be seen from the tenor of these remarks, that I am opposed to the plan of organising an establishment in order to carry out strictly the provisions of Regulation X. of 1818. There is no necessity, in my judgment, for such a measure; and I entirely agree with Mr. Forbes that the less the officers of Government interfere with the people, the better. That gentleman has pointed out, also, that separate treasuries would be necessary, though he has over-rated the number.

16. But if we are not to attempt to collect the revenue of Cuttack by a strict adherence to the provisions of Regulation X. of 1818, what change is necessary? All must agree that the system of issuing dustucks, as it has been heretofore conducted, is, to use the words of Mr. Secretary Grant, "purely noxious." When the present subject came before me originally, I recorded an opinion to the effect that there did not appear to me to be any good reason why the sale law, which was in force in Bengal, should not be extended to Cuttack. I refused to admit the fact that the zemindars of Cuttack were ignorant of what they had to pay, or when they had to pay their revenue—that the best proof of this was to be found in the fact that, when advertisements of sale were issued, they invariably paid up their balances—that this fact showed that, when dustucks were issued, it was not inability to pay, but unwillingness that stayed their hands—that, therefore, the issue of dustuck did little or no good—and that the substitution of the threatened process of sale would be less vexatious, and more effectual towards the end in view. I gave up my opinion in deference to those expressed by Messrs. Ricketts and Mills. I must confess, however, after a most careful re-consideration of the whole subject, that I return to my original opinion, with this modification, that I would act upon the suggestion of Mr. Forbes, as set forth in his letter dated the 21st January 1850. Mr. Forbes would issue one demand of payment, and afterwards issue an advertisement of sale if the demand were not paid by a given date. He would have three sales in the year instead of two as recommended by Mr. Ricketts. I think sales thrice, instead of twice in the year, would be an improvement, financially speaking, as contributing to speedy payments, and would be an advantage to the zemindars themselves, as not requiring too much from them at one time, and as lessening the temptation to improvidence.

17. Whether this plan or that of Mr. Ricketts should be adopted, an alteration of Regulation X. of 1818 would, I conceive, be necessary. It is no doubt true, as stated by Mr. Ricketts, that under Clause 4, Section V. Regulation X. 1818, the issue of a written demand, previous to advertisement for the sale of the estate, is discretionary; but inasmuch as the Collector, before he proceeds to an actual sale, is required to be satisfied, that the other

other measure authorised in the preceding sections would be insufficient for the realisation of the Government arrear, I do not think that a general resort to sale, without the use of the other provisions of the law, could be regarded as legal. The spirit of the law certainly is that the revenue shall be realised by other means than by sale; and if we determine to make the process of sale the main instrument for the realisation of the revenue, we are bound to make the law conformable to our altered system.

18. If the law should be changed, I would dispense with the necessity of obtaining sanction for the issue of sale advertisements. To apply for sanction would be a mere matter of form, and therefore quite superfluous.

19. Mr. Forbes and the Commissioner are advocates for passing a law empowering the zemindars to sell summarily, and without the necessity of instituting summary suits, the tenures of their tenants. Mr. Allen, the Collector of Balasore, is strongly opposed to such a measure. He thinks it would convey a dangerous power to the zemindar, for which there is no occasion, as he can sell the tenures in question immediately after he has obtained a decree, and that a decree in a summary suit, if the law be vigorously administered, may be obtained in three months. But Mr. Allen appears to have forgotten, that to sell under-tenures in satisfaction of summary decrees, except at the end of the year, is illegal, and is prohibited by the Board's circular, dated the 19th June 1834, No. 16. My strong impression is, however, that this illegality is very general; and it is a question whether it would not be better to legalise this practice, than to proceed upon Mr. Forbes's plan. I would consult Mr. Forbes and the Commissioner on the point, and request the former to prepare the draft of a law making the necessary alterations in Regulation X. of 1818, and empowering zemindars to sell under-tenures, either without the previous institution of a summary suit, or immediately after the obtaining of a decree, as might seem most fit to that officer.

20. I concur with Mr. Ricketts, in thinking, and for the reasons given by him, that to change the appointments at Balasore and Pooree into Deputy, instead of full Collectorships, would be an unwise measure.

25 September 1851.

(signed) E. M. Gordon.

MINUTE by Mr. Currie.

On the general subject discussed in this correspondence, I have little more to say than that I agree fully in the sentiments expressed in the first 18 paras. of Mr. Gordon's minute.

It is clear that the state of landed property in Cuttack bears a much closer resemblance to that which prevails in the permanently settled districts of Bengal, than to that existing in the North Western Provinces. It is clear too, that although it was the intention of Regulation X. 1818 to assimilate the system of administration in Cuttack to that of the North Western Provinces, yet from the want of Mofussil establishments in the former province it was never fully and effectually carried out; and that, for the last ten years at least, sale advertisements have been the ordinary means of enforcing payment of the revenue. It appears further that the people have become habituated to this mode of coercion, and that dustucks are found to be continually less and less effective. It would seem then that the province is fully ripe for the enforcement of a simple sale law, which is admitted in Mr. Secretary Grant's letter to be "the least vexatious process of realisation, and the one most conducive in the end to the respectability and welfare of the zemindars."

Even in the North Western Provinces where, from the peculiar condition of a large proportion of the landed proprietors, some mode of personal coercion appears indispensable, the dustuck system is, I think, at best a necessary evil. Very much, no doubt, has been done of late years to mitigate the abuses to which it is inherently liable, but after all I cannot regard it with the complacency with which it seems to be viewed by the Western Board. The aggregate amount levied in tullubannah is no doubt small when compared with the aggregate jumma; yet in some districts it amounts to a tolerably heavy tax, and in those districts the number of dustucks is of course very large.* But the levy of the authorised tullubannah is the least part of the annoyance and, in all probability, of the expense which the system inflicts upon defaulters. Though imprisonment for arrears be almost obsolete, the practice of detaining the defaulter in the custody of the nazir, or at the tuhseeldaree catcherry still continues; and in the latter case there can be no security that the authorised period of ten days is not often exceeded. From Mr. Muir's letter it might be supposed that the tullubannah levied from defaulters provided the whole expense of serving the dustucks and left a considerable surplus to Government; but, from Appendix No. 6 to the "Directions to Collectors," it seems clear that only the extra and temporarily employed peadahs are paid out of the tullubannah, and that no part of the expense of the chuprassees and sowars of the fixed establishment, who must serve a large proportion of the dustucks, is defrayed from that source.

The

* For instance, Goruckpore, the revenue of which is, I believe, about 29 lakhs. Number of dustucks, 40,192. Tullubannah, 80,466 rupees.

Appendix, No. 7.

The plan proposed in Mr. Gordon's minute is, as it seems to me, identical with that advocated by Mr. Ricketts, with the single modification that the number of sales is to be three instead of two; and this I think an improvement. Should the Government assent to the proposal, which, as observed by Mr. Ricketts, will in fact be only to systematise under authority a practice now actually existing,* I think with Mr. Gordon that it will be necessary to make some modification of the law. It will probably be sufficient to rescind Regulation X. 1818, and declare, in modification of Section IV. Act I. 1845, that the previous sanction of the Board shall not be necessary to the sale of estates in the province of Cuttack. The sales would of course be conducted under section V. of that Act, and the issue of a previous tullub chittee on the occurrence of an arrear is authorised by the original law, Regulation XIV. 1793.

I do not find it stated in the Board's letter to Government, or in any of the other papers, whether it is proposed that the tullub chittee should be served at the expense of the defaulter or of Government. I think that the defaulter should pay for both the tullub chittee, and the sale notice; but if this is done it will be necessary to organise a plan similar to that under which dustucks are served in the North West. It should, however, be so arranged as that the tullub chittee will pay the whole expense of the necessary establishment.

The question of providing for the summary sale of mokuddumee and other under-tenures is not without difficulty, and should, I think, be separately considered. It is intended that, under the proposed system, the Collector should exercise all discretion in actually proceeding to sale; and the existence of an arrear due from a mokuddum, which the zemindar has not had opportunity to realise, would be a legitimate ground of indulgence.

With regard to the question of Mofussil establishments, though opposed to the introduction of a tuhseeldaree system, such as exists in the North Western Provinces for collecting the revenue by personal duress, I am favourable to the location of revenue officers at a distance from the Sudder station in the manner suggested by the Commissioner. These officers would of course try all summary suits in their respective jurisdictions, and they should be empowered to receive the revenue of the smaller zemindars who might prefer paying at their cutcherry to making payments at the Sudder station. The duty of issuing tullub chittees and sale notices to all such parties would devolve upon them; and the establishment of peons necessary for the purpose would form a sufficient guard for the custody and conveyance of the small amount of treasure which would pass through their hands. Whether any of these officers should be vested with the powers of deputy magistrates would depend upon their personal character and qualifications; but I think that they might very properly be entrusted with the management of the abkaree in their respective jurisdictions.

With regard to the Collectorships of Pooree and Balasore, I concur with my colleagues. The duties of salt agent in both those districts are very important; and the office should not, I think, be reduced below, but should rather be better remunerated than that of an ordinary Collectorship.

(signed) *E. Currie.*

22 November 1851.

NOTE by Mr. Officiating Secretary *Plowden.*

By Regulation X. of 1818, the process, generally, by which arrears of revenue are recovered in the Ceded and Conquered Provinces, was introduced into the province of Cuttack, which is a temporarily settled province.

2. The essential difference between the processes in the permanently settled districts of the Lower Provinces of Bengal and the temporarily settled province of Cuttack is that, in the former, sale is the first, and, in the mass of cases, the only process, and it follows the default of the zemindars as a matter of course; and in the latter, sale is the last process, in the mass of cases not resorted to at all, and in no case resorted to otherwise than as a special necessity after special inquiry; issue of dustucks at the defaulter's charge, arrest and imprisonment of his person, sale of his personal property, attachment and khas management of his lands, and farming out his lands, being resorted to instead.

3. When it becomes necessary to resort to the sale of an estate in a temporarily settled district, the special sanction of the Board of Revenue must be previously obtained in each several case of sale; and the Board are required, at the time of authorising such sale, to fix the latest day on which in each case the arrear or demand due shall be received.†

4. Latterly, the issue of dustucks, under the provisions of Regulation X. of 1818, became wholly ineffectual in the province of Cuttack, as payment of revenue was not finally enforced until the estates were lotted and advertised for sale, insomuch that the lists of estates sent to the Board, with application for permission to sell, came to embrace nearly the whole province.

5. The

* Note.—It will not escape observation that the number of estates actually brought to sale under this practice is exceedingly small. Seventeen in 10 years in Pooree, eleven in 6 years in Balasore.

† See Section IV. Act I. of 1845.

5. The dustuck system having thus become useless as a method of collecting the revenue, at the same time that it was liable to many abuses, and was attended with great expense to the zemindars, the Board of Revenue proposed, in 1850, to discontinue it, and to adopt instead the system of periodical sales in force in the permanently settled districts of Bengal, the Cuttack districts having now been settled for 30 years, and the settlements having been made precisely on the principle of the Bengal settlement, except its permanency.

6. On a reconsideration of the subject, in connexion with objections made by the Bengal Government, and, after further inquiry, the Board adhered to their opinion, and in December 1851 repeated their recommendation for the abolition of the dustuck system, and the substitution of periodical sales for the realisation of the revenue. To give effect to this change, they were of opinion that Regulation X of 1818 must be altered, if not abrogated, and that it should be declared, in modification of Section IV, Act I, of 1845, that the previous sanction of the Board is not necessary to the sale of estates in the Province of Cuttack.

7. In now reporting these particulars, the Bengal Government write as follows:—

“There is, in fact, very little real analogy between Cuttack and the North Western Provinces. The settlement in the former is a zemindaree settlement, the rights of all under-tenants and ryots being fixed during the whole period of its duration. In the latter, the settlement is made in detail with all those having a proprietary interest in each village. The dustuck system, which is truly described by Mr. Currie to be a necessary evil even in the North Western Provinces, is a source of pure mischief in Cuttack, being ineffectual for its object, and recourse having almost always to be had to sale as a final measure of coercion. It was adopted in Cuttack when there was no proper settlement, and when the revenue was unequally assessed. Its abolition is nothing more than the necessary complement of the very perfect zemindary, though terminable settlement, that has since been effected.

“It does not appear to his Lordship that any alteration of the law is necessary for the discontinuance of the practice of issuing dustucks. So much of Regulation X of 1818 as prescribes the issue of dustucks as a necessary preliminary to sale was repealed by Clause 2, Section II, Regulation XI, of 1822; and though the provisions of the former Regulation have ever since been acted on, they have not been compulsory, but permissive. There can be no necessity for a law to authorise the abandonment of a process which the law says may be resorted to or not at the pleasure of the executive. It is only necessary that the Board should give notice in the province that, after a certain date, the process of recovering arrears by dustuck will no longer be resorted to. To this effect the Board of Revenue has been instructed.”

8. These views of the Bengal Government will probably be held to be perfectly sound. As regards the law, they are undoubtedly correct.

9. But in order to complete the change, it is necessary that the 4th Section of Act I of 1845, which requires a reference to the Board of Revenue in each instance before a sale can be held, should be repealed as regards Cuttack. The Bengal Government recommend, therefore, that this be done, either by a short Act for the purpose (such as the one transcribed in the margin*), or that the occasion of revising the sale law as respects under-tenures, and the payment of the dues of joint shareholders on separate account, be taken to pass a new sale law, embodying all the alterations which experience has shown to be necessary.

10. This latter course will probably be preferred, in which case these papers should be taken up with those on the subjects abovementioned, and any others which may be pending in relation to the sale law, with a view either to the incorporation of all proposed amendments, which it may be determined to adopt, in one new law, or to the construction of a new sale law embodying all such amendments.

G. Plowden.

28 February 1854.

N. B.—The above Act (drafted by the Bengal Government) would not effect the purpose. Besides the repeal of Section IV, so far as it relates to the Province of Orissa, an amendment would be necessary of Section III, as that province would be left out of the operation of the sale law altogether. Section III relates only to permanently settled districts, which the districts of Orissa are not. It would therefore be necessary, besides taking Orissa out of the rule of Section IV, to bring it within the rule of Section III.

This point will also have to be attended to, if, instead of a special Act for this and other amendments, it be determined to re-cast the present sale law, Act I of 1845.

G. P.

* Act No. — of 1854.—Whereas it was enacted by Section IV, Act I, of 1845, that in districts not permanently settled no sale shall take place for arrears of land revenue, or other demands of Government, without the special sanction of the Board of Revenue previously obtained in each several case of sale, and whereas it is not expedient that such sanction should be obtained to the sale of land for such arrears on demands in the temporarily settled districts of the Province of Orissa, it is enacted as follows:—So much of Section IV, Act I, of 1845, as enacts that in districts not permanently settled no sale shall take place for arrears of land revenue, or other demands of Government, without the special sanction of the Board of Revenue previously obtained in each case of sale, so far as the same relates to the Province of Orissa, is hereby repealed.

Appendix, No. 7.

APPENDIX, No. 2.

EXTRACT of a LETTER from the Government of *Bengal* to the Government of *India* in the Home Department, No. 775, dated 15 September 1853.

Para. 11. There are two admitted defects in the present sale law, one is that a sale of an estate for arrears voids all under-tenures, the other is that shareholders of joint undivided estates cannot save their property from sale by the payment of the quotas due on their respective shares. His Lordship some months ago submitted to the Government of India the project of a law for the correction of the former evil, and the latter will be cured by passing into law the substance of the eight sections of the Board's draft above referred to. In the belief that these measures will provide a remedy for the most objectionable effects of the sale law, his Lordship desires to recommend them strongly for the early consideration and adoption of the Legislature.

12. The Governor has only one addition to suggest to the Board's draft, and that is, that there should be a minimum limit to the amount of jumma which any one or more shareholders of a joint undivided estate should be allowed to pay in one separate account, and that limit his Lordship considers might fairly be fixed at 50 rupees. By the law of 1807, no shareholder was entitled to a division whose sudder jumma was less than 500 rupees, and though this law was afterwards repealed, yet practically the limit has always been high, as it is obvious that a small proprietor could not afford the expense of maintaining an ameen for years, merely to enable him to pay his revenue on separate account.

13. The limit of 50 rupees will not therefore be felt as a hardship, particularly if two or more shareholders are allowed to join together for the purpose, their aggregate jumma not being less than the minimum. If every shareholder, however small his share may be, were to be permitted by law to have a separate account, there would be a risk in every district of such minute payments as those which have occasioned considerable public inconvenience in Chittagong, and which the Government has been at much pains to get rid of.

EXTRACT of a LETTER from the Secretary to the Board of Revenue, Lower Provinces, to the Government of *Bengal* in the Revenue Department, No. 302, dated 20 August 1852.

Para. 10. But Mr. Forbes' plan of reserving from sale, under certain conditions, the shares of those proprietors who should pay their quotas of the Government revenue, appeared to the Board deserving of consideration, and if it were in force, there would apparently be no necessity, they observed, "for adopting his other suggestion of permitting one sharer to sue summarily another defaulting sharer. There cannot be a doubt that, were the plan carried into effect, it would lessen the number of applications for divisions and deprive powerful proprietors of the means of injuring their co-sharers' rights. The only objections to the plan that occurred to the Board, were the multiplication of accounts and the increase of business it would introduce, and the temptations it would hold out to the sharers to collude so as to throw shares with inadequate assets on the hands of the Government. The first set of objections, however, they did not consider to have much force—with an increase of establishment the additional work would give little or no trouble, and in return for so great a boon, it would be perfectly just to meet the expense by the imposition of a tax on the landowners by whom, on account of its smallness, it would not be felt. With respect to the second objection it would, they thought, be removed, if the joint nature of the whole estate should not be altered by reason of the sale of any of the shares, that is, if the whole estate continued to be liable for any arrear not covered by the price of any share that might happen to be sold."

11. The Board thought that reasons of sufficient force had not been advanced for depriving sharers of the right they now possess of enforcing the separation of their shares; and as this right had been admitted in a long course of legislation, they thought its abrogation would not be justifiable except on the ground of necessity, to which point matters had not attained.

12. Entertaining these views, the Board thought it expedient that the whole correspondence above referred to should be circulated for the opinions of the Mofussil officers. With reference to their returns it may be sufficient to observe generally, that the majority* of the officers who pronounced any opinions at all, were in favour of the plan of opening separate accounts with shareholders. Some were opposed to it, but there was little in their objections

* Note.—Amongst these were Messrs Dunbar, Gouldsbury, and Taylor, Commissioners; and Messrs Annand, Bowring, Davidson, Hamilton, Louth, G. Loch, Mactier, Trotter, Torrens, and Yule, Collectors. Those who were opposed to it were Messrs Gough, Harvey, and Brown, Commissioners, and Messrs P. Taylor, A. Reid, and Tottenham, Collectors.

objections deserving of the name of argument, and by some the plan did not seem to have been understood. Mr. Brown wrote as if the plan was now in operation, confounding the privilege of exemption from sale at present awarded to a sharer whose share is under butwarra on his paying the arrear due from him, with that of the proposed exemption, without the necessity of the sharer having to apply for a separation of his share. Mr. Harvey seemed in like manner to fall into the same mistake, and he proposed on grounds which appeared to the Board to be wholly insufficient, to put a stop to butwarra altogether.

18. On a consideration of these returns and of the whole subject, the Board have come to the following general conclusions:—1st. That the work of effecting divisions of estates by the revenue authorities at the instance of the shareholders, cannot be altogether dispensed with. 2d. That the existing law for effecting divisions is defective and requires amendment; and, 3dly, that the plan of opening separate accounts with shareholders, advocated by Mr. Forbes, and supported by so many officers of standing and experience, ought to be adopted, subject to such safeguards and restrictions as may be considered necessary.

* * * * *

20. The Board will now offer some remarks on the third general question of opening separate accounts with shareholders, and reserving from sale the shares of those proprietors who may pay their quota of the Government revenue without the necessity of having previously brought their shares under the operation of the butwarra law.

21. Enough has been written in this letter to show that the proper division of an estate must in very many cases be a work of difficulty. Admitting that, by the better agency it is proposed to introduce and the greater power which it is proposed to confer on those to whom the work is to be intrusted, the difficulty may be lessened, yet it can never be entirely removed. The thing to be done is to distribute interests of varying value and difficult of estimation amongst contending occupants, so that justice may be done to all. And there can be no doubt that industry and discrimination in acquiring the necessary information, as well as judgment and honesty in applying it, are essentially necessary in a high degree, for the proper execution of the task. It is therefore desirable to lessen as much as possible the necessity for butwarra.

22. But there can be no question, as has been stated by many of the local officers in reply to the Board's circular, that the object of the applicants for butwarra in the great majority of cases, is not the separation of their shares, but the saving of their shares from sale by the payment of the exact amount of revenue (and no more) that may be due upon them, and although there has doubtless hitherto been great delay in the completion of butwarra arising from many causes, such as the badness of the agency employed, the inefficiency of the existing law, and the remissness of the revenue authorities, the Board are convinced that that remissness has, in a great measure, arisen from the apathy of the parties concerned, and that the delays are as frequently owing to the indifference of the owners with respect to the consummation of the butwarra as to any other cause.

23. Under this impression it appears to the Board that it is highly desirable to confine the attempts at butwarra to those cases in which the applications for butwarra may be safely assumed to be made in good faith, and in order to ensure this the Board see no better or more certain course than to allow of the opening of separate accounts.

24. It may be suggested that the difficulty might be met by requiring the shareholders to apply, as at present, for a separation of their shares, but allowing the division to remain in abeyance in cases in which it was not pressed by the applicants. The object contemplated by such a scheme would of course be the protection of the interests of the separate shareholders without imposing on them the necessity of a separation, and this might be accomplished by a slight change in the existing law. But the scheme would be founded on a fiction, and could not with credit be sanctioned by the Legislature; whilst it would not meet a numerous class of cases in which a remedy for existing evils is called for, namely, the cases in which the lands of an estate found upon the rent-roll as one distinct and with a fixed jumma, are not separately defined, but in joint and undivided occupancy with other estates having separate numbers on the rent-roll. It is obvious that the applications for the butwarra of a shareholder in such a case could not often be complied with, for the butwarra would comprise the partition of several estates, to which the consent of the proprietors of those estates would be necessary, yet, the poor and honest shareholder in such an estate, without doubt requires protection from a more powerful or fraudulent co-sharer, and this, as it appears to the Board, can be effected in no better manner than by the system of separate accounts.

25. So long indeed as that system can be carried out without the risk to the security of the Government revenue, the Board do not see what valid objection can be urged to the introduction of it, and they think it quite clear that any objection on this score will be entirely obviated by holding that the share sold shall constitute, equally as it did before the sale and before the introduction of a separate account, a part of the whole undivided estate, and that the whole estate shall be liable for any balance that may remain uncovered by the price of the share sold. The increase in the number of accounts will easily be met by an increase of establishment, the expense of which may, without any injustice, be defrayed rateably by those for whose benefit it is incurred.

Appendix, No. 7.

26. The advantages of the plan are numerous and striking. If it is adopted, applications for butwarras will be confined to those cases in which a division is really necessary, and much valuable time will thus be saved to the officers of Government. The number of butwarras being also greatly diminished, the risk to which Government is now exposed of loss of revenue from having separated shares with inadequate assets thrown upon their hands will, consequently, be decreased. The benefit conferred on the honest shareholder by protecting him against a dishonest co-sharer, will be immense. All the shareholders will be relieved from the anxiety they now suffer from uncertainty regarding their partner's payments. Encouragement will be given to shareholders to record their interests in the registers of mutations; and, lastly, by rendering sales of entire estates extremely rare, it will protect the ryots and under-tenants from the gripe of auction purchasers, and give them that increased security in their tenures which it is so desirable to effect.

27. Such are the main grounds upon which the Draft Act has been framed, and enough has now been said to place the Government in possession of all circumstances essential to the full understanding of the objects the Board have in view. The conditions under which parties shall be admitted to separate accounts, with minor provisions for the more efficient execution of butwarras when applied for, will be found detailed in different sections of the Act. On the whole, the majority of the Board believe that the proposed law will be looked upon as a great boon of the agricultural community; and although Mr. Ricketts is inclined to think that, if a plan could be introduced for much more greatly simplifying butwarras, it might be yet more acceptable than the one proposed, by giving independent possession to each sharer, and freeing the ryots from the inconvenience of being answerable for their rents to a numerous body of landlords, he is not prepared to suggest any plan for so facilitating the completion of butwarras, and he is agreed with his colleagues in thinking that the system proposed is, under all circumstances, the best that can be adopted, and one likely to be well suited to the requirements of the case.

EXTRACT FROM DRAFT ACT.

XXIV.—Clause 1.—It being well known that many sharers of joint estates withhold the payment of their quota of the public revenue to the great injury of the other shareholders, who are thus made to pay more than is due from them, and to the great multiplication of applications for divisions, which are preferred, not for the purpose of having the shares of the applicants separated, but to enable them to save their shares from sale, by paying what is legally due upon them, it is hereby enacted that, from the date of the passing of this Act, and subject to the following rules and conditions, shares in joint estates, the proprietors of which shall have paid the Government revenue due upon them, shall be exempted from sale.

Clause 2.—When the sharer or sharers of a joint estate, holding in common tenancy desire to pay their quota of the Government revenue separately, they shall submit a written application to that effect to the collector, attested by two credible witnesses. The application shall contain a distinct specification of the extent of the interest held in the estate by the applicant or applicants, and how it was acquired, that is, whether by inheritance, gift, or purchase. The collector will then cause to be published in his own cutcherry, in that of the judge, in that of the moonsiff, in the police thannah in whose jurisdiction the estate is situated, as well as on some conspicuous part of the estate itself, a copy of the application made to him. If within six weeks from the date of the publication of these notices, no objections are made by any of the other sharers, or any other party interested, the collector will proceed to open an account with the applicant or applicants, and will credit separately to their shares all payments made by them. The date on which the collector shall record his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share or shares of the applicant or applicants are to commence.

Clause 3.—When a proprietor of a joint estate, who pays revenue immediately to Government, and whose share consists of specific lands, desires that the amount of revenue due upon his share shall be paid separately, he shall prefer to the Collector a written application to that effect, attested by two credible witnesses. The application shall contain a specification of the lands comprised in his share, together with a statement of the amount of sudder jumma that was fixed upon it at the time it was created, or which has heretofore been paid on account of it. On the receipt of this application, the Collector will cause to be published the same kind of notice, and in the same places, as that which he is directed to do in Clause 2d of this Section, and in the event of no objection being urged within the time stated in that clause, he will open an account for the share at the proportion of jumma which the proprietor claims to pay, and pass to its credit separately all payments made on account of it. The date from which the share in question shall be considered and treated as a separate one, shall be that on which the Collector records his recognition of it as a separate share.

Clause 4.—If it be objected, by any person having an interest in the estate, either that the applicant has no right at all to the share claimed by him, or that his interest in the estate is less than that claimed by him, or of a different nature, the Collector will institute a summary inquiry into the fact of possession, and if he be satisfied that the applicant

applicant is really in possession of the interest claimed by him, he will open a separate account for his share, as directed in the two preceding clauses. If in the case of a claimant of specific lands, the objection be that the jumma alleged by the applicant has never been recognised as the separate jumma of such lands, the Collector will inquire into the fact, and, according as the truth of the objection is established or otherwise, will reject or admit the application.

XXV. In order to guard against errors and confusion of accounts, the Collectors are prohibited from recognising the existence of proprietors holding in common tenancy, and proprietors possessed of specific lands in one and the same estate. As the meaning of the term "common tenancy" implies a right to collect from all the ryots of an estate, the creation of one specific Mehal necessarily converts the remaining lands into a specific Mehal.

XXVI. Whenever the Collector shall have ordered a separate account, or separate accounts, to be kept for one or more shares, if the estate shall become liable to sale for arrears of revenue, the Collector shall put up to sale only that share or those shares of the estate from which, according to the separate accounts, an arrear of revenue may be due. In all such cases, notice of the intention of excluding the share or shares from which no arrear is due shall be given in the advertisement of sale prescribed in Section VI. Act No. I. of 1845. The estate sold will consist of a share or shares, and these together with the excluded shares, will continue to constitute one integral estate, the share or shares sold being charged with the separate portions of jumma, or the aggregate of the separate portions of jummas, assigned to such share or shares. Provided, however, that nothing contained in this and the two foregoing sections shall bar the indefeasible right of Government to hold the entire estate responsible for the amount of the whole jumma; and if in any case the highest offer or bid for the share or shares exposed to sale shall not equal the amount of arrear due up to the latest date of payment, the Collector shall stop the sale of such share or shares, and if the arrear be not paid up within ten days, shall proceed to sell the whole estate; and such sale shall be made after notification and in the forms prescribed in Section VI. Act I. of 1845; and such notification shall not be published till the expiration of ten clear days from the day on which the first sale was stopped. Provided also, that if the highest offer or bid shall equal the balance due up to the latest date of payment, and the share or shares be sold accordingly, and the purchaser fail to pay the deposit as required by Section XV. Act I. of 1845, or to make good the full amount of the purchase money as required by Section XVI. Act I. of 1845, the Collector shall in either case, if the arrear be not paid up within ten days, proceed to sell the whole estate, after notification in the forms prescribed by Section VI. Act I. of 1845; and such notification shall not be issued till the expiration of ten clear days after the day on which the default shall have occurred.

XXVII. If the whole estate shall be sold owing to any of the causes mentioned in the preceding Section, the provisions of Section XX. Act I. of 1845, in regard to the application of the purchase money, shall in all respects be applicable and be enforced accordingly.

XXVIII. When a share or shares of an estate held in common tenancy, or specific lands in a joint estate, shall be sold, under Section XXII. of this Act, the purchaser shall acquire the share or shares, or the specific lands, subject to all encumbrances existing at the time of sale, and shall not acquire any rights in respect of under-tenants which were not possessed by the previous proprietor at the time of sale.

XXIX. When separate accounts for the shares of an estate shall at any time have been opened by the Collector, those accounts shall be held to describe the true status of the estate until alterations in the accounts, founded on fresh applications from the sharers, and on inquiries similar to those made on the occasion of the original application, shall have been made, and no error in regard to the proprietorship of shares shall be admitted as a ground of suit in any court of justice, against the Collector or Government, if the sharer or sharers shall have failed to notify to the Collector any change that may have taken place in the share or shares, and to apply, as in the original instance, for the alteration of accounts, made necessary by the alteration that may have taken place in the shares.

XXX. As the opening of so many separate accounts may render necessary an increase in the Collector's establishment, and as it is just that the expense of the increased establishment should be defrayed by those for whose benefit it has been incurred, the Board of Revenue are hereby empowered to prescribe rules by which the increased expense shall be made to fall on the parties rateably, and the charge thus imposed shall be levied by the same process as that in force for the realization of arrears of revenue.

Appendix, No. 17.

PAPERS relative to a proposed Revision of Act I of 1845.

(No. 721.)

From the Secretary to the Government of Bengal to *E. Currie*, Esq., Legislative Member of Council for Bengal.

Revenue.

Sir,

Fort William, 21 November 1855.

I AM directed to forward herewith for your consideration the original paper noted in the margin,* and to state that the Lieutenant-Governor desires to take this opportunity of requesting you to report what prospect there is of a Bill being introduced to amend Act I of 1845 in respect of securing under-tenures in case of an estate being sold.

2. The subject was referred † to the former Legislative Council of India in 1852, and formed No. 63 in the list ‡ of cases pending before that Council when the present Council was constituted in 1854.

I have, &c.

(signed) *W. Grey*,
Secretary to the Government of Bengal.

PETITION of about 245 Zemindars in the District of Tirhoot.

OUR representation is this:—There are many petty zemindars in this district, as also several villages which have been subdivided into several portions both by rights of sale and inheritance. For this reason it often happens that petty shareholders withhold paying the Government revenue, and the other shareholders are obliged to borrow money to pay the dues of the defaulters and thereby save the whole estate from being sold. Thus by repeatedly paying for the defaulter, parties who hold large shares are much reduced, till at last, when they fail to obtain loans, their estates are sold. Also, when a petty shareholder withholds payment of the Government revenue, and when this circumstance is not known to his co-sharers having large shares, the whole estate is sold. We therefore pray that Act I of 1845 be revised, and that an enactment be passed directing that the shares of those parties only who neglect to pay the Government revenue shall be sold. When such a rule has been passed, there will be no need of bautwarra, and the incurring of any expense on that account. We further solicit that an istahar be issued to the effect that all shareholders of each talook should, within six months, submit to the Collector a statement of their respective shares, and it is no matter of regret if the defaulters' shares are sold.

(signed) *K. C. Mookerjee*.

28 November 1855.

(No. 488.)

From *Hodgson Pratt*, Esq., Under-Secretary to the Government of Bengal, to the Commissioner of Revenue, Bhaugulpore Division.

Sir,

Lieutenant-Governor's Camp,
Gourah, Zillah Sarun.

I AM directed by the Lieutenant-Governor to forward to you for report the accompanying petition from certain zemindars of Tirhoot, praying for such an amendment of Act I. of 1845, that in the case of estates held by several shareholders, the lands belonging to defaulting shareholders only shall be sold for arrears of revenue.

I have, &c.

Government of Bengal, Revenue,
6 January 1855.

(signed) *Hodgson Pratt*,
Under-Secretary to the Govt. of Bengal.

* Translation of a petition from the zemindars of Tirhoot.

Letter from the Under-Secretary to the Government of Bengal to the Commissioner of Revenue, Bhaugulpore Division, No. 488, dated the 6th January 1855.

Letter from the Commissioner of Bhaugulpore to the Secretary to the Government of Bengal, No. 1625, dated 6th November 1855, with enclosure.

† Government of Bengal to Government of India, Home Department, No. 1049, dated 21st October 1852.

Government of Bengal to Government of India, Home Department, No. 54, dated 3d February, 1854.

‡ Letter from Legislative Member of Council to the Secretary to the Government of Bengal, No. , dated 22d June 1854.

Secretary to Government of Bengal to Legislative Member of Council, No. 1493, dated 3rd July 1854, clause 2 paragraph 3.

(No. 1625.)

From G. F. Brown, Esq., Commissioner of Revenue for the 12th or Bhaugulpore Division,
to the Secretary to the Government of Bengal, Fort William.

Appendix, No. 7.

Revenue.

Sir,

Bhaugulpore, 6 November 1855.

I HAVE the honour to acknowledge the receipt of Mr. Under-Secretary Hodgson Pratt's letter, No. 488, dated 6th January last, with enclosed petition from certain zemindars of Tirhoot, praying for such an amendment of Act I of 1845, that in case of estates held by several shareholders only the portion belonging to the defaulting shareholders shall be sold for arrears of revenue.

2. This subject has been already reported on by me (as will be seen from the annexed extract, paras. 4 and 5 from my letter to the Board of Revenue, No. 561, dated 5th April 1854), having been forced on my notice by the immense number of butwarrahs always pending in Tirhoot, and the mischief resulting therefrom in a financial point of view; for the payment of the small jummahs into which the Government demand is thereby subdivided cannot be enforced except once a year, and that, too, at the end of the year instead of once a quarter.

In the course of five years ending with 1853, 169 mehals were divided into 669, thereby adding 500 mehals to the district rent roll, many of them with jummahs less than 10 rupees each.

3. The petitioners state, and truly so, that the necessity and expense of butwarrah proceedings would be superseded if the law were altered in the manner pointed out. At present, indeed, in nine cases out of ten, the applicants for butwarrahs have no real desire that their land should be divided, their object being gained* as soon as an order is passed for the appointment of an ameen to make the butwarrah; for from that date they are entitled to the protection which sections XXXIII. and XXXIV. of Regulation XIX. of 1814 are calculated to afford. Whereas, under any other circumstances, the proprietors of joint estates who have distinct interests and pay their revenue separately (as is very much the case in Tirhoot) are kept in a perpetual state of anxiety lest any one of their number should default, either wilfully or accidentally, and thus involve the whole in irretrievable ruin. This liability is particularly felt where, as it often happens, the number of proprietors is large and the amount of shares small; and I believe it to be the occasion of much of the chicanery and litigation for which Tirhoot is so notorious.

4. As already observed in my report to the Board of Revenue, No. 561, dated 6th April 1854, "I have reason to believe that all the evils complained of would disappear could the sale law be altered so as to allow of only the share in arrear being sold, provided the sum bid covered the arrear, and the rest of the mehal exempted from responsibility except where such was not the case."

5. The original petition received with your letter is herewith returned,

I have, &c.
(signed) G. F. Brown,
Commissioner of Revenue.

EXTRACT paras. 4 and 5, from a Letter from the Commissioner of the Bhaugulpore Division, to the Address of the Secretary to the Board of Revenue, No. 561, dated the 5th April 1854.

4. In at least nine out of ten cases the parties concerned would be just as well, perhaps better, pleased were the lands not divided, provided their respective shares and jummahs were recorded in the Collector's office and each proprietor held responsible for the revenue of his own share only. Indeed, I have reason to believe that all the evils complained of would disappear could the sale law be altered so as to allow of only the share in arrear being sold, provided the sum bid covered the arrear, and the rest of the mehal exempted from responsibility, except where such was not the case.

5. At all events, Government should not suffer, as is now the case, by large jummahs being so far subdivided as to prevent the Collector's enforcing payment every quarter; for, under the Board's Circular, No. 1, of 22d January 1842, when the jummahs is inconsiderable the liability to sale is reduced to only twice, and even to only once a year; and that at the end instead of at the beginning of the year.

* Vide article 8 of the Board's butwarrah series.

Appendix, No. 7.

PAPER relative to the Bill to improve the Law relating to Sales of Land for Arrears of Revenue in the Bengal Presidency.

From Captain *H. W. Craufurd* to the Clerk of the Council.

SIR,

The Honourable the Legislative Council having, at their sitting of the 17th of May 1856, passed a resolution on the motion of Sir James Colville that "the petition of Captain Craufurd, presented on the 10th of May, be referred to the Select Committee on the Bill to improve the law relating to sales of land for arrears of revenue in the Bengal Presidency, with an instruction to consider and report upon the propriety of protecting under-tenants against the consequences of a sale for arrears of rent," I hope I may be permitted to lay before the Committee, through you, something explanatory as to that petition, and afterwards to reply shortly to some of the objections that have been made to the Bengal Government's scheme for the protection of under-tenants when an estate is sold for arrears of revenue. I shall also beg to be allowed to say something in reply to the objections that have been made to the extension of protection to cases of sales of under-tenures for arrears; and, lastly, to submit to the consideration of the Committee a scheme for the protection of honest and non-defaulting under-tenants of all degrees and other incumbancers, from the consequences of a sale of landed property for arrears either of revenue or of rent.

The great experience of some Members of the Committee and their thorough acquaintance with the laws regulating the relations of landlord and tenant as well as with all that has passed during the long discussion of the subject of protecting under-tenures in cases of sale for arrears, relieves me from the necessity of troubling the Committee with any explanatory statement regarding those matters. I might go to great length on the subject, and perhaps with some advantage to my own views, but the time of the Committee is valuable, and I will refrain from trespassing on it at greater length than is absolutely necessary for my purpose.

I am most sensible of the very slight claim I have to the confidence of the Committee, for I am not of long standing in the country, nor have I the honour to belong to that class whose views alone have hitherto had any influence in Indian Legislation. But, I think, if the Committee will grant me such a fair share of its confidence as will induce its members to give a deliberate consideration to the scheme I shall propose, they will perceive in it at least the germ of a simple, consistent, and practicable method of protecting registered incumbances of all classes from the injurious consequences of sales for arrears under the present law, and that it may be effected without impairing the security of the Government revenue, without altering the system of registration, and without disturbing the basis of either Mr. Grant's or Mr. Currie's Sale Bills.

I will now, with the permission of the Committee, lay before it a short explanation as to my petition, which is not well calculated to lead fully into the subject with which it is to be hoped the Committee will deal *in extenso*. The Council was to go into Committee on a Bill for the consolidation and amendment of the law of sale for under-tenures, which contemplated leaving the subordinate tenures subject to annulment, as at present, on a sale of the superior tenure of arrears. At the same time Mr. Grant's sale law Bill, in which provision is made for the protection of under-tenures in cases of sales for arrears of revenue, was before a Select Committee to be reported on. I certainly had allowed the proper moment for putting forward my prayer to pass by, but I was not at the time resident in Calcutta, and the progress of the Bill had escaped my notice. When Mr. Currie's Bill was first brought forward I had petitioned the Council against legislating on the subject without providing for the protection of under-tenants, and it seemed to me a hard measure for them to have a Bill pressed forward, making substantive changes in the relations of landlord and tenant, and granting increased powers to the former for the destruction of the latter, whose grievance was left untouched. I hurried then to put before the Council a petition praying for certain enactments calculated to protect all incumbances on under-tenures sold for arrears and to bring all under-tenures under one sale law, which, I thought, would at least lead to a postponement of Mr. Currie's Bill, and that it might follow and not precede that of Mr. Grant to amend the sale law for superior tenures.

The broad principle of the present law for sales of landed property for arrears, whether the property be a zemindarree tenure created by Government or an inferior tenure created by the zemindar, or an under-tenure of that inferior tenure, and so on 'gradatim,' is, that the right of the party to whom the arrears are due is not limited to the simple recovery of the amount of his arrears, but extends to the sale of the tenure free from all the incumbances that have accrued on it since the time of its creation, whether their extinction be necessary or not for the recovery of the arrears.

The broad principle now contended for, and the justice of which has long since been generally admitted, is that the right of the party to whom the arrears are due should be restricted to the sale of what is necessary for their recovery. It is also contended that it is against the interest of the State, and highly impolitic, to impair the value and the security of all secondary tenures of land, whether as an investment or as a pledge for advances for their improvement, or otherwise, by permitting their annulment to be the consequence of a default in due payment of revenue or rent on the part of their superior.

It is admitted that all tenures, whether zemindarree tenures created by Government or under-tenures created by zemindars and inferior landholders, are answerable in their entirety,

as at the time of their creation, for the rent payment then imposed on them—but it is contended that all incumbrances on property to be sold for arrears should be undisturbed as long as the selling value of the property subject to them is equal to the amount to be recovered; and, however defective my petition may be, it is to be hoped that the Committee will make a full report to the Council, on the subject of the application of that principle, in some form or other, to all sales of land for arrears.

I will now attempt a reply to some objections that have been made to the Bengal Government's scheme for the protection of incumbrances in cases of sales of estates for arrears of revenue, and to its extension, modified in conformity with the circumstances, to their protection in cases of sales of under tenures for arrears of rent.

The Honourable Member of the Committee who is the author of the new Sale Law Bill, and who has devoted so much time and thought to the important and complicated question of protection to under-tenures, has thus set forth his reasons for not adopting the Bengal Government's scheme when framing that Bill. "He had strongly approved of this scheme at one time as a great step in advance, but he objected to it because it did not give complete security to under-tenants holding under honest titles at fair rents, and did not therefore do what it ought certainly to be the object of the Legislature to do. The object of the Legislature ought to be to give security to the under-tenant, with the view of encouraging him to lay out capital in the improvement of his land, and certainly, so long as his tenure was liable to be taken from him for no default of his own on forfeiture of the parent estate, so long would he be discouraged from laying out money on the land." At the same time the Honourable Member allowed that the position of under-tenants would be much improved by the adoption of the scheme. If the Honourable Member's objections went no further than this, I should say that he still approved of the scheme, and I should entertain a confident hope that he would not oppose its introduction into his Bill, as subordinate to his own, which would complete the measure of security that he wisely thinks it should be the object of the Legislature to afford. But the Honourable Member has put forward two other objections, to which his ability, experience, and influential position give great weight. I do not despair, however, of showing the Committee that these objections are not of such importance as to justify the rejection of a scheme having so much to recommend it as that of the Bengal Government. One of these objections is, that, in case of forfeiture of the parent estate and a re-settlement by Government, the improving tenant, who had laid out capital on his tenure, would suffer an injustice in the re-settlement from a large enhancement of his rent. This consequence of the sale of an estate for arrears of revenue under the Bengal Government scheme would certainly not be impossible, but its occurrence would be highly improbable. It could only occur when resumption of the estate by Government took place, because it would not fetch, when put up for sale, the amount of arrears due. Now those arrears could amount to no more than a quarterly instalment of the annual revenue, and would, in all probability, be much less, and at either price it may be taken for granted that a tenant who had sunk capital in the improvement of his property would gladly become the purchaser of the estate. He would, however, if Mr. Grant's scheme and that of the Bengal Government were united, of course, before sinking any considerable amount of capital in improvement, secure himself from the chance of resumption by registry under section XXXVI. or XXXVII. of Mr. Grant's Bill. The only remaining objection on the part of Mr. Grant, I believe to be, that fraudulent creations of tenures previous to a sale would be frequent, and that purchasers would therefore find that they had purchased a "losing concern or a bag of law suits, and that landed property would in consequence fall in value." But the provisions for upholding only such incumbrances as were registered at least three months previous to the date of sale would greatly check such proceedings. There would also no longer be any temptation to a zemindar to use up his property in that way; for, instead of being able, as at present, to re-acquire it free from incumbrances by a *benamtee* purchase, all his fraudulent incumbrances would, if registered three months before the date of sale, be upheld if the estate subject to them would fetch the amount to be recovered, and, if it would not, his property would be resumed.

It is in ignorance as to what course the Bengal Government will pursue, and in great doubt, from observations that have dropped in debate from the Honourable Member who represents it in Council, whether it will afford any support to the scheme bearing its name and originating with its present head, that I have ventured to trouble the Committee with any argument in favour of it, which, under other circumstances, I might, with great advantage, have left to be put forward by its natural supporters. The Honourable Member representing the Government of Bengal has gone so far as to declare, in his place in Council, that putnee and other tenures of that class are the scourge of the country, and that the legislation contemplated is peculiarly for their security, and calculated to lead to their multiplication. Any argument that I might urge to show that the creation of these tenures usually relieves the ryots from the exactions of an embarrassed landlord, and replaces him by one with whom the primary object is—not the collection of rent, but the encouragement of agricultural operations, might be looked upon with suspicion. But the present head of that Government has, fortunately for me, recorded his opinion on that point in these words, "Perhaps the greatest of all evils belonging to sales is the insecurity which they bring upon under-tenants of all descriptions, and the mischievous power of annoyance and interference and extortion which they give to a new auction purchaser over his under-tenants. If we can ameliorate nothing else belonging to sales, we ought at all events to endeavour to amend this; for, if ever any great improvement is to happen to this

Appendix, No. 7.

country, it must come by means of the introduction, as under-tenants of zemindars, of men of skill, capital, and enterprise."

It has been objected by Mr. Currie to the application of the same protection to under-tenures of lower degrees that may eventually be granted to those derived directly from the zemindar, that they are so various in kind, and so numerous in Bengal, that it is unsafe to deal with them in that general way, and without knowledge of the special conditions of each. It is difficult, however, to conceive that any of them can have been created under such conditions as would render it unjust to protect it from annulment, in consequence of default on the part of the holder of the superior tenure—provided always, that the under-tenant had not himself defaulted in payment to his superior.

It has also been objected to the extension of this protection to cases of sales of under-tenures, that, although the Government may curtail its own privileges, it has not the same right to deal with the privileges of zemindars and other landholders. But surely, as in the case between the Government and the zemindar, the former has reserved no rights to itself beyond the realisation of the assessed revenue, so, in the case of inferior tenures created by zemindars and others in perpetuity, there are no rights reserved by the landlords, beyond the realisation of the rent imposed on the tenure, that are of sufficient strength to bar legislation for the security and improvement of landed property, and the advantage "*rei publicæ*." The Legislature has frequently interfered to regulate the conditions of these tenures, and Mr. Currie's Bill, now before the Council, proposes a great alteration in their condition; for whereas now they are only saleable for recovery of arrears at the close of the year, that Bill proposes to give to the landlord the privilege of selling them at any time of the year; and to the Government new privileges, which will much aggravate the insecurity that already affects them so disadvantageously.

The zemindars having sought, and being about to obtain, a change in the condition of these holdings which will be highly advantageous to themselves, it seems to me that they will not be in a position to raise any valid objection, on the grounds stated, to legislation for the protection and security of the under-tenants, and indeed of all registered incumbrancers. With regard to the right of re-entry having been reserved by the zemindar, the Chief Justice, in the debate on this question of the 17th instant, clearly showed that, if it ever had existed, it had been taken away by Clause 3, Section III. Regulation VIII. 1819, which positively declares putnee and other under-tenures to be not avoidable for arrears.

It now only remains for me to put before the Committee the scheme for which I respectfully prayed their deliberate consideration at the beginning of this letter, and I believe that will be most conveniently done in the form of a series of proposals; first, for the amendment of Mr. Grant's sale law Bill for estates, and then for the amendment of Mr. Currie's sale law Bill for under-tenures.

As to Mr. Grant's Bill, my first proposal is that a registry of incumbrances shall be kept in the collectorate of each district in four separate books, three of which are already kept, and have been since the passing of the registration law, in 1793, by the registers of deeds.

Book No. 1 for registry in two divisions, provisional and permanent, of tenures under Sections XXXVI. and XXXVII. of Mr. Grant's Bill.

Book No. 2 for registry of deeds of sale, or gift of lands, houses, and other real property.

Book No. 3 for registry of leases and limited assignments of land, houses, and other real property.

Book No. 4 for registry of deeds of mortgage on land, houses, and other real property, as well as certificates of the discharge of the same.

The books 2, 3, and 4, at present kept by the registers of deeds, should be handed over to the Collectors, upon whom would devolve in future the duty of registering such deeds, as well as those to be registered in the new book No. 1. The Collectors would, of course, receive the present authorised fees for registration, and they should be applied to the support of an establishment for the proper performance of the duties. The registration of small tenures by poor people might be much facilitated by authorising a reduced fee, and permitting provisional registration by moonsiffs for tenures under a certain jumma, to be fixed by the Board of Revenue; the moonsiffs to comply with the provisions of the registration law as regards the validity of the deed to be registered, and to forward it to the Collector for his endorsement and entry in the registry book.

2dly. I propose that the Collector should keep, for each mehal having a separate number in the *rowzee*, an abstract of the existing registered incumbrances on it, in a series of four separate schedules, taken from the four register-books aforesaid.

Schedules 1, 2, and 3 to set forth the following particulars regarding each incumbrance:—The date of registration. The name of the registered incumbrancer. The nature of the incumbrance. The yearly rent, and the term, when the incumbrance is a terminable one. Schedule 4 to show the name of the registered mortgagee, the extent of his lien on the mehal, the amount secured by it, and the conditions of repayment.

These abstracts, once set in order, would give little extra trouble in the collectorate; and, bearing in mind the generally diffused and accurate knowledge possessed by natives of the condition of estates in Bengal, they would, I think, give sufficient notice to intending purchasers at public sales, while the register-books would be open, as usual, for the inspection of parties desiring more special information.

3dly. I propose that a copy of the abstract of existing registered incumbrances on any estate to be sold under Mr. Grant's Bill, form a part of the notification of sale, but that only such incumbrances

incumbrances in Schedules 2, 3, and 4 shall be advertised as were registered three months previous to the latest day of payment of revenue, as fixed under Sections III. and IV. of Mr. Grant's Bill.

4thly. I propose that, in the 35th section of Mr. Grant's Bill, the third exception to the right of the purchaser "to avoid and annul all under-tenures and forthwith to eject all under-tenants," shall stand thus: All incumbrances duly registered in the collectorate and advertised with the notification of sale, and whereon no arrear of rent was due on the latest day of payment of revenue as fixed under Sections III. and IV. of this Act. Provided that, if, when the lot be put up for sale, there be no bid, or if the highest bid be not equal to the amount to be recovered, the Collector shall proceed immediately to offer the lot for sale free from the incumbrances in Schedule 4, and shall so proceed, if the bids be not equal to the amount to be recovered, to offer the property for sale, first, free from the incumbrances in Schedule 3, and then free from those in Schedule 2. I refrain from dealing with Schedule 1. If Mr. Grant's scheme be sound, recourse to the sacrifice of the property registered in it can never be necessary for the realization of the revenue, and in practice I am pretty confident that the sacrifice of any registered incumbrances will be prevented by the holders of them bidding at least up to the amount to be recovered, which can never be large.

As to the protection of incumbrances in cases of sales of under-tenures under Mr. Currie's Bill, it seems to me that the same system may be easily applied for that purpose.

My first proposal regarding that Bill would be to bring sales of putnee tenures under it by repealing the selling clauses of Regulation VIII., 1819, so as to have all under-tenure sold under one law.

2dly. I propose that the collector should keep for each registered under-tenure an abstract of existing registered incumbrances, divided into four classes.

All incumbrances of older standing than the tenure itself to form the first class.

All incumbrances registered in Register book No. 2, and created since the creation of the tenure itself, to form the second class.

All incumbrances registered in Book No. 3, and created since the creation of the tenure itself, to form the third class.

All incumbrances registered in Book No. 4, and created since the creation of the tenure itself, to form the fourth class.

I do not propose to form a class of those under-tenures registered under Section XXXVII. of Mr. Grant's Bill, because that system of registration is hardly capable of application to under-tenures not created by the zemindar.

3dly. I propose that a copy of the abstract of existing registered incumbrances on any tenure to be sold shall form a part of the notification of sale, but that only such incumbrances shall be advertised as were registered three months previous to the sale day fixed under the provisions of Mr. Currie's Bill.

4thly. I propose that the rights of all purchasers at sales held under Mr. Currie's Bill be thus defined. (See Section XXXV. of Mr. Grant's Bill.)

The purchaser of an under-tenure sold under this Act shall acquire the tenure free from all incumbrances that may have been imposed on it after the time of its creation, and shall be entitled to avoid and annul all under-tenures and forthwith to eject all under-tenants with the following exceptions.

1st. All incumbrances duly registered in the collectorate and advertised with the notification of sale, and whereon no arrears of rent were due on the sale day fixed by Government for sales of under-tenures under this Act. Provided that, if, when the lot be put up for sale, there be no bid, or if the highest bid be not equal to the amount to be recovered, the Collector shall proceed immediately to offer the lot for sale free from the incumbrances in class 4, and shall so proceed; if the bids be not equal to the amount to be recovered, to offer the property for sale free, first from the incumbrances in class No. 3, and then from those in class No. 2.

2d. Lands whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk.

And such a purchaser as is aforesaid shall be entitled to proceed in the manner prescribed in Sections IX. and X. of Regulation V., 1812, for the enhancement of the rent of any land coming within the second class of exceptions above made, if he considers the same to have been held at an unfair rent, and if the same shall not have been held at a fixed rent, equal to the rent of good arable land for a term exceeding 12 years; but not otherwise.

Provided always, that nothing in this section contained shall be construed to entitle any such purchaser as aforesaid to eject any khoodkasht kudeemee ryot or any resident hereditary cultivator having a prescriptive right of occupancy at fixed rents, or at rents assessable according to fixed rules under the regulations in force, or to enhance the rent of any such ryot or cultivator otherwise than in the manner prescribed by the laws in force, or otherwise than the former proprietor at the time of the creation of the tenure may have been entitled to do.

As Mr. Grant, in his Bill, does not protect unregistered old talookdaree tenures, so, in my proposals as to Mr. Currie's Bill, I have not protected unregistered incumbrances older than the creation of the tenure itself. Had Mr. Grant's Bill not been in existence, the matter might have been differently arranged; but I believe that, at sales of under-tenures

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held under Mr. Currie's Bill, with these provisions the sacrifice of incumbrances will be prevented, as at sales of estates held under Mr. Grant's Bill, by the holders of them bidding at least up to the amount to be recovered, which will always be small.

Begging you to do me the favour to lay this before the Select Committee to which my petition of the 10th instant has been referred,

I have, &c.
(signed) *H. W. Craufurd.*

Calcutta, 26 May 1856.

MINUTE.

SALE LAW IMPROVEMENT BILL.

Letters from
Board of Revenue,
with Minutes and
other enclosures.

THE papers transmitted by the Board on the subject of the Sale Law Improvement Bill, including the Minutes of the Members and the abstracts of Mofussil opinions, as well as the original letters containing the opinions of the officers specially noticed by the Board, will now be transmitted to the clerk to the Legislative Council.

2. I have read these papers, and the printed papers sent down from the Legislative Council, with the care and attention called for by the great importance of the subject of which they treat.

3. In sending up the opinions of the Revenue Officers under this Government, I will add a few words in explanation of my own sentiments, and I will do this as briefly as possible, for the papers are already very voluminous.

4. I would in the first place request particular attention to the remarks of the Board on Section III. of the Bill as to the effect of cutting off in such districts as Sylhet all modes of collecting the revenue except by sale under this Act. At present the revenue in Zillah Sylhet is collected primarily and mainly under the provisions of Section IV. Regulation I. 1801, and there are upwards of 70,000 recorded estates on the Collector's Roll, all minutely sub-divided. It has been doubtful, ever since the passing of the present sale law (Act I. of 1845), whether this mode of collection be legal, or not; but there can, I submit, be no doubt that it ought to be made legal if it be not so.

5. The Board propose that the Section above quoted should be now distinctly re-enacted, with this alteration however, that express sanction of the Board shall not be necessary in every instance, but that the Board be empowered "to invest such Collectors, as they consider proper, with the power of distraining the personal property of revenue defaulters before bringing the estates in balance to sale." I entirely agree with the Board, and desire to submit their recommendation for the favourable consideration of the Legislative Council.

6. The first important alteration of the present law which occurs in the new Bill is to be found in Sections X., XI., XII., XIII. and XIV. By the operation of these Sections a very great boon will be conferred on shareholders of zemindarees, with every one of whom the Collector will be empowered, after certain enquiries, to open separate accounts, bringing to sale for the realization of arrears only those shares which may be actually in balance; and if those shares prove unsaleable, giving to the co-sharers an option, in the first instance, of purchasing them by paying the whole arrear due from them, before actually proceeding to sell the whole estate for the arrear, which power is necessarily reserved in the last resort for the security of the Government revenue.

7. This amendment upon the existing law was originally proposed by the Most Noble the late Governor of Bengal; but it was a part of his Lordship's plan, that the benefit should not be extended to any share, the revenue of which might not exceed 50 rupees. To this it was objected in the Legislative Council, that the object is to confirm the just rights of the sharer by securing his property when there is no default on his part; and that a share paying 40 rupees may be of as much concern to the owner as are estates paying 40 lakhs to the Rajah of Burdwan.

8. I would say, with deference, that I doubt if this objection be sound. The object of the law seems to me not "to secure the just rights of the sharer" absolutely and without reference to the security of Government. For if that were so, it would be unjust in any case to sell out the sharer who had paid his quota. Yet this the proposed law does not scruple to do, even though the sharer may have paid up his full share of the revenue, whenever the Government revenue on the whole estate, *i. e.* on other shares of the estate, cannot otherwise be realized. I apprehend that the sharer in a joint undivided estate, charged with the payment of a certain fixed revenue to Government, cannot properly be said to have any rights except what the law has given him; and among those rights, ever since the permanent settlement, has never been a right to have a separate account as to his share, or to have his interests in any way distinguished from the interests of all other sharers in the estate. What the Government is now disposed to allow (clearly not as a right but as a boon) is avowedly to be limited by all such conditions as may seem necessary for the security of the Government, and if it be for the security of the Government interests to limit this boon

boon to shares of a certain value, it is surely allowable to do so; nor does it appear to me any reason to the contrary to say, that a sharer has in justice a right to be secured from the sale of his property on payment of his quota, because as I view it, he has in reality no such right, and never had it; nor is it proposed, even by those who use this argument, to give him any such absolute protection.

9. I would submit therefore, that it is quite open to consideration, and may be proposed for consideration without any breach of justice and right, whether or no it be for the interests of Government to grant the boon generally and universally; or whether, on the contrary, it be not advisable to limit it to shares of a certain value as proposed by Lord Dalhousie; and I must say for my own part, that I look on Lord Dalhousie's proposition—more or less modified—as in the highest degree expedient on this occasion.

10. There are a great many districts under the Government of Bengal, including all the districts of the Behar Province, in which the sub-division of shares is carried to a great extent. I walked into a small village a few days ago in the Patna district, which I was told on the spot was divided among or held jointly by seventy sharers; and at Chuppra, I was visited by certain zemindars of old family, whose zemindaree, never large, is now held in seventy-five shares, of which each separate share is owned by three or four different persons. These were spoken of as quite ordinary cases, and it seems obvious that the number of the sharers will go on increasing under the Hindu law up to the limit of starvation, especially if encouraged and fostered by unlimited separate accounts at the Collectorate. The question cannot but occur to me—Is it wise and politic to encourage this? or even if it were wise and politic, how are any conceivable establishments to keep such an enormous mass of small separate accounts?

In Sylhet there are already 70,000 different estates; and, as a specimen of the extent of sub-division, Mr. Glover, the Collector, tells us of one estate which has already 150 recorded sharers, and 800 unrecorded, who, if they think it worth while to pay the fees, may all get themselves recorded as soon as this Bill passes.

11. Now I am driven to believe that, before rushing at once into such a system of account as this Bill will bring upon us, it would be safer at all events to begin with some reasonable limit. If 50 rupees, as proposed by Lord Dalhousie, be considered too high (I confess I do not think it so), let a lower standard be taken. But in any case let the Act be tried first, as it were, on manageable terms. If it works easily, it can afterwards be at any time extended gradually as may seem fit. As at present drawn, it appears to me that the proposed law will, in the words of several of the revenue officers consulted, "swamp the Collector's offices."

12. It is certain that the present law discourages sub-division to a certain extent, and has assuredly a tendency to break up over-divided estates. I suppose that the Legislative Council are not likely to differ from me in the opinion that it is undesirable to extend a pauper proprietary, and will be willing, like myself, to avoid everything that may have a tendency unduly to encourage the "rabbit warren" system of landownership.

13. Whether the plan of a limit be adopted or not, I would submit that it will be advisable to omit from Section XII. the direction to the Collector to "institute summary inquiry into the fact of possession."

14. On this subject I desire to adopt the following observations by Mr. Theobald, which seem to me very worthy of notice. I would add that, under the system now enforced by the Board, no proprietor's name is now recorded by the Collector until he has satisfied himself as to the fact of his possession:—

"And upon these objections, when made, the Collector is to institute a summary inquiry into the fact of possession.

"It has been remarked that recorded sharers have already established their title, and that they ought not to be put to the risk of a second inquiry, which will, in many cases, operate as an invitation and inducement to dispute and litigation on a title which never was questioned before; and following up these views, it has been suggested that the applicant who proves, by a reference to the Collector's books, that he is a recorded sharer, should *ipso facto* be entitled to have the separate account of his share opened.

"It is to be hoped that this suggestion will be adopted; but if not, it is important to note what is the enquiry which the Collector is to make as the Bill now stands. The inquiry is to be into the fact of possession. Such an enquiry would be a departure from the application. The application refers to grounds of title: possession may, or may not, go with the title. The question, therefore, of the fact of title or truth of the application may be wholly different from the question of possession. If, indeed, unrecorded proprietors were to have the benefit of the Bill, there would be some reason for putting it on the ground of the fact or possession; but I can imagine none why this fact should be inquired into, in the case of persons already recorded as having a title. Moreover, what shall constitute 'possession' is not explained; there is no word in the whole vocabulary of the law which admits of a greater variety of application. Possession may be constructive or direct and actual; by oneself, one's agent or servant, or constituted by facts which show an intention to possess, and merely no adverse claim to the possession by any other person. It has been common, I am informed, for European proprietors to have shares of zemindarees recorded in the names of their managers or servants. Who, in that case, the manager or the proprietor, is in possession? If the latter, is he to lose the benefit of the Bill by reason of his not

Appendix, No. 7. being recorded, though in possession? One tenant in common may alone receive the rents and pay their shares to other tenants in common; or, a manager appointed by one may be in possession, not for one but for all. Who, in these cases, is in possession? A mortgagee of a share may be in the receipt of the rents, while the mortgagor is the recorded sharer. Is the recorded sharer not to have the benefit of this Bill, or is the possession of the mortgagee to be construed as his possession. This is but a small sample of the cases of no uncommon kind, in which the result of an application must be extremely doubtful, if the right of the recorded sharer is to depend on the question of possession."

15. The next important alteration proposed by this Bill is that contained in Section XV. which allows a zemindar to deposit money or Government securities with the Collector, so that the amount, or the interest in the securities, may be used in liquidation of balances as they arise. I look upon this measure as one which may prove of considerable value and usefulness to absentee zemindars unable to find trustworthy agents, a very general condition of absentee zemindars in this country. I am uncertain, however, whether it be a real affair of the Government to transact agency of this kind for absentees. The provision may (like the institution of the Government agency now about to be abolished) have a tendency to raise the value of Government securities; but I doubt, after all, if it will be made much use of. If it should be largely made use of, it would seem as reasonable in this case as in the case of the Government agency to empower the Collector to charge an agency commission for drawing and applying interest on securities, the private property of individuals. On the whole, and speaking with much deference, I am not greatly in favour of this provision. The Government can now permit a zemindar to deposit cash or paper, when it may think fit in peculiar cases, and did so in the case of the late Dwarkanauth Tagore. I doubt if it be expedient to force the Government to do so in all cases.

16. I come now to the provisions regarding under-tenures, which are in every respect the most important parts of the Bill, and those demanding the most careful consideration; and first of "Ante-permanent settlement tenures," the subjects of the first and second clauses of Section XXXV. of the Bill.

17. As I view the case of these ante-settlement tenures, I am unable to divest myself of the opinion that the proposed change of the law will affect them very disadvantageously. I need hardly say that the present Sale Law (Act I. of 1845) gave to the holders of these tenures no new rights. When that Act declared that an auction purchaser of a zemindaree had no power to avoid or annul (1.) "Istemrree or Mokurrree tenures, which were held at a fixed rent more than twelve years before the permanent settlement," and (2.) "Tenures existing at the time of settlement, which have not been, and may not be, proved liable to increase of assessment on the grounds stated in Section LI., Regulation VIII. of 1793," it declared only what had been the law ever since 1793. The rights of tenants of the two classes above named were given at the same time with the rights conferred upon zemindars, and are coeval with the permanent settlement. They cannot surely be now infringed without injustice; and I would submit that it cannot but be a very serious infringement of those rights to enact, at this time of day—60 years and more after the date of the law which constitutes their charter—that the status then given to them, and declared to be as permanent as the permanent settlement, shall nevertheless now cease and determine altogether, unless the possessors of those rights shall, within three years, come in and register them before the Collector, exposing themselves by that very process to an inevitable sequence of litigation, with all its difficulties and uncertainties, such as they were most unlikely ever to have been in danger of under the existing law, except in the rare event of a sale of the zemindarees to which they belong.

18. If it were proposed to enact that, unless the zemindars of the permanent settlement should now come forward and register before the Collector a number of particulars regarding their zemindarees, certain to provoke and produce a long chain of expensive and uncertain litigation not otherwise likely to arise, and that, failing such registration within three years, their estates should be deprived of the benefits of the permanent settlement, there would undoubtedly be an outcry against the proposition; yet, unless I am under some great error in my view of the question, such a proposition would differ in principle very little, if at all, from that of the present Bill as regards ante-settlement tenures. The rights annexed to these tenures are as old as those annexed to the zemindarees, and they were granted by the same authority, in the same manner, and under the same sanctions. If then it would be unjust now to make registration a condition of the continuance of the permanent settlement as regards zemindarees, and of this no one can doubt, it must surely be equally unjust to make registration a condition of the continuance of the permanent rights guaranteed to the ante-settlement tenures by the law of the permanent settlement.

19. The law of 1793, after declaring the power of cancelling and annulling under-tenures to be exercised by an auction purchaser of a zemindaree, says expressly:—"Nothing contained in this regulation shall be construed to authorise the assessment of any increase upon the lands of such dependent talookdars as were exempted from any increase of assessment at the forming of the Decennial (Permanent) Settlement, in virtue of the prohibition entered in Clause 1st, Section LI., Regulation VIII., 1793. The revenue payable by such dependent talookdars is declared fixed for ever."* How can any novel rule be now made a condition

* Regulation XLIV. 1793, Sections VI. and VII.

a condition of this legally declared permanency? Yet this appears to me to be what is intended by the present Bill.

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20. Nor is this all, for the present Bill proposes to annex to these tenures a new penalty for arrears of rent, such as they were never liable to before, and such as, to my apprehension, they seem to have been guaranteed against by former laws. According to former laws, an ante-settlement tenure might be sold for an arrear of rent,* but it was sold with all its privileges intact; and while the purchaser succeeded to all the rights of the defaulter, the latter received (less the amount in arrear) the full benefit of the purchase-money.

21. But under the law as now proposed, if an arrear, however small, should happen to be due, or can be made to appear as due, on the latest day fixed for the zemindars' payment to Government, every right and privilege attaching to the tenure is to be at once swept away, the tenure is to be no longer excepted from the operation of the ordinary power of an auction purchaser, and it may be avoided and annulled, and its holder ejected at the will of the new zemindar, just as if the holder were a tenant-at-will of yesterday, and as if the laws of 1793 and 1799 had never been enacted for his benefit.

22. It was said, in favour of the registration provision, during one of the debates on the Bill, that to enable a tenant to register must be advantageous to him, "for every holder of an under-tenure was liable to answer to the regular suit of every successive purchaser of the parent estate, because every successive purchaser of the parent estate enters with all the rights of the person with whom the settlement was originally made, and by the force of those rights can put the holder of the oldest under-tenures to the proof."

23. To this I would desire to submit, by way of answer in the first place, that to enable a tenant to register is one thing, and to force him to register on pain of losing his rights on the occurrence of a zemindaree sale is another. The latter is what the present Bill appears to do, and not merely the former.

24. In the second place, I would desire to observe, that successive actions against a tenant who has once succeeded in proving his title on a first action seem very unlikely to take place; and if they do take place, can harm only the plaintiff, and not the tenant, with a decree in his pocket to produce against all comers.

25. Further, I would bring to notice, that revenue sales are extremely rare, and therefore actions by auction purchasers to oust ante-settlement tenants rarer still. An ante-settlement tenant knows this, and is content. But he knows, too, that not every one who has a right is able to prove it, when brought into court for that purpose. If such a misfortune as a sale of the zemindaree should occur, and be followed by an action to try his title, the ante-settlement tenant will do his best to defend himself, and will take his chance of success. But he will surely thank nobody for a law which (like this Bill) will drive him into court, sale or no sale, occasion or no occasion; will put him to a proof which, as the law now stands, he might perhaps never have been called on to produce; and which, whatever the ultimate result to the tenant, will create a litigation, and all the expense and harassment of a litigation, such as, but for the new law, might probably never have come to pass at all.

26. Lastly, I would remark, that this Bill will very probably cause an innumerable quantity of false claims to establish a title under this class of tenure, to be supported by the usual amount of perjury and forgery, to the great detriment of the zemindar during the pendency of the claim, and occupying much of the time of the officers of Government in fruitless labour.

27. It is very probable that I may have mistaken the effect and meaning of the proposed alteration of the law, and that my objections may be therefore imaginary. But if I should be correct in my interpretation, I cannot but be excused for desiring that the provisions above noticed may receive further consideration before they are finally passed into law.

28. This much as to ante-settlement tenures. I will now speak of tenures created subsequent to the settlement, the provisions regarding which in the third clause of Section XXXV., and certain following sections, are perhaps the most remarkable in the whole Bill.

29. The object of the Bill has not been to save from the interference of auction purchasers all post-settlement under-tenures, but only such as are held liable to the payment of rents sufficient to afford a fair proportion of the revenue assessed on the parent estate. Accordingly, it provides that tenures of any description, farms, talooks, putnees, howalahs, theekas, ijarehs, jotes, or by whatever other denomination in use in different districts, may all, after certain inquiries to be made by the Collector as to the proportion of their rents to the zemindaree jumma, be registered; and when registered, shall be forever safe from the effects of a zemindaree sale.

30. It is no doubt a great and serious grievance, that no man in these provinces can hold or take a tenancy of land under a zemindar without risk of its being annulled by the sale of the zemindaree itself. This risk is certainly much less than it used to be before the

* Clause 7th, Section XV. Regulation VII. 1799.

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the passing of Act I. of 1845, but it still exists; and while this is the case, there must be a considerable standing difficulty in the way of agricultural improvement. Although, therefore, in the case of tenures now existing, the risk was probably more or less considered when the bargain was made by the tenant, and therefore there may be some room for doubt as to the abstract justice of conferring, at the expense of the zemindar, what is in effect a large pecuniary value on these tenures, beyond what was ever contracted or paid for by the tenant, yet in consideration of the general evil involved in the present insecurity of under-tenures, there seems to be at the present time a general consent of opinion that in some way or other the condition of post-settlement under-tenants ought, for the sake of the public weal, to be made more stable and secure; and to do this, as far as possible, is the purpose of all who are interested in the present Bill.

31. I have, however, after much anxious consideration, arrived at the conviction that the method of attaining the object in view proposed by this Bill is open to very serious, and, I incline to think, insuperable, objections; and this I find to be the general opinion of the most intelligent and experienced officers who have been consulted.

32. It is well known that in most parts of Bengal and Behar whole districts are held in one form or another of under-tenure, the vast majority being post-settlement tenures. Within three years, if this Bill passes, applications will be made to register all these, and a great many more besides, that is to say, fictitious tenures, claims to which are certain to be made up for the occasion. As I read the Bill, too, there is nothing to prevent any fixed tenancy ryots holding directly under the zemindar from applying for registration; and if so, the number of applications may be swelled by thousands. Almost every revenue officer who has considered the subject has assumed as incontrovertible, that, in a great majority of instances, for any one tenant that may apply, the whole zemindaree to which it belongs must be measured, and its assets ascertained and compared, before the conditions of Section XXXVII. can be complied with. It has been endeavoured to prove to me by a very able and experienced native friend, favourable to the present Bill, that this will not be necessary, except in a small proportion of cases, which he was disposed to assume arbitrarily at 5 per cent. of the whole number of applications. I have not been able to agree in this opinion. But even supposing we are to undertake the operation of measuring and ascertaining the assets of as many zemindarees as may be concerned in 5 per cent. of the very numerous applications which will pour in, what a gigantic task to throw ourselves upon, utterly unprepared as we are for any such scale of operation!

33. Or let it even be supposed (which is the most favourable, but surely most improbable supposition,) that not one single zemindaree will have to be measured and valued in consequence of these applications; is it not quite certain that, at the least, a very large proportion of all the under-tenures for which application may be made will have to be measured and valued? And must not even this be, to any officer who knows practically what such operations involve, and what sort of instruments he has to employ upon them, a thing to be contemplated with the most serious apprehension?

34. Accordingly, we find the revenue officers, for the most part, speaking of the proposition as one of extreme difficulty and hazard. Mr. Ricketts, member of the Board, says:—"The ascertainment of this sufficiency to afford a fair proportion would be in many cases next to impracticable." And again:—"In large estates such an inquiry would be interminable." Mr. Dunbar, member of the Board, writes of Section XXXVII.:—"It seems to me impracticable to carry out its provisions as they stand in the Bill. No Collector could by means of a summary investigation satisfy himself that a new tenure has been created in good faith, so far as the interests of Government are concerned, and that the rent payable by the holder is not less than is fully sufficient to afford a fair proportion of the revenue assessed in the parent estate. Nothing short of a detailed process similar to that employed in cases of Buttwarrah could give the Collector the necessary assurance." Lastly, Mr. Dampier, member of the Board, says of Sections XXXVI. and XXXVII.:—"These are the most important parts of the law, and I very much doubt if any summary inquiry could enable a Collector to carry through the objects proposed by them." And further on, after approving of Mr. Ricketts's proposition, that the registration of under-tenures should not ordinarily protect against the Government, he adds:—"If otherwise, the inquiries would be impracticable and interminable."

35. These are the opinions of the members of the Board. Of the Commissioners, Messrs. Davidson, Steer, Young, Samuells, Groe, and Stainforth (now a member of the Board) are all against this part of the Bill, some of them expressing themselves in strong terms against it, while most of the Collectors quoted by the Board object to this part of the Bill, besides several very capable and experienced Deputy Collectors who look on the proposed provisions as in the highest degree difficult, if not, as one of them expresses it, "nearly impracticable."

36. For myself, if the Bill should pass in its present shape, and if, as may surely be anticipated, a large number of under-tenants and self-styled under-tenants come forward for registration, I am unable to imagine how the plan will be carried into effect, except after a prodigious delay, and then, after all, with infinite hazard to the Government revenue.

37. For it is a part, and I apprehend, an inevitable part, of the scheme, that "under-tenures,

tenures, for the registration of which application shall be made within the prescribed time, shall, in case of the sale of the parent estate for arrears of revenue, be protected pending the summary investigation of the Collector.* But where the applications are numerous there is no saying how this may interfere with the collection of the Government revenue, or what confusion it may bring about. Even those revenue officers who do not think the plan impracticable are mostly of opinion that it will take years to effect the necessary inquiries which are to be made by the Collector. During all these years whole zemindarees, made up chiefly or entirely of "protected" under-tenures, many of them, of course, unreal and got up for the occasion to worry the zemindar, will be unsaleable for arrears, or, if sold, must be sold at far less than their real prices; for who would give the full price, or who could tell the real value of a zemindaree, every foot of which was under a protracted investigation as to its under-tenures, including all the claims and counter claims and boundary disputes, and suits and appeals, and special appeals and frauds, and chicaneries of every description inevitably consequent upon such an investigation, the cost of which must be incalculable, and the result far beyond the guessing powers of the acutest of human kind?

38. And let it be considered also what a prodigious and utterly unmanageable amount of hopeless litigation will, by the proceedings of the next three years, be thrown into our already inadequate and over-burthened civil courts.

39. I pass over for the present the immense litigation before the Collectors and the tens of thousands of "summary investigations," which everybody knows have an inveterate tendency to grow as long and tedious and complicated as the most "regular" investigations. I will pass over also the vast numbers of appeals from the so-called "summary" investigations of the Collectors to the "summary" tribunal of the Commissioner, and thence, unquestionably, in very numerous cases, to the Board of Revenue in Calcutta. I pass over all this, though as all the under-tenants and self-styled under-tenants in the Lower Provinces must apply for investigation or lose their chance for ever; and, as we have been told (see Sale Law Debates of 22nd December 1855) that two-thirds of all the lands in Bengal are held in under-tenures, we may conceive what will be the flood of work poured upon the revenue officers by the operation of this Bill. But I am very desirous of calling attention to the necessarily large proportion of these many thousands of cases, which, after passing through all the stages of summary litigation before the revenue courts, will eventually come, first as regular suits, and then in various forms of appeal before the civil courts of the country, from the Moonsiffs up to the Sudder. It seems to me certain that the influx of litigation thus about to be caused will utterly choke and stifle the civil courts, and so produce inevitable delays and arrears, and all the enormous expense and other mischiefs therefrom invariably arising. And if this anticipation be correct, there will surely be an amount of hazard incurred by this part of the Bill far overbalancing all the good at which it aims; and this especially, if it should appear that the essential end in view may be attained without hazard of any such dubious consequences.

40. Now I cannot but think that a slight modification of a plan suggested many years ago, and recently revived and adopted by Lord Dalhousie when Governor of Bengal, may be found, though, perhaps, not wholly free from objection, yet sufficient to ensure all, or nearly all, the essential objects of the present scheme, without involving us in any of its greatest difficulties.

41. That plan was thus described by the Honourable Mover of the present Bill on the 22d December 1855:—"That all under-tenures in an estate, without exception or inquiry, should be allowed to hold as good against an auction purchaser as they were against the former proprietor, as long as the parent estate should be saleable at a price that would cover the arrears of revenue due from it; but that as soon as the parent estate should fail to be saleable at such a price, it should be forfeited to Government, and the whole of the post-settlement tenures should be annulled; whereupon Government should proceed to form a new settlement of the land."

42. Setting aside the unessential objection which in the debate quoted was taken to the plan of "forfeiture," an objection at once obviated by changing forfeiture to Government into purchase by Government, only two substantial objections could, it appears from the debate in question, be found to the plan proposed: one, that it would not ensure complete protection to honest under-tenants holding at fair rates; the other, that it would tend to cause the creation of fictitious tenures, and thereby diminish the value of estates. It may, perhaps, be found that the first objection is capable of being removed by an additional provision, which will certainly improve the plan. The other objection may also, I think, be partially, but very sensibly, obviated; and the residue of objection that will then remain will, perhaps, when carefully examined, appear comparatively slight and inconsiderable, or, at all events, not comparable in weight and importance with the benefits of the plan on the one hand, or on the other, with the much more formidable objections which, I cannot but think, beset the scheme of the present Bill.

43. It will be convenient, in examining these two objections, to invert their order, and treat, in the first place, of the second objection. This second objection was thus stated:—

"If

* Section XXXVIII.

Appendix, No. 7. "If this measure" (i.e. the measure proposed by Lord Dalhousie) "were introduced, there was no doubt that it would open the way to fraud. There was no doubt that many zemindars would create benamee and other talooks in their estates at inadequate rents, or would pretend to have created such talooks. Their estates might be purchased by persons in ignorance of the fraud, who would ultimately discover that they had bought a losing concern or a bag of lawsuits; and the consequence of frequent bad bargains of this sort would be that the auction value of all zemindarees, even of those in which no such frauds had been really committed, would be diminished. He had no doubt that such fictitious tenures would be created in many cases, and he believed that a general reduction of the value of zemindaree property would be the consequence."

44. Now I would submit that it might go a great way towards removing this objection to enact, regarding tenures created after the passing of the Act, that they should not in any case be valid after an auction sale unless registered. The registry would enable all interested persons to acquire perfect information as to the creation of new under-tenures, so that no auction purchases could hereafter take place "in ignorance of the fraud," but all would know exactly what they were going into; and then, if any one should purchase a bag of lawsuits, it could only be because he was partial to lawsuits, and who then could say him nay?

45. And the further effect of this amendment might surely be, that any diminution of value of zemindarees that might be caused by the fraud of the zemindars would take place only as to the zemindarees in which the frauds had occurred, and would not necessarily or probably extend to others; and there would certainly be no need that we should trouble ourselves to mitigate to the fraudulent zemindar the obvious consequence of his own fraud, namely, the reduced price he would receive for his zemindaree when brought to auction sale.

46. But if any one should pursue this further, and should say that these frauds would soon throw the zemindarees in which they had been committed into the hands of Government, I should reply unhesitatingly that this would be a positive good.

47. It has been matter of question whether the permanent fixing of the Government Land Revenue, which took place in the Lower Provinces under the administration of Lord Cornwallis, was or was not disadvantageous to the country; and plausible arguments have been advanced on both sides. But whatever be the sound judgment as to the question of permanently fixing the Government demand in the land, there has never been any room for doubt, that the manner in which the permanent settlement was actually carried into effect was in the highest degree erroneous and objectionable. The intention of the permanent settlement was to recognise and confirm existing rights in the land, and to prevent encroachment on those rights for the future. The effect of the settlement was, however, to erect into landowners men who were mere tax collectors, and to give them almost unlimited power over all the old village proprietors, thus exposing to hazard a vast mass of long existing rights and creating new and unknown rights of property where they had never been before. The consequences of this (which was quite distinct from the permanent fixing of the Government dues, and need by no means have accompanied that measure) have been deeply injurious to the great body of real proprietors whose rights were sacrificed on the occasion; and the bad consequences of the measure may be traced at the present day in many of the evils which penetrate into and vitiate so much of the constitution of our rural societies. The only chance of breaking any part of this system down (and every breach in it is a blessing to thousands) is through the purchase of zemindarees by Government at auction sales. Opportunities for such purchases occur indeed but rarely, but when they do present themselves, I would submit that they should never be neglected. Every zemindaree so purchased is a population redeemed and regenerated, and well would it be for Bengal and Behar if there were any prospect of such purchases on a far larger scale.

48. This much as regards the second objection to the scheme of the Government of Bengal. As to the first, it may, as I would submit for consideration, be fairly met and sufficiently obviated by providing, as it would I suppose be perfectly safe to provide, that the Government, after purchase of a zemindaree by auction sale, should be debarred from cancelling or enhancing the rent of any tenure which might be proved on mofussil investigation to be honestly and adequately assessed. This would surely "give complete security to under-tenants holding under honest titles at fair rents," and would entirely prevent the possibility of the occurrence of the supposed case of the industrious and the idle talookdars put as an example in the speech of the honourable mover of the Bill already quoted, wherein the industrious talookdar was devoted to ruin under the Bengal scheme for the sole fault of his idle brother. I would submit that, with the amendment now suggested, which could produce no possible hazard to the Government revenue, industry would be as certain of its reward as in the celebrated pictures of Hogarth; and if so, the whole of this first objection would seem to be satisfactorily removed.

49. There is, however, a question regarding post-settlement under-tenures which I have not seen adverted to in any of the debates or correspondence regarding this Bill, but which seems to me very worthy of consideration, namely, whether there are not some under-tenures which, far from encouraging agricultural improvement, are by their nature so ruinous and destructive to the public weal as to render it highly desirable to discourage them by all means in our power, and even to get rid of them as far as possible, instead of doing any-thing

thing to encourage and perpetuate them; I mean those tenures which are extremely common in Bengal and Behar, and more particularly in Bengal, which convey a right of collecting a half or a fourth or any other share of the rents of a mehal or a division of a mehal or a village. There are numerous cases in which one "khoodkasht ryot" has to pay his little rent in shares to three or four or more talookdars, or other under-tenants of the zemindar; every sharer trying to get the most he can, and to overreach his co-sharer, and the ryot being ground to powder between them all. This is notoriously one of the curses of the country, carrying with it the most bitter and ruinous consequences. In its present shape this Bill will tend to perpetuate the evils of this cruel system; but I would hope that it may on further deliberation be found practicable to take a different course.

50. In advocating the plan (with some amendments) of the Bengal Government, I am fortified by the strongly consenting opinion of Lord Dalhousie, and of some of the best informed and most experienced of the officers who have been consulted on the subject; besides that of at least one well-known non-official person, who has given much attention to the matter, and is highly qualified to speak with authority regarding it.

51. To conclude, then, without affecting any accuracy of legislative expression, but merely as a means of more clearly explaining my sentiments, I would desire, on the subject of under-tenures, to legislate somewhat as follows:—

"The purchaser at a sale held under this Act shall acquire the estate, subject to all leases, assignments or other incumbrances existing on the estate at the time of sale, with the following exceptions; that is to say, the said purchaser shall be entitled to avoid and annul all leases, assignments, and other incumbrances, created subsequent to the passing of this Act, which may not have been duly registered within one month from the date of the deed constituting the incumbrance, and at least three months before the date of the sale; and the said purchaser shall also be entitled to annul and avoid all tenures created since the permanent settlement, whether before or after the passing of this Act, and whether registered or unregistered, the terms of which may entitle each of the holders thereof to collect a share of the rent of each ryot or other subordinate tenant within the tenure in question.

"When an estate is put up for sale under this Act, for the recovery of arrears of revenue due thereon, if there be no bid, or if the highest bid be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the collector may purchase the estate on account of the Government, and the Government, by such purchase, shall acquire the estate free from all incumbrances which may have been imposed upon it subsequent to the time of settlement, and shall be entitled to avoid and annul all under-tenures and to eject all under-tenants, with the following exceptions:—

"First. Istemraree or Mokurruree tenures, which were held at a fixed rent more than 12 years before the permanent settlement.

"Second. Tenures existing at the time of the permanent settlement, which have not been, or may not be, proved liable to increase of assessment on the grounds stated in section LI. Regulation VIII. of 1793.

"Third. Any tenure created since the permanent settlement, the holder of which may be willing to enter into engagements to pay for the term of the tenure such a fixed rent as the Government may assess upon it, not exceeding in any case two-thirds of the total amount of the ascertained Ryottee or Mofussil assets comprised in the tenure.

"Provided that no tenure created since the passing of this Act shall be entitled to exemption from annulment under the preceding clause, unless the same were duly registered within one month from the date of the deed constituting the tenure, and at least three months before the date of the sale.

"Provided also that no tenure created since the permanent settlement shall be entitled to exemption from annulment under the third clause of this section, if it be a tenure, the nature of which may entitle each of the holders thereof to collect a share of the rent of each ryot or other subordinate tenant within the tenure in question.

"Fourth. Lands held at rents not less than the rent of good arable land in their neighbourhood, whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk."

52. The law framed on this principle will, as I humbly incline to believe, subserve all the essential purposes of the Bill now under consideration, without, as it seems to me, incurring any of its most serious difficulties.

53. It will preserve all under-tenures intact in the event of ordinary sales for arrears of revenue, except in the rare case of a purchase by Government in default of other sufficient bidders; and even in that event, it will assign a limit to the power acquired by Government, which will ensure the stability of all tenures held at fair rents, without in any degree hazarding the Government interests. It will cause no new measurements or Mofussil inquiries, because, when an estate is bought by Government, a Mofussil inquiry must necessarily take place; and this inquiry, which would at all events be made, will disclose all the facts required for the security of the tenant, as well as for the security of Government. It will occasion no increase of litigation, but, on the contrary, immensely diminish it. For, on the one hand, it will cut off all that large class of lawsuits which now occur after a sale between the

Appendix, No. 7.

auction purchaser and parties claiming rights of permanent under-tenancy; and, on the other, it will send tenants to court against the Government, or Government against tenants, only in those rare and scarcely supposable cases, in which the Government, after a purchase and a measurement, may be unwilling to comply with the provisions of the law in favour of under-tenants holding, or willing to hold, on rents proved by Mofussil investigation to be fair and adequate.

54. The plan proposed will, as I humbly conceive, give to all *bond fide* tenants as complete security and stability as they are capable of receiving, nor can I foresee any strong objection to it, but that it will allow a zemindar to create fictitious under-tenures for his own benefit. If however these tenures be created at adequate rents, there is no reason, that I am aware of, why they should not be upheld as well as any other fairly rented tenures. If they be created at inadequate rents, they will be invalid against a purchaser unless registered; and if registered, all the facts regarding them will be known and capable of examination by all interested persons, so that no one need be ignorant of their existence, or with moderate care, of their real nature, before he attempts to bid for the estate.

55. If a zemindar should create a large number of inadequate tenures fraudulently, the value of his estate will fall, and he will suffer in proportion to his frauds. If the frauds have been extensive, the estate will soon become the property of Government by a transfer which, happen when it will, can rarely be anything but advantageous to the prosperity and social advancement of every fair tenant and every honest ryot on the estate.

56. There is yet, as I am disposed to believe, one more advantage connected with this plan, which, if I do not deceive myself, is an advantage of no small importance. If it should hereafter be determined to legislate in like manner for subordinate tenants after the sale of a superior under-tenancy, such as a putnee talook and the like, this plan is capable of being applied to them with comparative ease and simplicity. I have expressed my grave doubts whether the plan proposed by the Bill be practicable as regards tenures immediately under the zemindar; but I shall not be accused of over-hasty assertion, if I declare my opinion that there can be no doubt as to the impossibility of applying the plan of the Bill to the cases of subordinate tenures (whose name is legion) under superior under-tenancies. The inquiries needful for so applying it could never surely be carried on by Government agency; and to throw them into the hands of private zemindars is never likely to be proposed as a safe and practicable measure of legislation.

57. With these observations, I would now submit the papers for the consideration of the Legislative Council.

Malda, 2 September 1856.

(signed) *Fred. Jas. Halliday.*

FURTHER PAPERS relative to the Bill to improve the Law relating to Sales of Land for Arrears of Revenue in the Bengal Presidency.

(No. 1.)

From the Secretary to Government, North Western Provinces, to the Clerk of the Council.

Sir,

Revenue
Department.

I AM directed to forward the accompanying copy of a letter from the Sudder Board of Revenue, North Western Provinces, No. 385, dated the 18th March last, together with copies of the Minutes, therewith submitted, by both members of the Board, regarding the Bill which has been brought before the Council, 'to improve the law relating to sales of land for arrears of revenue in the Bengal Presidency.'

2nd. The Lieutenant Governor observes that the objections in these Minutes to Clauses 1 to 6, Section V. of the Bill, appear grounded on a misapprehension of the true scope and effect of these clauses, which do not exclude recovery of any outstanding arrears in these provinces by the sale process, but leave the course to be pursued in the province of Benares, and in districts not permanently settled, to the exclusion of Outtack, the same in all respects as they are at present under Section V., Act I., of 1845.

3rd. With reference, also, to the concluding paragraph of Mr. Jackson's minute, the Lieutenant Governor observes, that the suggestion therein made appears to have been already met by the provisions of Clause 3, Section XXXV. of the Bill.

4th. The Lieutenant Governor fully concurs, however, with the Board in thinking that Sections X. to XII. would, as far as they might be made operative, be calculated seriously to derange and injure the revenue administration in these provinces.

5th. Upon the whole the Lieutenant Governor desires me to express his decided opinion that the new law should not be made to extend to the districts under this Government.

6th. It would, in some of its provisions, have a bad effect in them; and in others, as in those

those intended for the protection of under-tenures paying rent, it is not applicable to their circumstances. Appendix, No. 7.

7th. Sections IX., XLIV., XLV., and XLVI. might, in principle, be with propriety enacted for the North Western Provinces. But experience has not shown them to be practically much required.

Head Quarters, Nynce Tall,
27 May 1856.

I have, &c.
(signed) *C. B. Thornhill,*
Secretary to Government of N. W. Provinces.

From Secretary, Sudder Board of Revenue, to the Secretary to Government, North Western Provinces, dated the 18th March 1856.

Sir,

I AM directed to request that you will lay before his Honour the Lieutenant Governor the accompanying minutes by both members of the Board regarding the Bill to improve the law relating to sales of land for arrears of revenue in the Bengal Presidency.

Revenue.
Present:—E. A. Reade, Esq., Senior Member, and C. C. Jackson, Esq. Junior Member.

I have, &c.
(signed) *H. W. Hammond,*
Secretary.

NOTE by *E. A. Reade*, Esq., Member, Sudder Board of Revenue, on Bill to amend the Law for Sale of Land for Arrears of Revenue.

SECTION V. of this Draft Act provides, under the third description of arrears, that the sale process shall extend only to arrears of the current year, or of the year immediately preceding. It is further evident from Section XLIII. that the restriction applies to arrears due on account of estates, and to other demands of Government. It is most necessary to protest against this important alteration of the preceding law as respects these provinces, including the province of Benares.

In both, the Government, in the pursuit of a just and beneficial policy, not unfrequently suspends a portion of its demand on account of calamities of season, and further permits the recovery of the instalments stipulated to be postponed, if the nature of the subsequent season in any year be such as to warrant the Collector's abstaining to press the realisation of the addition to the current demand.

Further, large sums of tucavee are advanced for the purpose of constructing works for agricultural extension and improvement, and the just principle is observed of recovering the amount by instalments, and of deferring the demand of the first instalment till sufficient time has been allowed for the completion of the work and its beneficial operations.

If this provision becomes a part of the statute, the Government will be unable to resort to the only process by which it has a tolerable certainty of recovering demands, payment of which, notwithstanding its liberality and indulgence, is often withheld, and to withhold which this provision would stimulate landowners.

Then, again, it is not unusual to sequestrate, or to sell, estates deteriorated by bad management and dissensions, Government being the purchaser, with the object of restoring the estate by judicious direct management, and by making a complete and accurate record of rights as the preliminary to re-instatement of the excluded proprietors, under engagements to pay up all, or any portion of the original arrear. This must be a work of time, and dependent, also, in some respects, on the nature of seasons; but if the sale process is barred after the lapse of two years, the Government is deprived of its only effectual remedy in case of non-fulfilment of conditions. If a limit must be fixed, it should not be less than 10 or 12 years.

The provisions of Sections X. to XII. are inapplicable to the principle on which settlements have been made, and settlement compacts recorded, in the province of Benares as well as the other North-Western Provinces. Ordinarily the shares of Malgozaree estates pay their quota through their representatives; the lumberdars, and if every one of the innumerable members of coparcenary communities, contrary to the compact of settlement, shall be held to have the privilege of claiming a separate account in the tehseeldaree, dispensing with the intermediate agency of the lumberdars, the necessity will arise of trebling the tehseel establishment.

It is also unnecessary; for, where partition, not involving the dismemberment of the mehal, is provided for by the settlement compact of future management (such partition being dependent on unanimous consent, or consent of a majority, or individual option, according to the tenor of the agreement) partitions of this description are made, and severalty of account results therefrom. The application of Sections X. to XII. should be excepted, though the sections following are unobjectionable.

It appears to be necessary to add to the exceptions of Section XXXV. as respects the province of Benares.

Appendix, No. 7.

In that province there are many rent-free parcels not exceeding 50 beegas, the titles to which have been declared valid by judicial investigation and decisions in the Civil Court, or in the Settlement Office, under Section VI., Regulation IX., 1825; and, as these investigations are now progressing to completion in all cases, it is desirable to provide protection for such as have been or shall be finally exempted from interference by awards of the Settlement Office and Civil Courts in appeal.

Further, in these provinces there are many numerous parcels of rent-free land not exceeding 10 beegas, released at the discretion of settlement officers from settlement to settlement, and some of large areas exempted with the sanction of Government on the same terms. These also might well be added to the exceptions of Section XXXV.

There are no talookdaree tenures in the province of Benares which resemble those of the Lower Provinces, and exceptions should therefore be made of that province in Sections XXXVI. to XLI.

But, both in the province of Benares and these provinces, there are many proprietary parcel-holders, on whose tenures jummas have been fixed at settlement, which are paid through the Malgoozar of the estate within the limits of which they are situated, or at the tehseeldaries direct, and these also should be declared under protection, if no arrear of revenue be due thereon at the latest day of payment.

It is necessary, to remove doubts and to guard against fraud, that there should be a provision in Section XLVII., empowering the Government, if necessitated to purchase property at a bid below the arrears incurred on the estate, to proceed against other property of the defaulter, if any, and to have recourse to the same measure if the amount bid in any case, cannot wholly be recovered from defaulting bidders. Bids have been made, and deposits lodged on the day of sale by friends and agents of the defaulters, leaving, after all exertions, a deficiency of the general amount, for which the sale process was resorted to, and doubts have been entertained whether, if Government becomes the purchaser at the resale, it has a right to proceed against other property. It is necessary that this right should be declared.

(signed) *E. A. Reade,*
Senior Member.

NOTE by *C. C. Jackson, Esq.,* Member, Sudder Board of Revenue, on Bill to Amend the Law for Sale of Land for Arrears of Revenue.

SECTION V. directs that "no estate, &c., shall be sold for the recovery of arrears or demands of the descriptions mentioned below, otherwise than after a notification." I conclude that it is intended that sale shall be restricted to the recovery of arrears of the descriptions mentioned below, though the literal sense of the sentence would be, that the notification was only requisite for the recovery of arrears of the description explained below; and that, for other descriptions of arrears, the notification was not a necessary preliminary to sale. I entirely concur with my colleague, that the restricting recovery by sale to arrears of the current and of the preceding year, will be attended with much inconvenience in these provinces, certainly with occasional loss of revenue, as it will lead to the relinquishment of revenue demands, which have been postponed either in consequence of bad seasons, or of bad management by the zemindars, or of the recusancy of a portion of the shareholders; these untoward incidents, which are frequent in the management of estates, are remedied by the timely application of other processes of recovery, which, however, would fail of success, if the power of eventual recovery, as a last resource, by sale, were relinquished.

As regards tucavee, the objection is still stronger, as the inability to recover it by sale process, if due for more than two years, will effectually put a stop to the benefits resulting from judicious advances on that account.

The provision in Section IX. is an improvement of the existing sale law.

The necessity for keeping a separate account for every shareholder in common tenancy or in severalty, who wishes to pay direct, will add much to the labours of the tuhseeldaree department, unless the privilege of paying separately is restricted to the lumberdars, who receive a commission for realising the revenue from subordinate shareholders; or to those who have obtained a separation of their shares under Regulation IX., 1811. I think it would not be advisable to allow the privilege to any shares in common tenancy, indicated only by their fractional denomination, as this ordinarily only denotes that portion of the common profits due to the holder of the share after all expenditure, including the payment of the Government revenue; in fact, the liabilities of shares in common tenancy are not sufficiently specified, and the attempt to adjust the accounts in every case of default, after taking into consideration the lands held seer, would entail endless labours on the tuhseel officers; it is now occasionally done, but the sale of separate fractional shares for arrears due according to the separate account to be kept for each, would render every case of this kind very complicated, and, I fear, offer great facilities and inducements for fraud; as the common tenancy can always be changed into a putteedaree tenure, or holding in severalty; the extending the privilege of paying separately to holders in common tenancy is not necessary.

I should prefer restricting the recovery of revenue due on shares of integral estates to the process of transfer to solvent shareholders; the admission of a stranger into a portion of a coparcenary

coparcenary estate is generally attended with ruin to the rest of the original community, who, if they are able, are always disposed to pay up the arrear of a defaulting coparcener, even with the prospects of his share being attended with eventual loss, rather than see it become the property of a stranger. If sale is resorted to, it is better to sell the whole, but there are, so far as my experience extends, very few cases in the North Western Provinces, in which recovery of revenue cannot be ensured by transfers or farms, or by kham management. Frequent resort to sales is a sure indication of heavy assessment, or of bad management by the revenue establishment, many of the persons on which are constantly on the look out for profiting by the difficulties they have themselves caused in the realization of the revenue; and the sale law, whether in its old or the amended form, offers the greatest facilities for establishing a permanent title in property, and relieves the collector and his establishment of the trouble of adjusting disputes amongst coparceners, or of restoring an estate by judicious kham management.

The proposed law appears to me inferior to the old one, which it rescinds, in the matter of perspicuity; it is not so well adapted for these provinces, and it authorises dangerous facilities for the sale of fractional portions of mehal s held in common tenancy, the sale of which under decrees of Court already cause much confusion, and endless litigation. In the case of decrees there is no longer any doubt of the demand being due from the shareholder whose rights are sold, but not so in the case of a revenue demand, as the default of a shareholder may have been caused in whole or in part by the undue exactions from the cultivators, of his coparceners, or by the difficulties of realising his dues they have placed in the way of the defaulting shareholder.

The most important provision in the new Act is that of Section XV., allowing proprietors or coparceners to deposit Government securities to the amount of the revenue of the entire estate, in fact for proprietors of entire estates to pay their revenue in advance, by keeping Government securities at the Treasury sufficient to meet demands. What are the circumstances which have necessitated such extraordinary precautions we are not informed, and I can only come to the conclusion that the difficulties placed in the way of the payment of the revenue after it became due, have frequently led to the sale of solvent estates: or that, in the absence of the proprietor, no secure place offers for depositing the revenue on his estate to be made available when due, except the Government Treasury. In the case of a coparcener depositing the revenue of an entire estate, it may be supposed that it is intended to guard against the wilful default of the other shareholders, but in such case the appropriation of the deposit, which must be annually repeated to guard against the fraudulent designs of the wilful defaulters, would in the end be attended with ruin to the coparcener making the deposit, unless he had some means of recovering from the wilful defaulters any balance realised from his deposit in excess of his own portion of the revenue. This part of the Act appears to me an abortive attempt to give security to landed property by a partial redemption of the taxes to which it is liable, but it is, in reality, nothing more than forestalling the Government demands at a considerable sacrifice to the party who avails himself of the privilege; whether it would be politic to allow redemption of land tax at 10 or 20 years' purchase is a matter for distinct and separate consideration.

Section XXXVI. applies apparently to the sub-tenures in Bengal called putnee talooks, not to the talookdary of the North Western Provinces comprising several villages or distinct estates, for which the talookdar engages separately or collectively, or receives a compensation for his rights in the shape of a per-centage on the assessment. It allows an important privilege of exempting those under-tenures which existed at the date of settlement from cancelment by sale of the parent estate, if they have been duly registered, after the collector has satisfied himself by inquiry that they have been truly represented by the applicant for registry; and Section XXXVII. allows registry to newly created tenures of this description, after the collector has satisfied himself by survey and other inquiries that the Government revenue will not suffer from their protection against sale process. The protection would be more complete, both for the proprietor of the estate and for the putnee talookdar, if the latter were obliged to show that the sale of the estate was not attributable to his own default, by production of receipt for payment of the rent to which his talook was liable, and by allowing him to deposit that amount in the Government Treasury in the event of its being refused on tender to the proprietor of the estate.

(signed) C. C. Jackson,
Junior Member.

(No. 2.)

PETITION of the Indigo Planters' Association and Enclosures.

To the Honourable the Legislative Council of India.

The humble Petition of the undersigned Members of the Central Committee of the Indigo Planters' Association, on behalf of themselves and the said Association,

Showeth,

THAT the said Committee have had under consideration the Bill now before your Honourable Council, entitled "A Bill to improve the Law relating to Sales of Land for Arrears of Revenue in the Bengal Presidency," and have been in correspondence with Mofussil mem-

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bers with a view to ascertain their opinions respecting it, and which Bill as your petitioners learn on a comparison thereof with the existing law, has been brought in, chiefly with a view to narrow the penal operation of the Revenue Sale Law and better to secure shares in zemindaries and valuable under-tenures to their proprietors against forfeiture under the said law.

That, as respects these, the essential objects of the said Bill, your petitioners regard it with the greatest satisfaction and gratitude, as fraught with benefit to all classes: not only capitalists and zemindars, but, in the opinion of your petitioners, the cultivating classes also.

Your petitioners beg to remark that, besides the under-tenures created immediately by zemindars, and for which protection is provided by the said Bill, there are others of great value which are of the same nature; such, for example, as dur-putnees, dur-izarahs, &c. &c., and it would be a great improvement in the said Bill if the same protection were extended to these also, and your petitioners pray that they may be included in the said Bill.

Your petitioners observe that a very elaborate and complicated procedure is provided by the Bill for the attainment of its objects. Many of the details of this procedure appear to your petitioners open to objections, and, in the view which your petitioners take of them, they tend to impair the value of the proposed protection.

Your petitioners therefore earnestly desire a re-consideration of the details of the said Bill. They annex to this petition a Report on the said Bill, with extracts of correspondence, and submit the same in the hope that they may be found to contain some useful suggestions.

That, subject to such alterations in the details of procedure, as may, on consideration, appear better conducive to the objects of the Bill,—

Your petitioners pray your Honourable Council early to pass the said Bill into a law, with an extension of its benefits to all such other under-tenures, besides those already provided for, as fall within the principle of the said Bill.

And your petitioners shall ever pray.

(Thirteen Signatures.)

REPORT of the Secretary of the Indigo Planters' Association to the Central Committee, on Bill brought into Council by the Honourable Mr. *J. P. Grant*, entitled "A Bill to improve the Law relating to Sales of Land for Arrears of Revenue in the Bengal Presidency."

THIS Bill has been for a very considerable time before the Legislative Council and under discussion, and should in the usual course have been reported upon by me much earlier, but few materials for forming a report have been supplied to me, and they have come slowly. I have endeavoured to supply the want of written communications by personal inquiries of members, and in the result I still remain not free from difficulty. Both on the written and personal communications, it appears to me the objects of the Bill are very generally approved and much desired; but, on the other hand, the details, or that mode or system of procedure on which the attainment of the objects depends, are much distrusted and by some regarded as unfit for the purpose.

In the course also of my inquiries, I have had reason to think that the Bill is not equally acceptable to those whose chief interests are as zemindars; and this has led me to consider whether, on any, and what grounds the zemindars are entitled to oppose the measure.

Though not necessary for the information of members, it is necessary for the orderly treatment of the Bill, that I should premise a short statement of what is the present operation of the Revenue Sale Law, and how it is proposed to be altered.

By the Revenue Sale Law of the Lower Provinces the permanently settled revenue is assessed on zemindaries: a default of payment makes the zemindary preemptorily liable to sale, and a sale sweeps away all but a few especially excepted under-tenures. A zemindary is often held by several persons in common tenancy, and sometimes there are sharers in it whose share consists of distinct integral parts, but the revenue law takes no notice of these divisions of interest. This Bill proposes to recognise as separate interests shares of a zemindary, whether held by several in common tenancy or consisting of distinct and integral parts of the zemindary, and to allow a separate account to be opened in the collector's books of revenue to be paid by each sharer; the advantage to the sharer will be that, in case of default of any sharer, not the whole zemindary will be put up for sale, but only the share of the defaulter. And with respect to under-tenures created by the zemindar, it proposes to protect them against the consequences of a sale of the zemindary: the effect will be that the purchaser of the zemindary will take it, not, as now, freed from, but subject to the under-tenures.

Abstractedly considered these proposals are highly beneficial to sharers in zemindaries and the under-tenure holders. They will be relieved of a great risk, saved much trouble in securing their property, and the tendency of the measure in both cases is to enhance the value of that property.

The two cases of the shares of zemindaries and under-tenures rest on distinct grounds, and must be considered separately. As respects the former, the measure lies solely between the Government and the zemindary sharers. The Government simply proposes to modify the security which it now has for the realization of its land revenue in favour of this class of proprietors. It does, however, reserve to itself, in case of need, the power which it has

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at present over the whole zemindary, so as to be secure in every event against a loss of revenue. Obviously it is a measure of concession, with perfect liberty to those to whom it is proffered not to avail themselves of it. The advantages are too obvious to need minute description. By dividing the revenue and distributing the burden in the same proportions as the right of property and interest, it facilitates payment. If one sharer falls into arrear, the consequence is confined to that one. It thus brings within the most narrow limits practicable the penal operation of the sale law; and this is an advantage to the entire agricultural community—zemindars, holders of under-tenures, and ryots; for the latter are great, if not the greatest, sufferers by a sale of the zemindary under the present revenue sale laws.

The case of the under-tenures is less simple. The parties concerned are the Government, the under-tenure holder, and the zemindar. There is no connexion between the Government and the under-tenure holder; the only interest which the Government has in the revenue; but its policy on the plea of revenue has been deeply injurious to the under-tenure holder. Its principle ought to be that, so long as the zemindary is of sufficient value to enable it by a sale to realize its revenue, it is indifferent what under-tenures have been created by the zemindar. Now it is the rents which constitute the value of the zemindary. That value would be impaired by under-tenures on which only pepper-corn or nominal rents are reserved; and this appears to be the only danger against which the Government has to guard. Accordingly the Bill, at the same time that it proposes to relieve under-tenures from the present law, has precautions against admitting to protection those under-tenures on which insufficient rents are reserved. On the part of Government, therefore, the measure is simply a modification of policy in favour of this important class of proprietors, and the sole question which remains is whether it can be objected to by the zemindars.

Now, when I speak of objections, I mean objections founded on some principles of right or equity, and if such there be in this case, they will be found in the contract rights of zemindars. The contract rights of the zemindar may easily be illustrated in the case of the putneedar (who for this purpose may be taken as a representative of under-tenure holders). The putneedar is a purchaser for a price or valuable consideration of a portion of the zemindary lands in perpetuity, with one condition attached, namely, payment to the zemindar of a rent the equivalent (or supposed to be) of the revenue payable for the lands comprised in the putnee. It is this condition which constitutes the tenure, connects the putneedar with the zemindar, and the putnee lands with the zemindary; and, except for the obligation which it contains, the putneedar would have an absolute and indefeasible estate, and would be entirely independent of the zemindar. The putnee rent, therefore, is the only interest which the zemindar has in the putnee lands, and therefore non-payment of that rent is the only ground on which the zemindar can claim any power over the putnee tenure, and it is equally clear that, if the putneedar makes no default, he is fully entitled by his contract to be as secure against the zemindar as the latter is against the Government so long as he pays the Government revenue.

Now compare these principles with the present state of the law. The law at present is, that, if the zemindar makes default in payment of the revenue, his zemindary shall be sold free from the putnee; and the putneedar is sacrificed, not because he has made default himself, but because the zemindar did not pay his revenue. What is proposed is simply that the putneedar shall not in future be sacrificed, and that the purchaser of zemindary, at a revenue sale shall take the zemindary subject to the putnee (and all other under-tenures), except when the putneedar himself is a defaulter, in which case the putneedar forfeits the benefits of the new law. In this proposal I confess I cannot find the smallest flaw in point of equity, and it is perfectly consistent with all the contract rights between the zemindar and putneedar. The only excuse which could be made for any longer continuing the present state of the law, would be the necessity of it for the realization of the revenue. But Government by this Bill denies the necessity.

Few zemindarias comparatively are brought to sale in the present day for arrears of revenue; and of these, except in impoverished parts of the country, a small proportion from the inadequacy of the rents to meet the Government revenue, the rest are put in arrear for fraud, and not unfrequently for the advantage offered by the revenue sale law. They are sold by the Collector, and bought by the defaulting zemindar benamee. The inducement to this fraud is, indeed, great. For example, a zemindary is put up for sale for an arrear of revenue, say of 5,000 rupees, and would be worth half a lack of rupees, if the purchaser were to take it subject to the under-tenures, but taking it free of those tenures (as he does), he will give double that sum for it. This enhancement of price, not needed to satisfy the revenue, swells the surplus after deducting from the proceeds of the sale the amount of revenue due, and is paid over to the zemindar, or if the zemindar himself is the purchaser benamee, he gets the profit by creating new under-tenures. The sacrifice of the putnee tenure, therefore, is no advantage to the Government, but is a clear gain to the zemindar, and it is notorious that zemindarias are wilfully put in arrear by the zemindars for the sake of this and similar advantages, which can only be obtained through the medium of a sale for revenue. But if the case is free from this fraud, and the zemindar unintentionally falls in arrear, the injustice is not the less to the putneedar, nor the profit less to the zemindar: the under-tenure is annulled, the value of the zemindary is enhanced, and the enhanced value goes to the zemindar. He thus gets twice paid for the same thing; first for a putnee on its creation, and next at the auction of the putnee lands, perhaps much enhanced in value by improvements made by the putneedar.

I have taken the case of the putnee holder, but the same reasoning applies to every other valuable tenure, and the evil only differs in degree.

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In extenuation of the existing state of the law, it has been said the putneedar purchases his putnee subject to the risk and has estimated it. It may equally be said he purchased with the chance of an improvement of the law; and of all men the zemindar cannot be permitted to object to the removal of the risk, by a better law; for that risk can never become a loss if the zemindar performs his duty. I refer to the obligation, which he is under towards the putneedar to pay the revenue.

These remarks will be sufficient, I trust, for the limited purpose for which they are offered, namely, to show that the zemindar has no right to object to the proposed protection to under-tenures.

Having explained the objects of the Bill, and defended its principles, I will proceed to examine the details and the manner in which it is proposed to effect those objects. The provisions respecting sharers of zemindaries are contained in the 10th, 11th, 12th, 13th, and 14th sections. By these, "recorded sharers" alone are entitled to the intended protection, and it has been suggested that it should be extended to those who are sharers in fact, but not recorded. But it has been fairly replied that those sharers who are not recorded may get themselves recorded, and so become in a position to avail themselves of the new law.

The mode prescribed for sharers is to make an "application" to the Collector. For the application of a sharer of a joint estate in common tenancy no particularity is prescribed by the Bill: indeed it is obvious, from the nature of his interest, what must be the form, and that the form would be very simple. But respecting the application to be made by a sharer whose share consists of specific or separate portions of land, the Bill requires that it should specify the land by metes and bounds, and the amount of sudder jumma paid [contributed] by the applicant. This latter form is subject to the same remarks as hereafter will be made on a similar requirement in the case of the under-tenures, and to those remarks I beg to refer.

The Bill having prescribed the "application," next provides for objections to it, and recognises the following:—

- (1.) That the applicant has no right to the share.
- (2.) That it is less than he claims.
- (3.) That it is of a different nature from that claimed by him.

And upon these objections, when made, the Collector is to institute a summary inquiry "into the fact of possession." And in the case of an applicant whose share consists of a separate portion of land, the further objection may be made that he has not stated his jumma correctly, and on that objection the Collector is to inquire whether the alleged jumma has been recognised by the other sharers, and according to the result of his inquiry, to admit or reject the application.

It has been remarked that recorded sharers have already established their title, and that they ought not to be put to the risk of a second inquiry, which will, in many cases, operate as an invitation and inducement to dispute and litigation on a title which never was questioned; and, following up these views, it has been suggested that the applicant who proves by a reference to the Collector's books that he is a recorded sharer, should *ipso facto* be entitled to have the separate account of his share opened.

It is to be hoped that this suggestion will be adopted; but if not, it is important to note what is the inquiry which the Collector is to make as the Bill now stands. The inquiry is to be "into the fact of possession." Such an inquiry would be a departure from the application. The application refers to grounds of title; possession may or may not go with the title; the question, therefore, of the fact of title or truth of the application may be wholly different from the question of possession. If, indeed, unrecorded proprietors were to have the benefit of the Bill, there would be some reason for putting it on the ground of the fact of possession; but I can imagine none why this fact should be inquired into, in the case of persons already recorded as having a title. Moreover what shall constitute "possession" is not explained; there is no word in the whole vocabulary of law which admits of a greater variety of application. Possession may be constructive or direct and actual; by oneself, one's agent, or servant; or constituted by facts, which show an intention to possess and merely no adverse claim to the possession by any other person. It has been common, I am informed, for European proprietors to have shares of zemindaries recorded in the names of their managers or servants. Who, in that case, the manager or the proprietor, is in possession? If the latter, is he to lose the benefit of the Bill by reason of his not being recorded, though in possession? One tenant in common may alone receive the rents, and pay their shares to the other tenants in common; or, a manager appointed by one may be in possession, not for one, but for all. Who, in these cases, is in possession? A mortgagee of a share may be in the receipt of the rents, while the mortgagor is the recorded sharer: is the recorded sharer not to have the benefit of this Bill, or is the possession of the mortgagee to be construed as his possession? This is but a small sample of the cases of no uncommon kind in which the result of an application must be extremely doubtful, if the right of the recorded sharer is to depend on the question of possession.

The Bill also, as framed, appears to me to raise a very doubtful question, or rather leaves it very uncertain what is the question to be tried, in the case of a sharer of specific portions of land, where the objection is to the amount of jumma stated by him. The Bill requires the applicant to state "the amount of jumma heretofore paid by him;" and then it provides that—"If the objection be that the jumma alleged by the applicant is not the jumma which has

has been recognised as such by the other sharers," the Collector is to "make a summary inquiry into the fact." What fact? That the jumma paid is the real jumma, or the fact of payment as alleged by the applicant, or the fact of recognition? And if of recognition, recognition of what? Whether of the payment in fact by the applicant, or of the amount as correct? And what will establish recognition? Will the acquiescence of one sharer preclude the others from objecting? If one sharer says, "True, the applicant has never paid more than the amount he states, and I and my co-sharers have paid such and such other sums, making up the full amount; but we have done so only from necessity, he having paid too little." Is that plea to avail in proof of non-recognition? I offer these purely as practical difficulties, which will open a wide door to dispute and litigation, and will render the success of an application in a great many cases very doubtful.

The sections relating to the under-tenures are the 35th, 36th, 37th, and 38th.

The under-tenures are classed under four heads:—

1. Istemraharee and mekuraree tenures, held at a fixed rent more than 12 years before the permanent settlement.

To these the new Bill appears to be a disadvantage. By the existing law they are absolutely protected (Act I. 1845, Section XXVI., Clause 1); but their future protection is to depend on, first, their being registered under this Bill; and, secondly, after registration the rents reserved on them being duly paid up at any time when the zemindary is liable to be put up for sale. If, as I am informed, the tenures of this kind were all ascertained and recorded at the time of the resumption proceedings, it is hard to impose on them the necessity of a new registration, which can be obtained only by means which will open a wide field for dispute and litigation, all the power and influence of the zemindar being arrayed against the applicant; and the tenure will be equally jeopardised, after registration, by the second condition, through the temptation which it will constantly hold out to deny the fact of payment.

2. Tenures existing at the time of settlement, against which the zemindar has failed, or may fail, to prove his right to enhance the rents.

To these also the new Bill appears to be a disadvantage. They are protected by the existing law; but their future security is to depend on registration under this Bill, and their rent being paid up at the time when the zemindary becomes liable to sale. I have already stated, and therefore need not repeat here, the objections to which these conditions are open.

3. Tenures of whatever description, and farms for terms of years which have been created since the time of settlement.

For these tenures this Bill first provides protection on two conditions; first, their being registered under this Bill; and, secondly, their rent being paid up at the time when the zemindary becomes liable to sale. The observations already made on this second condition, in connexion with the two first classes of tenures, are here applicable; and I may now add, that, dangerous as this condition is in itself, the danger is aggravated by the want of all provision in the Bill for judicially ascertaining the fact of default of payment, and for any notification of it before the sale. If these defects in the Bill are supplied, the under-tenure holder might reasonably claim not to be more harshly treated for his default than the zemindar is by the Government. The zemindar has a latest day, beyond the proper legal period, and therefore, in fact, an extension of time for payment before his zemindary can be notified for sale; so, by analogy, the under-tenure holder should have the power of curing his default, which, as in the zemindar's case, may sometimes be a default, not of his own, but of his servants.

There is also another qualification on the right of under-tenures of this third class to be admitted to registration. The Collector is, on receipt of the petition, to cause whatever measurement, survey, and local inquiry he may deem necessary for the security of the Government revenue. This provision is a cause of apprehension to members of great experience; they say a measurement, survey, and local inquiry can be carried on only by an army of native ameens and their assistants, in whose train follow the well-known and dreaded corruptions; and following up the prospect thus opened, they apprehend the effect, though less extensive, will be similar to that of the resumption proceedings in unsettling titles and disturbing enjoyment, and from the lamentable fruits of which, it is said, property in some parts of the country is only just recovering. It surely will be wise to take heed on this warning. The members from whom it proceeds are not insensible to the highly beneficial character of the essential objects of the Bill, and would not willingly renounce them, and it may be hoped those objects may be secured by means free from those objections. Persons entertaining such apprehensions will, of course, not apply for the proposed protection; but the consequences may nevertheless reach them. To meet in a degree these apprehensions, it has been suggested, that the Collector shall have an unfettered discretion to act in each case according to its particular circumstances, in directing or withholding the inquiry or survey and measurement.

It has been remarked that the Bill will protect only the original tenures:—"As regards new tenures, putnees will only be benefited by this new Bill. They can be registered and made secure, in the event of a sale of the parent estate for Government arrears. But durputnees, and all other lower tenures, cannot be registered, because the proprietor did not create those under-tenures." By the 7th rule of Section XXXVI., it is pretty plain that only

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those tenures granted by the zemindar or proprietor of the parent estate can be registered."—
[Mr. E. Roberts.]

This is a defect, and an inconsequential one. If the rent reserved on the original under-tenure is a fair proportion of the sudder jumma, and is paid up—for both of which the Bill provides—the lower tenures carved out of the original under-tenure are of no importance to the revenue, and their safety shall be left dependent on that of the under-tenure, standing or falling with it; but, in respect of their own interests, the dur-tenure holders should have the opportunity of preventing a forfeiture of the parent tenure.

After this enumeration of under-tenures which are to be placed under protection, come, in Sections XXXVI. and XXXVII., the means by which the proposed protection is to be obtained. It is ultimately by registration of the under-tenure, and this is to be obtained by petition to the Collector, the particulars of which petition are minutely prescribed by the Bill. Notice of this petition is to be given to all parties concerned, and they are to have the opportunity of making objections; and then the case is to be heard on evidence. This procedure is regarded by different members with various degrees of apprehension, as a probable source of frauds, forgeries, and perjuries, the usual instrumentality of mofussil litigation.

In reference to the application to be made by sharers of zemindaries, I have alluded to the difficulty of complying with the required form. The difficulty will be still greater of following up the required petition. Mere minuteness of detail could hardly have been required in the petition if it had been devised to satisfy an English lawyer advising for an unwilling purchaser on a title. The petition is to comprise particulars classed under no fewer than nine heads: (1,) the pergunnah or pergunnahs in which the tenure [land] is situated—(2,) the denomination of the tenure—(3,) the name or names of the villages whereof the land is composed—(4,) the area and boundaries in complete detail—(5,) the amount of rent, cesses, and duties payable—(6,) the date of the deed constituting the tenure, or date when the tenure was created—(7,) the name of the proprietor who created it and name of—(8,) original, and (9,) present holder, and relation between those two, and manner in which the latter acquired it.

The first and third, and second and fifth, are perhaps unnecessarily separated. The first, second, and third standing, the fourth might be dispensed with. To establish the sixth, the deed or writing, I should suppose, must be produced and proved, which might alone be sufficient. The fourth requirement is regarded as in a great many cases impracticable, and the case is not provided for in which the deed is lost; probably not a rare occurrence in the case of the older tenures.

It is true the requirement is under one qualification, namely, these particulars are to be given "as far as they are ascertainable:" the rule therefore is open to exceptions; but what are the circumstances which may excuse compliance with the rule? It is true also that, if no objection is made, the Collector is only to make "due inquiry," and to be "satisfied." There is therefore, in *ex parte* cases, great latitude and a dispensing power in the Collector; but this also will give opportunity and scope for the well-known arts of the *amlah*. Moreover at any time within a year, "any party dissatisfied" with the award "may institute a civil suit to set it aside:"—which, whatever be the extent of the privilege—whether it is to be exercised only where the award has been made after a summary investigation, or exercised generally—detracts from the value of the registration.

In the annexed extracts from correspondence will be found several other remarks and suggestions on the Bill from members of great mofussil experience.

The question remains, can the important objects of the Bill be attained with checks and precautions and on a simple plan, consistently with the perfect security of the revenue which is provided (or intended to be) by this Bill? The latter part of this question raises another. If those parts of the plan of the Bill are abandoned, which are directed to the ascertainment whether fair rents have been reserved on the under-tenures, what security can the Government have in their place for the safety of its revenue? The following plan has been suggested. That the under-tenures should be registered in the office of the Collector on proof simply of the deed or writing by which they are created, an abstract of which should constitute the record; and that all tenures so registered should be protected. The protection in the first instance would be that the zemindary would be put up for sale subject to the under-tenures. If the bid for the zemindary exceeds the arrears of revenue, no question arises to affect the under-tenures. If, on the other hand, the price offered falls short of the arrears of revenue, a few days should be given for any under-tenure holder to come in and pay the arrears, he being permitted to stand in the place of a mortgagee, or, at his option, a purchaser. There may be no under-tenure holder with means to avail himself of this privilege; in which case, by analogy to the Bill as it now stands, any under-tenure holder should have the opportunity of establishing the *bonâ fide* character of his rent and tenure. As an ultimate resource in the interest of the revenue, the zemindary might be liable to sale free, as now, from the under-tenures: but, in that case, the price realised being partly made up of the value of the under-tenures, should be regarded as clothed with a trust to compensate the under-tenure holders for their loss, and a liberal measure of damages should be legislatively established. The compensation should cover the price paid for the under-tenure and its improved value. If the surplus proceeds of the sale were retained until claims of this kind were satisfied, there would be an end of the common fraud of zemindars making default for the sake of the gain to be derived from a sacrifice of the under-tenures.

It has been suggested that there may be parts of the country where the plan proposed in
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the Bill could be extensively applied without the consequences apprehended by some members. And, in this view, that plan, with a few alterations, might be retained, and, some such plan as above suggested, be superadded to it. The Bill would thus become universally acceptable. Appendix, No. 7

5, Bankshall-street, 10 June 1856.

W. Theobald, Secretary.

EXTRACTS FROM CORRESPONDENCE in Office of Indigo Planters' Association.

Merits of the Bill.—"The gain to the landed proprietors in respect to this measure alone is immense, and in a district like Tirhoot, where possession in common tenancy is carried out to such an enormous extent, and where, consequently, security against bad faith is so seriously needed, this law will be held a great boon."—[Mr. C. Strachan.]

Difficulty attending the Procedure as to Share of Zemindaries.—"The labour imposed on the several authorities to carry through the requisite summary inquiries to enable them to open separate accounts, will be so considerably increased, that it is to be feared frivolous and vexatious objections will be too readily admitted and allowed weight, and many applications will be hastily rejected.

"It is therefore necessary that some definite rules in respect to the nature of the objections which are cognizable, be laid down.

"It seems also to me, as an advisable measure, that, in connexion with the collectorate, a separate establishment be erected solely for the purpose of carrying through applications for registration, for they will count by thousands, and under the considerations specified in Sections XXXVI. and XXXVII., the inquiries which will have to be made will be so extensive that serious delay will be unavoidable, where the work to be done is left to one burthened with other responsible duties."—[Mr. C. Strachan.]

Time allowed for Objections insufficient.—"The second point I would notice is the limited time allowed under Sections X., XI., and XXXVI., within which only objections can be entered and attended to. The reasons are so obvious, that it is needless to enter into any lengthy exposition to show why thirty days or six weeks (the utmost period allowed) are not sufficient for the purpose, and I would submit for the serious consideration of the Central Committee the necessity of suggesting an extension of time. It appears to me that a three months' notice is not too long, and that less than that would be positively injurious."—[Mr. C. Strachan.]

The Bill stops short of the Protection desired by some Members.—"What is prayed for is absolute protection to the under-tenants, co-sharers of estates, who, at the time of sale, have fairly paid the full of their registered amounts. A co-shareholder or under-tenant may not have the means of purchasing the whole estate by paying up the entire revenue; his joint shareholder knowing such, and wishing to obtain the whole estate, may fail to pay his share, and subsequently obtain his ends by purchasing the whole estate benamee."—[Mr. Terry.]

"Those new provisions of the proposed law, which go to enable co-partners in an estate to obtain a separate liability for their quota of Government revenue, and mortgagees to bar extinction of their lien by default, and to permit the deposit of Company's paper as security for the due payment, under all circumstances, of the revenue, are unexceptionable, and not likely to meet with other opposition than that of needy copartners who desire to continue a system of joint liability, and of covetous co-partners who, under the present law, can, by a fraudulent default and purchase, oust the other shareholders of the estate."

First Registration of Istemraharee and Mocurraree Tenures unnecessary.—"The changes noted in your letter, I can see no objection to allow them to stand as they are; such tenures are all safe as the law now stands, for they have for the most part been duly ascertained when the resumption law was put in force, for pottahs and documents had to be produced, and investigations were taken before duly competent authorities on their genuineness, so that the registration has in a great measure been carried out."—[Mr. D. Andrew.]

Impossible for the Istemrahareedars to comply with the Conditions.—"I do not see that it is possible for the ryots who are holders of Istemraharee or Mocurraree tenures to obtain registration, as one of the conditions provided by the new Act is that the area of the land comprised in the tenure, with its boundaries in complete detail, must be furnished on making application to the Collector. This is an injunction which many will have difficulty in complying with, and though in theory it may appear simple, it is practically next to impossible. Under the old sale law, these tenures were good, and I do not see any necessity for rendering registration compulsory under the new Act. The Government survey at present going on does not define the boundaries and give the area of every jumma in a village, only the boundaries of the village itself, and the area of the resumption muhal and lakhiraj lands that it may contain."—[Mr. A. Stuart.]

"In putnee talooks the boon conferred by Mr. Grant's Bill is so great, that holders of this description of tenures should gladly welcome the day when they shall see their property placed on a sound and safe footing, and removed from the risk of being injured at the caprice or negligence of a zemindar; but there is one clause of the Bill which, if

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allowed to pass, completely annihilates the benefits contemplated. I mean, &c." "The writer then refers to the condition that no arrear of rent is to be due on the last day of payment of the Government revenue."—[Mr. A. Stuart.]

Difficulties of obtaining Registration.—"Section XXXVI. This section throws all the difficulties of registration on the under-tenant, who is seldom rich enough to cope with the zemindar; and in the present state of the mofussil courts, it must fail, unless much simplified."—[Mr. Terry.]

"Section XXXVII. leaves registration at the mercy of any Collector, even when no other opposition is offered, unless he considers the rent paid by the holder to be a fair proportion of the assessed revenue. What is a fair proportion? Collectors may differ much upon that point. Moreover, collectors never trouble themselves to investigate personally mofussil claims, but such investigations are usually left to badly paid ameens, or some of the Collector's most favoured unlahs, who always notoriously decide in favour of the highest payer."—[Mr. Terry.]

Opinion of an Opponent of the Bill.—"Fortunately for zemindars, however, the dividing of such tenures from the parent estates will not, on trial, be found so easy as the promoters of the measure have supposed. Mr. J. P. Grant has not prepared himself by a study of the quinquennial register, so as to understand the nature of the rent rolls of an estate; it will soon be found to cause immense trouble and expense to all parties concerned; will ruin many, and will create no end of confusion to the Government revenue.

"It is not possible for any one, without the experience of many years, to conceive the state of confusion into which the boundaries of the different portions of an estate have worked themselves up together. To divide such portions, then, the one from the other, so as to safely render them independent of each other and of the parent estate, and at the same time secure the Government revenue, would require a very careful and expensive survey of the whole estate, a process in a large estate requiring many years. A Collector's establishment will never be able to make any needful inquiry so as to produce a result at all worthy of trust. To leave the division of estates in their hands without a regular organised survey will be worse than nonsense. Who is to pay for that survey? Surely not the zemindar, whose very throat, so to speak, it will have to cut; and no putneedar, istemrahreedar, or mocrateedar, will even be able to pay it. As for native ameens, of the nature alluded to by Mr. J. P. Grant in his speech on the proposed law, it will be far better to decide all disputed points by the throws of dice, or by tossing up a rupee, or any other rule of chance, by which we may be assured far less injustice will be perpetrated. It is absolutely necessary an estate should be surveyed before it is divided. In this point alone I think I may safely defy the collective wisdom of the Legislative Council. Those who do not know what the division of an estate is will then find out, to their cost; and even putneedars, istemrahreedars, &c., will not find all smooth, as they at present think. Let them, however, do as they like. If this law is at all carried out, the Government revenue will get into such confusion that nothing will put it straight again. A result will be sure to be arrived at as much opposed to the expectations of the promoters of the law as was that to the far-famed resummptions."—[Mr. Cave.]

One Member, referring to minor Difficulties, says—"I think nothing can be better than Mr. Grant's amendments, but difficulties may arise in the matter of registration, for a deed cannot be registered under two rupees, and one rupee to the kerani, who throws a thousand obstacles in its performance if he is refused his fee, which is illegally demanded; and this is one of the curses of the country, that every amlah of each office must have his perquisite, unless you attend yourself, which cannot be effected; considering the distance one is located from the station."—[Mr. R. Savi.]

One Member suggests as auxiliary to the registration of putnee tenures, that the tenure, or the names of the putneedars, should be marked on the new revenue map, now under preparation.—[Mr. R. Savi.]

"I would also pray, now that the Thakbust Ameens have nearly completed their work, and the specification of lands, boundaries, and extent, is defined, that each putneedar's name be inserted with the village or pergunnah he may hold, in the map about being drawn out by the Company's surveyor; and this plan would materially assist the Collector in opening separate accounts under Section XI., in accordance with the Bill."—[Mr. R. Savi.]

Enhanced Rents generally reserved on Putnees.—"I would beg to draw attention to the fact that zemindars, in leasing putnee and such tenures, do it on considerably enhanced rents from those paid by them to the Government, leaving out the poonbar or purchase-money for the same; and the realization of the Government revenue would be insured for a certainty and without any trouble, if a clause in the new Act was inserted for a putneedar to have the option of paying directly into the Collector's treasury his monthly instalments of rents on his zemindar's account, and a receipt granted by the Collector for the same. As the law at present is, the Collector is prohibited from receiving putnee rents. Most zemindaries yield at least 75 per cent. in excess of Government revenue; the Collector could, therefore, easily carry the amount due for Government revenue to credit, and hand the balance to the zemindar to do what he thought fit. This would insure not only the Government due, but preclude the possibility of any collusion of the zemindar in withholding the revenue paid to him, and bringing the talook for sale for arrears and purchasing it benamsee, thus defrauding the putneedar not only of his tenure, but the large amount of poonbar

ponbar paid. Transactions of this kind have been done, and to the ruin of parties, who have only remedy by a civil suit, and may, after seven years of trouble and expense, find, even if successful, that no property can be attached, all being previously made benamee."—[Mr. D. Andrew.]

Tenures already registered should be admitted to Protection without fresh Registration.—“Putnee talooks that have been made on good faith, have been already registered as by law directed. We should therefore have a clause in the new Act upholding those registered putnees, otherwise confusion and heavy extra expenses must be again incurred for fresh stamps and all other charges, which I do not suppose was contemplated when the proposed Act was framed.”—[Mr. D. Andrew.]

Difficulty of obtaining Registration.—“Section XXXV. It would be very difficult for ryots or holders to prove what is required in the 1st and 2d Clauses. Clause 3 gives a substantial and just protection. Clause 4 is altogether unjust, and would cause no end of litigation, which the object of the Bill is, I imagine, to prevent. For instance, lands for building on may be given at a low rent, and for considerations beyond the mere rent too numerous to be enumerated. And what is to be considered the rent of good arable land, where it ranges from 2 annas per beegah to 12 rupees?”—[Mr. Terry.]

“Section XXXVII. leaves registration at the mercy of every Collector, even when no other opposition is offered, unless he considered the rent paid by the holder to be a fair proportion of the assessed revenue. What is to be considered a fair proportion? Collectors may differ much upon that point. Then who is to decide? Moreover Collectors rarely trouble themselves to investigate personally mofussil claims; but such investigations are usually left to badly-paid ameens, or some of the Collector's most favoured amlahs, who notoriously decide in favour of the highest payer.”—[Mr. Terry.]

(True extracts.)

10 June 1856.

W. Theobald, Secretary.

(No. 3.)

PETITION of Rajah Sutt Shurn Ghosaul, dated 19th September 1856.

To the Honourable Members of the Legislative Council of India.

The humble Petition of Sutt Shurn Ghosaul, of Bhokoyloss, Zillah 24 Pergunnahs, a Zemindar in the Presidency of Bengal,

Most respectfully sheweth,

THAT your petitioner, as a zemindar, takes the liberty to submit a few observations and suggestions on the Draft Act, intituled, “A Bill to improve the Law relating to Sales of Land for Arrears of Revenue in the Bengal Presidency,” for the consideration of the Honourable Council.

2. That your petitioner most cordially admits the equity and justice of the security which the Bill is intended to afford to persons whose interests are affected by the sale of an estate for arrears of public revenue; but most respectfully begs to object to the protection held out by the Bill to the holders of under-tenures created since the time of settlement, on the following grounds.

First. That, according to the sound and wholesome principles laid down in Regulation I. of 1793, and upheld by subsequent Regulations and Acts, the purchaser of a permanently settled estate sold for its own arrears, succeeds to the rights and privileges enjoyed and exercised by the original engager at the time of settlement. He therefore acquires the estate free from any subsequent incumbrances imposed upon it by the defaulter or his predecessors, being representatives or assignees of the proprietor, with whom settlement was concluded. But although the main part of Section XXXV. of the Bill prescribes similar provisions based upon the same invariable principles, yet its third exceptional clause exempts “tenures of all sorts and farms for terms of years,” which may have originated since settlement, from being null and void, if they are duly registered under Section XXXVII., and if there was no arrear due on them on the latest day of payment. This exception is therefore contrary to the long-established principle inculcated and upheld by various Regulations and Acts passed by the Supreme Government.

Secondly. That if these tenures are protected from the effects of sale, it will be a source of manifold fraudulent and collusive transactions. A proprietor having disposed of his estate in ostensible or real under-tenures, registered under Section XXXVII., at an aggregate jumrah equal to annual Government revenue, will intentionally suffer the estate to fall in arrear. In one case he defrauds the Government of its due instalment of revenue, reserving to himself in the names of other persons all the rights and privileges he enjoyed before his default, and at the same time he fills his exchequer with a large sum which he receives in the nature of fine or premium, together with the instalment of revenue in arrear. Thus an opportunity is given to the present proprietors to make an immense fortune by creating fixed assessments of under-tenures in their estates, which the Bill pronounces unalterable by any future proprietor

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Thirdly. That such restricted sales will tend much to endanger the realisation of public revenue. When an estate is sold subject to these incumbrances, purchasers will not be forthcoming to compete as bidders at the public sales. They will have very little or no inducement to embark their capital in a speculation which, far from affording them any profits above the revenue due to Government will render them liable to collection charges from their private purses to collect that revenue. Men will scarcely direct their ambition towards the acquirement of zemindarees, and Government will be obliged to hold khas all such estates; and the zemindaree system will, in the course of a few years, be gradually demolished; and there is no doubt that that system is the best security for the punctual realisation of the public revenue. But under Section XLVII. of the Bill, Government also purchases the estates, subject to the provisions of the Bill under review. It cannot, without infringing the terms of the perpetual settlement, annul the registered under-tenures with which the sold estates will be burthened. Consequently even a tenure yielding one anna per annum will be brought under the immediate management of Government, and the entire parent estate will yield to it nothing beyond the fixed revenue which the Government now obtains through the zemindars, without collection charges. Your petitioner begs to propose therefore that the tenures in question be declared voidable by the sale purchasers. The Bill, then, with its other essential improvements contained in it, will be a great boon to the country.

3. Your petitioner, on a careful survey of the existing sale law and the new Bill, takes leave to remark, that there is no provision made to enable purchasers to take peaceful possession of estates sold in revenue sales. A notification and a certificate under Section XXVII. of the Bill, are not sufficient when a purchaser meets with opposition either from the defaulters or the talookdars whose talooks are not affected by the sale. Under such circumstances, finding it inconvenient to appeal to the dilatory chances of a regular suit, they are compelled to involve themselves in affrays, in order to acquire possession of what they have fairly bought. If Section XXVIII. of the old sale law, Regulation XI. of 1822, which enjoins the appointment of a Commissioner to give possession, be restored, with some alterations suited to the times, litigation under Act IV. of 1840, and breaches of the peace will be greatly diminished. Should the Honourable Council direct its attention to this proposal, your petitioner may be permitted to state that, in his opinion, the country will be greatly benefited.

4. That there is another point which your petitioner does not deem proper to pass unnoticed here. The Bill is silent regarding the rights of a purchaser of a share of an estate sold under Section XIII. If such purchasers are entitled to the rights described in Sections XXXV. and XLII., your petitioner begs to suggest the insertion of the words "of an estate or share of an estate" between the words "purchasers" and "sold," in Section XXXV., in the place of "of an entire estate," and the same words in Section XLII., in the place of "of an estate," to avoid misconstruction of the law on this point.

5. Your petitioner in conclusion trusts that he has not fallen into any error in understanding the provisions of the intended law.

And your petitioner, as in duty bound, shall ever pray.

Sutt Shurn Ghosaul.

Bhookoylass, 19 September 1856.

(No. 4.)

From the Secretary to the Government of Bengal, to the Clerk of the Legislative Council, No. 671, dated Fort William, 19 September 1856.

Sir,

Revenue.

In continuation of the junior secretary's letter,* No. 367, dated the 15th ultimo, I am directed to forward herewith a copy of a Minute, dated the 2d instant, by the Lieutenant-governor, on the subject of the Bill "to improve the law relating to sales of land for arrears of revenue in the Bengal Presidency," together with copies of the papers, as per accompanying list.

I have, &c.

(signed) *W. Grey,*

Secretary to the Government of Bengal.

* From the Junior Secretary to the Government of Bengal, to the Clerk of the Legislative Council, dated Chuppra, 15 August 1856.

Sir,

I am directed by the Lieutenant-governor of Bengal to express his regret that he has been prevented, hitherto, by the many details pressing upon him during his tour, from submitting to the Select Committee of the Legislative Council his sentiments on the Sale Law Amendment Bill now under consideration.

The Lieutenant-governor is most desirous of submitting his opinion on the important measure in question, together with those of the revenue officers subject to the Bengal Government, which are now before him; and the object of this letter is to apologize for and explain the delay that has unavoidably occurred, and to assure the committee that the opinions of the Lieutenant-governor on the Bill, with those of his subordinates, will now be forwarded at the earliest possible date.

I have, &c.

(signed) *C. T. Buckland,*

Junior Secretary to the Government of Bengal.

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MINUTE by the Lieutenant-Governor of Bengal.

THE papers transmitted by the Board on the subject of the Sale Law Improvement Bill, including the minutes of the members, and the abstracts of Mofussil opinions, as well as the original letters, containing the opinions of the officers specially noticed by the Board, will now be transmitted to the clerk of the Legislative Council.

Sale Law
Improvement Bill.
Letters from Board
of Revenue, with
Minutes and other
Enclosures.

2. I have read these papers and the printed papers sent down from the Legislative Council with the care and attention called for by the great importance of the subject of which they treat.

3. In sending up the opinions of the revenue officers under this Government, I will add a few words in explanation of my own sentiments, and I will do this as briefly as possible, for the papers are already very voluminous.

4. I would, in the first place, request particular attention to the remarks of the Board on section III. of the Bill, as to the effect of cutting off, in such districts as Sylhet, all modes of collecting the revenue, except by sale under this Act. At present the revenue in Zillah Sylhet is collected primarily and mainly under the provisions of Section IV., Regulation I., 1801, and there are upwards of 70,000 recorded estates on the collector's roll, all minutely subdivided. It has been doubtful, ever since the passing of the present Sale Law (Act I. of 1845), whether this mode of collection be legal or not. But there can, I submit, be no doubt that it ought to be made legal if it be not so.

5. The Board propose that the section above quoted should be now distinctly re-enacted, with this alteration however, that express sanction of the Board shall not be necessary in every instance, but that the Board be empowered "to invest such collectors as they consider proper, with the power of distraining the personal property of revenue defaulters before bringing the estates in balance to sale." I entirely agree with the Board, and desire to submit their recommendation for the favourable consideration of the Legislative Council.

6. The first important alteration of the present law which occurs in the new Bill is to be found in Sections X., XI., XII., XIII., and XIV. By the operation of these sections a very great boon will be conferred on shareholders of zemindarees, with every one of whom the collector will be empowered, after certain inquiries, to open separate accounts; bringing to sale, for the realisation of arrears, only those shares which may be actually in balance, and, if those shares prove unsaleable, giving to the co-sharers an option in the first instance of purchasing them by paying the whole arrear due from them before actually proceeding to sell the whole estate for the arrear; which power is necessarily reserved in the last resort for the security of the Government revenue.

7. This amendment upon the existing law was originally proposed by the most noble the late Governor of Bengal. But it was a part of his Lordship's plan that the benefit should not be extended to any share, the revenue of which might not exceed 50 rupees. To this it was objected in the Legislative Council that the object is to confirm the just rights of the sharer by securing his property when there is no default on his part; and that a share paying 40 rupees may be of as much concern to the owner as are estates paying 40 lacs to the Raja of Burdwan.

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8. I would say, with deference, that I doubt if this objection be sound. The object of the law seems to me not "to secure the just rights of the sharer" absolutely, and without reference to the security of Government. For if that were so, it would be unjust in any case to sell out the sharer who had paid his quota. Yet this the proposed law does not scruple to do, even though the sharer may have paid up his full share of the revenue, whenever the Government revenue on the whole estate, that is on other shares of the estate, cannot otherwise be realised. I apprehend that the sharer in a joint undivided estate charged with the payment of a certain fixed revenue to Government, cannot properly be said to have any rights except what the law has given him; and among those rights, ever since the permanent settlement, has never been a right to have a separate account as to his share, or to have his interests in any way distinguished from the interests of all other sharers in the estate. What the Government is now disposed to allow (clearly not as a right, but as a boon) is avowedly to be limited by all such conditions as may seem necessary for the security of the Government, and if it be for the security of the Government interests to limit this boon to shares of a certain value, it is surely allowable to do so, nor does it appear to me any reason to the contrary to say that a sharer has in justice a right to be secured from the sale of his property on payment of his quota, because, as I view it, he has in reality no such right and never had it; nor is it proposed, even by those who use this argument, to give him any such absolute protection.

9. I would submit therefore that it is quite open to consideration, and may be proposed for consideration without any breach of justice and right, whether or no it be for the interests of Government to grant the boon generally and universally, or whether on the contrary, it be not advisable to limit it to shares of a certain value as proposed by Lord Dalhousie. And I must say for my own part that I look on Lord Dalhousie's proposition, more or less modified, as in the highest degree expedient on this occasion.

10. There are a great many districts under the Government of Bengal, including all the districts of the Behar province, in which the subdivision of shares is carried to a great extent. I walked into a small village a few days ago in the Patna district, which I was told on the spot was divided among, or held jointly by 70 sharers; and at Chuppra I was visited by certain zemindars of old family, whose zemindaree, never large, is now held in 75 shares, of which each separate share is owned by three or four different persons. These were spoken of as quite ordinary cases; and it seems obvious that the number of the sharers will go on increasing under the Hindoo law up to the limit of starvation, especially if encouraged and fostered by unlimited separate accounts at the collectorate. The question cannot but occur to me; is it wise and politic to encourage this? Or even if it were wise and politic, how are any conceivable establishments to keep such an enormous mass of small separate accounts? In Sylhet there are already 70,000 different estates; and, as a specimen of the extent of subdivision, Mr. Glover, the collector, tells us of one estate which has already 150 recorded sharers and 800 unrecorded, who, if they think it worth while to pay the fees, may all get themselves recorded as soon as this Bill passes.

11. Now I am driven to believe that, before rushing at once into such a system of account as this Bill will bring upon us, it would be safer at all events to begin with some reasonable limit. If 50 rupees, as proposed by Lord Dalhousie, be considered too high (I confess I do not think it so), let a lower standard be taken. But in any case let the Act be tried first, as it were, on manageable terms; if it works easily, it can afterwards be at any time extended gradually as may seem fit. As at present drawn, it appears to me that the proposed law will, in the words of several of the revenue officers consulted, "swamp the collectors' offices."

12. It is certain that the present law discourages subdivision to a certain extent, and has assuredly a tendency to break up over-divided estates. I suppose that the Legislative Council are not likely to differ from me in the opinion that it is undesirable to extend a pauper proprietary, and will be willing, like myself, to avoid everything that may have a tendency unduly to encourage the "rabbit warren" system of land ownership.

13. Whether the plan of a limit be adopted or not, I would submit that it will be advisable to omit from Section XII. the direction to the collector to "institute summary inquiry into the fact of possession."

14. On this subject I desire to adopt the following observations by Mr. Theobald, which seem to me very worthy of notice. I would add that, under the system now enforced by the Board, no proprietor's name is now recorded by the collector until he has satisfied himself as to the fact of his possession.

"And upon these objections, when made, the collector is to institute a summary inquiry into the fact of possession.

"It has been remarked that recorded sharers have already established their title, and that they ought not to be put to the risk of a second inquiry, which will in many cases operate as an invitation and inducement to dispute and litigation on a title which never was questioned before; and following up these views it has been suggested that the applicant who proves by a reference to the collector's books that he is a recorded sharer, should *ipso facto* be entitled to have the separate account of his share opened.

"It is to be hoped that this suggestion will be adopted; but, if not, it is important to note what is the inquiry which the collector is to make as the Bill now stands. The inquiry is to be into the fact of possession. Such an inquiry would be a departure from the application.

The

The application refers to grounds of title; possession may or may not go with the title; the question, therefore, of the fact of title or truth of the application may be wholly different from the question of possession. If, indeed, unrecorded proprietors were to have the benefit of the Bill, there would be some reason for putting it on the ground of the fact of possession; but I can imagine none why this fact should be inquired into in the case of persons already recorded as having a title. Moreover, what shall constitute 'possession,' is not explained; there is no word in the whole vocabulary of the law which admits of a greater variety of application. Possession may be constructive, or direct and actual; by one's self, one's agent or servant, or constituted by facts which show an intention to possess, and merely no adverse claim to the possession by any other person. It has been common, I am informed, for European proprietors to have shares of zemindarees recorded in the names of their managers or servants. Who, in that case, the manager or the proprietor, is in possession? If the latter, is he to lose the benefit of the Bill by reason of his not being recorded, though in possession? One tenant in common may alone receive the rents and pay their shares to other tenants in common, or a manager appointed by one may be in possession, not for one, but for all. Who, in these cases, is in possession? A mortgagee of a share may be in the receipt of the rents, while the mortgagor is the recorded sharer. Is the recorded sharer not to have the benefit of this Bill, or is the possession of the mortgagee to be construed as his possession? This is but a small sample of the cases of no uncommon kind in which the result of an application must be extremely doubtful, if the right of the recorded sharer is to depend on the question of possession."

15. The next important alteration proposed by this Bill is that contained in section XV., which allows a zemindar to deposit money or Government securities with the collector, so that the amount of the interest in the securities may be used in liquidation of balances as they arise. I look upon this measure as one which may prove of considerable value and usefulness to absentee zemindars unable to find trustworthy agents, a very general condition of absentee zemindars in this country. I am uncertain, however, whether it be a real affair of the Government to transact agency of this kind for absentees. The provision may (like the institution of the Government agency now about to be abolished) have a tendency to raise the value of Government securities; but I doubt after all if it will be made much use of. If it should be largely made use of, it would seem as reasonable in this case as in the case of the Government agency, to empower the collector to charge an agency commission for drawing and applying interest on securities, the private property of individuals. On the whole, and speaking with much deference, I am not greatly in favour of this provision. The Government can now permit a zemindar to deposit cash or paper when it may think fit in peculiar cases, and did so in the case of the late Dwarkanath Tagore. I doubt if it be expedient to force the Government to do so in all cases.

16. I come now to the provisions regarding under-tenures, which are in every respect the most important parts of the Bill, and those demanding the most careful consideration. And first, of "ante-permanent settlement tenures," the subjects of the first and second clauses of Section XXXV. of the Bill.

17. As I view the case of these ante-settlement tenures, I am unable to divest myself of the opinion that the proposed change of the law will affect them very disadvantageously. I need hardly say that the present Sale Law (Act I. of 1845) gave to the holders of these tenures no new rights, when that Act declared that an auction purchaser of a zemindaree had no power to avoid or annul.

First, "Istemarree or Mokurruree tenures which were held at a fixed rent more than 12 years before the permanent settlement," and

Secondly, "Tenures existing at the time of settlement which have not been and may not be proved liable to increase of assessment on the grounds stated in Section LI., Regulation VIII., of 1793."

It declared only what had been the law ever since 1793. The rights of tenants of the two classes above-named were given at the same time with the rights conferred upon zemindars, and are coeval with the permanent settlement. They cannot, surely, be now infringed without injustice; and I would submit, that it cannot but be a very serious infringement of those rights to enact at this time of day, 60 years and more after the date of the law which constitutes their charter, that the status then given to them and declared to be as permanent as the permanent settlement, shall nevertheless now cease and determine altogether, unless the possessors of those rights shall, within three years, come in and register them before the collector, exposing themselves by that very process to an inevitable sequence of litigation, with all its difficulties and uncertainties such as they were most unlikely ever to have been in danger of under the existing law, except in the rare event of a sale of the zemindarees to which they belong.

18. If it were proposed to enact that, unless the zemindars of the permanent settlement should now come forward and register before the collector a number of particulars regarding their zemindarees, certain to provoke and produce a long chain of expensive and uncertain litigation not otherwise likely to arise; and that, failing such registration within three years, their estates should be deprived of the benefits of the permanent settlement, there would undoubtedly be an outcry against the proposition. Yet, unless I am under some great error in my view of the question, such a proposition would differ in principle very little, if at all, from that of the present Bill, as regards ante-settlement tenures. The rights annexed to these tenures are as old as those annexed to the zemindarees, and they were granted by

Appendix, No. 7. the same authority, in the same manner, and under the same sanctions. If then it would be unjust now to make registration a condition of the continuance of the permanent settlement as regards zemindarees, and of this no one can doubt, it must surely be equally unjust to make registration a condition of the continuance of the permanent rights guaranteed to the ante-settlement tenures by the law of the permanent settlement.

*Regulation XLIV, 1793, Sections VI. and VII.

19. The law of 1793, after declaring the power of cancelling and annulling under-tenures to be exercised by an auction purchaser of a zemindaree, says expressly, "Nothing contained in this Regulation shall be construed to authorise the assessment of any increase upon the lands of such dependent talookdars as were exempted from any increase of assessment at the forming of the decennial (permanent settlement, in virtue of the prohibition entered in Clause First, Section LI. Regulation VIII. 1793. The revenue payable by such dependent talookdars is declared fixed for ever."* How can any novel rule be now made a condition of this legally declared permanency? Yet this appears to me to be what is intended by the present Bill.

† Clause 7, Section XV., Regulation VII., 1799.

20. Nor is this all, for the present Bill proposes to annex to these tenures a new penalty for arrears of rent, such as they were never liable to before, and such as, to my apprehension, they seem to have been guaranteed against by former laws. According to former laws an ante-settlement tenure might be sold for an arrear of rent, † but it was sold with all its privileges intact; and while the purchaser succeeded to all the rights of the defaulter, the latter received (less the amount in arrear) the full benefit of the purchase-money.

21. But, under the law as now proposed, if an arrear, however small, should happen to be due, or can be made to appear as due, on the latest day fixed for the zemindar's payment to Government, every right and privilege attaching to the tenure is to be at once swept away, the tenure is to be no longer excepted from the operation of the ordinary power of an auction purchaser, and it may be avoided and annulled, and its holder ejected at the will of the new zemindar, just as if the holder were a tenant at will of yesterday, and as if the laws of 1793 and 1799 had never been enacted for his benefit.

22. It was said in favour of the registration provision, during one of the debates on the Bill, that to enable a tenant to register must be advantageous to him, "for every holder of an under-tenure was liable to answer to the regular suit of every successive purchaser of the parent estate, because every successive purchaser of the parent estate enters with all the rights of the person with whom the settlement was originally made, and by the force of those rights can put the holder of the oldest under-tenures to the proof."

23. To this I would desire to submit, by way of answer in the first place, that to enable a tenant to register is one thing, and to force him to register on pain of losing his rights on the occurrence of a zemindaree sale, is another. The latter is what the present Bill appears to do, and not merely the former.

24. In the second place, I would desire to observe, that successive actions against a tenant who has once succeeded in proving his title on a first action, seem very unlikely to take place; and, if they do take place, can harm only the plaintiff, and not the tenant with a decree in his pocket to produce against all comers.

25. Further, I would bring to notice that revenue sales are extremely rare, and therefore actions by auction purchasers to oust ante-settlement tenants rarer still. An ante-settlement tenant knows this and is content. But he knows, too, that not every one who has a right is able to prove it when brought into Court for that purpose. If such a misfortune as a sale of the zemindaree should occur, and be followed by an action to try his title, the ante-settlement tenant will do his best to defend himself, and will take his chance of success. But he will surely thank nobody for a law which (like this Bill) will drive him into court, sale or no sale, occasion or no occasion, will put him to a proof which, as the law now stands, he might perhaps never have been called on to produce; and which, whatever the ultimate result to the tenant, will create a litigation, and all the expense and harassment of a litigation, such as, but for the new law, might probably never have come to pass at all.

26. Lastly, I would remark that this Bill will, very probably, cause an innumerable quantity of false claims to establish a title under this class of tenure, to be supported by the usual amount of perjury and forgery, to the great detriment of the zemindar during the pendency of the claim, and occupying much of the time of the officers of Government in fruitless labour.

27. It is very probable that I may have mistaken the effect and meaning of the proposed alteration of the law, and that my objections may be therefore imaginary. But if I should be correct in my interpretation, I cannot but be excused for desiring that the provisions above noticed may receive further consideration before they are finally passed into law.

28. This much as to ante-settlement tenures. I will now speak of tenures created subsequent to the settlement, the provisions regarding which, in the third Clause of Section XXXV., and certain following sections, are perhaps the most remarkable in the whole Bill.

29. The object of the Bill has not been to save from the interference of auction purchasers all post-settlement under-tenures, but only such as are held liable to the payment of rents, sufficient to afford a fair proportion of the revenue assessed on the parent estate. Accord-

ingly

ingly it provides that tenures of any description, farms, talooks, putnees, howalahs, theekas, ijarehs, jotes, or by whatever other denomination in use in different districts, may all, after certain inquiries to be made by the collector as to the proportion of their rents to the zemindaree jumma, be registered; and, when registered, shall be for ever safe from the effects of a zemindaree sale.

30. It is, no doubt, a great and serious grievance that no man in these provinces can hold or take a tenancy of land under a zemindar without risk of its being annulled by the sale of the zemindaree itself. This risk is certainly much less than it used to be before the passing of Act I. of 1845, but it still exists; and while this is the case, there must be considerable standing difficulty in the way of agricultural improvement. Although, therefore, in the case of tenures now existing the risk was probably more or less considered when the bargain was made by the tenant, and therefore there may be some room for doubt as to the abstract justice of conferring, at the expense of the zemindar, what is in effect a large pecuniary value on these tenures, beyond what was ever contracted or paid for by the tenant, yet, in consideration of the general evil involved in the present insecurity of under-tenures, there seems to be at the present time a general consent of opinion that, in some way or other, the condition of post-settlement under-tenants ought, for the sake of the public weal, to be made more stable and secure; and to do this as far as possible is the purpose of all who are interested in the present Bill.

*31. I have, however, after much anxious consideration, arrived at the conviction that the method of attaining the object in view proposed by this Bill is open to very serious and, I incline to think, insuperable objections; and this I find to be the general opinion of the most intelligent and experienced officers who have been consulted.

32. It is well known that, in most parts of Bengal and Behar, whole districts are held in one form or another of under-tenure; the vast majority being post-settlement tenures. Within three years, if this Bill passes, applications will be made to register all these, and a great many more besides, that is to say, fictitious tenures, claims to which are certain to be made up for the occasion. As I read the Bill too, there is nothing to prevent any fixed-tenancy ryots, holding directly under the zemindar, from applying for registration; and, if so, the number of applications may be swelled by thousands. Almost every revenue officer who has considered the subject has assumed as incontrovertible, that in a great majority of instances, for any one tenant that may apply, the whole zemindaree to which it belongs must be measured, and its assets ascertained and compared, before the conditions of Section XXXVII. can be complied with. It has been endeavoured to prove to me, by a very able and experienced native friend, favourable to the present Bill, that this will not be necessary except in a small proportion of cases, which he was disposed to assume arbitrarily at 5 per cent. of the whole number of applications. I have not been able to agree in this opinion. But even supposing we are to undertake the operation of measuring and ascertaining the assets of as many zemindarees as may be concerned in 5 per cent. of the very numerous applications which will pour in, what a gigantic task to throw ourselves upon, utterly unprepared, as we are, for any such scale of operation!

33. Or let it even be supposed, which is the most favourable but surely most improbable supposition, that not one single zemindaree will have to be measured and valued in consequence of these applications: is it not quite certain that, at the least, a very large proportion of all the under-tenures for which application may be made will have to be measured and valued; and must not even this be, to any officer who knows practically what such operations involve, and what sort of instruments he has to employ upon them, a thing to be contemplated with the most serious apprehension?

34. Accordingly, we find the revenue officers for the most part speaking of the proposition as one of extreme difficulty and hazard. Mr. Ricketts, member of the Board, says "the ascertainment of the sufficiency to afford a fair proportion would be in many cases next to impracticable;" and again, "in large estates such an inquiry would be interminable." Mr. Dunbar, member of the Board, writes of Section XXXVII.: "It seems to me impracticable to carry out its provisions as they stand in the Bill. No collector could, by means of a summary investigation, satisfy himself that a new tenure has been created in good faith so far as the interests of Government are concerned, and that the rent payable by the holder is not less than is fully sufficient to afford a fair proportion of the revenue assessed on the parent estate. Nothing short of a detailed process similar to that employed in cases of Butwarrah, could give the collector the necessary assurance." Lastly, Mr. Dampier, member of the Board, says of Sections XXXVI. and XXXVII.: "These are the most important parts of the law, and I very much doubt if any summary inquiry could enable a collector to carry through the objects proposed by them." And further on, after approving of Mr. Ricketts' proposition that the registration of under-tenures should not ordinarily protect against the Government, he adds, "if otherwise, the inquiries would be impracticable and interminable."

35. These are the opinions of the members of the Board. Of the Commissioners, Messrs. Davidson, Steer, Young, Samuells, Grote, and Stainforth (now a member of the Board) are all against this part of the Bill; some of them expressing themselves in strong terms against it, while most of the collectors quoted by the Board object to this part of the Bill; besides several very capable and experienced deputy collectors, who look on the proposed provisions as in the highest degree difficult, if not, as one of them expresses it, "nearly impracticable."

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36. For myself, if the Bill should pass in its present shape, and if, as may surely be anticipated, a large number of under-tenants and self-styled under-tenants come forward for registration, I am unable to imagine how the plan will be carried into effect, except after a prodigious delay, and then, after all, with infinite hazard to the Government revenue.

37. For it is a part and, I apprehend, an inevitable part of the scheme, that "under-tenures, for the registration of which application shall be made within the prescribed time, shall, in case of the sale of the parent estate for arrears of revenue be protected pending the summary investigation of the collector" (Section XXXVIII.). But, where the applications are numerous, there is no saying how this may interfere with the collection of the Government revenue, or what confusion it may bring about. Even those revenue officers who do not think the plan impracticable, are mostly of opinion that it will take years to effect the necessary inquiries which are to be made by the collector. During all these years whole zemindarees, made up chiefly or entirely of "protected" under-tenures, many of them, of course, unreal and got up for the occasion to worry the zemindar, will be unsaleable for arrears, or, if sold, must be sold at far less than their real prices; for who would give the full price or who could tell the real value of a zemindaree, every foot of which was under a protracted investigation as to its under-tenures, including all the claims and counter claims, and boundary disputes and suits, and appeals and special appeals and frauds, and chicaneries of every description, inevitably consequent upon such an investigation, the cost of which must be incalculable, and the result far beyond the guessing powers of the acutest of human kind?

38. And let it be considered also what a prodigious and utterly unmanageable amount of hopeless litigation will, by the proceedings of the next three years, be thrown into our already inadequate and over-burthened civil courts.

39. I pass over for the present the immense litigation before the collectors, and the tens of thousands of "summary investigations" which everybody knows have an inveterate tendency to grow as long and tedious and complicated as the most "regular" investigations. I will pass over also the vast numbers of appeals from the so-called "summary" investigations of the collectors to the "summary" tribunal of the Commissioner, and thence, unquestionably, in very numerous cases, to the Board of Revenue in Calcutta. I pass over all this, though as all the under-tenants and self-styled under-tenants in the Lower Provinces must apply for investigation or lose their chance for ever, and as we have been told (*see Sale Law Debate of 22d December 1855*) that two-thirds of all the lands in Bengal are held in under-tenures, we may conceive what will be the flood of work poured upon the revenue officers by the operation of this Bill. But I am very desirous of calling attention to the necessarily large proportion of these many thousands of cases which, after passing through all the stages of summary litigation before the revenue courts, will eventually come, first as regular suits, and then in various forms of appeal, before the civil courts of the country, from the moonsiffs up to the sudder. It seems to me certain that the influx of litigation thus about to be caused will utterly choke and stifle the civil courts, and so produce inevitable delays and arrears, and all the enormous expense and other mischiefs therefrom invariably arising; and if this anticipation be correct, there will surely be an amount of hazard incurred by this part of the Bill far over-balancing all the good at which it aims, and this especially if it should appear that the essential end in view may be attained without hazard of any such dubious consequences.

40. Now I cannot but think that a slight modification of a plan suggested many years ago, and recently revived and adopted by Lord Dalhousie when Governor of Bengal, may be found, though perhaps not wholly free from objection, yet sufficient to ensure all or nearly all the essential objects of the present scheme without involving us in any of its greatest difficulties.

41. That plan was thus described by the honourable mover of the present Bill on the 22d December 1855: "That all under-tenures in an estate without exception or inquiry should be allowed to hold as good against an auction purchaser as they were against the former proprietor, as long as the parent estate should be saleable at a price that would cover the arrears of revenue due from it; but that, as soon as the parent estate should fail to be saleable at such a price, it should be forfeited to Government, and the whole of the post-settlement tenures should be annulled; whereupon Government should proceed to form a new settlement of the land."

42. Setting aside the unessential objection which in the debate quoted was taken to the plan of "forfeiture," an objection at once obviated by changing forfeiture to Government into purchase by Government, only two substantial objections could, it appears from the debate in question, be found to the plan proposed—one, that it would not ensure complete protection to honest under-tenants holding at fair rates; the other, that it would tend to cause the creation of fictitious tenures, and thereby diminish the value of estates. It may perhaps be found that the first objection is capable of being removed by an additional provision which will certainly improve the plan. The other objection may also, I think, be partially, but very sensibly obviated; and the residue of objection that will then remain will perhaps, when carefully examined, appear comparatively slight and inconsiderable, or, at all events, not comparable in weight and importance with the benefits of the plan on the one hand, or, on the other, with the much more formidable objections which, I cannot but think, beset the scheme of the present Bill.

43. It will be convenient in examining these two objections to invert their order, and treat, in the first place, of the second objection. This second objection was thus stated:— "If this measure (that is the measure proposed by Lord Dalhousie) were introduced, there was no doubt that it would open the way to fraud. There was no doubt that many zemindars would create benamie and other talooks in their estates at inadequate rents, or would pretend to have created such talooks. Their estates might be purchased by persons in ignorance of the fraud, who would ultimately discover that they had bought a losing concern, or a bag of lawsuits; and the consequence of frequent bad bargains of this sort would be that the auction value of all zemindarees, even of those in which no such frauds had been really committed, would be diminished. He had no doubt that such fictitious tenures would be created in many cases, and he believed that a general reduction of the value of zemindaree property would be the consequence."

44. Now I would submit that it might go a great way towards removing this objection to enact, regarding tenures created after the passing of the Act, that they should not in any case be valid after an auction sale unless registered. The registry would enable all interested persons to acquire perfect information as to the creation of new under-tenures, so that no auction purchases could hereafter take place "in ignorance of the fraud," but all would know exactly what they were going into; and then if any one should purchase a bag of lawsuits, it could only be because he was partial to lawsuits, and who then could say him nay?

45. And the further effect of this amendment might surely be, that any diminution of value of zemindarees that might be caused by the fraud of the zemindars would take place only as to the zemindarees in which the frauds had occurred, and would not necessarily or probably extend to others; and there would certainly be no need that we should trouble ourselves to mitigate to the fraudulent zemindar the obvious consequence of his own fraud, namely, the reduced price he would receive for his zemindaree when brought to auction sale.

46. But if any one should pursue this farther, and should say that these frauds would soon throw the zemindarees in which they had been committed into the hands of Government, I should reply unhesitatingly that this would be a positive good.

47. It has been matter of question whether the permanent fixing of the Government land revenue, which took place in the Lower Provinces under the administration of Lord Cornwallis, was or was not disadvantageous to the country; and plausible arguments have been advanced on both sides. But whatever be the sound judgment as to the question of permanently fixing the Government demand in the land, there has never been any room for doubt that the manner in which the permanent settlement was actually carried into effect was in the highest degree erroneous and objectionable. The intention of the permanent settlement was to recognise and confirm existing rights in the land, and to prevent encroachment on those rights for the future. The effect of the settlement was, however, to erect into landowners men who were mere tax collectors, and to give them almost unlimited power over all the old village proprietors; thus exposing to hazard a vast mass of long existing rights, and creating new and unknown rights of property where they had never been before. The consequences of this (which was quite distinct from the permanent fixing of the Government dues, and need by no means have accompanied that measure) have been deeply injurious to the great body of real proprietors whose rights were sacrificed on the occasion; and the bad consequences of the measure may be traced at the present day in many of the evils which penetrate into and vitiate so much of the constitution of our rural societies. The only chance of breaking any part of this system down (and every breach in it is a blessing to thousands) is through the purchase of zemindarees by Government at auction sales. Opportunities for such purchases occur indeed but rarely; but when they do present themselves, I would submit that they should never be neglected. Every zemindaree so purchased is a population redeemed and regenerated; and well would it be for Bengal and Behar if there were any prospect of such purchases on a far larger scale.

48. This much as regards the second objection to the scheme of the Government of Bengal. As to the first, it may, as I would submit for consideration, be fairly met and sufficiently obviated by providing, as it would I suppose be perfectly safe to provide, that the Government, after purchase of a zemindaree by auction sale, should be debarred from cancelling or enhancing the rent of any tenure which might be proved on Mofussil investigation to be honestly and adequately assessed. This would surely "give complete security to under-tenants holding under honest titles at fair rents," and would entirely prevent the possibility of the occurrence of the supposed case of the industrious and the idle talookdars put as an example in the speech of the honourable mover of the Bill already quoted, wherein the industrious talookdar was devoted to ruin under the Bengal scheme for the sole fault of his idle brother. I would submit that, with the amendment now suggested, which could produce no possible hazard to the Government revenue, industry would be as certain of its reward as in the celebrated pictures of Hogarth; and if so, the whole of this first objection would seem to be satisfactorily removed.

49. There is however, a question regarding post-settlement under-tenures which I have not seen adverted to in any of the debates or correspondence regarding this Bill, but which seems to me very worthy of consideration, namely, whether there are not some under-tenures which, far from encouraging agricultural improvement, are by their nature so ruinous

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and destructive to the public weal as to render it highly desirable to discourage them by all means in our power, and even to get rid of them as far as possible, instead of doing anything to encourage and perpetuate them. I mean those tenures which are extremely common in Bengal and Behar, and more particularly in Bengal, which convey a right of collecting a half or a fourth or any other share of the rents of a mehal or a division of a mehal or a village. There are numerous cases in which one "Khloodkasht ryot has to pay his little rent in shares to three or four or more talookdars, or other under-tenants of the zemindar; every sharer trying to get the most he can, and to over-reach his co-sharer, and the ryot being ground to powder between them all." This is notoriously one of the curses of the country, carrying with it the most bitter and ruinous consequences. In its present shape this Bill will tend to perpetuate the evils of this cruel system; but I would hope that it may, on further deliberation, be found practicable to take a different course.

50. In advocating the plan (with some amendments) of the Bengal Government, I am fortified by the strongly consenting opinion of Lord Dalhousie, and of some of the best informed and most experienced of the officers who have been consulted on the subject, besides that of at least one well-known non-official person who has given much attention to the matter, and is highly qualified to speak with authority regarding it.

51. To conclude, then, without affecting any accuracy of legislative expression, but merely as a means of more clearly explaining my sentiments, I would desire, on the subject of under-tenures, to legislate somewhat as follows:—

"The purchaser at a sale held under this Act shall acquire the estate, subject to all leases, assignments, or other incumbrances existing on the estate at the time of sale, with the following exceptions; that is to say, the said purchaser shall be entitled to avoid and annul all leases, assignments, and other incumbrances created subsequent to the passing of this Act, which may not have been duly registered within one month from the date of the deed constituting the incumbrance, and at least three months before the date of the sale; and the said purchaser shall also be entitled to annul and avoid all tenures created since the permanent settlement, whether before or after the passing of this Act, and whether registered or unregistered, the terms of which may entitle each of the holders thereof to collect a share of the rent of each ryot or other subordinate tenant within the tenure in question.

"When an estate is put up for sale under this Act for the recovery of arrears of revenue due thereon, if there be no bid, or if the highest bid be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the collector may purchase the estate on account of the Government, and the Government by such purchase shall acquire the estate free from all incumbrances which may have been imposed upon it subsequent to the time of settlement, and shall be entitled to avoid and annul all under-tenures, and to eject all under-tenants, with the following exceptions:—

"First. Istenrree or mokurrree tenures, which were held at a fixed rent more than twelve years before the permanent settlement.

"Secondly. Tenures existing at the time of the permanent settlement which have not been or may not be proved liable to increase of assessment, on the grounds stated in Section LI., Regulation VIII., of 1793.

"Thirdly. Any tenure created since the permanent settlement, the holder of which may be willing to enter into engagements to pay for the term of the tenure such a fixed rent as the Government may assess upon it, not exceeding in any case two-thirds of the total amount of the ascertained ryottee or mofussil assets comprised in the tenure.

"Provided that no tenure created since the passing of this Act shall be entitled to exemption from annulment under the preceding clause, unless the same were duly registered within one month from the date of the deed constituting the tenure, and at least three months before the date of the sale.

"Provided also that no tenure created since the permanent settlement shall be entitled to exemption from annulment under the third clause of this section, if it be a tenure the nature of which may entitle each of the holders thereof to collect a share of the rent of each ryot or other subordinate tenant within the tenure in question.

"Fourthly. Lands held at rents not less than the rent of good arable land in their neighbourhood whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk."

52. The law framed on this principle will, as I humbly incline to believe, subserve all the essential purposes of the Bill now under consideration, without, as it seems to me, incurring any of its most serious difficulties.

53. It will preserve all under-tenures intact in the event of ordinary sales for arrears of revenue, except in the rare case of a purchase by Government in default of other sufficient bidders; and even in that event, it will assign a limit to the power acquired by Government, which will ensure the stability of all tenures held at fair rents, without in any degree hazarding the Government interests. It will cause no new measurements or mofussil inquiries, because, when an estate is bought by Government, a mofussil inquiry must necessarily take place; and this inquiry, which would at all events be made, will disclose all the facts required for the security of the tenant as well as for the security of Government. It will

will occasion no increase of litigation, but, on the contrary, immensely diminish it. For on the one hand, it will cut off all that large class of lawsuits which now occur after a sale between the auction purchaser and parties claiming rights of permanent under-tenancy, and, on the other, it will send tenants to court against the Government or Government against tenants only in those rare and scarcely supposable cases in which the Government, after a purchase and a measurement, may be unwilling to comply with the provisions of the law in favour of under-tenants holding or willing to hold on rents proved by Mofussil investigation to be fair and adequate.

54. The plan proposed will, as I humbly conceive, give to all *bond fide* tenants as complete security and stability as they are capable of receiving, nor can I foresee any strong objection to it, but that it will allow a zemindar to create fictitious under-tenures for his own benefit. If, however, these tenures be created at adequate rents, there is no reason that I am aware of why they should not be upheld as well as any other fairly rented tenures. If they be created at inadequate rents, they will be invalid against a purchaser unless registered; and if registered, all the facts regarding them will be known and capable of examination by all interested persons, so that no one need be ignorant of their existence, or, with moderate care, of their real nature, before he attempts to bid for the estate.

55. If a zemindar should create a large number of inadequate tenures fraudulently, the value of his estate will fall, and he will suffer in proportion to his frauds. If the frauds have been extensive, the estate will soon become the property of Government by a transfer, which, happen when it will, can rarely be anything but advantageous to the prosperity and social advancement of every fair tenant and every honest ryot on the estate.

56. There is yet, as I am disposed to believe, one more advantage connected with this plan, which, if I do not deceive myself, is an advantage of no small importance. If it should hereafter be determined to legislate in like manner for subordinate tenants after the sale of a superior under-tenancy, such as a putnee-talook and the like, this plan is capable of being applied to them with comparative ease and simplicity. I have expressed my grave doubts whether the plan proposed by the Bill be practicable as regards tenures immediately under the zemindar; but I shall not be accused of over-hasty assertion, if I declare my opinion that there can be no doubt as to the impossibility of applying the plan of the Bill to the cases of subordinate tenures (whose name is legion) under superior under-tenancies. The inquiries needful for so applying it could never surely be carried on by Government agency, and to throw them into the hands of private zemindars is never likely to be proposed as a safe and practicable measure of legislation.

57. With these observations, I would now submit the papers for the consideration of the Legislative Council.

(signed) *F. J. Halliday.*

Malda, 2 September 1856.

Mr. RICKETTS' MINUTE on the Sale Law Improvement Bill.

Section XII.—The orders of the collector under this section are made appealable to the higher revenue authorities in regular course, and are also made subject to reversal or alteration by the civil courts; I would not have any appeal beyond the collector. The inquiries under the section are as to the possession of a party, and as to the amount of jumma payable, should either be contested by another sharer. One decision in the revenue courts will be quite sufficient. I should be inclined to allow no appeal to the collector from the decision of his deputy, but it may be well for the present to admit the interference of the collector to the extent to which he can exercise it in other departments of his office.

Section XV.—I can see no objections to the provisions of this section. It certainly provides for redemption of the land-tax, and in the manner proposed I see no reason why the tax should not be redeemed. It is not probable that many will take advantage of the rule, and if it were probable, still I would have the rule. It is not intended to decrease the resources of posterity, while the redemption will have the effect in promoting improvement of a complete exemption from all liability to the State, the resources of posterity will be in no way affected by the transaction. The existence of the debt, and the necessity for paying the interest thereof, are facts. The transaction will be equivalent to redemption of the land-tax for a money payment at 25 years' purchase, and the immediate application of the money to the liquidation of so much of the debt; supposing the debt to be extinguished by redemption, or in other words, supposing all the public securities in existence to be deposited under the Act, I do not see how posterity could suffer; there would be less land revenue to receive, but there would be no interest to pay. I do not see that the condition of the country would be improved in many respects. Imagine Bengal with no collectors' offices, no last days of payment, with all their griefs and anxieties, no settlements with "unfortunate" over-assessments, no turning out escorts for treasure at unreasonable times, all the cost of collectors' and deputy collectors' establishments, guards, &c. &c. saved and laid out in improving the courts and the police. I can see no object in the land tax, except to meet State expenditure. Unless it be denied that the landed interest would prosper more without the tax than with its payment of debt by redemption of tax would be advantageous.

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Section XXXV., Clause 2.—It will be necessary on the part of Government to watch closely applications for registry of tenures under clauses 1 and 2; otherwise, by means of fictitious cases, the Government revenue might be very injuriously affected.

The wives, brothers, and cousins of the zemindars will be put forward to claim the registry of talooks as not being liable to enhancement; the zemindar will consent to registry, or, in order to prevent suspicion of fraud, will defend the case sufficiently to give a fair colour to the transaction; and the registry of many talooks at inadequate jummas having been effected, the estate will be allowed to fall into balance, and will ultimately come into the hands of the Government with all the talooks secured by registry. It is provided that, at any time within 60 years, fraudulent registry may be set aside on fraud being proved at the suit of Government in the civil court; but the difficulty of such proofs after years have passed will be excessive, and such litigation is to be avoided if possible. I would have two classes of such cases; one merely between the parties, and not affecting the right of Government to increased assessment in case of Khas management—the other class to be special, the interest of Government in opposition to the registry to be considered, and the collector's order in favour of registry to be subject to the confirmation of the Commissioner. I would add the two clauses underwritten to section XXXVI.

“ Provided always that if it be intended that registry of a tenure of the first or second class shall protect the tenure against a re-settlement, on the part of the Government, in the event of the estate at any time coming into the possession of Government by purchase, under section XLVII. of this Act, such intentions shall be distinctly set forth in the application, which shall be styled applications for special registry; and in such cases registry shall not be allowed without the sanction of the Commissioner on the report of the collector if that officer decide in favour of registry; or on the appeal of one of the parties if the order of the collector be against registry.”

“ Any party dissatisfied with the award of the Commissioner may, within one year from the date of the award, institute a suit in the civil court for the reversal of the same, and the Government shall be made a party to such suit.”

Section XXXVII.—As concerns the Government, this is the most important section of the Act. It is in some respects in accordance with the principles I have before advocated, but I think there would be practically great difficulty in carrying it into effect as it stands. On a party applying for the registry of a new under-tenure created at any time since the settlement, the collector “ is to satisfy himself, that the rent to be paid by the proprietor of the under-tenure is fully sufficient to afford a fair proportion of the revenue assessed on the parent estate.” The ascertainment of this sufficiency to afford a fair proportion would be in many cases next to impracticable.

According to the wording of the draft the collector would have to ascertain that the rent of the tenure was fair—fair with reference to the revenue assessed on the whole estate, that is proportionate, not disproportioned to the burthen to be borne by the remaining lands of the estate.

Of course this can only be determined after ascertainment of the rent of the tenure, and the rent of the remainder of the zemindaree. In order to comparison both must be determined. In large estates such an inquiry would be interminable. Take, for instance, Burdwan; an under-tenure held under the Rajah of Burdwan could not be registered under the Act, until the rental of the whole of the Burdwan Raj had been ascertained.

I would abandon all endeavour to ascertain what would be the proportionate, the fair rental compared with the whole rental of the estate, and confine inquiries to ascertaining that the rental fixed on the tenure to be registered is suitable. If the lands are in the hands of ryots, under ordinary circumstances the rent should be about 50 per cent. on the ryottee rental. If the land is to be held immediately by the lessee without the intervention of any ryots, the rent should be about 30 per cent. of the gross proceeds. When circumstances are peculiar, special inquiry and special terms of registry will be needful.

By these means the interests of the State may be sufficiently protected in the event of the estate coming into the hands of the Government, and the tedious and expensive process of comparison will be avoided.

But, unless the parties desire that the registry should be good against Government as well as any other auction purchaser, I cannot see the necessity of inquiry. Indeed, in practice, I feel assured it would make the law a dead letter, and deprive those who have urged the enactment of this law of the very thing which they have all along been seeking.

Under the Act, as drafted, no under-tenure could be created and registered without the approval of a revenue officer of the Government. A zemindar may desire to raise money by letting a village for a term of years at a light rental, receiving a sum of money down for the lease; a zemindar may desire to borrow money and to make over a village to the lender for 20 years, the debt to be paid from the usufruct; a zemindar may desire to make over a village to a younger brother to be held by him free of all payments for his life; a zemindar may desire to give to a party a block of jungle on a lease for 80 years to be held rent free for the first 20, and then to pay a light assessment; a zemindar may desire to lease a swamp for 50 years, receiving no rent on condition that the farmer lays out a certain sum on embankments; or, as in the case of Mr. Mackenzie, which first led to the agitation of this question, a zemindar may desire to lease a quantity of poor land for the planting of date trees for a long term of years at a very low rate. No such tenures could be registered under the law; but it is, I conceive, in every point of view desirable that such transactions should be protected, and it was for the purpose of

of procuring protection for such transactions that the agitation of this question was commenced.

The Government could not by any possibility suffer from such transactions, if the registry is merely to be good against auction purchasers other than the Government; and the country at large must benefit from them, for they are indispensable to confidence, without which capital will not be expended; and if it is desired that such transactions should stand in case of purchase by Government, there would be no difficulty in devising conditions of registry combining all necessary security for the Government, with all necessary security for the lessee.

The most noble the Governor-general, in his minute of the 21st October 1852, writes, "The case in which the Government becomes the purchaser of an estate in the absence of any other bidders is so distinct from the case in which a purchaser is found in the market, that I am surprised to find there are objections to the provision that the Government, when so purchasing, shall have the power of invalidating some of the under-tenures which ordinary purchasers are not to have." I desire to maintain this distinction; but provided the terms of registry are made suitable to the condition and circumstances of the tenure to be registered, I can hardly imagine a case in which it could be necessary for the Government to object to registry.

If a zemindar having given a village to be held at a pepper-corn rent after receiving a price for such lease, defaults, I see no reason why the purchaser at a sale should have any more right to annul that lease than a private purchaser would have had. If it be registered, the purchaser knows what there is left to buy, and he will bid accordingly. To annul such leases when the purchaser is not the Government is wantonly to injure the owners of such tenures, and through them to injure the country. To annul such tenures when Government may be the purchaser is, provided the tenures were registered, unjust to no one, for all parties made the bargain by which the tenures were created with full knowledge that such would be the case; and, though injurious to the country, not so injurious as would be the permanent diminution of resources, if such tenures were as a rule to stand.

But when demanded (which I believe would be very rarely the case, for nearly all would be content with security against the effect of ordinary sales) I would have inquiry made such as I have proposed above, and allow registry with protection against purchase by Government in perpetuity, or for a limited number of years, according to the circumstances of each case.

In the minute I have before quoted, the Governor-general remarked: "I conceive that a perpetual lease for any agricultural purpose can hardly be desirable." In Mr. Mackenzie's case in all probability it would suffice to give protection against auction purchasers other than the Government. If he did desire protection against a Government purchase, may be, he would be entirely satisfied with a guarantee for 50 years, and I think such a limited guarantee would be suited to the case. The land he would take, though poor, is capable of being made exceedingly profitable. I would allow guarantee sufficient to ensure to him full return on the capital expended; but I see no reason why the Government should deprive itself of the power of benefiting from the improved condition of the country when such return has been completed. I would not therefore give a guarantee in perpetuity.

In a word, I would have no inquiry as to assets and fair proportionate rental when registry is to be good against other purchasers than the Government only; I would have buyers and sellers, owners, and farmers, zemindars and tehsildars, without any hinderance, make such bargains as they considered most conducive to their interests; but I would insist on registry, with particulars sufficient to show the exact extent to which the proceeds of the estate had been alienated, so that purchasers should know what there was left to buy. When registry has to stand against the Government, then I would have inquiry made as to the extent to which the interests of the Government would be affected by the registry, and forbid it or permit it to be made with guarantee for 20 years, or 50 years, or 99, or in perpetuity, with reference to the circumstances of each case.

The draft makes the collector's orders under sections XXXVI. and XXXVII. open to appeal to the superior revenue authorities in usual course, and subject to suit in court, if instituted within one year of the collector's decision. When registry is to affect the interests of the Government, that is, to guarantee the stability of the tenure, notwithstanding purchase by Government, I would have the registry confirmed by the Commissioner. Without this the collector's order would be practically final. In the cases in which the Government might suffer most, no one would appeal or resort to the civil court. I would not in any case allow appeal to the Board of Revenue.

I would substitute the following for clauses 2 and 3, section XXXVII. of the Draft:—

"There shall be two sorts of registry of tenures of the 3d class, ordinary and special; ordinary where a tenure shall be secured against auction purchasers other than the Government; special whereby a tenure shall be secured against Government also."

"If the application be for ordinary registry, the provisions of clause 2, section XXXVI. shall be held applicable."

"If the application be for special registry, in addition to the process prescribed in clause 2, the collector shall institute inquiries with a view to the security of the public revenue. He shall ascertain the extent and capabilities of the tenure to be registered, and satisfy himself that the rent assessed in the tenure is not inadequate, or such as would

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deprive the Government of its just dues in the event of the zemindaree interest lapsing to the Government under section XLVII. of this Act. Having made all necessary inquiries, the collector shall reject the application for special registry, or sanction special registry with guarantee against re-settlement for 25 years, or for 50 years, or for 99 years, or in perpetuity, as he may consider suitable, and shall submit his proceedings for the sanction of the Commissioner whose order on the collector's report or on appeal, should either party appeal, shall be final."

Section XXXIX.—I would have no appeal to the Commissioner in cases in which the Government has no interest at stake. Under clause 2, section XXXVI. any party dissatisfied with the collector's award may institute a suit in the civil court within a year. As the draft stands, one party might appeal to the Commissioner and the other might take the case into court. It cannot I think be desirable to have two or three decisions in the revenue courts, and afterwards two or three decisions in the civil courts. Practically, many of these cases will be disposed of by deputy collectors, and I would not allow of any appeal by right to the collector, much less from the collector to the Commissioner.

In cases of registry in which the Government has an interest, and which consequently partake of the character of administrative cases, I have provided for appeal to the Commissioner, but I would not allow a further appeal to the Board even in these cases. The interests of the Government may I think be trusted to the Commissioners; other parties have the civil courts open to them.

Section XL.—The wording of this section is extremely obscure.

Section XXXV., Clause 4.—I conclude the intention is that rent shall be levied, after notice, under Regulation V. of 1812, equal to the rent of good arable land. If such is the intention, it should be more clearly expressed; but rent of "good arable land" is too indefinite. Good arable land in Assam pays four annas per beegah, in some villages of Bengal good arable land pays 24 rupees per beegah. I would add the words "in the village provided that in no case shall increased rent levied under this section exceed three rupees and eight annas per beegah of 14,400 feet."

(signed) *H. Ricketts.*

MR. DUNBAR'S MINUTE ON THE SALE LAW IMPROVEMENT BILL.

THERE is much in the proposed law to recommend it, and legislation on some of the new subjects introduced is very desirable, indeed I might perhaps more properly say, indispensable, but on these points in particular I doubt the practicability of carrying it out as it stands. The nature of these doubts will be gathered from my remarks on those sections which appear to me to require amendment.

Section IX.—This section provides that any party in a suit pending before a court of justice for possession of the estate or any part thereof, may deposit the amount of the arrear of the revenue before sunset of the latest day of payment, and may thereupon be ordered by the said court to be put into temporary possession, under security; I think the law should declare him entitled to recover the amount of the deposit, with or without interest as the court may direct, not from the proprietor of the estate, as laid down in the Bill, but from the estate itself, which should be restored to the defaulting proprietor after repayment in full, according to accounts passed and approved by the Court.

Sections X., XI., and XII.—Section XI. provides that a recorded sharer of a joint estate, whose share consists of a specific portion of the land of the estate may apply for leave to pay his share of the Government revenue separately; and section XII. provides that, in such a case, summary inquiry shall be made should objections be raised as to the amount of jumma payable by such portion, the point of inquiry being whether the jumma is or is not that which has been (previously) recognised by the other sharers. In such a case the estate is joint, but the tenancy separate. It may frequently happen that a party will be found in possession, and that the specific lands have for some time paid a fixed and recognised jumma; but it may also be clear beyond question that such jumma bears no fair proportion to that which is left to be discharged by the remainder of the estate. The propriety of legalising such payments upon such grounds appears to me extremely questionable. To receive payment according to a man's interest in a joint estate, as provided for in section X., is fair and reasonable; but I think it is going too far to direct the acceptance of a jumma, on a specific portion of a joint estate, often arbitrarily fixed without any reference whatever to the assets of that portion and of the rest of the estate.

Parties in the position supposed in section XI. should be left to disconnect themselves from their co-sharers by the usual Butwarrah process. I should strike out section XI. altogether, and remodel section XII. so as to provide only for cases under section X.

Sections XV. and XVI.—I heartily approve of this new provision. It will be a great encouragement to English capitalists to invest money in the purchase of land in this country.

Section XVII.—I concur in the propriety of the protection given to estates under the management of the court of wards; but I am disposed to doubt whether the privilege proposed

posed to be conferred on minors of whose property the court of wards has not assumed the management under the provisions of Regulation VI. of 1822, is necessary. Assumption of management of the property of minors is the rule, and exemption should be given only under circumstances which render interference unnecessary and unadvisable; one of these should be due security for the payment of the Government revenue. To allow the revenue of the minor's estate to remain outstanding, during the whole period of his minority, might frequently be to do him an irreparable injury. Estates of which the court of wards do not take charge under Regulation VI. of 1822, are usually insignificant and of little profit, and the balances accruing during a minority, might sometimes be much more than the property would fetch.

Section XXIII, line 20.—Supposing the price bid by a defaulting bidder to have been more than the arrear for which the estate was sold, it seems scarcely fair, in addition to the forfeit of his deposit, to make him answerable for the whole difference between his bid, and the price eventually obtained. I think it would be sufficient to make him responsible for any part of the arrear which might yet remain due after a conclusive sale. Forfeiture of a 25 per cent. deposit, and this contingent further responsibility are quite enough to keep off collusive or reckless bidders. Default would probably be the consequence of inability arising from no dishonesty of purpose. In such a case, if Government secures its own demand, I do not see why it should go beyond that to enable the defaulting proprietor to compel the defaulting bidder to make him a present.

Section XXIX.—There is one condition of restoration to possession in this section which appears scarcely just. A party may obtain a decree annulling a sale, but he is not to be put in possession "until any amount of surplus purchase-money that may have been paid away by order of a civil court be repaid by him with interest at the highest current rate of Government securities," as by a subsequent section (XXXIII.) it is provided that no person shall be entitled to contest the legality of a sale, after having received any portion of the purchase-money: the repayment here provided for must of course refer to payments made to other parties. I do not see on what principle they should be chargeable to a party who in no way benefited by them, or why they should be allowed to affect his right under a decree which must be grounded on considerations of an entirely different character.

Section XXXIII. Proviso.—I think it is desirable that the acts or omissions pointed out in this proviso should be more distinctly specified. Left as it now stands, I fear it may give rise to unpleasant and very inconvenient difficulties.

Section XXXV. Exception fourth, line 55.—The fixed rent here spoken of should be declared to be of good arable land "in that locality."

Section XXXVI.—The purpose of these rules is extremely good, but I much doubt their sufficiency; they apply to old talookdaree tenures, many of which are of great value. It will be an easy enough matter for the person desiring to register to give all the particulars required to be set forth in the application; but I confess I have no hope that the grave questions which these applications must inevitably give rise to can be disposed of satisfactorily by summary investigation and award. If the proprietor objects to the area of land said to be comprised in the tenure, to the boundaries, to the rent and cesses, and the duties incident to it, unless these points are all clearly and distinctly laid down in the deed by which the tenure was originally constituted, or clearly omitted in some other document, it is quite impossible for any officer to give an award with any just confidence that he is right.

As registration is to give full protection to such tenures in cases of sales of entire estates for arrears of revenue, I am clearly of opinion that it should be made dependent on the result of an investigation of a more careful and extended character, or on the establishment of the claim in the civil court.

Section XXXVII.—This section calls for the most careful and deliberate consideration. It seems to me impracticable to carry out its provisions as they stand in the Bill; no collector could, by means of a summary investigation, satisfy himself that a new tenure has been created in good faith, so far as the interests of the Government revenue are concerned, and that the rent payable by the holder is not less than is fully sufficient to afford a fair proportion of the revenue assessed upon the parent estate. Nothing short of a detailed process, similar to that employed in cases of butwarrah, could give the collector the necessary assurance. The remarks of Mr. Ricketts upon this section appear to me very much to the point. I beg to make special reference to them, and to state that they have my general concurrence.

Section XXXIX.—I would allow appeal to the Commissioner, but to the Board only on special grounds.

Section XLIII.—If a proprietor is *bonâ fide* sold out, and subsequently acquires the means of buying the estate, as in the case of patrimonial property he may naturally wish to do, it seems hard that he should not come in on precisely the same terms as anyone else. If the person from whom he purchases has acquired the estate without encumbrances, I do not see how it could be made subject to them again.

25 April 1856.

(signed) J. Dunbar.

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Mr. DAMPIER'S MINUTE on the Sale Law Improvement Bill.

THE intent of the proposed law is very good, and I have known so much injustice done and distress occasioned by the system of selling entire ijmaltee estates for the arrears due by single shareholders, and the not affording protection to those who were willing and ready to act in good faith as to their proportion of the Government revenue, as well as by the avoidance of nearly all newly created under-tenures in estates sold for arrears of revenue, that I am glad to see a law proposed which may, I think, with a few alterations in detail, remedy the evils and insecurity so generally complained of.

My colleagues have remarked on the law in detail, and although I generally concur with them, I should wish to add a few remarks.

Sections X., XI., and XII.—I do not anticipate any great difficulties in carrying out the provisions of these sections, nor do I think that the interests of the Government are at all likely to suffer from their enforcement. There is always so much jealousy amongst ijmaltee shareholders, so many discordant interests are to be consulted, and almost always some of the shareholders are found to be adverse to the separation of the others from the joint property, that the collector might always be certain to have objections on claims preferred which would enable him to check or detect any attempted frauds on co-sharers or the Government. I do not look forward to any of the evils from section XI. which I see Mr. Dunbar thinks may arise from such part of the law. In the districts where the survey has been completed those records will materially aid the collector in coming to a decision; and although, as Mr. Dunbar states, the jumma on the specific portion may be arbitrarily fixed, so long as it has a fair proportion with regard to its extent and proceeds to the jumma of the entire estate, no injury can be done by admitting the possessor to a separate account. The collector has, I presume, the power of rejecting such a claim. The collector's inquiries are confined to the possession of the alleged portion of the estate by the applicant; I would therefore have his order open to revision by the civil court, as in dakhil kharij cases.

Sections XV. and XVI. have my fullest concurrence, and I hope extensive use may be made of their provisions.

Section XVII.—I think it might be advisable to adhere to the provisions of Section IV., Regulation VI. of 1822. Under the proposed enactment an accumulation of arrears might accrue to the ruin of the minor on his coming of age.

Section XXIII.—I would not allow the defaulting proprietor more than one option of recovering his estate by the payment of his arrear in case of the default of the purchaser or purchasers.

Section XXXI.—By whom is the interest to be paid? I suppose by the Government, as the sale can only be annulled for non-observance of the provisions of the Act by section XXIV., or, in cases of peculiar hardship under section XXV.

Section XXXV.—I concur with Mr. Ricketts, the wording should be "good arable land within the village, or in the vicinity of the village."

Sections XXXVI. and XXXVII.—These are the most important parts of the law; and I very much doubt if any summary inquiry could enable a collector to carry through the objects proposed by them; and I agree generally with Mr. Ricketts that it would be advisable to make such registration protective against all auction purchasers, excepting the Government; and I would have the collector, previous to the sale of any estate, have the books of the registry in a place where all would inspect them of each estate, so that intending purchasers might ascertain the number and rentals of the protected properties. If the registers are not to be protective against the Government, I think that the necessary inquiries based on Mr. Ricketts' calculations might be conducted without much difficulty, according to Regulations VII. of 1822 and IX. of 1825. If otherwise, the inquiries would be interminable and impracticable, though section XLVII. limits the cases in which the Government may purchase.

Section XXXIX.—If Mr. Ricketts' modifications are adopted, appeals to the Board of Revenue should only be admitted on special grounds, which is the practice now in settlements.

Section XLIII.—The provisions of this section are, I think, necessary to prevent collusion and fraud.

See Section III.,
Act I., of 1846.

I wish to add one more remark: Is it the intent of section III., which says that estates in arrear in default of payment shall be sold by auction to the highest bidder, to bar any other mode of realizing arrears in the permanently settled districts, and thus rescind by inference, though not in direct words, Section IV., Regulation I. of 1801? as, if so, the revenue in Sylhet will fall into balances. The collector reports, that by means of that section alone he is able to realize it in the small tenures of that zillah.

1 May 1856.

(signed) W. Dampier.

From the Officiating Secretary to the Board of Revenue, Lower Provinces, to the Secretary to the Government of Bengal, No. 248, dated Fort William, the 25th June 1856.

Sir,

In continuation of my letters noted in the margin, upon the subject of the proposed new law regarding the sale of estates for arrears of revenue, I am directed to submit the following additional remarks for the consideration of the Lieutenant-governor.

2. The subject has been touched upon in the minutes of Messrs. Dunbar and Dampier; but as Mr. Stainforth entirely agrees in opinion with the other members of the Board, and as he has had much experience in the district to which these remarks principally apply, the Board think it right to bring the subject again and prominently to the notice of his honour.

3. The immense number of the estates on the rent-roll of the district of Sylhet, and the very small jumma they generally bear, has rendered it necessary for the local authorities to collect the revenue, partly by distraint and sale of personal property of defaulters, under the provisions of Section IV., Regulation I. of 1801; and the annexed statement will serve to show the extent to which recourse has been had to the Regulation in question. This practice was continued in 1845, after the passing of Act I. of that year under the sanction of the then Board, and the majority of the present Board consider it to be legal, and such is also the opinion of the late legal remembrancer, Mr. C. Trevor. Mr. Dunbar has doubts upon the point of legality consequent upon the passing of Act I. of 1845.

4. The Board, however, are unanimous in considering that such a provision is indispensably necessary, in a district like Sylhet, to the due collection of the Government Revenue, and they are of opinion that it should be distinctly re-enacted in the new law. They do not, however, consider it necessary that the express sanction of the Board of Revenue should be applied for in every instance with a full report of the circumstances under which recourse to distraint is considered necessary, as Section IV., Regulation I. of 1801 contemplates; but they think a general power should be given to the Board of Revenue to invest such collectors as they considered proper, with the power of distraining the personal property of revenue defaulters before bringing the estates in balance to sale.

I have, &c.
(signed) E. T. Trevor,
Officiating Secretary.

Land Revenue.
J. Dunbar, esq.,
W. Dampier, esq.,
and H. Stainforth,
esq.
No. 229, dated 13th
instant.
No. 235, dated 20th
instant.

Number of Estates in respect of which the Collector acted on the special Authority of Board.	Sudder Jumma of Estates in foregoing Column.	Average Number of Estates per Annum in respect of which Collector acted, &c. &c.	Sudder Jumma of Estates in foregoing Column.	Average Number of Estates in each Kist (3 in Sylhet) in respect of which &c. &c.	Sudder Jumma of Estates in foregoing Column.
1,49,575	1,96,680	14,952	19,668	4,985	6,556

From the Commissioner of Revenue for the 12th or Bhaugulpore Division, to the Secretary to the Board of Revenue Lower Provinces, Fort William, No. —, dated 4 June 1856.

Sir,

I beg to acknowledge your Miscellaneous Circular, No. 2, dated the 26th of February last, and to submit, annexed, for the consideration of the Board, the reports on the Bill of a new Sale Law received from the collectors in this division.

2. The two chief alterations of the law proposed in the Bill consist in the protection it offers to sharers who pay their quotas of the revenue, and the confirmation of the under-tenures mentioned in class 3 of the exceptions in section XXXV.

3. The former of these measures seems to me calculated to afford some very desirable relief to co-sharers with perfect safety to the revenue of the State. Moreover it will be beneficial to the ryots, as clearing up, in cases on which it takes effect, all doubt regarding the person entitled to receive rent for them, and as tending to check the evil of under-tenures which spring up in some districts as irrepressibly as weeds on the land.

4. Section X. is well calculated to afford relief to sharers in whole estates; but the great majority of proprietors, where sub-division has taken place, are sharers in mouzas or component parts of estates; and as the jumma of mouzas has not been apportioned, it will be impossible to assign shares of jumma in such cases proportioned to the jumma on the whole estate.

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5. The consequence will of course be opposition to the vast majority of applications for separate accounts in shares in component parts of estates; provided that the fact of such applications having been made becomes known to co-sharers, and there is time for opposition; and the result must be that most of the applicants will be referred to the Civil Court.

6. A law for the apportioning the jumma of mouzas seems a necessary preliminary to carry out fully the objects of section X. and very desirable. No objection to such a measure would be consistent with our present laws, for such apportionment can be claimed under the Butwarrah law.

7. If sections X., XI., XII., and XIII. are to be enacted as they are in the Bill, there seems reason to anticipate that proprietors will frequently sell small shares of land with large shares of jumma, and thus compel co-sharers either to allow property larger and more valuable than that which the fraudulent sharer has reserved, to be sold for arrears of revenue, or to pay those arrears, and he make good in future the jumma unfairly apportioned.

8. It is quite possible, in spite of the precautions prescribed in section X, that co-sharers may be ignorant of applications for separations of accounts, or they may be away from home, or struck with sore sickness, or prevented by some cause equally potent from appearing within the time allowed.

9. Some check might be given to the separation of accounts without the knowledge of co-sharers by doubling the time allowed for objection; but this remedy might be very injurious to the honest applicant, and I can devise no better check than that of allowing closure of any account which may appear to have been opened unfairly at any time within one year from the date on which it was opened.

10. The second great alteration proposed by the Bill is that of recognizing and confirming under-tenures which the present law declares annulled by sale for arrears of revenue.

11. The two interests chiefly to be regarded by the Legislature in the amendment of the Sale Law are, I apprehend, indisputably that of the great mass of the people, and that of the State which is necessary to control and protect it. To these all other interests seem of secondary importance, and should apparently be so treated.

12. It does not, however, appear to me that the importation of the third class of exceptions in section XXXV. into the Sale Law is consistent with due observance of this principle. It will render purchasers of shares of estates, the least exceptionable tenures as regards the State and the cultivators of the soil, less frequent; and it will make room for numerous gradations of idle middlemen, placing over the actual cultivators of the soil superiors, whose divided resources diminishing with their increasing numbers (vide Maltus), will allow them to afford no assistance when crops are poor, and must be equally apt to fail in furnishing the funds necessary to make the Malgoozar to discharge the public revenue; so that, as regards the ryots and the State, encouragement of these tenures seems to be much to be deprecated.

13. Again, the network of under-tenures, with which the Bill promises to cover the land, seems a texture of injustice to co-sharers, who will be compelled either to allow their own shares to be hammered away at sales, or to purchase others in which their wasteful co-partners have created sub-tenures, leaving them no profit adequate to the price they have been forced, under the alternative above mentioned, to pay.

14. Under-tenants, too, are very apt to combine in order to exclude those who purchase their rights, and this has a strong tendency to prevent realization of the Malgoozar's dues, and to throw estates, where section XLVII., restricting the power in section XXXVI., Regulation XI. of 1822, tacitly admits they ought not to be unnecessarily thrown, that is, on the hands of Government.

15. Under these considerations I am adverse to the confirmation which class 3 of the exceptions in section XXXV. would give to under-tenures. I approve highly of the encouragement the Bill holds out to the purchase of shares of estates; but for this very reason, among the others which I have stated, I deprecate strongly the propagation of under-tenures, which are at present unknown in some districts, as jeopardizing the stability of the revenue, as discouraging economy in co-sharers, as producing complication, fraud, and litigation, as dangerous to the zemindar, and as sinking the ryot to the lowest ebb of helpless and hopeless poverty.

16. It seems to me quite impracticable to carry out the directions at page 26 of the Bill. Ameens cannot be trusted in such matters, and if the collector can do the work therein cut out for him, he must either be a very complying officer, or be endowed with supernatural knowledge and power.

17. With these remarks on the two principal points of the Bill, which I am well aware do little justice to the important subject, I proceed to offer a few remarks on other matters in the Bill.

18. Section V. says that no interest in an estate is to be sold for recovery of demand not being land revenue, but which are similarly recoverable, saving after the notification therein described;

described; and if an under-tenure amounts to an interest in an estate, the terms of the section are deficient in precision, seeing that by Section XXV., Regulation VII., 1799, we can, under certain circumstances therein set forth, recover rent as revenue, and enforce its realisation by sale after the notice entered in Regulation VIII., 1835, which is other than that prescribed in section V.

19. The expression "due time" in section VIII. of the Bill and existing Act, is very vague. It cannot, of course, be intended that money placed to the general account of a Malgoozar, after the latest date fixed for payment, shall be transferred to his credit in the account of his estate; but it seems doubtful whether a sum credited in his general account before the said latest date, is not necessarily transferable on an application made subsequently to such date and at any time before the sale. This ambiguity might now be removed.

20. The power given in section IX. to mortgagees to prevent sales of estates seems to me objectionable. A is mortgagee under a deed of conditional sale from B. The latter, to pay off A, wishes his estate sold off by the collector to the best advantage, so that he may have something over for himself. The Bill allows A to prevent this, and perhaps enables him to foreclose his mortgage, and thus obtain the estate on what may be very inadequate consideration.

21. I do not perceive why the highest offer mentioned in section XIV. must be equal to the amount due up to the date of sale, when the liability of the purchaser will, under section XXXII., run from a different date, up to which only, under section XLIV., the defaulter has claim to rent.

22. It seems doubtful whether payment of revenue cannot be, according to the tenor of section XV., after the latest dates fixed for payment.

23. Some addition seems necessary to the closing provision of section XXIII., seeing that it may be impossible, from some cause or other, to receive the tender of payment by the defaulter at the time it is made; apparently he should not be allowed a longer time than that given to auction purchasers for completing payment of his balance, especially as some estates are made saleable only twice a year, and some even only once.

24. It occurs to me that section XXV. should be altered so as to allow the Commissioner to recommend reversal of a sale, even though a petition be not presented within the time specified in section XXIV. A proprietor may be in the clutches of his adversary, or the jaws of death, and thus incapacitated for filing a petition within time. Relief in such cases should be rendered possible.

25. If we are to sell "rights and interests" in estates under this Bill, as I suppose we are, in realisation of balances which have accrued in estates other than those in which the said rights and interests lie, alteration seems necessary in this section.

26. I do not understand how the execution of a decree mentioned in section XXIX. can be obtained without restoration to possession. The terms seem to me synonymous and convertible.

27. A slight alteration at the commencement of section XXXIII. of the Bill seems necessary, because, as noticed in paragraph 17 of this letter, we can, in realisation of demands recoverable as revenue, sell under a different Act.

28. I am very doubtful of the propriety of leaving the words noted on the margin in the specification of the first and second classes of exceptions in section XXXV. of the Bill. Section VI., Regulation VIII. of 1793 shows dependent talookdars who were at the time of the decennial settlement deemed proprietors. Their tenures, like many others, are transferable, and many of them very valuable; at present they can only be brought to sale under a summary decree for rent due at the end of the year (Clause 7, Section XV., Regulation VII., 1799). The Bill converts these talookdars, if they are in arrear at the time the estate in which they are situated is sold, into mere leaseholders, and deprives them and others of what they would obtain if their tenures were sold after paying the rent due on them, which may be in arrear from causes beyond their control; and this alteration of the law not only affects them very seriously, but may be deeply injurious to creditors also. The farmer of the Bill has blown hot on the interests of creditors in section IX., and cold on them in this section.

"And whereon no arrear of rent was due on the latest day of payment of revenue as fixed under sections III. and IV. of this Act."

29. In addition to what I have recorded in respect to sub-tenures generally, I beg to remark, in respect to those now existing, which are included in Class 3 of the exceptions in Section XXXV., that the terms under which these tenures were conveyed may have ostensibly conferred perpetual rights, but the parties knew well that the rights in question were really avoidable by sale for arrears of revenue, and the price paid was proportionately small. The Bill under consideration proposes to give to the tenant the difference of the price paid and the price which would have been paid, to the loss of his landlord.

30. To make the measure fair to the zemindars, it seems to me that the tenures in question should at all events remain liable to be voided by sale for arrears of revenue, unless the under-tenants intermediately secure themselves by purchasing their continuance.

Appendix, No. 7.

31. The rent of good arable land varies from 24 rupees a beegah, for the tobacco and potato land at Hajeeapore, to four annas a beegah in some parts of the Sontal pergunnah; so that it seems necessary to say where the "good arable land," with the rent of which the rent of the land in the fourth class of exceptions in Section XXXV. may be equalised, is to be held situated.

32. I would add to section XXVIII. the words "or by the decision of the superior revenue authorities;" and I would alter section XXXIX. by making the awards of collectors open to revision by those authorities, with or without appeal.

33. I would remark on section XLIII., that Section XXXIV., Regulation XIX., of 1814, urgently requires amendment. The leading principle of the present sale law and Bill is that the revenue shall be paid by a fixed date; but any owner of a specific mehal under butwarrah is at liberty to pay after this date, as, until it expires, it is impossible to ascertain the share of balance which he ought to tender; and because in practice it is impossible to carry out the provision of the section.

I have, &c.
(signed) H. Stainforth,
Late Commissioner, Bhaugulpore Division.

From the Collector of Tirhoot, to the Commissioner of Revenue Bhaugulpore (No. 104),
dated Tirhoot, 28 April 1856.

Sir,

I HAVE the honour to acknowledge the receipt of the Board's letter (No. 2), dated the 26th of February, with your order passed thereon, dated the 1st of April; and with reference thereto, beg to report my sentiments on the new sale law, together with those of Mr. Deputy Collector Davies.

2. The sections which most affect this district are X., XI., XXXVI., and XXXVII. On receipt of your order I thought it necessary to intimate to the most influential and respectable zemindars, that I should be happy to entertain any sentiments which they might think necessary to urge in modification or otherwise of any of the sections embodied in this Act; but to my astonishment these gentlemen are silent, and up to the present moment I have not been favoured with any reply to my requisition.

3. The information obtained from the Record Office with reference to the various settlements of 1797, 1824, and 1830, lead me to anticipate great difficulty in carrying out the provisions of the Act, should the smaller proprietors of estates oppose. I will take for instance, the settlement of Talook Luckhunpoor. In 1797 this estate consisted of one usli and nine dakhli villages; the sudder jumma was fixed at Rs. 860. 12. 6. A portion of this estate was sold for arrears of revenue, under the provisions of Regulation I. of 1793, section X. The estate was afterwards divided into two portions, with separate numbers and jummas on the rent roll but the area of the estate was not apportioned out to the purchasers at auction, the lands remained in joint occupancy. Now, in the event of all the proprietors coming forward and demanding that a separate account be opened, there will be no difficulty in complying with their request, but Talook Luckhunpoor may be the property of 50 or 60 maliks, some proprietors by right of inheritance, some by right of purchase; one malik may hold an anna share, another a pie share, another a gundah share, another a cowree share, another a krant share, another a dunt share, another a musunt share, and another a raen share. Opposition to the application there must be, not from one of the proprietary body, but from half a dozen of them, particularly as section XI. rules that the application must contain a specification of the land and its boundaries. The shares in properties in this district are sub-divided to such an extent that we seldom think of registering the share of a proprietor in the mutation register; we refer the individual to the civil courts, merely inserting his name in the mutation register, without specification of shares.

4. Again, the rent of a mehal comprising many villages has been settled in the lump. The rent roll is mehalwar and not mouzawar. A proprietor may hold a two-anna share in two villages out of ten villages comprising the mehal; or perhaps he may hold one village entire out of ten villages. On his application to open a separate account, there can be no difficulty in carrying out the provisions of the Bill, provided all the other proprietors are agreeable to the arrangement; but the suits instituted under the provisions of Regulation VIII. of 1800 preclude my anticipating any such happy combination of circumstances as would permit my carrying out the provisions of the Bill without constantly referring parties to the civil court. The parties must there seek their redress in the civil courts, and the mehal remains *in statu quo ante*.

5. The landed proprietors of this district are very wealthy. The advances made yearly by the indigo planters and Government on two products alone, indigo and opium, are, at the lowest computation, forty lacs of rupees. The tobacco crop on the ground on a beegah of land, sells for 40, sometimes 50 rupees the beegah. The value of land of course rises in proportion, but large zemindars do not exist in this district with one exception; for out of 5,804 mehals on the rent-roll of this district, one mehal only is the property of the Maharajah of Durbhenga. The necessity of registering the names of proprietors on the mutation register

register without specification of shares, the necessity of referring proprietors to the civil courts to determine their rights and interests in landed estates, proves to my mind most completely that sections X. and XI. will remain a dead letter in this district. The boon intended to be conferred on the proprietary body will be the cause of frightful litigation in the civil court.

6. The majority of the landed proprietors are Hindoos, and those of the upper classes, Rajpoots and Brahmins, are notoriously litigious; it remains to be seen whether their love of litigation and natural disposition of combativeness will succumb to self-interest. The suits instituted under Regulations VIII. of 1800, and XIX. of 1814, have solved this problem in favour of their love of litigation. The law on paper looks very pretty indeed; it is an admirable Bill, and meets with my entire approval; but to carry out its provisions with success is quite another affair. The success of the measure is with the proprietary body; their shares in estates being divided into anna, pie, gundah, pun, krant, dunt, musunt, and raen shares, must preclude my anticipating its successful working; on the contrary, that it will cause an enormous amount of litigation in the civil courts, is to me matter of no doubt whatever. Doubtless many proprietors (where the proprietary body in the mehal do not exceed eight or ten individual-) will take advantage of the provisions of this Bill, but my knowledge of the native character precludes my entertaining any sanguine hopes of its working with celerity and smoothness, not because the provisions of the Act are faulty, but because the native of India is naturally of a litigious disposition, and he is perfectly miserable if he sees his neighbour's condition more prosperous than his own. In a small village community of proprietors this feeling of enmity, one towards another, is intense; to that community the new sale law will be a curse, and not a blessing. Mr. Davies has expressed his sentiments as follows:—

"I have the honour to acknowledge the receipt this day of the Board's Circular, No. 2, dated the 26th February, in which a report is required from collectors on the Bill for improvement of the law relating to sales of land for arrears of revenue. The term is so general that it is difficult to know on what particular point a report is called for. Local peculiarities in regard to landed property which might be affected by the alteration the law is about to undergo there are none; the right of ownership in regard to superior and subordinate tenures are the same here as those prevailing elsewhere in this province.

"The relief offered by separating responsibility is very great indeed, and this measure is hailed with the utmost satisfaction by all the proprietary body. The approval of the principle is universal, and it is a matter of some surprise that, being so obvious and also one by which the Government benefits in an equal degree with the landholder, its recognition should have been so long deferred.

"On the details of the measure by means of which this result is secured it is difficult, without being allowed further time for study and thought, to offer any opinion with consideration.

"But on the first perusal of the Bill, there is a provision in Sections X. and XI., in regard to the period allowed, within which objections are permitted to be made, which struck me as being objectionable on account of its very limited duration. The circumstances under which a party possessing an undoubted right may be prevented from appearing within six weeks are innumerable, and will readily occur to every one; an extension of the time therefore to afford greater facilities for appearance is, in my humble opinion, absolutely necessary. One of the gravest objections to the provisions of the existing butwarah law, is the restriction in the time allowed for bringing forward adverse claims, an objection which has been repeatedly and forcibly brought to my notice by reason of the great number of butwarah cases I have to dispose of in this district. Hence my anxiety to see a similar fault avoided in this law.

"I have another objection to urge. It refers to the unlimited extent to which separate responsibility is permitted. I admit that the principle cannot be gainsaid; every sharer, however small his possession, is entitled to be secured in his just rights. But the question is, how will such a law affect landed property ultimately, from the encouragement it gives to fractional division? I have had cases before me in which applications have been made for the partition of land paying 11 annas revenue, and less. The expense and difficulties which occur in carrying through a butwarah case deter small shareholders, in many instances, from applying for the separation of their interests in a joint estate; but under the present law the separation of shares held in common tenancy will be easy and inexpensive, and the applications which will pour in will not count by hundreds or thousands but by tens of thousands, and in this district more especially, where the proprietary body is known to be very large.

"The most important, as also the most difficult question involved in this Bill, is the one which relates to the security given to under-tenures; from obviously selfish and interested motives the landholders are, as a matter of course, opposed to any legislation on this subject. The question, however, has to be considered not with reference to class interests, but on the broad principles of equity and justice, and with due regard to the security of the public revenue; but on this point the opinion of any one like myself, whose experience is confined to minor revenue matters, cannot be of any weight or consequence. I shall, therefore, be held excused for not offering any suggestions, and indeed the little I have

Appendix, No. 7. written on the subject of this Bill has been written with diffidence and hesitation, and more out of respect to the wish you expressed that I should consider and report upon the proposed enactment than from any desire of my own to give an exposition of my opinions."

I have, &c.
(signed) *E. F. Loutour*, Collector.

From the Officiating Collector of Monghyr, to the Commissioner of Revenue for the 12th Division, Bhaugulpore, No. 60, dated Monghyr, the 22d April 1856.

Sir,

In obedience to the instructions of the Board of Revenue, No. 2, dated 26th February 1856, I have the honour to submit a report on the proposed new sale law.

2. I presume that this report is only called for on such parts of the proposed law as may differ from Act I. of 1845. Sections X. to XVII. of this law enact a system of summary division of estates, and Sections XXXV. to XLI. detail at length a system of registration of under-tenures corresponding with the general provisions of Section XXVI. Act I. of 1845. With the exception of these two very important parts, the proposed law is generally similar to Act I. of 1845, with slight differences, such as the omission in Section XXVIII. of the words, "provided such arrears have accrued since the possession of the defaulting proprietor" (Section, XX. Act I. of 1845).*

3. The proposed system of summary butwarrahs appears to me scarcely necessary. The security which is designed for part owners could be conferred by some slight changes in the present butwarrah law, with less danger to the revenue. If the grounds of this opinion be wrong, the Board will, I trust, remember that my experience as a collector does not extend beyond one month. Under the present law a shareholder can always prevent the sale of the estate by paying up the balance due from another owner before sunset, and can recover the amount from the defaulter under Section IX., Act I. of 1845. And were the butwarrah law changed by the rescission of Circular Orders, No. 235, 24th July 1841, and No. 25, 20th January 1841, and a regular division of any shareholder's property from the main estate or the separate mehal rendered legal, such shareholder paying all expenses himself, then by instituting a regular suit, any shareholder may protect himself.

4. A summary butwarrah, such as is planned in the law under consideration, is very dangerous to the revenue, and opens the door to litigation endless. If every owner of a cowrie of an estate, the whole estate being perhaps a jagheer of five or six beegahs, is entitled to open a separate account with Government for the payment of one pie annually, and entitled to have the sixteenth part of a beegah measured off the said estate, there will be great increase of labour in the collections, and great opportunities of fraud. There are many small estates of this kind (with many owners) in this district. It may be said that this petty ownership does and must exist, and the law merely protects the owners. But registering a right is a very different thing from mere protection, and by the rules of political economy the extreme subdivision of the land is a certain cause of weakness in the state, a fact which is so certainly known as to have given rise to the law of primogeniture; consequently the extreme facility which the proposed law will give to this subdivision is impolitic, and it is possible that the occasional suffering of a part owner whose estate is sold for another's arrear may be and is productive of good to the state.

5. Sections XXXV. to XLI. of the proposed new law contain detailed instructions for a system of registration of under-tenures, such registration having been allowed in general terms in Section XXVI., Act I. of 1845. That this rule is unnecessary, at least in this district, is proved by the simple fact that no under-tenant has ever availed himself of the provision; and as under-tenants appear to me sufficiently protected by Section XXVI., Act I. of 1845, and Section X., Regulation V. of 1812, I think that this registration, if carried into effect to any extent, would materially increase the difficulty of realising arrears of revenue from estates, and would open the door to much fraud.

6. I have mentioned above my belief that a trifling alteration of the Division of Estates law would render any summary division unnecessary, an alteration which the Board of Revenue could effect without the interference of the Government. By filing petitions for such summary divisions just before the quarter day (which would prevent the sale of their shares), endless confusion and serious loss of time and revenue might be caused by fraudulent parties. For these various reasons the proposed sale law is in my humble opinion unnecessary, and, wherein it differs from Act I. of 1845, impolitic.

I have, &c.
(signed) *W. Tucker*, Officiating Collector.

* So in original.

From the Officiating Collector of Bhaugulpore, to the Commissioner of Revenue, Bhaugulpore Division, No. 102, dated Bhaugulpore, 19th April 1856.

Sir,

I HAVE the honour to acknowledge the receipt of the Board's letter, No. 2, dated 26th February 1856, calling on me for a report regarding the draft of a new sale law, and in compliance with the Board's orders, beg to submit a few brief comments regarding it.

2. The objects set forth in the preamble are most undoubtedly of the highest consequence, and the security to landed property given by an Act such as the one proposed, if carried out fully, will give a stimulus to the expenditure of capital on land which did not before exist.

3. The difficulty in carrying out the provisions of the Act in this district lies in the increase of work which it would throw on all departments of the collector's establishment, (this could however be obviated by increasing the establishment) to carry out the provisions of the Act, without a considerable increase in both the accountants towjee and other departments, would be, I believe, impossible.

On the towjee of this district there are borne 3,632 mehals, as noted below.

DESCRIPTION of MEHALS.	Number of Mehals paying a Jumma exceeding 100 rupees.	Number of Mehals paying a Jumma less than 100 rupees.	TOTAL.
<i>Nizamut.</i>			
1. Mehal permanently settled - - - - -	563	702	1,265
2. Invalid Jagheer Mehal permanently settled - - -	2	1,722	1,724
3. Mehal temporarily or summarily settled or let in farm - - - - -	0	0	643
	565	2,424	3,632

According to the provisions of the Act, there is no limit as to what shares are to be permitted to open out separate accounts. In many estates the number of shareholders is very large and the amount of sudder jumma paid by each consequently small; I presume by the scale of fees entered at the end of the draft Act it was not intended that very small shareholders should be permitted to take advantage of the Act, and I would beg to suggest that no separate account should be permitted for any share not paying a sudder jumma of at least fifty rupees per annum to Government; and I believe that were this limit to be fixed, the number of applications for being allowed to pay for their shares separately would be very large; and I do not think it advisable to permit the indulgence of a separate account any parties whose share does not pay such a sum annually.

5. The security given to farmers by Section XXXVII. of the draft Act is of great importance, and it appears to me that the precautions noted therein for the prevention of the registration of farms fraudulently granted at low jummas (provided that can be carried out) are sufficient; I cannot but think however that to carry out the provisions of this section in a manner to fulfil the intentions of the Act will be very difficult, especially at first when a great many applications may be expected.

6. The report or measurement of an aeen which cannot be tested by an officer of the department, is not ground on which a collector can with any confidence decide as to how far the jumma put on the same is fair as regarding the sudder jumma of the estate, and in most cases of collusive farms there is no likelihood of any objection from any party, as the zemindar and mostajir would be both in league on the matter; and should local investigations not be held by an officer of the collectorate, it is probable that the Act may be taken advantage of in many instances to secure through the concurrence of ameens the registration of farms assessed at fraudulently low jumma.

7. The only security against this is in my opinion a local investigation, and I believe it to be of the highest importance to the public that this be insisted on; if assistance be given to the collector by covenanted or uncovenanted assistants sufficient to enable him to institute real inquiries into the matters regarding which he is required to satisfy himself by this section, the registration of farms will be a boon to the public, but I do not think that without such sufficient inquiry it will be productive of good. I would propose that no farms paying a jumma of less than 100 rupees be considered capable of being registered.

Appendix, No. 7.

8. It appears to me that the number of dakhil kharij suits instituted will be greatly increased by the promulgation of this Act.

9. I see no valid objection to the proposed Act, with the exception of the increased work which will be thrown on the collector's establishment, which is already too small for the work expected of it; should it become law, I trust that from the fees which are realised from applications under it, extra aid may be permitted to be entertained. At present the accountant's department in particular is much over-worked, and for every share that is separated from the parent mehal the number of chellans and entries in the zemindary account will increase, and the difficulty of making up the accounts during the last days of payment will be still more felt than it is at present. The Act is framed with a view to protect the interest of those who pay the Government revenue, but to enable it to do so efficiently it will be necessary to provide the collector with means sufficient to carry out its provisions.

10. I have but a very short time since entered the revenue line, and have still a great part of my time occupied by magisterial duties; the call for a report on this Act is urgent, and I regret not to have time to spare from my other duties to give the matter more thought, and more time to the writing of this report. I beg to forward this letter, trusting that the great press of business which occupies my time will serve as my excuse for its brevity and for any imperfections which it contains.

I have, &c.
(signed) *E. Russell,*
Officiating Collector.

From the Officiating Commissioner, Burdwan Division, to the Board of Revenue, Calcutta, No. 270, dated Burdwan, the 29th March 1856.

Revenue.

Gentlemen,

I HAVE the honour to acknowledge the receipt, on the 10th of this month, of your Circular, No. 2, dated the 26th February, requesting me to call for a report from each of the collectors of this division on the Bill for the improvement of the law relating to sales of land for arrears of revenue, and to submit the same to your Board.

2. In accordance with this request, I forward the returns mentioned in the margin in original, and beg to state my own opinion on the Bill as called for also by your Board.

3. The draft law proposes the following alterations in the existing law:

First. The extension of the ordinary law of sale to the province of Cuttack, which has hitherto been exempted from its operation.

Secondly. The securing the rights of a mortgagee who pays up the balance due from an estate.

Thirdly. The securing the rights of a solvent shareholder against the default of his co-sharers.

Fourthly. The securing the rights of a solvent proprietor against the neglect or fraud of his agent.

Fifthly. The securing the right of under-tenants.

4. On the first point the opinion of the Commissioner of Cuttack will probably have decisive weight. I am aware of no valid objection to the proposed extension.

5. The second point secures the right of mortgagees very effectually, and, in my opinion, very fairly and properly. By the present law, although a mortgagee may pay up the balance due on an estate, that gives him no additional lien upon the property; he can only recover the sum so paid as a common debt in the regular mode through the civil courts. The draft law, however, provides, at the end of Section IX., that if the mortgagee can prove before a court of justice that the deposit made by him was necessary in order to protect any lien he had upon the estate, the amount so paid by him, "shall be added to the amount of the original lien." This amendment seems to me, as I have said above, a very just and proper one, and a great improvement upon the old law.

6. The third alteration protects the solvent shareholder from the default of his partners. There can be little question, I imagine, as to the propriety of this amendment if it be possible to carry it out; but the difficulty is, as to how it should be done. The draft Act proposes that every sharer in an estate, whether a sharer in a joint estate held in common tenancy or the holder of the specific portion of the land of an entire estate, should be able to protect his share from sale by paying up his own portion of the balance, and that in such cases the Collector, after certain inquiries, must open a separate account in his books for the solvent shareholder (Section X.), and must credit separately to his share all payments made by him on account of it.

7. It strikes me that this mode of proceeding will hardly answer the purpose contemplated; that is to say, that it will be found in practice so complicated and cumbrous, that it will probably break down.

8. There

Bankoora,
Burdwan,
Hooghly,
Midnapore.

The return from
Beerbhoom has not
yet been received,
but will follow.

8. There are hundreds (literally hundreds) of estates in this district alone, which pay less than one rupee per annum, and some of these have "recorded sharers," any one of whom may, under the new law, claim to have a separate account opened for him in the collector's office. What a mass of complicated accounts this will necessarily give rise to.

9. One of these "recorded sharers," for instance, comes to the collector on the latest day of payment, tenders the amount of his share, and gives in a written application asking to have a separate account opened in his name. The collector receives the money at once, and on the next day issues the notice required by Section X., and not until some time after can he decide upon the propriety or otherwise of allowing a separate account to be opened in his books. He may have hundreds of such applications, and the last of them may not be decided on for some weeks, or even months. In the meantime the collections and accounts in the office are thrown into confusion, and I am not sure that the Government revenue may not, perhaps, suffer in consequence.

10. Take a case for instance: A, B, C, D, are recorded proprietors of Mouza E. A, B, and C, deposit their separate shares and crave a separate account, but D deposits twenty rupees, saying that half, not only a fourth, of the estate is in his possession. After some time the collector "institutes a summary inquiry into the fact of possession," and decides, under Section XII., that D is in possession of a two-fifth share of the estate, and A, B, and C, of one-fifth share each. Now here will be a difficult matter to settle, for every one knows how very complicated butwarrah cases are at all times; but this is not only a butwarrah case, but an Act IV. of 1840 case also; and under the proposed law such cases may occur over and over again.

11. It seems to me, on the whole, that the draft Act mixes up, unnecessarily, a butwarrah law with a sale law, and that it would be preferable to separate the two—to pass the sale law without any butwarrah provisions, and to make a separate enactment for the latter purpose.

12. But if it be determined to have the two together, I would certainly recommend that a limit should be laid down, and that the benefit of separate payments should not be allowed to any shareholder who does not pay at least (say) 50 rupees per annum.

13. It is said that the share of a poor man paying 40 rupees per annum may be of as much concern to him as the estate of the Maharajah of Burdwan paying 40 lakhs, and that therefore it is not just to lay down any limit. It may not be easy to gainsay this, but still if we find in practice that this cannot be carried out, as I think, we must set aside the plea of universal justice for that of general utility. If there is no limit, the shareholders paying anna and even pice jumma are entitled to a separate account equally with these who pay lakhs; but this would, to my mind, give rise to so much complication and confusion in the accounts, as to jeopardise the entire scheme.

14. There should also, I think, be some limit as to the time within which applications for separation of shares should be required to be made. For instance, all such requests should be made in writing (say) one month before the last day of payment of revenue.

15. There is another point which I may notice connected with this part of the subject, namely, whether in case a sale takes place of a share which has been separated, and no bid be offered equal to the amount of arrear, a second period of ten days should be allowed to the defaulter to pay up his original balance. I would strongly urge that it should not; this indulgence would break in upon the essential principle of the sale law—a principle which has been found to work so admirably—and I should be very sorry to see it thus set aside. Such a clause would be, to my mind, a step backwards in legislation.

16. With regard to securing the rights of a solvent proprietor against the fraud or neglect of his agent, by allowing the former to deposit with the collector cash or Company's paper for the purpose of being applied to the payment of arrears, I imagine, there can hardly be two opinions. This will be a very great boon to all proprietors of land, and will be looked on as a benefit of no ordinary kind. The advantages are so self-evident that it seems strange it should never have struck any one before.

17. There should, however, it seems to me, be a discretion allowed to the collector to reject such applications, if he thinks fit. Without this we shall have landholders depositing Government securities with the collector merely to get rid of the trouble of drawing the interest themselves; others may place it in the collector's treasury for security's sake, and not for the purposes contemplated by the law.

18. I now come to the most important part of the draft Act, namely, the subject of under-tenures.

19. Under the present law all recent under-tenures fall on the sale of the parent estate. The natural consequence is, that but few capitalists will lay out their money on land to which they can get no sufficient title. Capital is universally admitted to be the great want of India, and therefore it may be not unfairly said that the present sale law has the effect of contracting, instead of developing the resources of the country; of depressing, instead of raising the value of land, and of discouraging, by every means in its power, the introduction of men of European skill, and enterprise and capital, into the interior of India.

Appendix, No. 7.

20. Many years ago the present Lieutenant-Governor of Bengal proposed a plan by means of which, as it seems to me, all these drawbacks would have been avoided. He suggested that under-tenures should not be in any way affected by a sale, that they should stand as good with the purchaser as with the old proprietor who created them, and that the sale in fact should be made subject to all the incumbrances which may have been imposed upon it before or after the time of settlement by any former proprietor. If, from the over-creation of such tenures, the value of the parent estate should have fallen below the amount of the Government revenue, so that the latter would be jeopardised, it was further proposed, at that time, that the estate should revert to Government, who would be empowered to make a new settlement of the land.

21. This always seemed to me a very complete remedy for the great acknowledged evil of the present law, one which would get rid of all the reasonable complaints of honest under-tenants, and at the same time secure, in the most complete manner, the revenues of the Government; but the draft Act proposes something quite different, and we are now told that the proposal to which I have alluded above does not give complete security to under-tenants, that it is a "half measure at best."

22. The new proposal is, that all under-tenures should be registered, and that when the holder of a new under-tenure (that is, of one created subsequent to the settlement) applies for registration, the collector should immediately cause the talook to be measured and surveyed at the expense of the talookdar. Then, if the collector is satisfied that the rent of the talook is fully sufficient to afford its share of the jumma of the estate, the tenure will be registered in complete detail, and this registry will secure it, in all time coming, whatever may become of the estate.

23. With much deference to the great name and to the acknowledged ability of the proposer of this amendment, I must say that I doubt very much whether it is calculated to benefit the person whom it professes to advantage (namely, the under-tenant) as much as is supposed; and it seems to me eminently calculated to jeopardise the Government revenue.

24. First, as to the under-tenant. By the original proposal his lease would stand good, notwithstanding a sale, and it would only be in case the value of the entire estate sunk below the amount of the sudder jumma that it could ever be hereafter questioned.

25. My belief is that this is a contingency which would but rarely occur, except in the cases which it was intended to meet, namely, cases of fraud; and in such cases, who would wish to uphold the interests of the fraudulent under-tenants?

26. It is notorious that the value of permanently settled land has risen very greatly during the last half century. If it had not done so, should we have two-thirds of the land in Bengal held under talookdaree tenure as at present? The original zemindar would not let his land except on a profit which the talookdar has to pay, and this profit shows the increased value of the land.

27. Wherever, therefore, there are under-tenures, especially when they are held by men of capital, we may be pretty sure that the parent estate is not likely to fall into the hands of Government from depreciation.

28. In the very uncommon case of a *bonâ fide* depreciation of permanently settled property by (say) diluvion, or the decay of old markets, or any other accidents, the under-tenure would be liable to a re-settlement, and it is said that advantage might be taken of this by the Government, and that the collector would fix the revenue of every beegah of land according to its existing value; so that a meritorious under-tenant would be fined by an enhancement of his jumma for having improved the value of his tenure at his own expense. But if this is the only objection, and it seems to me, I must say, very much of a visionary one, it might be partly remedied by declaring that in any new settlement so made, the new jumma of the entire mehal should not be raised above the permanently settled jumma. Thus, if the jumma of the whole estate was 100 rupees, and that of the under-tenure 50 rupees, the collector, if he thought fit at the re-settlement to put a jumma of 90 rupees on the under-tenure, would be unable to put more than 10 rupees on the rest of the property. It may be asked how would this benefit the meritorious under-tenant? It would, at any rate, guarantee him against any exorbitant demand.

29. The amended proposal is declaredly intended to benefit the under-tenant himself, but I very much question whether that person would not prefer the original proposal to the new one. There would be no expense of compulsory registration, no trouble, no measuring, no surveying, no ameens, no mooktears, no inquiring into crops, assets, and so on, in order to "satisfy" the collector that the rent of the talook was sufficient to afford its share of the jumma of the estate. All would be clear before him, and he could lay out what capital he pleased on his property from the day after the amended law was passed, and never trouble his head about the zemindar or his affairs, and never be obliged, as is too often the case now, I am inclined to think, to advance money to the zemindar in order to prevent him from carrying out a threat of default. He would also, if the estate were brought to the hammer, have the option, which I believe in nine cases out of ten he would seize, of purchasing the whole property himself; or if he did not choose to do this, he might, I believe,

very

very placidly trust himself to be fairly dealt with by the collector, or, if not by him, by the commissioner, and failing him also, the Board and the Government. Appendix, No. 7.

30. And now as to the interests of Government under this new law. It strikes me that it leaves the Government too much in the hands of the collector. An under-tenant applies for registry. The collector causes the tenure to be measured and surveyed, and if he is satisfied that the rent paid by the under-tenant is fully sufficient to afford its share of the jumma of the estate, the tenure is at once registered, and this registry secures it for ever at the rent then fixed.

31. But do collectors never make mistakes in settlements? Are they never deceived by the ameens and subordinates to whom they must trust for a great portion of the information upon which their settlement must be founded? Are commissioners never wrong in their judgment in such matters? Has experience told us that the revenue authorities are immaculate? that they never commit an error or a fault in a settlement?

32. It may be worth the while of many under-tenants to spend large sums of money in furnishing false information during the progress of such surveys, but the collector's order once given, the under-tenant is safe "in all time coming;" there is no *locus penitentiae* for the Government, the collector's order has been passed and cannot be amended.

33. On the whole, I am of opinion that the original amendment proposed would be found in practice to work better than the new one, that it would be more satisfactory to under-tenants, and that it would be a much safer principle for the Government to go upon themselves.

I have, &c.
(signed) J. H. Young,
Officiating Commissioner.

From the Officiating Collector of *Burdwan*, to the Commissioner of Revenue, Burdwan
Division, No. 47, dated the 24th March 1856.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 40, dated the 10th instant, with its enclosure from the Board of Revenue, No. 2, dated the 26th ultimo, on the subject of the proposed Bill for the improvement of the law relating to sales of land for arrears of revenue, and with advertence thereto I beg to offer the following remarks:—

2. The fundamental alterations proposed by the Draft Act to be introduced, may be condensed under the following five headings:

I. The doing away with the necessity of obtaining the previous sanction of the Board of Revenue to sales of estates for arrears of revenue in the province of Cuttack.

II. The securing to the mortgagee of an estate, in the event of his preventing the estate being sold by himself, paying up the Government arrear, the same benefit *quoad* the sum so deposited as he possessed in regard to his original lien on the estate.

III. The allowing landholders to deposit Company's paper with the collector, so as to prevent their estates being sold owing to accidental circumstances or owing to the fraud or neglect of their agents.

IV. The securing from sale the shares of non-defaulting co-proprietors in estates, whether the shares in question may be held in joint tenancy, or whether the area held by each sharer may be distinct.

V. The registration of *bonâ fide* under-tenures; both those which existed at the time of the decennial settlement, as well as those which have since been, or may hereafter be created, and the thereby upholding the proprietors of them in possession of their lands at the same rates as heretofore, whenever the parent mehal, of which they form integral portions, may be sold for arrears of revenue, or for other demands which are directed to be realised in the same manner as arrears of revenue.

3. It is to the last two most important of the five proposed fundamental alterations in the law that it is my intention chiefly to confine my remarks. I am not aware of any objection to the three other proposed alterations; but, on the contrary, I consider the concession which it is in contemplation to grant to mortgagees, and the allowing landholders to deposit Company's paper, to be eminently just and useful measures.

4. It occurs to me to remark, in connexion with the proposed change in the method of conducting sales of estates in Cuttack, that some alteration in the wording of Section V. of the Draft Act is called for in regard to estates which are not situated within that province. I allude to the second class of estates which it is proposed under the new law shall not be sold unless the provision of Section V. of the Act shall have been duly followed out in respect to them. I think it should be more clearly defined what is meant by permanently

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settled estates. The Board of Revenue ruled in their circular, dated the 18th May 1842, No. 13, that estates could not be sold under the general provisions of the sale law until their settlements had been confirmed by competent authority. The mode of procedure which has been adopted in consequence of this ruling has been to dispense with the fifteen days' special notice of sale in all cases where the settlements having been regularly completed with the proprietors under the provisions of Regulation VII. of 1822, had been confirmed by competent authority, even although those settlements were temporary ones only. On the other hand, estates settled in perpetuity by the settlement officer or collector, but the settlement of which had not been confirmed by competent authority, could not be sold without the fifteen days' special notice being in the first instance issued. I do not think it can have been the intention of the framer of the new Act to put the temporarily settled estates of the districts of Bengal in a more favourable position than that which they before occupied, in a better position indeed than that which it is intended the Cuttack estates of the same calibre shall henceforward occupy; and it seems to me therefore that the wording of the section ought to be so altered as to continue the Bengal temporarily settled estates which have been confirmed by competent authority on the same footing which they formerly stood on and on which it is now proposed to place the Cuttack ones. In the same manner the section ought, it appears to me, to define that permanently settled estates in Bengal districts are not to be sold without the special notice, unless their settlement has been confirmed by competent authority.

5. Next, in regard to the proposition of staying the sales of the shares of non-defaulting co-proprietors of an estate, whether the shares in question are held in joint tenancy (*ejmalee*), or whether they are held separately (*tafreek* or *chinnit*). It appears to me that, in the former case, that is to say, where the whole estate is held in joint tenancy, the mode of procedure recommended by Mr. Grant may with much advantage be resorted to, and that, in the second description of cases, that is to say, where the land held by each of the co-proprietors is held by them separately, the same method of dealing with the separate shares of the estate may be successfully carried out, although the operation will undoubtedly be one of great labour and intricacy. I agree in the propriety of allowing a non-defaulting co-sharer in either of the above descriptions of cases to save his share from sale, and also of Mr. Grant's proposal to bestow that boon on all classes of estates, however small their extent and jumma; and I am also of opinion that the allowing co-sharers to open separate accounts with the collector for the sums due on their respective shares is a proper measure, although it will certainly cause much additional trouble to the collectorate *omlahs* in some districts.

6. The manner, however, in which the Bill proposes that the defaulting proprietor's share shall be dealt with when put up to sale, and the course which is to be adopted in selling the whole estate when the balance due on the share is not covered by the amount bid for it, appear to me to be open to objection.

7. I do not see why it should be considered necessary in the former case for the amount of the bid to be sufficient to cover the amount of the balance. If the balance due by the sharer was rupees fifty, why should not the collector be allowed to sell, supposing there was a *bonâ fide* bid of rupees five, or say of one rupee even, Government being left to realise the residue of the arrear from the defaulter in such manner as they might be able? There would certainly be danger sometimes of the defaulting shareholder colluding with the new purchaser, but I do not think such a result would often occur. I would empower the collector to sell on any *bonâ fide* bid which might be made for the purchase of the share, how small soever that bid might be, and by whomsoever (the defaulting sharer alone excepted) that bid might be made. I would restrict the collector receiving a bid from the actual defaulter unless it exceeded in amount four times the sum due. In this manner twenty-five per cent. of the purchase money would be at once realised from the defaulter, and the Government arrear would be at once recovered. There is nothing, that I am aware of, in the existing law, which prohibits an actual defaulter bidding for the purchase of his own estate when put up for sale for arrears of Government revenue; nor is it desirable, nor was it I believe ever intended, that any such restriction should be imposed on landed proprietors, who may from time to time for various reasons be desirous of ascertaining the market value of landed property in the different districts in which they are proprietors by putting their own estates to the test of a public auction.

8. Under the existing law the course which a collector would adopt in the event of the actual defaulting proprietor of an estate making a bid and there being no other bidders for it, would be to bid for Government up to the extent of the balance, and if the defaulter went beyond it, to knock the estate down to him; but, as of course Government would not buy shares in estates, this method could not be followed out in dealing with them, and I would recommend, instead of it, the modified plan which I have noted above. The collector would only have to proceed to the ulterior measure proposed by Mr. Grant when there had been no *bonâ fide* bid, however small, for the share, or when the bid made by the actual defaulter himself was less than four times the amount of the balance.

9. Where the co-sharers who had paid up, and to whom would be given the option of purchasing the defaulter's share in the event of the latter not being disposed of at the first sale, might not be able to agree among themselves as to who was to be the purchaser, it appears to me proper that some provision ought to be made in the Bill to decide the point. One of the co-sharers might say, for example, that he was ready to purchase the whole of the defaulter's

defaulter's share, but that he was indisposed to purchase it in conjunction with his brother-sharers; and a second, perhaps a third, co-sharer, might say the same. To which of them in such case should the preference be given? To him holding the largest share in the residue of the estate? To the one who was prepared to pay the largest price? or, if the co-sharers could not agree amongst themselves as to who was to be the purchaser, would in such case the whole estate have to be brought to the hammer? I think that, in the event of dispute, the share should be sold to the highest bidder among the non-defaulting co-sharers.

10. With regard to the question of enforcing the registry of under-tenures, I am of opinion that it should be left optional with the proprietors of such of them as existed at the time of settlement to register or not as they might think proper. If registry were effected, it should thenceforward ensure the under-tenure holders from ejection and enhancement of rent; but if it were not effected, I do not consider that the omission should be considered a sufficient ground for ignoring the validity of the tenure. To say nothing of the expense, there may be many good reasons why the holder of an old under-tenure is not prepared to register. He may have already obtained a suit in the courts upholding the validity of his tenure, or the very fact of his non-registering may be the means of inducing the zemindar to bring a suit to try the validity of a holding regarding which there previously existed no dispute whatsoever. I have no doubt that a very large number of the holders of the old under-tenures will take advantage of the provisions of the Act and will proceed to register; but, as I have remarked above, I would make the act of registering an optional, not an imperative one, and I would not put any limit on the period within which the old putnee holders should be required to proceed to registry, or in default of doing so, should lose the benefit they would otherwise have derived from resorting to it. From the wording of the Draft Act (Section XXXVI.), it would seem that the collector will not be required to make a survey of these old tenures when application is made to him for their registry, but that he is to be guided by the information filed by the applicant as to the boundaries and situation of the holding, and is to proceed at once to register in the absence of any objection on the part of the zemindar: but it seems to me that a survey and careful recording of these old tenures is quite as much called for as is a survey and record of the new under-tenures; for the zemindar might, if so inclined, collude just as easily with the holder of the one as he could with the holder of the other.

11. The proposal for surveying and registering the new under-tenures according to the rules laid down in the Draft Act is an equitable one, and although the carrying of it out will in many districts, especially in those to the eastward of Bengal, be attended with very great difficulties, still I think that the difficulties will not be insurmountable.

12. In this district (Burdwan) I do not anticipate much trouble in carrying out the work. The putnee talooks, generally speaking, consist of one or more whole villages, and as the boundaries of each village, as well as its exact area, will have been correctly marked out and ascertained by the revenue survey, the collector will find but little difficulty in ascertaining whether or not the annual talookdaree jumma bears a fair relative proportion to the gross revenue of the whole estate. The old collectorate papers will show him what were the area and assets of each separate village of each separate estate at the period when the records in question were drawn up, and although the assets and areas of some of the villages may now differ more or less from what they then were, yet I do not think that the difference will in many instances be found to be large.

13. Tracing out, surveying, and recording, parcels of land held in putnee, and the making an approximate calculation of their assets relatively to those of the estate of which they form a component part, will not be nearly so easy an undertaking where the under-tenures, instead of consisting of one or more whole villages, comprise, as is not unfrequently the case, only parts of one or more villages, those parts not being in one compact plot, but scattered in different pieces all over the village. The survey and the old collectorate papers will only in such cases be so far of assistance to the collector in enabling him to determine the relative area and assets of the under-tenure *quoad* the gross area and assets of the parent mehal, that the former will show the limits and area of the villages in which the several parcels of land making up the under-tenure are comprised, while the latter will show the extent and jumma of the several villages as they stood at the time when the papers in question were prepared. It will still remain for the collector to survey and map the several parcels of land to ascertain the description of soil, and, having done so, to determine whether the putnee jumma paid by the putneedar for his holding is or is not fairly proportionate to that of the whole estate.

14. In this district and in Bancoorah, the registration of the putnee talooks will be materially assisted by the course which has been adopted in carrying out the revenue survey. The greater part of these two districts appertain, as you are aware, to a very few large mehals, which mehals are let out in putnee tenures of one, two, three or more villages in each, to a large body of putneedars now in Bancoorah. It not unfrequently happened that there were so many as 15, 20, 25, or even 50 contiguous villages all belonging to one and the same mehal, and the separate identification of each one of which was not therefore absolutely demanded by the survey rules; but as these fifty villages were all let out in putnee to several, perhaps, nearly to an equal number of putneedars, a mowzarree survey, or what was in most instances an equivalent to a talookdaree survey, was deemed proper to be resorted to. This was effected in every instance in which adjoining villages were held

Appendix, No. 7. by distinct putneedar, and in almost every instance the boundary was amicably adjusted between the parties, all future disputes in the magistrate's and in the civil court as to the boundary between the adjoining villages or putnees being thereby set at rest for ever. The putnee tenures in Burdwan are very similar in nature and extent to what they are in Bancoorah, and they are being dealt with in the same manner.

I have the honour to be, &c.

(signed) *H. M. Reid,*
Officiating Collector.

From the Officiating Commissioner of Revenue, 16th Division, to the Board of Revenue, Lower Provinces, Fort William, No. 308, dated Chittagong, 19th April 1856.

Revenue.

Gentlemen,

I HAVE the honour to submit my opinion on the draft of the new Sale Law, and to forward the communications I have received from the collectors of this division on the same subject.

2. Sections X., XI., and XII. treat of the separation of shares, whether held in common tenancy, or consisting of specific portions of land. A recorded proprietor may apply to the collector to pay his share of the Government revenue separately, and a recorded proprietor may, within six weeks of the issue of a notice, make objection to the application. It must be a well-known fact that numerous estates do not bear on the books of the collector anything like all the names of the parties who are the several proprietors. Is it intended that non-recorded, but at the same time well-known proprietors, shall be debarred the benefits of this provision of the law? If such is not the intention, it should be declared that all joint proprietors, be they recorded or not, shall be at liberty to avail themselves of the provisions of Sections X. and XI., and that they shall be at liberty to object to those provisions being made available by any co-proprietor; and the question, whether the party applying, and the party opposing were proprietors or not, might be left to be decided by the collector in the summary inquiry he is directed to make in Section XII.

3. But, if it is the intention of the law to confer the boon of separation only on recorded proprietors, the sections may stand. A correct record of the interest held by every individual owner of land in every estate is so desirable that I should be glad to find that the sections are meant to be restricted to recorded proprietors. If non-registration is attended with such hazard, and the reverse with such advantage, that owners of land will naturally seek for the record of their rights, we shall have in time a public record of owners of estates approaching to correctness and completion.

4. It depends also on what may be the aim of the law whether Section XIV. should or should not be modified. If the object is to force co-proprietors to register their names as such, then the limitation of the right to save the estate from ultimate sale by the payment of the arrear (after the failure of a first sale to realise the amount of the arrear) to recorded proprietors, is calculated greatly to promote the object in view. But, if there is no such object, and if it is right to make such a provision as that contemplated in Section XIV. in favour of proprietors, equal justice to all requires that any joint proprietor, recorded or not, should have it in his power to stay the sale of the entire estate by paying up the arrear due upon a fraction of it.

5. But, be the sections taken in their limited, or more extended sense, they cannot fail in operation to bring an immense immediate and prospective addition of business upon the collector and his establishment. Every partner in an estate will now apply to have his name registered in the collector's register of mutations. Being a recorded proprietor, his next step will be to apply for a separation of his share under Sections X. and XI. In most instances there will be no opposition, and the separation will be effected as a matter of course without much personal trouble to the collector; but the effect of the measure will be important as regards the labour to the collector's office. The revenue-payers will be multiplied in many districts several fold, and in the place of the 40,000 separate accounts now kept with as many, for the most part petty proprietors, the Chittagong collector will have to open separate accounts with perhaps not less than a lac of proprietors, of a still lower order.

6. But the instances of opposition, especially under Section XI., will be by no means rare, and the inquiry, however it may be called, cannot be otherwise than tedious and difficult.

7. My own mind finds no difficulty in imagining a case wherein nothing but a regular partition, made after a survey of the estate, would suffice to enable the collector to decide what amount of revenue ought to be the quota of the share sought to be separated. Cases connected with butwarahs are, beyond all comparison, the most troublesome of all the duties which now come before a collector, and a great addition of such cases is not to be contemplated upon, without apprehension that the collectors will find themselves unequal to the prompt discharge of their duties.

8. Still the aim of the law is so admirable and the justice of it so undoubted that its provisions, as above discussed, ought to be retained as far as possible. The multiplication of revenue-payers, is what cannot be avoided, and an extra establishment, at a trifling cost, will meet

meet that difficulty, while the fees for the separation may be expected to yield a considerable sum of revenue at once. Where no opposition is made to a separation, and where no difficulty is experienced by the collector in ascertaining the proper amount of revenue to be put upon the share to be separated, the separation might be allowed to take place in the manner prescribed. But to provide against the collector being overworked by having to investigate difficult cases of disputed rights and interests, he should be allowed to refuse separation and to refer the parties to the Civil Court for the adjustment of their claims. The decision of the suit by the Civil Court might be declared to be summary, subject to modification or alteration by a regular butwarrah whenever that might take place.

9. In the Schedule A and B appended to the Act there is nothing said of the expenses of any local inquiry in connexion with Sections X. XI. and XII. If those sections are to stand and the collector is to be vested with no discretion to refuse an investigation, however complicated, provision ought to be made to authorise the collector to entertain, at the cost of the parties, any establishment he may require in order to effect any necessary local inquiry.

10. Referring to Section XV. it may be asked, is it the object of the Legislature to afford to landholders the means of purchasing the redemption of the land tax? If so, instead of a deposit of a public security bearing interest, the rate of which is subject to fluctuation, a specific sum, in lieu of the tax, should be fixed as the price of redemption, say a sum equal to 20 years' purchase. At this rate there can be little doubt that the privilege would only be rarely taken advantage of, but there may be estates so lightly assessed, or the property involved on the estate may be so valuable, or the condition of the party desiring redemption may be so peculiar, that the purchase amount would be as nothing compared with the benefit to be gained by the possession of a rent-free tenure in perpetuity.

11. If a deposit is observed only as a temporary security against sale, it should be at the option of the party desiring such security, to make it; and if the principle of compounding for the land tax is not one opposed to the stability and well-being of the State, the means of effecting it should be rendered as easy as the nature of the transaction will admit.

12. With a view to the improvement of under-tenures, three separate schemes have been proposed. One scheme is in the law; another has the high support of the present head of the Bengal Government; and the third emanates from Mr. Ricketts. One scheme is to compel the registration of all under-tenures, immediately from the zemindar, after inquiry, and to regard all registered under-tenures as safe for ever. The second scheme is to register all under-tenures, whether created by the zemindar or some inferior holder, the registry of which is desired by the parties themselves, without inquiry, and to hold such tenures safe against all future purchasers of the zemindaree so long as the latter is saleable for its arrears at a price equal to the arrear. Mr. Rickett's scheme is to register, after inquiry, all under-tenures which might be desired to be protected against Government as auction purchaser, and to register, without inquiry, all tenures which only require protection against other auction purchasers.

13. With regard to the first of these schemes, its details are contained in Sections XXXV. to XLI. of the Draft Act. Old talooks must be registered as well as those newly created. With regard to the first class of talooks, the old ones, the course of procedure, as laid down in the second clause of Section XXXVI., is simple, and seems to me a most judicious and advisable measure. If no other talooks are to be registered, those which profess to have been held prior to, or from the time of the perpetual settlement, ought certainly to be registered. On every change of proprietors, this want of a register gives rise to continual frauds, and is the cause of extensive and harassing litigation. Men who have no talookdaree rights assert them against the new purchaser, and if the old proprietor is in league with them, they often succeed in establishing a fraudulent title; and, on the other hand, an auction purchaser knowing the natural disposition of the natives to set up false titles, often disputes a valid one from sheer ignorance of the nature of the title.

14. But, owing to the facilities which exist for creating fictitious and fraudulent tenures, whether new or old, by forged deeds, I would not accord to any under-tenures any exemptions or privileges, such as would effect the rights and interests of Government as auction purchaser of the estate in which such tenure was contained, which are not now attached to such tenures. Talooks held twelve years prior to the revenue settlement are safe by the present law, but talooks created since then, lapse on a sale for arrears of Government revenue; and I would now deal with such, precisely as I would with newly created talooks, of which I am now about to speak.

15. In working the plan proposed for the registration of new talooks, I foresee innumerable difficulties. How is the collector to satisfy himself that a talook has been created in good faith so far as the interests of the Government revenue is concerned, and that the rent payable by the holder is not less than is fully sufficient to afford a fair proportion of the revenue assessed upon the parent estate? This could not be done without measuring and ascertaining the assets of the entire estate. Where a zemindar has ten villages and pays 1,000 rupees for the whole, by what means shall the collector be able to say that 150 rupees for any one village is a fair proportion of rent, as compared with the whole rent paid for all ten villages? He could only do this by actual survey and measurement of all the villages. Small talooks, then, in large estates are impossible; for who, for a talook of 500 rupees, would consent to pay the cost of measurement of a large estate?

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16. The revenue survey will not make it much easier for the collector to decide whether the rent of a particular talook is such as to remove any risk of loss to the public revenue or not. With the area of the parent estate before him, it may still be a difficult question to decide what a fractional part of that estate ought to be assessed at, so as to leave no ground of apprehension that the assessment will always be ample to afford a fair share of the revenue assessed upon the parent estate.

17. But, say that the collector has ascertained the exact state of the talook, and that at a certain sum it will apparently pay its proportion of the public revenue assessed upon the parent estate; is it safe to declare that under no circumstances shall Government as purchaser be competent to alter the rent of any registered talook? Suppose that a zemindar has an estate which he cannot fully cultivate; suppose he draws a line through it, and gives the estate consisting of scattered patches of cultivated and waste in equal portions to himself, in some fictitious name, as two separate talooks. If the revenue was 1,000 rupees, the collector could not object to register each talook at 600 rupees. The registry over, suppose the zemindar offers the ryots of one talook better terms upon the other, and that they all agree to locate themselves upon the other. This done, suppose the zemindar falls into arrears and the Government purchase the zemindarree. It is plain to see that, in place of an estate yielding 1,000 rupees, the Government obtain one which yields only 600, with the chance of letting tenants for the lands thrown out of cultivation by the fraudulent act of the late proprietor.

18. Where such a fraud can be committed, there will not be wanting fitting parties to commit it. It will be as impossible to provide against it, as it is certain that it will be extensively practised; and this is such an insuperable objection to the measure proposed that no counter-advantages can compensate for it.

19. It can never be that, with the means of fraud so easily available, registration of an under-tenure shall be made without the most particular inquiry. I have instanced a case in which all the care and precaution possible would be unavailing to guard the interest of Government. Remove even the risk of loss to the Government revenue, the plan cannot be worked out. The collector would find it quite impossible to make the numerous inquiries previous to registration which the proposed measure, if carried, would require him to do.

20. In some estates the rent of a fractional part, if assessed in proportion to the rent of the parent estate, would be so light that no owner of such would, except in consideration of a large present premium, give away a talook on such an easy jumma. To insist on the rent of a part being equal comparatively to the rent of the whole, is to impose unfair terms on the zemindars; not to insist on it, is to give greater facilities and temptation to commit frauds against the public revenue.

21. Of the scheme contained in the law, I have strong and decided objections. Of the three schemes, that of the Bengal Government appears to me to be the best. Let any and every under-tenure be registered when both the parties concerned in the giving and accepting, agree to desire it. Let those tenures hold good against all auction purchasers of the parent estate, except when Government is the purchaser on the contingency (not likely often to happen) of the estate not being saleable at public auction for an amount equal to the arrear due upon it. Every zemindar will then be at liberty to make what terms he likes with his talookdars, and they will be free to do the same with parties holding from them. The Government revenue will in no way be put to risk or damage, and though the liability of cancelment of tenures is a feature in the Bengal Government scheme, which the scheme in the law obviates, I am still of opinion that the public have now such trust in the fair dealing of the Government, that the purchase of an estate on behalf of Government would not be regarded by the honest talookdars with any dismay. Holding at fair rates, there would be no fear that the talookdar would be disturbed, or subjected to any material increase of assessment, and those who had by artifice held at inadequate rates, are not the men upon whom any sympathy is to be bestowed.

22. By the plan of the Bengal Government any zemindar might, or he might not, create tenures. That talooks will be created in great number there is little doubt. A talook being created, it behoves the State to see that it has really all the protection which the law designs to afford. Registered talookdars should have the privilege of paying their rent direct to the collector; without this, fraudulent zemindars will be always defaulting in order to buy in their estate banamee. Every talookdar will be said to have been in arrears in order that their tenures may be destroyed. It may be that the zemindar will not often succeed in establishing that a talook was in arrears when it was not so, but he will succeed now and then, and success occasionally will amply repay him for having made the attempt on a large scale.

I have, &c.

(signed) C. Steer,

Officiating Commissioner of Revenue.

From the Officiating Collector of *Chittagong*, to the Commissioner of Revenue, 16th Division,
No. 749, dated 16th April 1856.

Sir,

I HAVE the honour to acknowledge the receipt of your office memorandum, No. 271, dated 13th ultimo, regarding the proposed new sale law.

2. The first ten sections of the new law appear to be very similar, and in many parts identical with the earlier sections of the old law, and do not seem to require any particular remarks. By Sections XI. and XII. the liability of joint proprietors of an undivided estate is limited to their actual interest in the property, and the following section points out the course to be pursued by the collector in separating a share held in common tenancy, and in apportioning to a sharer a specific portion of land. The part proprietor of an estate so often suffers from the indifference, the extravagance, or the malice of his fellow-sharers, that none can doubt the justice of providing him with some more substantial security than he at present enjoys. The new law will undoubtedly confer a boon on a large class of landholders, but it will also have the effect of increasing to a vast extent the expense of collecting the revenue. I can hardly imagine a case in which a joint proprietor will not avail himself of the advantages which the law offers, and there will be scarcely a zillah in Bengal in which the number of mehals upon the towjee will not be speedily trebled. In this district with its 40,000 sudder mehals, the increase will be in no way less remarkable, for the partners of a small Chittagong turruff are just as numerous as the partners of a large zemindaree. The increase, too, will be progressive; for the shares which have been separated will in course of time become themselves the subject of fresh divisions. It may be urged that by affording such facilities for subdividing estates, you will cover the land with petty tenures, and will destroy the extensive properties which now exist. The fact appears to be that these divisions are in existence already, and arise from the laws of inheritance, and the wants of the people. The law will not create, but will perpetuate them, and in the place of vast estates coming into the market, and passing into the hands of a single individual, a wealthy capitalist must hereafter be contented with buying property piecemeal.

3. To Section XI. I have no objection to urge, for Section XIV. will sufficiently repress the endless frauds which would otherwise spring from it. A consideration of section XII. leads me to think that the collector will often find it difficult to arrive at a correct decision by a summary inquiry when the land and jumma is disputed by the other sharers. In my opinion it would be better to refer the parties to the butwarrah laws when the objections do not appear frivolous or groundless. The collector's decision may be wrong, or the applicant may be in possession of more land or (which will be more common) may pay a much less jumma than properly falls to his share. So long as the estate remains in joint proprietorship, the weaker sharers have some hold over the stronger, but when the division takes place, and they become responsible for an undue proportion of the revenue, they may find it difficult to retain their lands. The sale would ruin them beyond hope of redress, and their more fortunate partner might complete the sum of his wrong-doing by becoming the purchaser of their shares under Section XIV. By the butwarrah laws now in force, the divided portion of a mehal, except in cases of fraud, becomes permanently severed from the parent estate, but by the present law, the separated portion is liable to be re-annexed at any time. In some instances, say where lands are exposed to diluvion, it would be hard to sell the property of one sharer because the lands of the other have ceased to exist. The provision should at any rate be modified; but, in my opinion, if a butwarrah is to take place, it should be so conducted as to obviate the necessity for any such stringent provision at all. I would rather in fact that the butwarrah laws should be revised and rendered more manageable than at present, than see the summary investigation proposed in Section XII. adopted:

4. Section XV. permits a recorded proprietor to deposit the amount of his revenue in cash or Company's paper with the collector. The provision is just, and whether it be used as a means of converting estates into freehold tenures or merely be used to avert the consequence of a co-parcener's bad faith or an agent's dishonesty, the result cannot fail to be beneficial.

5. The next section which, in my opinion, requires notice, is XXXIII. It is ruled, as in the present law, that, unless an appeal shall have been preferred to the Commissioner, no case shall lie in the civil court for reversal of the sale. In districts where estates are numerous, mistakes are apt to occur, and it sometimes happens that mehals are sold through an oversight, and the unfortunate proprietor remains unaware of the fact until the period of appeal has gone by. Such a case occurred in this district; payment had been made, but credited to another estate, which bears a somewhat similar name and jumma. The owner could obtain no redress, for the civil court refused to entertain his case, because he had not appealed to the Commissioner.

6. The most startling change to which the proposed law will give rise, concerns the condition and value of intermediate estates. The present law benefits the zemindar at the cost of the talookdar, and with but few exceptions places every tenure at his disposal. The proposed law will cover Bengal with perpetually settled mehals and render the jumma of the talookdar as fixed and immutable as that of the zemindar. The present law contains a reservation in favour of—First, Istumrree tenures which have been held for more than twelve years before the permanent settlement. Secondly, of such as were in existence at the time of the

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the settlement; and Thirdly, of certain tenures of more recent creation. The proposed law, in addition to the above, will embrace tenures of whatever description belonging to the third or last mentioned class, and further will outstrip the present law by insisting upon a registration in all cases. As no talook can be deemed valid if unregistered, so no registered talook can be set aside unless it be proved within 60 years that the assessment is detrimental to the Government revenue. Thus, the advantages conferred by the registration will be enormous, and I cannot help fearing that the system will be attended with abuses just as extensive. Under the present law, the zemindar who opposes the talookdar's claim is probably a recent purchaser who has paid a high price for his estate and is anxious to turn it to the utmost advantage. Under the proposed law it will be difficult to prevent the talookdar and the zemindar from colluding, or to prevent the latter from creating fictitious tenures for his own peculiar profit. The collector who adjudicates on the validity of the tenure will (in the case of mehals of the first and second class) be often a passive instrument in the hands of parties between whom there exists no real variance. The title deeds may be forged, but who will prove them forgeries? The jumma may be merely nominal; but without a local inquiry and in the absence of trustworthy records, how will this fact be ascertained?

7. Section XXXVII. refers to talooks of recent creation. I presume that the zemindar is at liberty to create a permanent tenure, but I do not understand upon what terms he is at liberty to settle with his talookdars. A careful and provident man would insist upon a fair assessment; a needy and extravagant one would prefer to part with his lands on an easy jumma in expectation of receiving a larger jumma. To what extent then is the collector's interference required, and what is meant by the terms that the rent shall not be "less than is fully sufficient to afford a fair proportion of the revenue assessed upon the parent estate." The assessment throughout the estate may be light, and if one talook is to be assessed in the same proportion as the others, and not agreeably to the market rates, the zemindary may be rendered comparatively worthless. If, on the contrary, we insist upon assessing the talook on the severe basis which is current in khass mehals, we may offend both talookdar and zemindar and deprive the latter of a very favourite method of satisfying his necessities. In most cases the mofussil inquiries must be extended to other lands than those of the talook which it is proposed to register. Sometimes it may be necessary to measure the whole zemindarree, and a most expensive agency will be required. The funds of course must be furnished by the parties whom the undertaking will benefit, and it will sometimes be a difficult matter to prevent the registration from becoming too costly a boon for the talookdar to avail himself of it. In districts which have been surveyed or measured, the task will be comparatively easy; but there are parts of Bengal where even the zemindars themselves possess no measurement papers and are utterly ignorant of the real extent and value of their possessions. In such cases the difficulties of the collector, and in fact of all parties concerned, will be increased ten-fold.

8. The introduction of a system of general registration will benefit the proprietors of recently-created under-tenures. To those who hold lands of the first and second class, the new law will, in my opinion, be ruinous. The old law left the zemindar to deal with them. By the new Act they will be put upon their defence at the prosecution of the collector. As in the case of lakherajdars, the *onus probandi* will lie with them; and when any pottah or sunnud is not forthcoming, they may be unable to prove the fact of possession, which perhaps is notorious in their own neighbourhood: such, it will be said, may be the case at present. True; but litigation is not now suddenly forced upon them at the instance of a third party. They are left in undisturbed possession until such time as the zemindar thinks proper to sue them.

9. The beneficial results which are likely to spring from the new Act are obvious; proprietors will be secured from the dishonesty of their agents or co-parceners, and a respectable and influential class of middlemen will be established. But the disadvantages are also to be considered. The zemindarree tenure will become comparatively worthless, and men will prefer vesting their money in under-tenures to purchasing fractional portions of estates and properties which yield little beyond their sudder jumma. The system of registration, with all its admitted advantages, will open the door to incalculable frauds, and tenures will be created regarding which the collector has no real knowledge. Government will in self-defence become an extensive proprietor, and then will follow increased expenses of collection and endless disputes with fraudulent talookdars.

I have, &c.
(signed) J. S. Spankie, Officiating Collector.

From the Officiating Deputy Collector of *Bullooah*, to the Commissioner of Revenue, 16th Division, *Chittagong*, No. 479, dated *Bullooah*, 26th March 1856.

Sir,

I HAVE the honour to acknowledge the receipt of your memorandum, No. 271, of the 13th instant, and its accompaniment from the Board of Revenue, Circular No. 2, of the 26th February 1856, calling for a report on the draft of an Act to amend the law of revenue sales.

2. The current Act I. of 1845 was merely a liberal alteration of Act XII. of 1841, by which the particulars of an estate were more generally made known to the public by a new system of advertisement, and a mitigation of the severity of procedure as to forfeiture in cases of non-payment of the full amount of purchase-money allowed.

3. Act XII. of 1841 was enacted for the benefit of the agricultural community, to abolish the levy of interest, and penalties on arrears, and to systematize and amend the laws for the realisation of revenue.

4. The present obtaining system has, therefore, with slight amendments, been now going on for fourteen years, but during all this time it appears that the law had been objected to and proposals for its amendment have occupied the attention of the best revenue authorities, and have now resulted in the proposal of the Draft Act under review.

5. The preamble of the proposed law embraces all the provisions of the current system, and a great deal more—Six objects are detailed.

First.—The assimilation of zillah Cuttack to the permanently settled districts of Bengal in the matter of sales.

Secondly.—Reasonable security to persons having liens on estates.

Thirdly.—Provision to enable sharers in estates to protect their shares from sale by reason of the default of co-sharers.

Fourthly.—Provision to enable landholders and absentees to guard against accidental sale of their estates through the neglect or fraud of their agents.

Fifthly.—Enforcement of registration of dependent talooks, and security to such tenures when registered.

Sixthly.—Protection to under-tenants from loss by the voidance of their tenures by a sale for the causes of which they are not responsible.

6. Although in the proposed Act much of the spirit, procedure, and wording of Act I. of 1845 is retained, the above objects are new, and, with the exception of the last, untouched by the former Act.

7. The first eight sections of the proposed law differ from the same sections in Act I. of 1845, simply by the alteration as regards zillah Cuttack, a little difference in wording, and the writing of the word gazette, where the former word was gazettes. In this last particular it appears to me that the former reading was preferable, and I see no advantage in substituting the singular for the plural number.

8. I am aware of no reason why the process of direct sale in the event of arrear, which is found in practice to answer in Bengal, should not be extended to Cuttack.

9. In the first part of Section IX. the existing law has been liberally enlarged; the power formerly allowed to zillah judges is extended to the civil courts in general. The last part of the section guards a holder of a lien on an estate against loss by sale of the property.

10. It is not expressed, but it is clear from the wording of the section, that the collector is bound to receive the arrear if tendered before sunset on the latest day of payment, from anyone whomsoever, and to credit it to the estate, and thereby to prevent sale, without enquiry in any way into the rights, motives, or interests which cause the payment of the arrear—all such matters being left to the civil court. Under this ruling, which applies to the current law, a person having only a lien on the estate, was not regarded as a party interested in the estate; and in the case of such a person preventing sale by the payment of the arrear, his payment was regarded as gratuitous. By the proposed law, the amount paid is added to the original lien: and surely there can be no objection to the introduction of this fair and honest dealing.

11. I cordially approve of Section X. as to the separation of shares held in common tenancy, for the purpose therein described; also of Sections XI. XII. XIII. and XIV. as they secure the Government and permit the estate to be saved till any sharers may be able to make a more complete separation of their land and shares by formal butwarrah: these clauses are entirely for the benefit of the zemindars.

12. With reference to clauses XV. and XVI. relative to deposits for the protection of an estate from possible sale, I would remark that the deposits may be made long before sale is probable; in which case attachments by order of the civil courts may be received by the collector and occasion difficulty; the clauses seem, therefore, scarcely complete without some reference to the above contingency.

13. Under the present state of the law I know nothing preventing the deposit of a sum with the collector to guard against a possible sale, and I believe the deposit has actually been made.

14. Clauses XVII. and XVIII. merely re-enact the current law.

15. Section XXVIII. relates to the application of the surplus money; it is the same as the rule in the current law, and coupled with it is a difficulty. Very many estates come to

Appendix, No. 7. the hammer because they are held by numerous partners in joint tenancy, and these cannot agree among themselves; the separate shares have not been recorded in the collectorate; often the several joint partners refuse to sign a joint receipt. Immediately after sale, precepts from the civil courts constantly desire the collector to attach certain amounts of the surplus proceeds in the name of some of the joint-holders, whose proportion of share is unknown to the collector; and thus sharers, whose rights are not affected by the orders of the civil courts, find it difficult to obtain their shares of the surplus sale money. In such cases as this, the course to be pursued by the collector, when a portion of the body of joint proprietors refuse to sign a joint receipt, should be defined. At present the law seems to rule that, unless the whole body of joint proprietors give the receipt, the collector should not pay the money—a practice attended with manifest hardship and requiring provision by law in this place.

16. The proposed law next requires the compulsory registration of under-tenures, and it carefully distinguishes old tenures and those created before settlement from new; part of Section XXXV. and the whole of XXXVI. relate to the registration of old tenures.

17. It is generally known that the present state of the law of registration is very defective, and often useless. In my own limited practice, in all difficult occasions I have found it totally so. The advantages of registration offered in Act I. of 1845 have scarcely ever been attended to. When a lease is granted, it is generally registered without inquiry by the register of deeds, but very seldom has the required notice been made to the collector—a neglect that would be fatal to a lessee if he tried at law to protect his lease against the interference of a purchaser at a sale under Act I. of 1845.

18. I am fully aware of all the advantages of registration. I would support any law which would make the complete registration of all old tenures general, but am averse to making such registration compulsory.

19. In the yet unsold estates, where registration of such old tenures has been neglected, the requisite proof for registration might be difficult to obtain, and the inquiry demands much of the collector's attention; and should registration not be granted, the tenure becomes reduced to a state similar to that of a ryot's.

20. I think any difficulty on this matter would be better left to the management of the purchaser and the occupant, and uninterfered with by the collector.

21. I would leave such old tenures as encumbrances on the estate exactly as they are now left by clauses one and two of Section XXVI. of Act I. of 1845, allowing the tenants liberty to register their holdings before the collector, if they choose, as security to themselves, but not visiting the neglect or inability to do so by any probable future penalty.

22. To the general provisions for causing the registration of tenures created subsequent to settlement, I am very willing to agree; but think that, if it was made compulsory only to register tenures created less than 12 years before the passing of the present Act, leaving tenures of older creation to benefit or not by registration, as may seem best to their owners, it would be found more to the advantage of the landed interests.

23. I think the words "fix a day" in the second clause of Section XXXVI. may be omitted with convenience to collectors, and no injury to the other parties concerned.

24. In the additional rules connected with registration under Section XXXVII. it is proposed that the collector shall commence measurement immediately. I am of opinion that it would be better to wait till the answer of the proprietor of the estate as to his objections to registration are received, and if necessary, decided by the collector.

25. With the above remarks I beg to express my opinion as to the rules for the registration of under-tenures, and proceed to notice the effect to be given to such registered tenures in the event of sale, not with any presumption that my remarks on such an important and disputed topic will be of any value, but simply because I have been ordered to report on the subject.

26. The effect of the proposed law is to cause all under-tenures to be registered, and all registered tenures to be considered as valid and permanent hereditary holdings with reference to the law of sale for arrears of revenue, and to be held good as such against all purchasers, the Government not excepted.

27. Another scheme, backed also by most experienced revenue authority, has been mooted—it is this, that all under-tenures created since the settlement, at whatever rates, could hold good so long as the parent estate should prove saleable for an amount equal to any arrear of revenue that might accrue upon it; and that whenever this should cease to be the case, the parent estate should be forfeited to Government, who should make a re-settlement of the whole of it.

28. I am rather averse to compel registration, and I deprecate the interference of Government between the zemindars and the under-tenantry, when that interference can be avoided.

29. The law proposes to give a permanence and a value to under-tenures, which were created by the zemindars, who at the time of creation did not consider the introduction of such proposed legislation, and only received the consideration from the accepting tenants naturally under the knowledge that the zemindars could cause a benamsee sale of the whole property, and subsequently increase or alter any of the rents. It is fair to conclude that, had it been known that the value and stability of these tenures would have been increased, the salamee would have been greater at the time of their creation. I do not think the law is equally fair to the zemindar as to the tenant; it places the zemindar in the position of a mere collector of rents; it diminishes his authority and interest in the estate; it tends, in my opinion, to deteriorate the value of zemindaree property throughout the country.

30. I see no reason why these under-tenures should necessarily be interfered with by Government, or why Government should necessarily be bound by them. I will put a case. A zemindar, urged by feelings of gratitude for services done by some one to him, say, for an intricate and important lawsuit concerning possession of land, carefully conducted by a vakeel through all the perils of the Mofussil and Sudder Courts to a final satisfactory conclusion, wishes to reward that vakeel by the present of an extensive hereditary farm at a mere nominal rent, not one-tenth of its actual value in the market—what right have the Government to step in to interfere, and say, We object to this farm? it is injurious to the property? it does not yield a fair rent? Again, the estate is primarily answerable to the Government for the Sudder jumma. Should the estate be sold and fall to the Government, Government would be injured by any law binding it to support such a lease as the above. I think, therefore, with Mr. Ricketts, that there might be incorporated into this law two species of registered engagements; the one distinctly unconnected with the Government, binding against any one purchasing the position and rights of the zemindars, but not binding against the Government in the case of a lapse of the estate; and another species binding on the zemindar or any one succeeding to his place, and also on the Government, and depending for its sanction on full inquiry by the revenue authorities, subject to all descriptions of appeal from the collector to the Board of Revenue, and thence to the Civil Court.

31. Government does not enter on the possession of a forfeited estate with the ultimate aims of an ordinary purchaser; and where an estate becomes the property of Government, it is not the collector's sole object to get the highest possible jumma from each tenant. On a change of proprietors, the Government is preferred by the under-tenants to a new zemindar; the settlement proceedings are conducted under experienced supervision; no extortion or harshness is permitted, no salamee is demanded, and all proceedings are open to the appeal of higher revenue authorities. The present rules for settlement, contained in the settlement manual, direct a most careful adjustment of the rights of every occupant of an estate, and allow of the confirmation of every fair tenure found to be in existence at the time of the commencement of the Government ownership. I believe that, under the existing settlement procedure, each talookdar, putneedar, durputneedar, seputneedar, howladar, &c. would fare far better than they do on the advent of a new zemindar under the current law; and that the state of under-tenures with reference to a purchase by Government, is in reality, if not in actual law, much better than in the case of purchase by private individuals.

32. On the purchase of a considerable estate by an individual, the process of obtaining possession commences with its accompaniments of affray, murder, and paying, and is followed by the sequel of increased jummas and salamee. None of these objectionable occurrences take place in the event of an estate being forfeited to the Government: and I submit that in the settlement of such an estate, the Government ought to, and would give security to all actual tenants occupying under honest titles at fair rates.

33. It has been argued that, unless registration be binding against the Government, a tenant who has improved his land will pay a tax on his improvements, whilst an idle tenant, who has allowed his tenure to deteriorate, will receive a premium for his negligence. I cannot see the force of this argument; under the spirit of the present settlement rules, the tenant possessing a property brought up to a mature state of cultivation, would have the same secured to him after inquiry, subject to no further alteration of jumma; whereas in the case of the tenure where there is evident room for improvement, the rent would be fixed only for a short period, at the expiration of which, fresh inquiry, with an increased demand of rent, would ensue. Indeed, I think registration of tenures, of which the greater part consist of waste lands, which are widely spread over Bengal, with a view to the determination of a future fixed rent, unadvisable, if not impracticable; it is making an obligation binding for ever on the calculation of a future contingency.

34. I do not think there is any very great necessity to guard against fraud, where the Government is not concerned; this proposed law is not enacted for the security of intending purchasers. A purchaser is bound to satisfy himself of the value of the thing he wishes to buy; if he covets an unembarrassed estate, and buys a bag of lawsuits instead, he has himself to thank for this caveat emptor.

35. On the whole, then, I prefer the scheme, which allows of the registration and formation of tenures without the interference of the Government authorities to that in the proposed law now under review, which demands speedy registration of all under-tenures; and would render them permanently effective against the Government.

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36. The whole of the proposed law is a philanthropic endeavour for the general benefit of the landed and agricultural interests; its aim must be universally approved, it is only in particulars that I have ventured to differ. I have expressed all that I could find to object to, and have no further comments to offer.

I have, &c.

(signed) *F. B. Simson,*
Officiating Deputy Collector.

FROM the Commissioner, Cuttack Division, to the Secretary to the Board of Revenue, Lower Provinces, No. 563, Pooree, dated the 24th April 1856.

Sir,

Revenue.

I HAVE the honour to acknowledge the receipt of your letter, No. 2 of the 26th February last, on the subject of a Bill for the Improvement of the Revenue Sale Law, which is now before the Legislative Council. In reply I beg to forward copies of the communications on the subject, which I have received from the Collectors of the Division, and at the same time to submit the following observations:—

2. The first provision of the proposed Sale Law relates to the repeal of Regulation X. of 1818, and the discontinuance of the present practice of obtaining the previous sanction of the Board of Revenue to sales of estates in the province of Cuttack. The honourable Mover of the Bill appears from his speech, as reported in the published proceedings of the Legislative Council, to be under the impression that the dustuck system still prevails in this province. That, however, is a mistake. The dustuck system was abolished on the 1st of January 1854, and the provisions of Regulation X. of 1818 have ceased to be enforced since the same period. The revenue is now collected in Cuttack, as elsewhere, in the regulation districts of Bengal, by a system of payments on fixed dates enforced, in the event of failure, by the sale of the tenure on which they are assessed. The success of this measure has been most complete. The Government revenue

DISTRICT.	Annual average Number of Sales from	
	1844 to 1853.	1854 to 1855.
Cuttack - - -	12	2½
Pooree - - -	1½	1
Balasore - - -	1½	2

is collected with even greater punctuality than before. Sales, as the marginal statement will show, have actually diminished in number, and the landholders have repeatedly described to me the annoyance and oppression to which they were subjected under the old system, when a whole army of peons was periodically let loose upon them, and expressed their lively satisfaction with the present arrangements. The only inconveniences attendant on the new system, arise from the necessity of submitting voluminous lotbundes periodically to the Board, the preparation of which imposes a serious task on the collector's establishment, and the obligation of obtaining the Board's previous sanction to the sales, which frequently involves their postponement in consequence of the Board's

answer not being received in sufficient time to admit of the publication of the notices which the law requires. These inconveniences will be removed by the provision in the Bill to which I have referred, and both this and the proposed repeal of Regulation X. of 1818 have therefore my hearty concurrence.

3. The next improvement of importance upon the present sale law, which the Bill contemplates, consists in allowing the amount of the deposit made by a mortgagee, in order to protect his lien on the estate of a defaulter, to be added to the amount of the original lien, thus affording the mortgagee the security of the estate itself in lieu of the mere right of recovering his deposit by an action against the proprietor, which is his only remedy under the present law. To this I can conceive no objection. It appears but equitable that the deposit which saves the estate from sale should be secured by a lien on the property in behalf of which it has been made.

4. The Collector of Cuttack (Mr. Shore) urges some objections to the provisions in Sections X. XI. XII. XIII. and XIV. of the Bill, whereby shareholders of joint undivided estates will be enabled to pay the revenue on their shares separately, and so to secure them from sale, except in the double contingency of one or more of the other shares failing, when exposed to auction, to realise the full amount of the arrears due upon them, and of these arrears not being made good within ten days of the sale by the solvent shareholders. He considers that these provisions will encourage the sub-division of property and the multiplication of petty estates, which is already, he thinks, a serious and growing evil in this country; and he would therefore limit their operation, as was done by the new rescinded Regulation VI. of 1807, to those shares the Sudder jumma of which should not be less than 500 rupees.

5. If I thought that the clauses of the Bill which I have quoted in the latest Section were likely to lead, as Mr. Shore supposes, to the further sub-division of petty estates, I should join with him in deprecating their introduction; for extreme sub-division, it is obvious, by creating a host of pauper proprietors, must materially increase the risk and labour of collecting the revenue, while its effect upon the people themselves and upon the prosperity of the country is likely, in my opinion, to be prejudicial.

6. I believe, however, that the operation of these clauses will in all probability be the very reverse

reverse of that anticipated by Mr. Shore. I think that the remedy which they provide against the fraud or negligence of co-sharers, will, in a great measure, put a stop to the partition of estates; that it will give the shareholders of joint undivided estates confidence and security in that description of property, and will render a formal partition of the estate under the butwarrah law unnecessary for their protection. Many persons appear to suppose that there is little difference between an actual partition, as effected under the provisions of Regulation XIX. of 1814, and the power which this Bill allows to sharers in undivided estates of protecting their own shares by the separate payment of their share of the revenue of the estate; but there cannot be a greater mistake. In the first place, according to the plan proposed, the whole estate continues answerable for the revenue assessed upon any portion of it; and in the next, the estate has the benefit of the joint funds of a number of individuals employing, generally speaking, a single manager, and retains an area sufficiently large to encourage the application of capital, instead of being split up, as it would be if partitioned into a variety of little unremunerative patches, each with a separate management, and dependent for improvement on the resources of a single individual. I consider the principle involved in these clauses to be worthy of adoption, and the details appear to me to be unobjectionable.

7. To the permission given to landholders, by Sections XV. and XVI., to secure their estates from sale, by depositing with the collector money or Government securities equal in amount to the Sudder jumma of their property, I can conceive no objection. It has been said that this permission may lead to the redemption or condemnation of the land tax; but, as Mr. Shore has pointed out, this cannot be until the interest on the public debt equals the land tax, and Government renounce the power of paying off the loans which they contract.

8. The provisions of Section XXXV. and the following sections, for the better security of under-tenures, have not been made applicable to this province. It has probably been thought that, as the recent settlement fixed and placed upon record the rights and interests of all persons at that time connected with the soil, and the under-tenures created since the settlement cannot be very numerous, it was unnecessary to disturb the existing arrangement. The number of under-tenures, however, which have been created since the settlement, either through the sale or abandonment of the old tenures, or the cultivation of lands formerly waste, is very considerable; and if it is advisable that the under-tenures in Bengal should be secured against forfeiture by the means proposed in this Bill, there seems no good reason why the measure should not be extended to Cuttack. Under-tenures created since the settlement, as it is, are limited in duration to the term of the zemindar's engagement with Government; * but this would form no objection, for the Bill deals, as I understand it, with the limited as well as the perpetual leases of Bengal, and does not propose to extend such leases beyond the periods for which they were originally granted.

* Act XVI. of 1842.

9. But I do not recommend that the provisions of the sections which I have quoted above should be extended to Cuttack. They would, from all I can learn, be very unpopular here. Nor am I disposed to think that they should be introduced into the revenue law of Bengal. Let us first examine the proposed measure under the supposition that it will be generally taken advantage of, that in the course of the next three years every talookdar, putneedar, moostajur, and ryot will have registered his tenure and secured himself against any enhancement of his rent during the period of his lease. The state of things, then, will be very much the same as that which has prevailed for the last 13 years in this province. Now, what has been the effect here? The answer, I fear, must be, that while the ryots and under-tenants are very much better secured against the exactions of their landlords than they were before, the agricultural improvement, which is stated to be one of the objects of the Bill, has not been attained; and this, for the very obvious reason that all incentive to the investment of capital in the improvement of the land has been removed from the only classes who have capital to invest. As matters stand, the sole person connected with the land who can benefit from its improvement, is the lowest on the scale, the ryot. The zemindar, the surburakar, mokuddum, and other intermediate holders, are no further interested than that any positive deterioration of the land would affect the ryot's power of payment, and any improvement would facilitate it. The motive, however, which these considerations supply is not sufficiently strong to induce these parties to lay out anything upon land which will return no direct interest on the money expended; natives have not sufficient foresight for a mere precautionary outlay. Indeed, in such a state of things as prevails here, the ryot's ruin is often the gain of the zemindar or the middleman. An inundation, which destroys all the hopes of the ryot, is not unfrequently a source of positive good to the zemindar, as it enables him to oust his under-tenants, and re-settle his estate free of all incumbrances.

10. Where this cannot be done, the zemindar sinks into the mere holder of a superiority, and has little more interest in the land than the owner of a jointure has in the estate on which it is secured. Talk to such a man of improving his estate by irrigation, by roads, by the introduction of new products, and his natural answer is, "What benefit shall I derive from these measures? The rents of my under-tenants are fixed, and if I trebled the resources of my estate, I should not be richer by a single pice." This is no imaginary reply, but an answer very similar to many which I have often heard since I came to this province. The case is precisely the same with the middleman. He, too, has nothing to look to beyond the rents of his under-tenants. The only hope of these men, apart from the cultivation of waste land, is the breaking up of the settlement tenures, and to this object many

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of the landholders and middlemen here devote themselves with great perseverance. According to the degree in which they succeed in this, they enhance the value of their property; and it is matter of notoriety that, in consequence of the increased facilities which a Government sale gives for testing and annulling under-tenures, a very much higher price is obtained for estates which are brought to the hammer than could be procured for them by private sale.

11. Throughout the discussions which have taken place on this Bill, the interests of the zemindars, in whom, by the theory of the perpetual settlement, the property of the soil is vested, appear to me to have been wholly overlooked. The question of fixity of tenure has been argued as if it affected the under-tenants and the Government alone. But it seems certain that the adoption either of Mr. Grant's measure or of that advocated by the Government of Bengal, would have the effect of depreciating the value of zemindary property to a very serious extent. At present, when a zemindary is sold by the collector, it passes into the hands of the purchasers free for the most part of encumbrances, and capable, under judicious management, of improvement to a greater or less extent, according to the circumstances of the case. It commands, therefore, a price calculated not merely according to its present rental, but according to the extent to which there is reason to expect that rental may be raised. But introduce fixity of tenure, and the zemindary is worth merely the market value of the existing rental, minus the cost and risk of collection. It cannot be doubted, I think, that, supposing registration to be generally adopted by under-tenants, there would be a very considerable difference between the value of zemindaries prior and subsequent to the act of registration; and, if this be so, it follows that, to the extent of this difference, the present Bill is a measure of confiscation.

12. It seems to be thought that the capital of the country is chiefly in the hands of the talookdars, and that agricultural improvement is to be looked for rather from them than from the zemindars. This idea has probably originated in the fact that indigo and sugar-planters seldom hold zemindaries, preferring to rent merely those talooks or villages which they require for the products they cultivate. As a general rule I believe it is unfounded. I cannot believe, for instance, that the improvement of the district of Burdwan would not proceed much more rapidly if the leases were under the control of the Rajah, than it is likely to do while the estate is sub-divided among putneedars who enjoy fixity of tenure, and who alone therefore have an interest in improving its resources. And even with regard to indigo and sugar-planters, it must be recollected that it is not in their character of middlemen that they expend their capital, but in that of manufacturers and contractors; their advances are frequently made to the ryots of estates in which they hold no tenures.

13. But suppose that the assumption to which I have alluded is correct, and that the improvement of the position of under-tenants in Bengal is so important as to justify the sacrifice of the zemindar's rights, is it quite certain that the most wealthy and most improving class of under-tenants, namely, the indigo planters, will really benefit to the extent that is anticipated either by Mr. Grant's measure (always supposing it to work) or by that of the Bengal Government, which, it would seem, they prefer. There is no doubt that their position as talookdars would be somewhat more secure than it is now, although I must say their entire disregard of the protection afforded to those who register under Clause 5, Section XXVI., of the present law, does not evidence much sense of insecurity; but would it be quite agreeable to them that the ryots and under-tenants in their talooks should be rendered equally secure? An indigo planter does not look for remuneration to the rent of the land he occupies. His object in taking a talook is to acquire a power over the ryots, which may enable him to induce them to cultivate indigo for his manufactory; and if the ryots could secure themselves by registry or otherwise against enhancement of rent, it is not unlikely that they might prove their independence by declining to sow indigo, and tendering their rent of a rupee or two per beegah instead. I do not think that indigo planters would wish to see the ryots as independent of them as they themselves are (or would be under this Bill) of the zemindar.

14. Then, let us consider what would be the effect upon the Government revenue of a general registration and fixity of under-tenures; and, first, with regard to the ante-settlement tenures, to which, I may observe, I have not alluded in the foregoing remarks. In cases where these tenures have formed the subject of suits or proceedings in the Civil or Revenue Courts, and the fact of their being ante-settlement tenures, bearing a certain fixed jumma, has already been judicially declared or otherwise clearly ascertained, there could of course be no objection to their registration in the mode proposed by the Bill. The holders of these tenures would acquire, from registration, a fresh security. Intending purchasers would more easily ascertain the assets or incumbrances of the estate they wished to purchase, and no injury would be inflicted on any one. But, according to the process which the Bill contemplates, there appears to me to be nothing to prevent an unprincipled zemindar from creating fictitious tenures of this description. The notice is to be served on the zemindar himself; no one, in all probability, will have any interest in objecting to the registry. Collectors in Bengal have no mofussil establishment, and the omlah, through whom they make their inquiries, may be bribed. It is not impossible, therefore, that the Collector may be deceived. The tenure is entered in the registry, and 10 or 15 years afterwards, when the zemindar allows his estate to go to the hammer, and settles down on his registered talook, containing the best lands in the estate, held at a pepper-corn rent, it will be almost impossible for any Government officer to prove the fraud. When we recollect with

with what profusion fictitious lakheraj tenures were created at the time of the permanent settlement, and how difficult it was found to detect them some 30 or 40 years later, we shall not suppose this fraud to be so improbable as at first sight it might appear. But the registration of *bonâ fide* ante-settlement tenures is an object so very desirable, and so perfectly unobjectionable, that I should be sorry it was abandoned from fear of fraud. What I wish is simply that fraud should be better guarded against than it seems to me to be in the present Bill, and to ensure this, I think the Collector ought to be vested with judicial powers in respect to the inquiries authorised in the 26th Section, and directed in all doubtful cases to examine parties upon oath. Fraud under the present Bill would, if detected, go unpunished. If the measure I recommend be adopted, the fear of incurring the penalties of perjury will render the attempt a very uncommon one.

15. I fear that not even this precaution would suffice to secure the Government revenue in the case of the registration of tenures created since the settlement, as provided for in the 37th section of the Bill. It appears to be forgotten that collectors are sometimes not only fallible but careless, and that survey ameens are very generally corrupt. If the proposed Act becomes popular, and registration general, it is not too much to suppose that, in a district containing 2,000 mehals, there will be 20,000 applications for registry and survey within the first year. What time or attention is it possible for the collector or any dozen of collectors to bestow upon these cases? and whence are competent and trustworthy ameens to be procured in sufficient numbers? Allowing that this difficulty may be overcome, still the collector must trust in a great measure to the report and proceedings of the ameen who conducts the survey. Even if the Revenue survey has passed over the district, it will be of little use to him, as the Bengal survey is not, like that of Cuttack and the North Western Provinces, a detailed survey, descriptive of each man's holding, but a mere demarcation of the boundaries of estates and villages. When the tenures, therefore, are created by the zemindar himself, for his own benefit, or that of his family, there would be little chance of discovering any fraud which might be committed, or of proving it, when discovered, to be a fraud, and not a blunder of the collectors. It must always be remembered, in considering this question, that, under the novel provisions of the present Bill, the land ceases to be hypothecated for the security of the Government revenue. For this security is substituted another and a very inferior one, namely, the zemindar's interest in the land; and if, through the carelessness of the collector or the corruption of the ameen, the zemindar is allowed to divest himself of more than a certain proportion of this interest, the revenue which the Government have hitherto derived from the estate is irretrievably gone. The Bill provides no mode of recovering it. This being the case, and the land being unfortunately the chief source we have to look to for our revenue in this country, it appears to me that we should be very unwise to place it in the power either of accident or fraud to alienate it. It may be and is, I admit, unlikely that frauds of the nature to which I have alluded could be perpetrated successfully to any great extent; but it is sufficient for my argument that they may be perpetrated, and that the revenue may suffer. I consider that we should be wrong to endanger it in any degree whatsoever.

16. I have argued the question up to this point, on the assumption that the provisions of the 37th section of the Bill will be generally put in force by the classes for whose benefit they are intended, and I have expressed an opinion that they would in that case be injurious to the zemindars, dangerous to the Government revenue, and of little benefit to any class except the mere terra tenant. But I believe that in fact the scheme will not work, that it is too complicated, involves too much risk of litigation, and will consequently only be taken advantage of by a very few individuals. This has already been stated publicly by a leading indigo planter, and is the opinion of all the most intelligent persons with whom I have conversed here. The measure contemplated in the Bill, too, will affect, it must be observed, only one class of under-tenants, those who hold immediately from the zemindars. This is obviously not intended, but it is so. It is not only by Government sales that the position of the durputneedar, the seputneedar, or the ryot, is endangered by Section XI. Regulation VIII. of 1819; if the putneedar fails to pay his rent to the zemindar, and the tenure is brought to sale, all leases granted by the putneedar are *ipso facto* voided. The decisions noted in the margin,* (though in my opinion erroneous), seem to show that the Sudder Court consider an ordinary sale for arrears of rent under Act VIII. of 1835, to be as fatal to under-tenures as a sale under Act I. of 1845 or VIII. of 1819. The under-tenant of a talookdar has, therefore, no inducement to go to the trouble and expense of the registration which will only protect him under one contingency, and that generally speaking not the most likely one.

* Chowdry Mohadeb Das,
versus
Chowdry Narain Mohapatur.
Cuttack Zillah Decisions,
8d April 1850.
Sudder Decisions, 13th August
1850.
Cuttack Zillah Decisions, 28th
January 1851.

17. If the principle embodied in the 37th section of the Bill were a good one, these difficulties might no doubt be got over. Registration might be made to protect the tenant not only against sales for arrears of revenue, but sales for arrears of rent also. But, if the Legislature are of opinion that it is desirable to have all under-tenures registered and their rents fixed in perpetuity, or at least for the term of existing leases, it appears to me that they ought not to throw the burden of such a great measure on the people, the majority of whom, it is evident, are either too poor, too ignorant, or too timid to avail themselves of it. They should proceed, as the Government of 1836, which was impressed with this view, did in Cuttack, enact that the rights and interests of every ryot and under-tenant throughout the country should be authoritatively fixed and recorded. The work unquestionably

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ably would be a vast one, but it was effectually done in the three districts of this division in the course of seven years, and by multiplying the establishment employed here, by the number of districts in Bengal, it could of course be accomplished there in the same space of time.

18. For the reasons I have already given, however, I object altogether to the principle embodied in the 37th Section of the Bill, and in matters of detail, if I were compelled to choose between them, I should prefer the Government scheme, which has the merit of being more complete, inasmuch as it secures every under-tenure up to a certain point without any action on the part of the tenants, is perfectly simple and inexpensive in its operation, and does not endanger the Government Revenue. But on two points I have the same objection to the Government plan as to that of the Bill; it affects, equally with the latter, the value of zemindary property, and it tends to produce a general fixity of tenure; add to which the absence of registration in the Government scheme would inevitably give rise to many frauds. Every zemindar who fell into difficulties, would, as a matter of course, break up the best portion of his estate into under-tenures at low rates for himself and his family, and the purchaser at the Government sale would find that, instead of a productive estate, he had merely purchased a right to certain rents, little more than sufficient to enable him to pay the Government revenue without actual loss.

19. I am altogether opposed to any measure which would have the effect of fixing in perpetuity a large proportion of the under-tenures of Bengal. If, as has been said, two-thirds of the land in Bengal is held under a talookdaree tenure, it should be remembered that the zemindaree tenure extends over the whole country, and that the talookdaree tenure is subordinate to it. I look for the improvement of the country, not only to the Talookdars, but to the growing intelligence of the landlords, and the better class of middlemen, and should be sorry to see their influence over the lower class of under-tenants extinguished, or to think that it would henceforth be impossible for a capitalist to obtain an unencumbered estate of any size in Bengal; on the other hand, I am fully sensible of the difficulties under which indigo planters and other mercantile men, who find it necessary to take talooks for the better prosecution of their business, labour from the present state of the law, and I think it very desirable that they should be relieved as far as possible. The problem, then, which we have to solve, is how to afford relief to an important class of middlemen, without interfering with the rights of others, endangering the Government Revenue, or erecting a barrier to improvement in the shape of a class of pauper landholders.

20. It seems to me that this will be best accomplished by a modification of the plan of the Bengal Government. The objections to that plan are, as I have already stated, that by excluding registration and the consent of the zemindar, it lowers the auction value of the zemindaree without affording the zemindar any compensation for the injury done him; and that it renders it impossible for a purchaser at an auction sale to know what he is buying. In order to obviate these objections and afford security to under-tenants, I would recommend that it should be competent to all under-tenants, in conjunction with their zemindars, or in the case of ante-settlement tenure or tenures, the rents of which have been permanently fixed by law, or by the decision of any competent Court, then in conjunction with the holders of such tenures, to present a petition to the collector, setting forth all the particulars regarding their tenure which the present law requires in such cases, and praying that the tenure should be secured by registration against all auction purchasers except the Government; that the collector should, upon receipt of such petition, issue notices in all the usual places and in the usual manner, making known the substance of the petition, and in the event of no objection being made by any third party, that he should register the tenure in a book to be kept for the purpose against the name of the zemindary in which it might be situated; that this registry should always be open to the inspection of intending purchasers at auction sales; and that all tenures so registered, and no other, should stand good against the auction purchaser—provided that, if the estate should not command at auction a price equal to its arrears of revenue, it should be in the power of the collector, after giving one month's notice to the tenants, to expose it to auction a second time, and in the event of the bids still failing to cover the arrear to purchase it on account of Government, and to annul all leases and tenures whatsoever. Should any objection be made to the registry by a third party, the collector might be directed to suspend his registration of the tenure for the space of six weeks from the date on which such objection might be filed; and the moonsiff or the judge might be authorized, on application being made to them within these six weeks, to grant a provisional injunction against the registry and to decide in a summary manner upon the applicant's objections, confirming or withdrawing the injunction as he considered the objections to be valid or otherwise.

21. Under this plan the zemindar would have an opportunity of securing his own interests and obtaining compensation for the diminution which registration would cause in the auction value of his estate; while he would be able to place an effectual check on the inconvenient multiplication of under-tenures at fixed rents. The Government revenue could not suffer by any possibility. The auction purchaser, by turning to the registry, would ascertain the exact amount of encumbrances on the estate he was about to purchase, and the honest under-tenant who did not object to pay a fair value to his zemindar for an improved title, would be able to secure himself against all future interference by as simple a process as it is possible to conceive. Even the interposition of Government for the protection of its own
interests

interests would not take place without time being afforded to the tenant to prevent the forfeiture of his tenure by the payment of the arrears due, a disbursement for the recovery of which the present Bill provides an ample security; and the inquiry into the objections of third parties whose interests may be involved would be tried at once in the Civil Court, without the necessity of any preliminary and probably inconclusive investigation by the revenue authorities. It is quite certain that there is a large class of talookdars and other middlemen who will not be pleased with this scheme, for the simple reason that they wish to secure all the advantages which the registration I propose would hold out, without paying for them and without consulting the interests or convenience of their landlords; but the Legislature will not, I apprehend, concern itself about the wishes of this or that party, but having determined what is most equitable and advantageous for all, will do that regardless of clamour.

22. The 4th clause of Section XXVI., Act I. of 1845, enacts, that lands held under *bonâ fide* leases at fair rents for the erection of dwelling houses or manufactories, gardens, tanks, &c., shall be excepted from the operation of the rule in that section, whereby under-tenures are voided on the occurrence of an auction sale of the parent estate for arrears of revenue. Clause 4, Section XXXV., of the present Bill introduces very important modifications into this clause. All lands occupied for the purposes specified in the present law are by these modifications excepted, whether held under *bonâ fide* leases and at fair rents or not, and the exception is extended to plantations which are not mentioned in the existing Act. It seems to me that, if this clause passes as it stands, a large proportion of the land in Bengal will speedily be held rent free. A man may cover two-thirds of his zemindaree with plantations of date, cocoa, betel, coffee, tea, or cotton, and give it rent free or at a pepper-corn rent to his son: when the estate is sold, the auction purchasers will be unable to touch this land, and the whole taxation will fall on the rice lands or on wet spots where plantations of the valuable products I have mentioned cannot be created. I do not understand the principle upon which it is sought to render leases of such lands less open to question than others. I can conceive no reason why a man should not be required to pay a fair rental for land occupied by a manufactory, a garden, or a dwelling house, quite as much as for the miserable patch of rice swamp which adjoins them. I should say, "protect the owners of these places by all means against summary ejection or harassing interference on the part of each new landlord, but do not throw away the revenue of the most valuable lands in the country, or compel the auction purchaser to forego the fair rental which they better than many other estates can afford to pay."

23. There is only one other point in the Bill which it will be necessary to notice. Mr. Schalch, the Officiating Collector of Balasore, suggests that the Collector should be authorised, when necessary, to put the auction purchaser in possession of the estate to which he has certified his title. It certainly is a defect in the law that, if the defaulting proprietor retains forcible possession, the magistrate is bound, under Act IV. of 1840, to support him, and the purchaser is obliged to carry his certificate of title in the Civil Court. I would amend the 27th section of the Bill, by adding the words, "and in the event of any person other than the purchaser retaining forcible possession of the estate or share of an estate sold, the purchaser may make affidavit before any magistrate, of his inability to obtain possession without the aid of the police, and the magistrate on being satisfied by the production of the Collector's certificate that the legal title to the estate is vested in the applicant, shall thereupon afford him the aid of such police force as may be necessary, and shall place him in possession, anything in Act IV. of 1840 to the contrary notwithstanding: and if any person resists the execution of an order for possession of an estate or share of an estate given under this section, or refuses obedience thereto, he shall be liable, on conviction before a magistrate, to the same penalties as if he had resisted the execution of an order given under Act IV. of 1840."

I have, &c.
(signed) E. A. Samuells,
Commissioner.

From the Officiating Collector of Balasore, to the Commissioner of Revenue for the Division of Cuttack, No. —, dated the 28th March 1856.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 272, of the 10th instant, calling for a report on the draft Bill to improve the law relative to sales of land for arrears of revenue.

2. Having acquired my experience as a Collector chiefly in a district which has been temporarily settled under Regulation VII. of 1822, I feel great diffidence in expressing an opinion on an Act which will have effect through the permanently settled districts. In the one, the records of the late settlement afford great facilities for the introduction of many of the contemplated changes which, for want of such data, must, in the others, be effected at a greater cost and with a greater risk of endangering the Government revenue.

3. On the six objects of the Act as set forth in the preamble, I need say little.

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4. The first, the discontinuance of the previous sanction of the Board of Revenue to sales for arrears of revenue in this province is necessitated by the alteration in the mode of insuring the payment of the revenue by the abolition of the dustuck system, recourse being now had solely to the sales of the estates of defaulters. This alteration has been in work for the last three years and has answered admirably. The revenue is now paid up with greater regularity, and without the harassing measures previously adopted, which invariably proved useless, the arrears being seldom paid up except under the threat of sale. During this period the number of estates sold has averaged annually two, whereas for ten years previously, when the dustuck system was enforced, the sales amounted to one and half per annum. The permanent determination of the dates of latest payment will cause no injury or hardship, but on the contrary tend to remove uncertainty and to save much trouble in the offices.

5. The remaining provisions of the Act provide for the better protection of parties holding a lien on an estate of co-partners, and of absentees, and for the absolute security and registration of dependent talooks and under-tenures. The necessity for these improvements, and the vast benefits that must result from the greater security thus afforded to the employment of capital on land in India, are too well known to require elucidation or support from any arguments I might advance.

6. The present draft Bill appears fairly to grapple with, and overcome the difficulty, which has hitherto been supposed to exist, of securing the Government demand while carrying out these improvements.

7. The rules laid down in Sections X. to XIV., for enabling co-partners to separate their shares, appear to me to afford every requisite facility for their protection, as well as for that of the Government demand.

8. The summary inquiries prescribed in Section XII, as also in Sections XXXVI and XXXVII, should, I think, be judicial, and the Collector be empowered to administer oaths, and compel the attendance of witnesses and the production of accounts, &c. As the inquiry is summary, and subject to the revision of the civil court, an appeal to the superior revenue authorities is not, in my opinion, advisable. Such an appeal, if not final, but increases the expense and delays the final decision, which rests with the civil court, to whom any party dissatisfied with the Collector's decision should at once be forced to have recourse.

9. Section XV. appears to confine the privilege therein given for the protection of an estate, by a deposit to cover an arrear that may accrue on it to the whole estate, and not to shares of an estate for which a separate account may have been opened under Sections X. to XIII. I see no reason why this concession should not be extended to co-partners of such a share, any deposit made by them, however, not to protect the share if the whole estate become liable to sale under the provisions of Section XIV.

10. The Collector is empowered to give, on the completion of the sale, under the provisions of the 27th section of the Bill, a certificate to the purchaser showing his title to his purchase, but is nowhere authorised to put him in possession. With such power I think he should be vested; for it is unjust to enact, as by Section XXXII., that the purchaser shall become liable for the Government revenue from the latest date of payment, without enabling him at once, and without reference to any other court, to enter on possession. The defaulter has certainly lost all right to the estate from the latest date of payment; yet, as the Collector is not empowered to dispossess him, he may retain possession and oppose by force the purchaser. Should the latter also have recourse to violence, the magistrate may bring the case into his court under Section II. of Act IV. of 1840, and being restricted to the investigation of the fact of actual possession, must uphold the defaulter; for, however valid the certificate may be as a proof of the purchaser's title, it is none of his possession. The purchaser must, therefore, have recourse to the civil court, and be obliged to pay the Government revenue pending the decision of the suit, without obtaining his rents from the cultivators.

11. The Collector should, therefore, I consider, be vested with the power of placing the purchaser of an estate, or of a share of an estate for which a separate account has been opened, in possession of his purchase. If the purchase be that of merely the right and interest in an estate sold for arrears other than its own, or for demands realisable as arrears of revenue, the Collector would of course not give possession, but only a certificate of title.

12. The registration of all under-tenures granted previous to the settlement should, as enacted, be rendered compulsory to obtain their exemption under Section XXXV., for the exemption from all future questioning and dispute is cheaply acquired at the cost and trouble of registry. The period allowed for registration might be extended to five years at least, from the promulgation of the Act; for however widely it may be circulated, a considerable time must elapse before its provisions can be generally known to the many ignorant and indigent holders of such tenures.

13. The charges and cost incurred in the survey and local inquiry required to be made regarding under-tenures granted subsequent to the settlement would, I fear, be considerable, and in some cases deprive under-tenants of the benefit resulting from the proposed registration. I would therefore allow the under-tenant to register his lease with a view either to permanent or provisional protection. To obtain the former he must follow the course pre-

scribed

scribed in Section XXXVII., and incur the expense of the survey, and the other necessary local inquiries; but to insure the latter, no survey need be made, and the under-tenure might be protected from annulment unless the estate under these conditions failed to sell for the amount of arrear due on it, in which case alone the provisional registered under-tenure should be liable to be voided.

14. I would, for the reasons stated in paragraph 8, allow no appeal to the superior revenue authorities from the Collector's decision regarding registration, unless on the grounds of "the good faith in which a tenure may have been created so far as the interest of Government revenue is concerned," or "the adequacy of the rent for the security of that revenue," these being points on which no appeal can be made to the civil court.

15. It has been objected that the protection here given is afforded only to tenures granted by the proprietors, and not to tenures created by talookdars or others holding under the proprietor. The wording of the draft does not appear to me to warrant that restriction, nor can I suppose such to be its intention; for the reasons on which is founded the introduction of a system of registration and of protection for under-tenures created by the proprietors, apply equally to under-tenures granted by talookdars and other under-tenants, which it may be within their competency to create. There would be no greater difficulty in registering the latter than the former description of tenures.

16. The protection granted in Section XXXVIII. to talookdaree tenures pending the summary investigation of the Collector in case of the sale of the parent estate for arrears of revenue, should, I think, be allowed only where the price offered for the estate, when sold with the reservation of the under-tenure, covers the amount of arrears; should the price bid be less, the estate should be disposed of unencumbered by the act of the defaulter, otherwise there may be no means of recovering the Government revenue until the survey or other inquiries have been completed, which may extend over a considerable period.

17. The protection above proposed to be given to under-tenures in permanently settled estates, does not appear to be conceded to similar holdings in estates not permanently settled. The papers and records of the late settlement would easily enable the Collector at once to ascertain if the rent fixed on an under-tenure were equivalent to the Mofussil jumma assessed on the lands included in it at the settlement. A local inquiry would show whether the zemindars were fraudulently endeavouring to separate the non-productive and better cultivated lands from those which might have deteriorated since the late settlement.

18. Provided, then, it were proved that the rent fixed on the under-tenure was equivalent to the assessment on the lands composing it at the late settlement, and that the Mofussil jumma of the remainder of the estate was not less than fixed at the settlement, I see no reason why the under-tenure should not be protected from annulment up to the expiry of the current settlement. The Government revenue could suffer no risk, and the purchaser, in case of the estate being sold, would still be in receipt of at least the same amount as that on which the Sudder jumma he is called on to pay was calculated; all leases would of course terminate on the expiry of the current settlement.

19. Section XLIII. of the proposed Bill differs from the present Act in the important omission of the word "unrecorded;" hence any unrecorded proprietor, even if the heir of a deceased recorded proprietor, re-purchasing his own share or the whole estate, might acquire the estate free from all incumbrances except those specified in Section XXXV. This must be, I imagine, an oversight.

20. The Act should, I think, distinctly state from what party the expense of issuing the sale and other notices specified in Sections IV. V. VI. VII. XXIII. XXVII. XXXI. are recoverable; for although Circular Order, Sudder Board Revenue, sale series, paragraph 25, directs the defaulter and the parties interested to be charged with the expense of serving certain of these notices, it may be doubted whether this order is legal, and it would be better that this point should be clearly settled by the law itself.

I have, &c.
(signed) *H. V. Schaleh*, Officiating Collector.

From the Collector of Cuttack, C. D., to the Commissioner of Revenue, Cuttack,
No. 206, dated the 25th March 1856.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 486, with the enclosed Circular from the Sudder Board of Revenue, requiring my opinion on the new Draft Act, published in the "Gazette" of the 6th February, relating to the sale of land for arrears of revenue.

Dated 10th March
1856.

2. It is so long since I have been employed in the Revenue branch of the service, and so very recently that I have re-entered it, that I cannot but feel considerable diffidence in submitting the following remarks. I have had no opportunity of testing my views by the practical experience afforded in a Collector's office, and they relate to a subject on which hitherto I have not been able to bestow very particular attention.

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3. With the exception of those parts of the proposed law, which prescribe the manner in which sales are to be held, and of Sections XV.-XVII., which enable absentee proprietors to protect their estates by the deposit of Government securities, the general tendency, I may almost say object of the Regulation, is to encourage the sub-division of property. So far as this result is brought about by the creation of permanent under-tenures, I do not think there is any particular ground for objection. But the multiplication of estates by partition, is, I think, a serious and growing evil, one which it may eventually be found necessary to check by legislative interference. The present law, however (*vide* Sections X. and XI.), has a directly opposite tendency, prevents the possibility of the mischief resulting from a joint proprietary, correcting itself by forming a sale of the whole property, and at the same time introduces a new class of shareholders, whose registration will burden the district towjee as much as if they had become separate proprietors by regular process of butwarrah. The only countervailing advantage, so far as Government interests are concerned, is that, with so easy and cheap a way open to them of protecting their shares from the consequences of their co-parcener's default, shareholders will be less ready to resort to the tedious and expensive process of partition under Regulation XIX. of 1814. And in consideration of their having this protection, I would go further, and recommend the re-enactment of some such wholesome provision as that of Regulation VI. of 1807, placing some limit to the extent to which an estate may be split up and received.

4. The provisions of the 35th and following sections appear to me open to some objection. I should, in the first place, greatly hesitate before applying them to districts which have not been subjected to the revenue survey operations. The expense of even an approximate value of the entire estate will often be enormous, and the difficulty that will frequently exist in ascertaining whether the tenure under inquiry is assessed with its fair share of the jumma, will be the greatest exactly where accuracy is of the most consequence, that is, where the object is to defraud the Government.

5. On the other hand, the preliminary inquiries will often be so tedious and costly, as either to deter under-tenants from seeking the protection which it is the object of these provisions to grant them, or to involve, and consequently depreciate, the property in the process. But I allow that these objections, affecting the interests of the Government on the one hand, and of the under-tenants on the other, will not apply in all cases where the Sudder jumma of the estate is so light as to allow of a considerable margin, and to make very minute inquiries unnecessary, where the estate is not a large one, and the under-tenure embraces a large portion of it; or where it is so compact and well defined, that the survey records will suffice without additional measurements. In these cases registration may be granted without danger to the Government revenue, or much expense and harassment to the parties seeking it.

6. To meet less favourable cases, I would suggest that it be optional with applicants whether to register under the present provisions, by which they will obtain complete protection, at some expense, or under those formerly proposed, which would grant them protection without any expense at all, but subject to revocation in the event of the parent estate being bought in by Government. It is further, I think, worth consideration whether, instead of the provision attached to Section XXXV., the benefit of a registration similar to that of under-tenants might not be extended to resident hereditary cultivators. In this case no very extensive or minute inquiry will be necessary; the village rates can always be ascertained with sufficient accuracy to protect the Government revenue; and it is hardly necessary to dwell on the beneficial results that will ensue from thus improving the condition of so important a section of the population.

7. The scheme for protecting absentee proprietors or others, by allowing a deposit of Government paper to protect the estate from sale, appears to me altogether unexceptionable. It has been said that this plan involves nothing less than a redemption of the land tax; but it is manifest that before it can have this effect, it is necessary, first, that the interest on public debt should equal the amount of the land tax; secondly, that it should be out of the power of the zemindar to reclaim his deposit; and thirdly, that the Government should pledge themselves not to pay off the loan.

I have, &c.
(signed) R. N. Shore,
Collector.

Revenue.

From the Officiating Commissioner of the Nuddea Division to the Officiating Secretary to the Board of Revenue, Lower Provinces, Fort William, No. 4, dated Allipore, 2 May 1856.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 37, dated 8th April 1856, drawing my immediate attention to your previous call on my predecessor, dated the 26th February, for his opinion and that of the Collectors in this division on the provisions of the draft of the new Sale Law.

2. I have

2. I have found so much to do since joining this office, that I have been unable to give the requisite attention to this important draft, or to find time to record in proper form conclusions to which I had come before leaving the Board. As it is, I am without complete returns from the Collectors, none of whom are as yet of a year's standing, and from whose letters, herewith submitted in original, the Board will not, I fear, obtain much assistance.

3. I will however first make my own remarks on the draft, or rather on those sections of it which contain new provisions, and which, omitting Section III., in which the only new feature is that it includes Cuttack and Sections IX. and XXIX., which contain obvious improvements on the old law, are Sections X. to XVI. and XXXV. to XLI.

4. Sections X. to XIV., which provide for the Collectors opening a separate account with the proprietor of each separate share in an estate, whether holding all the lands in joint tenancy or in possession of distinct lands, will, I feel sure, be received as a great boon by landholders generally, and the precautions taken to secure Government in Section XIV. are, I think, quite sufficient.

5. But I think it will be necessary to empower a Collector to close a separate account as well as to open one. The applications under Sections X. and XI. need not always be given in at the same time, and the result of the summary inquiry to be under Section XII. in a subsequent application may show the Collector that the demand entered in his accounts against a shareholder whose application had been previously granted was incorrect.

6. Thus A applies for a separate account to be opened for a four annas share of an estate in which B has an interest, consisting of a single village for which he has paid a jumma of 140 rupees, the sudder jumma of the estate being 600. The Collector grants A's application and enters a demand of 150 rupees against his share: subsequently B comes forward and applies to have an account opened with him for his village on 140 rupees. The joint tenant proprietors object that the jumma specified by B is insufficient; a summary inquiry follows, and the Collector decides on admitting the application. Either the deficient 10 rupees of sudder jumma must be entered against the shareholders who have not applied for a separate account, or a proportion of it at least must be added to the demand against A. The concluding provisions of Sections X. and XI. respectively seem to give a character of finality however to the Collector's sanction of an application.

7. Attempts will be made, beyond doubt, to get the question of adequacy of jumma on a specific portion of an estate settled summarily under Section XII., in preference to putting in motion the dilatory machinery of the butwarrah law. If the Collector find that the alleged specific jumma is that which has been recognised by the other sharers, he cannot reject the application for a separate account, however inconsistent this may be with his orders on previous applications.

8. I would therefore suggest that provision be made for a Collector's closing a separate account, or for his revising the demand which he had previously entered against a sharer on his sanctioning its being opened, from which date, as the draft stands, the separate liabilities of the sharer for the demand entered against him commence.

9. On Sections XV. and XVI. I have already recorded an opinion while secretary to the Board; indeed, if I mistake not, my note on Rajah Pertabchunder Sing's petition, or rather on Mr. Plowden's remarks on it, was what led to the issue of the Board's circular order on this subject, and to their subsequent address to Government, which has caused the introduction into the draft of these provisions for deposit. Very few landholders will have the means of availing themselves of the privilege which these provisions confer, and it seems unnecessary, therefore, to argue on the financial results which would follow were deposits to be made by landholders generally or by a large proportion of them.

10. By far the most important sections of the draft are those which provide for and regulate the registration of old and new talookdaree tenures. I wish I could add that, in my opinion, these provisions and regulations will, in practice be operative.

11. I have but one remark to make on Section XXXV., and that is, that arrears of rent are not paid so punctually in the Mofussil as to render it at all probable that any of the tenures on an estate sold for arrears will have fulfilled the last of the conditions specified in Clauses 1, 2, and 3 of the section. The latest days now fixed by the Board happen to fall about a fortnight after the expiration of the Bengali month, for which the rent of all tenures must have been paid in, or they will be liable to fall. This condition will be the cause of constant harassment to the under-tenants, and the question suggests itself, why should the purchaser profit by a default on the part of the under-tenant? For this default, if it occurred, was an injury to the previous owner.

12. The tenures forming the 1st and 2d classes of exceptions, for the registration of which in the Collector's office Section XXXVI. provides, have been hitherto registered only in the office of the zemindar. The under-tenants will hail with gratitude the public record of their rights which is now to be preserved. I have no objections to offer to any of the provisions of this section.

13. It is in carrying out the additional rules, prescribed in the following section for the registration of tenures for the third class of exceptions, that I apprehend difficulty. All new tenures are to be entered for registry within one month of their creation, and the

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applications are to specify the fullest particulars. The widest discretion is then left to the Collector, and the result will depend altogether on the way in which he exercises it, and on the view which he may take of the grave responsibility which this section imposes on him. He is to take whatever measures he may deem necessary to test the correctness of the particulars handed in to him, and to satisfy himself that the assets of the tenure are proportionate to the rent payable by the holder, and that this rent is proportionate to the revenue for which the estate is liable. To satisfy himself of this, he must go through all the details of a settlement of the estate, and it must depend on the size and character of the latter, whether this process can be gone through at a cost which the applicant for registry would care to pay.

14. If the Collector is easily satisfied, I find no remedy for an unwise exercise of his discretion other than that of recourse to the Civil Court within 60 years, with the object of showing that registration was obtained by fraud. It would be very difficult indeed, and the difficulty would increase every year of the 60 years term, for Government to prove such a plea to the satisfaction of the Court.

15. Where the under-tenure was the putnee of a fractional share of a joint estate, the Collector's inquiry would have to embrace the whole estate. Again, in the 24 Pergunnahs there are cases in which estates, forming separate numbers on the Towjee, are so mixed up one with the other that such an inquiry would have to embrace three or four estates.

16. It may be said that the law is not intended for exceptional cases such as those I have alluded to. No doubt if these provisions work well, so as to admit of compliance without risk to Government, with even a moiety of the applications for registry which will be given in, the country will have made a great stride. I have no information, it will be seen, from any Collectors on the general character of the new tenures occurring in their districts. I can only therefore argue on their character, such as I have found it in the tenures of the 24 pergunnahs, where they are for the most part putnees and farms of entire interests in estates, joint or otherwise. These estates will be more often found composed of plots of land in villages distant from one another, than of single villages or of compact groups of villages.

17. In my opinion, a clear understanding of what is the prevalent character of the under-tenures most requiring protection, and precise information as to how this character varies in different districts, is absolutely necessary before such decisive and final provisions as these can safely be made law; and, pending the collection of such information, I should prefer seeing the proposals of the Bengal Government introduced into this draft.

18. I shall conclude with a few words on the Collector's returns. Mr. Mangles has begged to be excused giving any opinion, on the plea of his inexperience in revenue matters. Mr. F. Lushington, Mr. Pigou, and Mr. Fowle, have altogether missed the points on which their opinions were required. On pointing this out to the two former gentlemen, and on requesting them to ascertain the views of their deputy collectors on the probable working of Sections XXXVI. and XXXVII. I obtained the further returns, which are also submitted. In the case of Moorshedabad, the second return is not a more satisfactory one than the first. In the case of the 24 pergunnahs, I have thus obtained the opinions of three deputy collectors of experience. That of Seebchunder Deb should, I think, carry weight with it.

19. This officer's view of Section XXXVII. is nearly the same as my own. He brings forward, moreover, objections even to Section XXXVI., being of opinion, apparently, that here also the interests of Government require to be watched. I know the theekas tenure to which he alludes, and am aware that the transfers of lands in the manner described have taken place; but I do not think that the tenure prevails to such an extent in any one estate as to cause apprehension that the revenue may suffer by the admission of applications for registration. There is Section XLI. to enable Government to cancel a registration fraudulently effected if the means of proving fraud are available.

20. It might happen, possibly, that the owner of an estate might create a new tenure on terms exceedingly favourable to himself, and succeed in imposing on a careless and superficial collector and in registering it as an old tenure. It might happen that this incumbance would affect the capabilities of the estate to bear its public assessment; but the case is an extreme one, and the fraud would be detected whenever the estate came to sale.

21. Referring to paragraph 6 of the letter of the collector of the 24 pergunnahs, in which he enumerates three classes of tenures, I may explain, though it is perhaps hardly necessary, that the khoodahdar is nothing more than a sub-tenant at will, a labourer in fact, on terms agreed to yearly between himself and the real under-tenant. The chuckdar is the local term for a junglebooree tenant, and the theekadar is the moommeedar described in the deputy collector's letter.

22. Mr. F. Lushington, of Nuddea, has sent in the best report, though it gives no information on the character of the under-tenures. He thinks the difficulties which oppose registration under Sections XXXVI. and XXXVII. will render the provisions of both inoperative.

23. I wish I could have added the testimony of some of the landholders, mooktars, and others

Mr. Fowle's report reached me too late to admit of a second reference to him.

others who attend my office; but very few of them, I find, are aware that any change in the sale law is impending. Measures should, I think, be taken to ensure a wider circulation of these draft Acts in the Mofussil.

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I have, &c.
(signed) *A. Grote*,
Officiating Commissioner.

From the Officiating Collector of Nuddea to the Commissioner of Revenue for the Nuddea Division, Allipore, No. 302, dated Nuddea, 3d April 1856.

Sir,

I HAVE the honour of acknowledging the receipt of your letter, No. 111, dated 12th ultimo, calling upon me to submit through you to the Board, my opinion on the new sale law, published in the "Calcutta Gazette" of 2d of February.

2. This law contains three important provisions not included in Act I. of 1845.

I. The separation of shares whether held in common tenancy or consisting of specific portions.

II. Protection of estates by deposits.

III. The registration of old and new talookdaree tenures.

3. I propose to confine my observations to those sections which contain the provisions relating to these three heads.

4. Sections X. and XI., on the separation of shares.—I beg leave to observe that, if the practice of registering the names of all the proprietors in every estate was general, the separation of shares might be easily effected; but this is not the case, and if no objections, except on the part of recorded proprietors, are admissible, serious injustice might be committed.

5. The answer to this would be, that it is the intention of Government to enforce the registration of the names of all the shareholders in every estate. If such be the case, it would be unjust to enforce the provisions of this Act until ample time had been afforded to all parties to comply with the requisitions of the Legislature.

6. Sections XV. and XVI. The advantages set forth in these sections are so obvious and so free from any objection, that it does not appear to me necessary to say more than to express my entire approval of them.

7. Section XXXV. The first point to which I would draw attention in this section is, that after the registration has been completed, the estate, whether of the 1st, 2d, or 3d description, may be lost in the event of any arrear of rent being due on the latest day of payment of revenue as fixed under Sections III. and IV.

8. These arrears might be occasioned by an error in the calculation, or they might consist of a very trifling balance, and cases may occur in which it will be difficult for the holder of a tenure to prove that he was not in arrears; at all events he may be involved in litigation.

9. Section XXXVI. Registration of old talookdaree tenures. The proprietors of these old tenures are already protected by law, and though the advantages they would obtain on registration would be large and complete compared with what they now possess, I doubt whether many would be prepared to undertake the labour and expense it would necessarily involve.

10. They would almost invariably have to encounter the opposition of the owner of the parent estate, and if they failed in satisfactorily establishing their claims, the zemindar would avail himself of all the information thus gained, and ultimately the holders of these tenures would have to defend their rights in the civil courts.

11. Section XXXVI. Secondly: Great difficulty would attend the carrying out of this part of the section. "Summary investigation," and "reasonable time," are expressions which depend for their force on the mind of the Collector. There will be perpetual appeals on these points to the Commissioner, who will also have his view of "summary" and "reasonable;" and thus it will be scarcely possible for an owner of a tenure applying for registration and meeting with opposition, to look forward with any reasonable hope to its accomplishment.

12. Section XXXVII. The tenures to be registered under this section are those of the third class described in Section XXXV. I do not understand it to include secondary and lower classes of under-tenures, such as durputnee and seeputneedar.

13. If the difficulties of registration under the preceding section are almost overwhelming, I would submit that, under this section, they are so greatly increased as to render it impracticable.

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14. Under this section a Collector would have to measure the entire area of the parent estate, inquire into the capability of the soil, the condition of the ryot, the respective positions of the several villages, and ascertain the assets of the whole before he could determine whether the tenure was created in good faith as far as concerned the interests of the Government revenue. Besides this, there would be objections on the part of shareholders, recorded or otherwise, mortgagees, and parties having a reversionary interest in the estate opposing the registration and adding to its difficulties. It would not be an exaggeration to add, that in a very short time, the Collector would have the whole of his district under Regulation VII. of 1822 and IX. of 1825.

15. Few, if any, holders of new talookdaree tenures and farms would be prepared to undertake the cost and submit to the vexation, trouble and delay imposed on them, and then, after all, the application might be refused, or the provisional registration reversed after further reference or delay by order of the civil court.

16. It will be urged, perhaps, in reply to this, that, in districts where the survey has been completed, registration would be comparatively easy. On this point I would remark, that each towjee estate has been demarcated and surveyed without reference to the under-tenures comprised in them, or the quality and capabilities of the soil. It will therefore be impossible for the collector to determine, on reference to the survey records, whether a tenure has been created in good faith as regards the Government, or the adequacy of the rent for the security of the Government revenue.

17. I am thoroughly prepared to admit the great advantages of registration, but if it is to be of any great service, it must be simple and compulsory. The latter, for the obvious reason that no great improvement of this nature can be carried out in this country, unless the people in the first instance are forced to adopt it.

18. On these grounds, I would recommend that every zemindar within six months from the passing of this Act should be compelled, under penalty, to furnish a list descriptive of all the tenures in his estate with jumma wassil bakie duly attested. This would at once place the Collector in full possession of every particular regarding the assets of every estate, and check any opposition the zemindar might hereafter be disposed to show by either denying the existence of any under-tenure, or disputing its jumma or that of any jotedar.

19. On the receipt of this list, the Collector should immediately serve notices on the several classes of proprietors described in Clauses 1, 2, and 3, Section XXXV., and enforce the registration of their tenures by subjecting them to the penalty of non-exemption in the event of the sale of the parent estate for arrears of revenue, and also denying them the privilege of suing their under-tenants under the summary suit laws.

20. The inquiry previous to registration to be limited to the simple fact of possession.

21. No injury would accrue to the zemindar or the holders of under-tenures by this speedy disposal of the question: it would greatly simplify the Collector's proceedings; while the Civil Courts would be open for the adjudication of any fraud which might be alleged to have been committed.

22. The object of registration is, as I understand, to protect the holders of all under-tenures given in good faith and at a fair jumma, and at the same time to defend the interests of the Government. Now, it appears to me that the interests of the latter are sufficiently protected by Sections XIV. and XLI.; they will not, therefore, be jeopardised by the summary inquiry I would establish, whilst protection to the former would be given at once without much trouble and at little cost beyond the registration fees.

I have, &c.
(signed) *E. H. Lushington,*
Officiating Collector.

From the Officiating Collector of Twenty-four Pergunnahs, to the Commissioner of the Nuddea Division, No. 171, dated Allipore, 4th April 1856.

Sir,

No. 396.

I HAVE the honour to acknowledge the receipt of your Office Memorandum, No. 111, dated 12th March 1856, and in reply to forward the accompanying report on the Bill for the improvement of the law relating to sales of land for arrears of revenue, published in the "Gazette" of 30th January.

2. With reference to this subject, it will not be inopportune to advert briefly to the salient points of the past and present sale laws, to sketch their history, and how they worked, as well as to consider the one proposed to be passed and the causes that have given rise to its contemplated enactment. The first intimation that lands of proprietors would be sold for arrears of revenue, was promulgated in Section VII. of Regulation I. of 1793.

3. From

3. From that year, then, to the present time, there have been as it were three periods during which the sale laws of this country have been administered without any material intermediate alterations. The first may be said to have lasted from the enactment of Regulation XIV. of 1793 to the introduction of Regulation XI. of 1822, which latter swayed the decisions of the courts until the passing of Act XII. of 1841, which, with slight alterations introduced by Act I. of 1845, has continued in full force up to the present time.

4. Up to the passing of Regulation XIV. of 1793, the arrears of Government revenue could only be collected through the intervention of courts of justice. Subsequently Collectors were empowered, after issue of due notice, to seize the defaulter, to attach his zemindary, and, at the expiration of a year, to sell his estate, should the arrears still remain unliquidated; in the following year, Regulation III. forbade the proprietors of land, except in special cases, to be confined for arrears of revenue, and vested the authority for the sale of defaulter's estate in the Board of Revenue, thus obviating the many suits for false imprisonment that used to be instituted against the officers of Government.

5. In the years 1795, 1796, 1799, 1801, 1803, and 1814, Regulations connected with the sale of estates for arrears of Government revenue were enacted; but they affected more the practice in the different zillahs of the country, rendering them conformable to the local customs of the inhabitants, rather than affecting the principle of the law of sale, which continued the same in theory until 1822.

Thus Regulation VI. of 1795 affected solely the province of Benares.

Regulation V. of 1796 directed the amount of land to be sold, to be proportionate to the arrears demanded, and authorised the sale of estates in separate lots. Sections XXVIII. and XXIX. of Regulation VII. of 1799 pointed out the application of existing sale laws as far as regarded the allotment of estates proposed to be sold.

Regulation I. of 1801 was the result of indiscriminate attachment of lands by Collectors, and was enacted to remedy this, as well as to provide against unnecessary delays in the recovery of Government revenue; also it prohibited, except under orders of the Governor-General in Council, the sale of a fractional portion of an estate.

Regulation XXVI. of 1803 affected solely the North Western Provinces, as likewise Regulation XXVII. of the same year.

Regulation XVIII. of 1814 abrogated the necessity of the sanction of the Governor-General in Council for the sale of lands for arrears of revenue, and authorised the Collector of the district to advertise the lands of a defaulter for sale without the permission of the Board of Revenue, although their sanction was to be granted before any actual sale took place; and from this date to 1822 absolutely no change occurred in the sale laws in force.

6. In 1822, it being apparent that the existing Regulations did not define, with sufficient precision and accuracy, the conditions that rendered valid the sale held under them, or were sufficiently specific of the rights and interests of purchasers of estates sold in accordance with their provisions, and as likewise much unnecessary hardship and injury had occurred to zemindars who had been deceived or plundered by their own agents, almost the whole of the preceding Regulations were annulled and repealed, and the process of sales of estates for arrears of revenue was greatly simplified by the promulgation of Regulation XI. of 1822.

7. By this Act the issue of any dustuck, tullub-chittee, or process of demand to defaulters of revenue was forbidden, different rules and restrictions with respect to the separate classes of estates were framed, and Collectors were empowered to sell estates under the authority of the Board of Revenue.

8. This Regulation remained unmodified till the passing of Act VII. of 1830, when Collectors were authorised to sell estates without any previous reference to the Board of Revenue; and it underwent a further modification by the promulgation of Act XX. of 1836, which so far controverted one of the provisions of Regulation XI. of 1822, as to permit the sale of an estate under butwarrah for arrears of revenue, before the expiration of the year within which the arrears became due.

9. This system continued in force until the Legislature introduced Act XII. of 1841, whereby, with the exception of Sections XXXVI. and XXXVIII. of Regulation XI. of 1822, all other Regulations connected with sales of land previously passed, were rescinded. The most important points connected with the change being the abolition of the levy of interest, and penalty upon arrears of revenue, the fixing of periodical dates for final payments of revenue and sales of estates, the increase of rate of deposit of earnest money from 15 to 25 per cent., and the abolition of the system of issuing advertisements of the sale of estates.

10. The above law was again modified by the passing of Act I. of 1845, which rescinded the third and following sections thereof; by the new law, the extra indulgence of permitting the original defaulter to make good his arrears within three days of a purchaser failing to pay, within the prescribed law of 30 days, the amount of purchase-money of any

Appendix, No. 7. estate sold for arrears, was granted; but, with this exception, and that of rendering the law inapplicable to the town of Calcutta, or the settlement of Singapore, Penang, and Malacca, there does not appear any material difference between this law, which remains in force up to this date, and the provisions of Act XII. of 1841.

11. On comparing the draft of the law in contemplation with Act I. of 1845, the analysis noted in the margin* exhibits in what sections the new matter is embodied, and how far the provisions of the present law will be continued by those of the proposed new Act. The new matter is contained in Sections X. XI. XII. XIII. XIV. XV. XVI. XXIX. XXXVI. XXXVII. XXXVIII. XXXIX. XL. XLI. XLVII. XLVIII. XLIX. L. and LI. Before, however, touching upon the same, I desire to record two suggestions that present themselves; the first refers to the 6th Clause of Section V. of the proposed new Act as well as of Act I. of 1845, wherein it appears to me that a more detailed description and specification of what is intended by the words "or other demands not being land revenue" is as desirable, as it would prove advantageous in the prevention of subsequent disputes; for instance, in the case of embezzlement of public money by a nazir or treasurer or other officer in charge of Government funds, and of the delinquent's property placed in security, being ordered to be sold, I presume the sale would be effected under this clause and section; but I think it would be preferable to have the examples specified.

12. The second suggestion is, that, whereas in Section VI. of the contemplated Act the notification desired to be issued therein is to be published in the "Official Gazette" (singular), so, in Section VI. of Act I. of 1845, the notice is desired to be published in the "Official Gazettes" (plural); if, therefore, there are two "Official Gazettes" which is the one intended to be specified by Section VI. of the new Act? or would the publication of the notification in either be considered sufficient to ensure the validity of the sale? It appears to me that this point requires definition; under the present law, the notices are published in the English "Government Gazette" published in Calcutta, and likewise in the Bengalee "Government Gazette" issued from Serampore, so that no room is left for doubt on this score.

13. I now come to the consideration of the new matter promulgated by the Law under review: it may be classed under three heads.

First.—The opening of accounts for separate shareholders.

Secondly.—The sanction to the depositing of Company's paper for the saving of an estate from sale.

Thirdly.—The registration of shikmee tenures, so that their integrity be not affected by the sale of the estate to which they belong.

14. Sections X. to XIV. inclusive treat on the proposition of a recorded sharer of a joint estate held in common tenancy, being permitted to pay his share of Government revenue separately; and direct that, if an application to that effect be, after summary investigation by the Collector, approved of by that officer, that then, after certain preliminary measures, a separate account is to be opened with such a shareholder. The justice of this measure no one can contradict; but, if it became law, the Government must be prepared to sanction applications for the increase of native establishments, as the great amount of work entailed thereby could not possibly be disposed of without such an increase; but it doubtless entirely neutralises the effect of the chicanery and deceptions that have often transpired connected with sales, where a rich shareholder, in order to become possessed of the share of a poorer one, has suffered his own share to fall in arrears, and when the estate has been put up for sale, has purchased the whole benamee. With reference also to the scale of fees as entered in Schedule B., it would be as well to define whether or not the Schedule in question was intended to interfere with such portions of Regulation XV. of 1797, as define the amount of fees to be levied for the registration of transfers.

15. Sections

* Sections II., III., IV., V., VI., VII., VIII., IX., of proposed law agree with corresponding ones of Act No. I. of 1845.

Containing new Matter.—X., XI., XII., XIII., XIV., XV., XVI., XXIX., XXXVI., XXXVII., XXXVIII., XXXIX., XL., XLI., XLVII., XLVIII., XLIX., L., and LI.

Sections of the proposed Law which correspond with Sections of Act I. of 1845:

New law.	Act I. of 1845.	New law.	Act I. of 1845.	New law.	Act I. of 1845.
XVII.	X.	XXV.	XVIII.	XXXIV.	XXV.
XVIII.	XI.	XXVI.	XIX.	XXXV.	XXVI. with slight alterations.
XIX.	XII.	XXVII.	XX.	XLII.	XXVII.
XX.	XIII.	XXVIII.			XXVIII.
XXI.	XIV.	XXX.	XXI.	XLIII.	XXIX.
XXII.	XV.	XXXI.	XXII.	XLIV.	XXX.
XXIII.	XVI.	XXXII.	XXIII.	XLV.	XXXI.
XXIV.	XVII.	XXXIII.	XXIV.	XLVI.	XXXII.

15. Sections XV. and XVI. accord permission for the deposit of Company's paper for the protection of estates from sale, a measure which must obtain the sanction and approbation of all revenue officers, as protecting zemindars from the misconduct of their agents and enabling them to travel on pilgrimages, or with any other object, without finding themselves sold out on their return, in consequence of a few rupees not having been paid into the collectorate treasury on their account.

16. Although Section XXIV. of the proposed new Act is, in every respect, to the same effect as Section XVII. of Act I. of 1845, I consider it proper, whilst new measures are in contemplation, to call your attention to the fact, that although by the section in question the Commissioner is empowered to cancel any sale, and award compensation and moderate damages to the purchaser, yet no provision is made for the payment of any such damage or compensation, as justice may require, when a sale has been unwarrantably effected through any mistake of the omlah of the office.

17. Sections XXXV., XXXVI., XXXVII., and XLII. treat of the rights of the purchaser of an estate under the new law to receive it free from all incumbrances, which may have been imposed upon it after the time of original settlement, and of the exceptions that are to be observed to this rule; also of the registration of old talookdaree tenures so excepted, and likewise the registration of similar tenures created after the passing of this Act. In these sections the principal new matter is the requirement of the holder of the tenure not to be in arrears on the latest day of payment of revenue, as fixed under Sections III. and IV. of this Act, and the prescribing the registration of old and new talookdaree tenures. However judicious these provisions may be, for the definition of the respective rights of parties concerned in the sale of an estate, and as such, I consider them worthy of all approbation, I cannot but consider the carrying out of the rules under Sections XXXVI. and XXXVII. as transforming the Collector's catcherry into a civil court, and that, subsequent to the passing of this law, the Collector will find his time entirely taken up with investigations as to the rights of every petty talookdar in the zillah. In most districts of Bengal, such as Rajeshye, Moorshedabad, Pubna, and Furreedpore, where I have myself held appointments in the fiscal department, holders of the tenures defined in Section XXXV. of the Act under review, possess documents defining their rights; but in the zillah of 24-Pergunnahs these documents are rare, as the zillah was measured in 1793, and no further definition of an under-tenure granted, than the entering of so much land against such and such a ryot's name in the jumabundee papers; and upon this frail tenure has the land gone down from father to son in the same families, but no separate pottah was granted by former zemindars to the holders of such lands, who nevertheless, in cases of arrears of rent, in accordance with the established practice of the zillah, sell these tenures under Act VIII. of 1835, which sales are recognised by the civil courts. These rights, also, are moreover frequently sold by the holders thereof in private transactions; it remains, therefore, to be considered whether the Board of Revenue will recognise these amongst the shikmee tenures designated in Section XXXVI. Further, it appears that the putnee tenures under Regulation VIII. of 1819 are not specifically mentioned in the list of those entered in Section XXXV. of the new Act; and though, from the specification of the particulars that the application for registration is to contain, it may be presumed they are included in the category, yet it would be more satisfactory to have the point defined.

18. In Section XXXVI. it is provided that, in case the Collector's proceeding be not satisfactory to the applicant for registry, the party is at liberty, within the space of one year from that officer's decision, to refer to the civil court. If such be the case, of what use are the provisions of Section XXXIX., which declare awards of Collectors to be open to appeal to superior revenue authorities? and should this continue in force, then must Section XXXVI. be slightly modified in this respect.

19. Section XLI. provides that, unless within 60 years from the date of registry a decree be passed at the suit of Government by a civil court pronouncing the registration to have been obtained by fraud, the entry in the permanent registry book shall be considered an effectual protection of the tenure. It appears to me that the intervention of the civil courts is unnecessary in such a case, and that, as the Board of Revenue has the power under Regulation XIX. of 1814 to quash a butwarrah fraudulently effected, so might it also take upon itself to nullify a fraudulent or otherwise erroneous registry, and without specifying any limit within which the discovery should be made.

20. On comparing Section XLIII. with Section XIV. of this Act, it appears to me that the provisions of the former neutralise those of the latter, inasmuch as Section XLIII. specifies that the purchaser of an estate under its provision will acquire it subject to all its incumbrances, whereas Section XIV. declares such a purchaser to obtain the estate free from them. I may have misconceived the terms of Section XLIII., as they are a little obscure, and in that case, I trust, I shall be undeceived.

21. None of the remaining sections of this Act appear to me to call for special notice, but there are one or two suggestions connected with the working of the whole law, that I trust I shall not be considered as trespassing too much on your attention in laying them before you.

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First.—It appears to me that the fees prescribed to be levied are excessive, and will effectually prevent the holders thereof in zillahs, where the under tenures are held at rents under 500 rupees per annum, from profiting by the security held out to them by registry; and I would recommend a scale of fees for tenures paying under 500 rupees per annum.

Secondly.—In event of an individual petitioning for registry on acquiring land by purchase, gift, inheritance, or in any other mode, are the fees to be levied in conformity with the new law or Regulation XV. of 1797? Mutations, likewise; are they to be continued under Section XXI. of Regulation VIII. of 1800, or under the contemplated law?

Thirdly.—There is no specification in the Act under review for the sale of land, save of estates paying revenue to Government; and the Act in no place provides for the sale of any kheraj or lakheraj tenure that may have been pledged as security of good conduct by those who may have subsequently forfeited the same.

Fourthly.—The words “right and interest,” hitherto intended to specify the amount of proprietorship to be disposed of, are entirely omitted in the phraseology of the new Act, as likewise mention of the validity, or otherwise, of a sale of an estate if subsequently discovered to have been purchased by an omlah of the Collector’s office or one of his deputy collectors. These remarks have been, I am aware, extended to an unwarrantable length, but I have deemed it expedient to notice every point connected with the working of the proposed law that has presented itself for my consideration, or that may have been suggested, and I trust that this will be deemed sufficient apology for their prolixity.

I have, &c.
(signed) *F. A. Lushington,*
Officiating Collector.

From the Deputy-Collector of the Twenty-four Pergunnahs to the Officiating Collector of the Twenty-four Pergunnahs, No. 65, dated Allipore, 22 April 1856.

Sir,

WITH reference to your office memorandum, No. 242, dated 9th instant, forwarding copy of a letter from the Officiating Commissioner, No. 122, dated 8th instant, I have the honour to submit, as follows, my humble opinion as to the practical working of Sections XXXVI. and XXXVII. of the draft Act, to improve the law relating to sales of land for arrears of revenue.

2. These two sections contain rules for the registration of the first three classes of under-tenures described in Section XXXV. The tenures forming the first and second classes are those which existed at the time of the decennial settlement, and are called the old talookdaree tenures, and the tenures constituting the third class are those created subsequent to that settlement, and are called the new talookdaree tenures and farms.

3. The object of Section XXXV. is to protect the rights of under-tenants on the sale of the parent estate on account of arrears of revenue. To attain this object without any prejudice to the interests of Government, it is provided, that if the tenures are duly registered under Sections XXXVI. and XXXVII., and no arrears of rent are due from them on the latest day of payment, they are secured against any risk whatever.

4. I shall now proceed to consider how far the rules laid down in Sections XXXVI. and XXXVII. are sufficient to answer the purpose for which they are proposed to be enacted. In doing so, I beg to be understood that my remarks have reference to the under tenures of this district only, and may not therefore apply to the other districts of Bengal.

5. Section XXXVI. lays down the following rules for the registration of the old talookdaree tenures. The holder of such a tenure shall apply to the Collector for registration, who shall issue notices requiring the proprietor of the parent estate or any other party interested, within 30 days to file any objection he may have to the registry of the tenure. In the absence of any objection, the Collector, if, after making due inquiry, he is satisfied of the applicant’s claim, shall register the tenure. If any objection is made, he shall make a summary investigation of the case, and grant or reject the application according to the result of that investigation.

6. From the above it appears that, in the cases of old talookdaree tenures, the Collector’s inquiry shall be confined to the claim of the applicant so far as the rights of the proprietor and other private parties are concerned; and if that claim is established, the registry of the tenure shall be allowed without any inquiry as to the adequacy of the rent payable by the holder.

7. In this district the tenures of the above description are chiefly those called the ticca-daree lands. These tenures were granted by former zemindars to private individuals generally at a quit rent, for some service done, or for clearing jungle or breaking up a new soil, but seldom for pecuniary consideration. Few documents of these tenures are to be seen, the only proof of their existence being the mention made in the measurement and assessment papers of 1190 B. S.

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8. But most of these lands have since been resumed, or have lapsed in default of heirs, and are now held by the proprietors in the names of their sons and relations. With a view of making a provision for their families, in the event of their estates being sold for arrears of revenue, the zemindars have not only transferred the tenures to their children at an inadequate rent, but have in many cases made a complete exchange of those lands; that is, the integrity of the tenures, as far as the quantity is concerned, has been preserved; but parcels of good land, in lieu of bad ones held by the original grantees, have been substituted.

9. It is most probable that these proprietors will take advantage of the proposed enactment, and get the lands registered in the names of their families and dependents, thereby reducing the hushood of the mehals to a great extent; and the summary inquiry prescribed by Section XXXVI. will hardly enable the Collector to detect the fraud.

10. For the registration of the new talookdaree tenures and farms, the rules given in Section XXXVII., in addition to those prescribed in the preceding section, are that the Collector shall cause such measurement, survey, and local inquiry to be made as he may deem necessary for the security of the Government revenue. He shall satisfy himself that the tenure was created in good faith, so far as the interests of the Government revenue are concerned, and that the rent payable by the holder is not less than is fully sufficient to afford a fair proportion of the revenue assessed upon the parent estate.

11. To ascertain this latter point, it will be necessary, in many cases, to measure and survey not only the tenure to be registered, but the entire estate in which the tenure may be situated. For the tenure may contain land of a superior description, so that, although the rent payable by the holder may be equal to the average rate of the estate, yet it may be very inadequate with reference to the quality of the soil.

12. Under such circumstances, unless the total area of the estate be measured and a jumabundee prepared, after ascertaining the rates current in the mehal for the different sorts of land contained in it, it is next to impossible that any satisfactory opinion can be formed on the above point. I need hardly say that such an inquiry must entail on the Collector much loss of time, and on the parties concerned trouble and expense.

13. There is another circumstance connected with the zemindarees of this district which makes an inquiry of the above nature peculiarly difficult. It is this: almost in every pergunnah there are villages, the lands of which are held jointly by the proprietors of two or more separate estates. For instance, the lands of mouzah Kouchpookhurea in pergunnah Magoorah are possessed, ijmalee, by the proprietors of no less than fifteen different estates, as per margin, according to their respective shares.

14. Now, it is easy to guess how difficult it would be for the Collector to prosecute the inquiry prescribed by Section XXXVII., if an under-tenant of any of these estates were to apply for the registration of his tenure; and it is well known that, owing to this circumstance, some of the mehals above alluded to, have been under butwarrah for upwards of 20 years, and the partition remains unfinished up to this date.

I have, &c.
(signed) *Sibchunder Deb,*
Deputy Collector.

No. on the Towjee.	NAME OF ESTATE.	Amount of Share in the Village.
		R. a. g. c. k. t.
1	Kist Chetlah and others - -	0 1 13 1 1 0
2	" Rungumberya, &c. - -	0 0 16 3 1 1½
3	" Naskurpore and others - -	0 0 17 3 0 1
4	" Kudumtollah and others - -	0 0 17 3 0 1
5	" Angaberya and others - -	0 0 17 3 0 1
6	" Roynuggur and others - -	0 2 13 1 1 0
8	Mousah Joulphia and others - -	0 2 13 1 1 0
9	Kist Chetlah and others - -	0 0 5 1 1 0
10	Ditto - - - - -	0 0 5 1 1 0
11	Mousah Suntuoshpore and others - -	0 0 5 1 1 0
12	Kist Chetlah and others - -	0 0 5 1 1 0
13	Ditto - - - - -	0 0 5 1 1 0
14	Ditto - - - - -	0 2 13 1 1 0
15	Kist Khureaberya and others - -	0 1 6 2 2 0
16	" Chetlah and others - -	0 0 3 0 1 1½
	TOTAL - - -	1 0 0 0 0 0

FROM the Collector of Behar to the Commissioner of Revenue for the Division of Patna,
No. 39, dated Gya, the 10th May 1856.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 1254, of the 12th of March, with its enclosures from the Sudder Board, regarding the draft of a Bill for improving the Revenue Sale Law, and in reply to state as follows:—

2. I have carefully perused the Bill in question. I have compared it with Act I. of 1845. I have studied attentively the several new clauses which have been introduced, especially Sections X. to XVI. and XXXVI. to XLII.; and with every desire to weigh impartially the advantages which the contemplated Bill is presumed to involve, I am forced to the conviction that the advantages which may in some instances be conveyed to small farmers and petty shareholders by the operation of these new clauses are not of so paramount a nature as to necessitate the passing of a special Bill for their benefit, and am also of
0.54. opinion,

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opinion, allowing advantages by the proposed changes may be secured to certain parties, that the same object, with perhaps a little more difficulty, is equally obtainable by legal process under the laws now in force, and I feel, moreover, forcibly convinced that the new law, if thoroughly acted up to, will so multiply the present arduous duties of the treasury department in a Collector's office, as to render it impossible to carry on the duties with the limited establishment now entertained; and it seems desirable, before passing the draft into law, that Government should well consider whether the advantages supposed to accrue to the petty shareholders by the new Act are commensurate with the immense increase of work its provisions will entail on their revenue officers and the expenditure and enlarged establishment will impose upon the State.

3. Act I. of 1845 has been in force now for more than 10 years, and as far as my experience goes, has worked admirably; it is thoroughly understood and appreciated by all classes of shareholders, and has stood the test of time to the thorough satisfaction of both Government and the people. Where then and what are the overwhelming motives that render it necessary to set aside an Act that not only works well, but is acceptable to the landed proprietors? No doubt some slight alterations might advantageously be effected in the old Act, such as substituting three periodical days for payment of revenue instead of four, and fixing the dates, not arbitrarily, but conformably with the three periods in the year in which the landlord collects his principal rents, namely, at the time of the Bhudree, Khurreef, and Rubbee crops, apportioning the kists according to the relative value of the said crops. Attention should also be paid in fixing the days of payment to the period of opium advances; the latter affords immense facility to the landlord in the payment of his Government revenue, and Government should bear in mind (I am speaking of Behar), that the ryots pay their rents to the zemindars from those advances, and that the latter are then in a position to pay Government. If the opium advances and fixed dates for paying in revenue are far removed one from the other, the smaller landholders, who compose the greater part of the class in this zillah, are compelled to borrow money at exorbitant interest to meet the Government demands; so that, if feasible, some attention should be called to this point.

4. But to revert to the Bill under discussion. If passed, its tendency will be to cause all *ijnalli* estates to become *mouzawarry*, and all *mouzahs*, or a large portion of them, now held under one or two or more recorded proprietors, to be subdivided into as many shares as there are shareholders; for, if not recorded proprietors, a *dakhil kharij* suit can make them so, and it is natural to conceive that every one possessing a distinct interest in a *mouzah* will prefer paying in the amount of his share direct to Government, and when, as frequently occurs in this zillah, some 80 or 100, or even more proprietors of a small estate, possessing infinitesimal interests in it, take advantage* of the proposed Bill to pay in their minute portions of the revenue direct into the Government treasury—and if no one oppose them there is no reason why they may not—what increase of labour will it not entail? What innumerable petty interests in estates must be entered in the treasury books? What an enormous aggregate of *chellans* and their counterparts? What a confusion of accounts? What difficulty in regulating the fractional portions some 40 or 50 shareholders, possessing a small *mouzah* paying a small Government *jumma*, will have to pay separately into the treasury? and what insuperable difficulties will present themselves at the last day of payment, when all these vast numbers of minute shareholders shall rush to the treasury to pay in their portions of the Government revenue? How impossible for the establishment, which under existing circumstances can scarcely during that period keep head against the current, to contend against the torrent which will pour in at the moment? It will fairly swamp them.

5. Such views may appear distorted and exaggerated, but it is only by putting forth an extreme case that the possible results can be gathered; and I am of opinion if Sections X. to XVI. are allowed full play, and are thoroughly acted up to by the petty shareholders of small estates, that a consummation such as I have hinted at may not be impossible, and the necessary consequence must be a large increase to the present treasury establishment, great delay in preparing and transmitting accounts, and a labour altogether incommensurate with the advantages proposed.

6. By the laws in force any recorded proprietor, if he wishes to separate his interest from the main property, can do so under the provisions of Regulation XIX. 1814, and his share becomes a distinct *mouzah* and is protected against sale as long as the Government revenue assigned upon it is regularly paid up; and as no restrictions, except that of insisting on the land so divided being compact and well defined, are imposed by the *butwarrah* laws. every part proprietor of an estate, if so disposed, can become independent, and I do not see why a law enabling a shareholder to pay in his rent separately, but not preserving his share from sale, is called for; it only creates and accumulates work without effecting anything that the laws in force could not with greater security convey.

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* I do not say they will, for Schedule B. will prevent them. I am only representing the legitimate result of the Bill, if carried out to its full tenor and extent.

7. In this zillah a vast number of estates are held in common tenancy, not of land but of produce; the system is bowlee or payment in produce instead of money. On the crops being cut they are appraised, and each shareholder, after deducting the ryotty hissa, gets his share of the remainder according to the amount of interest he holds in the mouzah. I conceive that in such a case the purchaser of a share under Section XIII. of the new Act, would experience great difficulty in getting his acquired rights assigned over to him; he has no land to take possession of, but a share in the produce, which fluctuates continually and to an interloper is almost intangible. A case of this nature would come under Section X., but does not that section apply rather to nugdee than to bowlee interests? The one is fixed, the other fluctuating; one is easily defined, the other varies so much as to render it impossible to assign a true valuation.

8. I am not aware that any instances occur in this zillah of shareholders in an estate possessing defined and distinct portions of land, so that Section XI. is hardly applicable to Behar; but I conceive, if any such instance exists, the question of separation could be more satisfactorily settled by the butwarrah than by the proposed law.

9. The matter of possession enjoined to be inquired into by the Collector in Section XII., is not so susceptible of proof as may be imagined; the evidence of the puarree and the statement of a nizamut peon, corroborated by witnesses, would constitute the grounds of decision, and nothing could be more untrustworthy or unsatisfactory; and in 90 cases out of 100 litigation would ensue, appeals would be preferred to higher authority, and the labour of both offices be indefinitely, and, to my notions, unnecessarily increased.

10. Sections XIII. and XIV. lay down rules for the sale of such share or shares as may fall into arrears, and are of such a nature as virtually to subvert and demolish the superstructure raised in the preceding clauses; for cases may, and will occur, where the highest offer for the ijmal share exposed to sale shall not cover the amount of arrear due thereon; the consequence is that the shareholder who, under Sections X. or XI., has obtained the privilege of opening a separate account, and who has, under Section XLVIII., been heavily mulcted to secure the said privilege, finds, through no fault of his own, that neither the fees he has paid under Schedule B., or the regularity with which he has scrupulously paid in his share of the Government revenue, in any way absolve or exonerate him from the calamity, neglect, wilful or unavoidable, on the part of the ijmal shareholders has plunged the entire estate. The shares of the insulated, as well as those of the united proprietors, become equally involved in the final catastrophe, and the only party benefited is Government, who appropriate the amercement* enjoined by Schedule B., and which was only paid in under a delusive hope that some corresponding advantage might result from it.

11. Sections XV. and XVI. are in every way just and appropriate, as there are many absentee shareholders of estates who are at the mercy of their local agents; and instances have been known where these latter, taking advantage of their position, have, through collusion or remissness, involved their principals in great difficulty. The proposed section enables such absentees to secure their interests unsubjected to risk or intrigue.

12. Section XVIII., corresponding with Section XI. of Act I. of 1845, has a tendency, I think, to make landholders procrastinate, an evil to which they are intuitively disposed; and instead of regarding the quarterly day of payment as the real arbiter of their fate, they look more to the character of the Collector, and pay in or adjourn payment accordingly. Some Collectors, as I know, confine themselves strictly to the letter of the law, and these rarely have an estate in arrear; others, more lenient or supine, find their sale-roll incumbered with applications for indulgence, and the consequence is, the rule being undefined, an immense latitude is left to the arbitrary will of the Collector. He may or he may not exempt an estate from sale, and it is possible that human frailty as much as stern impartiality may decide the point. I think, if certain periodical dates are specified, full and timely notices promulgated, and the landholders given to understand that from one year after passing of the Act no margin or latitude would be attended to; that, except an appeal to the Commissioner, no door of escape or retreat was open to them; that then, without any undue harshness or injustice to the landholders, the Government revenue would be paid in on the fixed dates with the greatest punctuality; and that there would be but few occasions for special consideration, if they did arise, and good and creditable reasons assigned. There would be ample time for the Commissioner to exempt such cases from sale; procrastination being a disease amongst the natives, strong remedies should be applied to correct the evil; there can be no hardship when every man knows beforehand that he has got three months to collect and pay in his rent.

13. Section XXIII., corresponding with Section XVI. of Act I. of 1845, requires one or two words of comment. A case occurred when I was Collector of Berhampoor, which presents a curious illustration of the working of this rule. An estate with an arrear of 21-10-6, and bearing a Sudder jumma of 31-14-11, was knocked down for 1,810 rupees, of which sum 25 per cent. or 452-8 was paid in as deposit. The purchaser, disapproving of his

* I call it a fine, because if the share is sold, and the fees, instead of being returned, are forfeited, the natives will regard them in the light of a fine.

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his bargain, failed to pay up the full amount of the purchase-money; the estate was re-sold, the defaulter purchased it himself for 29 rupees. The question was whether the balance of the original purchase amount was to be collected from the defaulting bidder or not. I was of opinion that Section XVI. only provided for levying a difference in case the price realised at the re-sale was less than that acquired at the first sale, and referred the point for the consideration of the Commissioner, who referred it to the Board, the result of which was, that the difference of price was to be levied from the defaulting bidder and paid over to the proprietor. Now this is an extreme case, and I opine one hardly contemplated by the framers of the law. I conceive some distinction might be drawn between cases where the re-sale exceeds the amount of the first sale, and where there is a declension of price. A compulsion of payment in the latter case seems equitable, but barely so in the former, where the proprietor is himself the purchaser. The mulct paid in as deposit is amply sufficient to preclude any reckless speculation.

14. Passing on to Section XXXIV., we come to rules for registration. I am of opinion that very few tenures referred to in the first and second clauses, and possessing the peculiar qualifications enumerated in Section XXXVI., are to be found in Behar. Talookdaree tenures, distinct and apart from those referred to in Regulation II. of 1819, may exist in nizamat mehals, and if so, the option of effecting their registration is very properly conceded.

15. It also seems to be very desirable that farming leases and tenures of the description referred to in Clause 3 should be secured against any interference on the part of a purchaser of the parent estate; but at the same time, I think it possible for the Collector to be deceived in the inquiries he is called upon to make under Section XXXVII. He is there enjoined to satisfy himself that the tenure or lease was created in good faith as far as the interests of the Government revenue are concerned, and that the rent payable by the holder bears a fair proportion to that assigned on the parent estate. Now, as far as the interests of Government are concerned, I admit that fraud can scarcely be practised with impunity, as (supposing the Collector to have been deceived) the power of selling the whole estate if it falls into arrear, guarantees the Government from loss; but it is possible that a landholder possessing two mouzahs constituting one lot or estate, one of which mouzahs is good and the other bad, may effect a fictitious transfer of the good mouzah to his wife or son at half the Sudder jumma of the whole estate, and obtain registration under this Act. Now, supposing 500 rupees to be the Sudder jumma, the Collector would see, especially if warranted by the deposition of the putwarree and other testimony, no unfair proportion, if the villages possessed nearly the same area, in assessing each at 250 rupees; whereas one might be worth 450 and the other only 50 rupees. Such instances are not uncommon. The landholders might then wilfully permit the estate to fall into arrear, and allow it to be sold. The purchaser in that case, bound by this Act to respect and not to interfere with the registered tenure, would find himself in the position of having to pay 250 rupees Government revenue for a mouzah which only yielded 50 rupees; and though by a regular suit under Section XLI. he might get the lease annulled, yet it would be a work of time. I entertain no doubt but that frauds of this and other unforeseen natures will arise out of this Act, and cause a great deal of trouble.

16. It is very difficult to foresee and anticipate all the possible results that may arise from the working of a Bill of the nature under review. Many of its provisions are doubtless admirable; but as my opinion is asked, I trust I may be absolved from impertinence or presumption if I venture the remark that the Bill does not appear absolutely called for. I think it will lead to abuses which, though dimly foreshadowed in my mind, are not sufficiently potent to authorise the expression of them. I think the Bill will conduce to great litigation, to a large increase of labour, to great confusion and trouble in the treasury department of a Collector's office, and that there is nothing introduced which the laws now in force do not, with perhaps a little more delay and difficulty, equally provide for.

17. The main objects to be obtained are set forth in the preamble: the first is that persons having liens upon estates should, by paying the money necessary to protect it from sale, have their rights secured. Does not Section IX. of Act I. of 1845 convey the same right? The second object is to afford shareholders easy means of paying in their share of Government revenue; can the means be called easy which are shackled† with such fees and charges under Schedule B. as of themselves tend to render the Bill abortive? for not one petty shareholder in 50, unless influenced by party discord or some peculiar and hidden motive, will incur the expense of obtaining a registration, especially when he knows beforehand that he does not thereby protect his share from subsequent sale, nor, if it did, is a special law on the subject requisite. Where there are many shareholders in an estate, the general interest requires that each shall pay up his quota of the Government revenue; if one fails, another pays it in under protest, and has his remedy in a civil action. The third motive

* The Sudder and Mufussil jummahs are of course quite distinct, the latter is always in excess of the former; but I am only here putting a case, and the amount of the Sudder jumma is quite sufficient for the purpose.

† In the former part of this letter, I have attempted to point out the disadvantages the provisions of the Bill would entail if really carried out, but I am of opinion that, if passed, it will become a dead letter, as no petty shareholder will pay in the fees and expenses enjoined under Schedule B.

motive is to protect absentee landlords against the sale of their estates through neglect or fraud of their agents. The Sudder Board's circular, No. 3, of the 21st of March 1854, moots the same question; it is one of considerable importance, and the justice of such a measure cannot be denied; but it may be asked what impediment exists at present, without any special law, to a Collector's receiving and crediting payment of revenue from recorded proprietors in anticipation? I know of none, and I doubt very much whether a Collector would be justified in refusing such advance payments; if the case refers to a farmer who holds land in lease from the zemindar, and, as an absentee, desires to protect himself from loss, then some law is desirable to effect it; but surely it cannot be urged that to secure this one point a new sale law was imperatively called for. The fourth motive is to enforce the registration of dependent talooks existing at the time of settlement, and to give security to such talooks when registered. I submit that the Bill does not enforce registration, but leaves it optional with the talookdar to effect or not as he likes, and my opinion is that Schedule B. operates as a serious impediment to any such registration. If registrations are effected, security is doubtless afforded by the Bill; but as regards Behar,* I doubt whether any of the nature implied exist, or if existing, that they will be registered; but, whether registered or not, they were protected against interference on the part of a sale purchaser by Section XXVI. of Act I. of 1845. The fifth and last motive is to protect farming tenures from loss or interference on the part of the purchaser in case the parent estate is sold for arrears of revenue. I say farming tenures, for none other could fall into the category of having rents fixed on them proportionate to those assigned on the parent estate—and if right in this view, the section above quoted affords the protection here set forth, so what necessity for a new law?

18. Having thus very imperfectly, and under the drawback and difficulties attending severe sickness, endeavoured to represent my views of the Bill in question, I would desire in conclusion to state a case existing in this district, for which no provisions have been suggested in the Bill under review. I allude to the case of the Belounjah Rajah, one well known to Government, and one which, notwithstanding repeated references from me, has not hitherto been finally disposed of; and as in the course of events it may entail much misery upon an impoverished but ancient house, I think the matter demands careful consideration.

19. The case is briefly as follows.—The father of the present Rajah, heavily involved in debt, and apprehensive that the sale of his entire raj would entail ruin upon his house, applied to Mr. Commissioner Smith, who proceeded to Bellonjah, and effected an arrangement whereby certain mouzahs, some 30 or 40, were made over to the creditors in mokurree, conditionally on the debts being remitted, and Government revenue to the extent of 7,391 rupees being paid in by them, and Mr. Smith ruled that the said mokurreedars were responsible for this portion of the Government revenue, and that the raj was only liable for sale in case the proceeds from the defaulting mokurreedars was insufficient to cover Government arrears. This order, illegal as it was, was confirmed by the Board in their letter No. 39, of the 28th March 1834, and on the strength of their confirmation, no less than 19 of these tenures were, up to 1843, sold for their own arrears. During the incumbency of Mr. Collector Taylor, a question of sale arose. Mr. Taylor saw the illegality and declared his inability to sell the defaulting tenure, and that the entire raj must be advertised for sale. Mr. Commissioner Gough acknowledged the dilemma, but urged restraint and less violent measures, and from that time to this, restraint and dustucks through the Nazir have been in force to collect the revenue; but the present rajah feeling the insecurity of his raj, petitioned to have Mr. Smith's provisions legalised. I recommended the introduction of Regulation VIII. of 1819 into this zillah, so as to treat these mokurrees as putnee talooks. The Board declined, and directed that the revenue should be collected from the mokurreedars under the provisions of Section XXV., Regulation VII. of 1799 and Regulation VIII. of 1835; but with all deference, I submit that these laws do not apply, and that the Collector could not, under one or the other, bring one of these mokurrees to sale, and that, in case of default, the existing law requires and enjoins that the entire raj should be advertised for sale.

20. Such is the case, and in a new sale law, was it not possible to introduce some clause whereby mokurree tenures in Behar should be placed in the same category as putnee talooks in Bengal? This would have been an essential boon, and one not only urgently required, but one which would have found great favour with the large landed proprietors of this district. I do not say or think that mokurree tenures in every respect correspond with putnee talooks, but the same rules might, I conceive, be brought to bear on both. The two tenures, with the exception of difference of local custom, possess strong features of resemblance; but, if Regulation VIII. of 1819 was not deemed applicable, some special clause or clauses might have been introduced elucidating and settling this vexed question.

I have, &c.
(signed) R. F. Hodgson,
Collector.

* As Collector of Behar, I only write of my own district. I do not presume to infer that the putnee talooks in Bengal may not benefit by this and other clauses.

Appendix, No. 7.

From the Collector of Dinagepore, to the Commissioner of Revenue, Rajeshaye, No. 144, dated, Dinagepore, 8 April 1856.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 11th March, calling for a report on the Bill for the improvement of the law relating to sales of land for an arrear of revenue, published in the Gazette of the 30th January last. The Bill to be reported on, embodies (a single section excepted) the whole of the present Sale Law, Act I. of 1845. It contains additional provisions for the protection, first, of the interests of the recorded sharer of a joint estate held in common tenancy, second of a recorded sharer of a joint estate whose share consists of a specific portion of the land of the estate. It protects also, first, Istemraree or Mokurreree tenures which were held at a fixed rent 12 years anterior to the permanent settlement. Second, tenures existing at the time of settlement not liable to increase of assessment. Third, tenures of whatsoever description created since the time of settlement. The provisions embodied in this Bill from Act I. of 1845 have worked so well for these last 10 years, and are acknowledged to be so well adapted to the requirements of our revenue system, as to render any interference with them in my judgment unnecessary and uncalled for. Their incorporation in the present Bill is sufficient evidence of the opinion entertained of their value. I may, therefore, be permitted to pass over this portion of the Bill, merely expressing my regret that, since additional provisions on the subject were considered necessary, they were not made the basis of a separate and distinct Act, instead of being incorporated in the present Bill. Reverting to the more specific provisions of the present Bill, the first and second relate to the protection, first, of a recorded sharer in a joint estate held in common tenancy; second, of a share which consists of a specific portion of the land of the estate; and I do not hesitate to state that the provisions are not only imperatively called for in justice to the co-sharer who has paid up his portion of the Government revenue, but that the mode proposed is, in my judgment, effectual, without in any way compromising the interests of the Government, or causing any loss or inconvenience to the zemindars. The idea appears to have been taken from the rules which obtain under the butwarrah regulation, and it may occasion surprise that a principle so distinctly enunciated nearly half a century ago, should hitherto have escaped the attention of our Legislators. The next division of the subject comprises under-tenures, as already shown.

1. The istemrare or mokurreree tenures which existed 12 years anterior to the permanent settlement.

2. The tenures existing at the time of the settlement.

3. Tenures of whatever nature, created since the settlement. I see no objection to the provisions of the Bill regarding the first and second descriptions of tenures. They are already in some measure protected by the conditions of the permanent settlement; the difference being that the permanent settlement consists simply in a declaration in favour of all such tenures generally, whereas the provisions of the present Bill are calculated to identify them. With reference to the third description of under-tenures, namely, those created since the permanent settlement, the question is no doubt one of great difficulty. I admit the necessity for protecting them in the event of a sale of the parent estate; and the scheme proposed in the Bill would perhaps be the best that could be devised, did it not appear in my judgment to be, under existing circumstances, hardly practicable. The difficulty springs from the obvious necessity (as proposed in the 27th Section of the Bill) for not only measuring and surveying the under-tenures, which operations are obstacles sufficient in themselves, but for the Collector satisfying himself that the rent payable by the holder is not less than is sufficient to afford a fair proportion of the revenue assessed upon the parent estate. To do this, it will be necessary, first, to ascertain what the actual assets and profits of the parent estate may be. But all revenue officers know the difficulty of ascertaining accurately, even in a case of butwarrah, the assets of an estate, and the time which elapses ere it can be tested, classified, and made available for that purpose. In no case can the inquiry be brought to a close in less than two years; but in cases where the zemindarees are large, three, or even four years may elapse, or a proximate period. Such being the state of things in butwarrah cases with respect to a single zemindaree, what labour and time will it not involve when brought to bear upon the zemindarees of an entire district. Added to this labour, will be the inquiry regarding the assets of the under-tenures, of which will be found, I surmise, nearly four or five thousand in most districts, and in no district less than two thousand. If the applications for registration of these under-holders come in nearly together, which will unavoidably be the case as I apprehend, the number of ameens that must be employed may be imagined, the numerous reports that must be made by them, the interlocutory orders in numbers that must be passed, and the lapse of time which all this work will involve. Supposing that, at the end of the first six months, a thousand cases are ready for decision by the Collector, and that that officer is able to dispose of as many cases per mensem as the Civil Court, namely, 25, he will only have decided 300 by the end of the year, or 1,800 in six years, or 3,600 in 12 years, unless the Government greatly increase the number of Collectors employed in Bengal, and thereby the expense to Government. Desirable, therefore, as the object of the Bill may be, I much fear that the difficulty of compassing it is of such a nature as to place it beyond our reach. I should, for these reasons, be disposed to prefer the scheme formerly

formerly proposed by Government, namely, that "all under-tenures in an estate, without exception or inquiry, should be allowed to hold as good against an auction purchaser as they were against the former proprietor, as long as the parent estate should be saleable at a price that would cover the arrears of revenue due from it; that as soon as the parent estate should fail to be saleable at such a price, it should be forfeited to Government. The Government scheme is recommended by the hope it affords of eventually repairing the injury inflicted by the permanent settlement of Bengal. For the lapse of the zemindarees to Government on account of arrears of revenue, will afford Government the opportunity for restoring to the actual cultivators of the soil the status, of which that settlement unfortunately deprived them, and transferred, apparently under a misconception, to the mere tehsildars of the Mogul Government, who were mistaken for a body analogous to the landed proprietors of England. I am aware of the outcry which is raised against any measure which is supposed to have the slightest tendency to trench upon that settlement. But to remove the evils of a system acknowledged to have proved most disastrous to the great body of the people is, in my judgment, not merely advisable, but a duty imperative upon Government. I have to notice two other points of the present Bill, namely, first, that provided for in the last paragraph of Section IX.; and second, that composing the entire paragraph of Section XV. The first is a provision for refunding to the mortgagee, who may have discharged the arrears of Government revenue, to protect himself against the sale of the estate before the mortgage has lapsed. The second is the chance afforded to the proprietor of a zemindaree to protect his estate from sale by making a deposit of public securities, the interest of which shall be sufficient to pay the Government assessment charged upon the estate. Both of these provisions are based upon obvious justice, which demands their implicit adoption.

I have, &c.

(signed) *F. A. E. Dalrymple*, Collector.

FROM the Officiating Deputy Collector of Maldah to the Commissioner of Revenue,
Rajshahye Division, Beaulah, No. 447, dated Maldah, 28 April 1856.

Sir,

I HAVE the honour to furnish the report required by the Board's Circular, No. 2, dated 26th February, and your letter, No. 71, dated 11th ultimo, on the Bill for the Improvement of the Law relating to Sales of Land for Arrears of Revenue, published in the "Gazette" of the 30th January last.

2. The main points in which this Bill differs from the law, as it now stands, appear to be these:—

First. It is proposed to secure parties having an interest in an estate against loss in protecting that interest, in case of its being imperilled, by the estate being allowed to fall into arrears, and so become liable to sale.

Secondly. To enable shareholders in estates, duly paying their shares of the Sudder jumma, to protect their shares in case of the estate becoming liable to sale through default of their co-sharers.

Thirdly. To enable proprietors to secure their estates from sale through the neglect or fraud of their agents.

Fourthly. To enforce the registration of dependent talooks existing at the time of settlement, by giving security against the consequences of the sale for arrears of revenue of the parent estate to talooks so registered.

Fifthly. To protect the holders of under-tenures, created in good faith, from loss by the avoidance of their tenures through sale of the parent estate for arrears of revenue.

3. With a view to the attainment of the first object, Section IX. of the Bill permits persons, not being proprietors, to deposit the amount of arrears due from any estate, with the view to its being carried to the credit of the estate, and so of saving it from sale in case of the proprietor defaulting; the amount so deposited and credited being recoverable by suit in the Civil Court, or in case of the party holding a lien upon the estate, being added to the amount of that lien.

4. I think it impossible to take exception either to the object here proposed, or to the means by which it is to be attained; I think it most just and right that parties having interests in estates should be enabled to protect those interests, and that they should at the same time, as far as possible, be secured against loss in so doing; and I know of no method whereby the object would be attained so simply and effectually as it is by that proposed in this Bill. As the law now stands, what security have such persons? None whatever. The recorded proprietor is the only person whom the law recognises in connexion with the estate; all revenue paid on account of it must be paid in and credited in his name; the existence of other parties is absolutely ignored; and they have consequently no safe method whatever of protecting, against the consequences of the neglect or fraud of the proprietor of an estate, interests in it which may possibly be greater than his. This is not as it should

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be; where an interest can be legally created, there should also be the means of protecting it legally; these means the Bill before us proposes to provide, and, as I have already said, in, I think, as simple and effectual a manner as possible.

5. In the next place, Section X. of the Bill proposes to empower the Collector to open a separate account with any shareholder in a joint estate held in common tenancy, who may desire to pay his share of the Government revenue separately; the form of application and course to be pursued by the Collector on receipt of it are prescribed in the Bill.

6. I am of opinion that this is also an excellent provision, and one calculated greatly to increase the security and enhance the value of landed property. It provides for a want hitherto, I believe, greatly felt, that namely, of security against the neglect or fraud of a co-sharer. As the law stands, the whole of a joint undivided estate is answerable for the whole of the revenue due from it; the smallest arrear remaining due after the last day of payment, renders the whole estate liable to sale; where the property in an estate is, as in this country so frequently happens, vested in a body, often a large one, of proprietors, great inconvenience must frequently be occasioned by the operation of this rule. I remember one case which I may quote as an instance of this; an estate in Chittagong, of which I now forget the name, was the property of a considerable body of shareholders; one set of shareholders invariably failed to pay in their share of the revenue when it became due, and the other set found themselves consequently compelled to find the whole amount, to raise the balance perhaps at an hour's notice or allow the estate to go for sale, and this happened not once, but regularly every quarter-day. It can easily be imagined how much annoyance and actual loss was caused by such a process of paying in the revenue, and how much the value of a share in such a mehal would be deteriorated by it. If the Bill under report become law, such a thing could not occur; the body of paying shareholders would at once apply for the opening of a separate account with them, and their interests would then be safe from the consequences of their co-sharers' default. I have no doubt whatever that this provision of the Bill will be taken advantage of to a great extent, should it become law.

7. And it cannot, I think, be doubted that the permission contained in this section may be granted with perfect safety to the Government revenue. In respect of the liability of the land for the revenue assessed upon it, no change whatever is made in the existing practice; all that it is proposed to do is to allow butwarrahs being made of jumma, as they now are of land; the object to be attained is the same, and the process by which it is to be attained infinitely more simple and inexpensive; while at the same time all risk to the Government revenue is avoided; I think it highly probable that one effect of this provision of the Bill will be to put a stop, in a great measure, to butwarrahs of lands for the future; by no means an undesirable result.

8. I now come to one of the most important of the alterations in the law which the Bill proposes to effect; by the section last referred to, shareholders are enabled to protect their interests against the fraud or neglect of their co-sharers; Section XV. of the Bill provides for the protection of the proprietor against the neglect or fraud of his own agent, by permitting him to deposit money or Government securities to meet any demand that may accrue against the estate.

9. The importance of this provision consists in this: that, as has, I believe, already been pointed out elsewhere, it virtually sanctions the redemption of the land-tax; it does so most undoubtedly; a proprietor of an estate has only to deposit Government securities to the value of 20 or 25 years' purchase of the revenue payable by the estate, according to the rate of interest which the securities bear, and his estate is secured against sale for ever.

10. The change in the nature of land tenure in this country which the enactment of this provision will involve, is unquestionably one of the utmost consequence; the object which the Bill proposes to attain is merely the securing of the proprietor against the fraud or neglect of his agent; the actual consequence may be the gradual conversion of all the zemindarees, independent talooks, and estates, under whatever denomination, paying revenue direct to Government, into virtually freehold tenures. Are the Legislature prepared to sanction this change? for my part I see no reason to dread it; on the contrary, the insecurity of landed property in this country has hitherto, I believe, been one of the causes which have chiefly retarded its advance in material prosperity; it is the cause which has mainly deterred from entering largely into zemindaree business Europeans, the men of capital, and what is perhaps more important, the men of energy.

11. One chief cause of this want of security in the case of estates paying revenue direct to Government, is the impossibility of reposing full confidence in native agents, mooktears, &c., and under the present system the least neglect,—it is unnecessary to suppose fraud on the part of any one of these men,—might throw the most valuable estate in the country into the market; security is possible only so far as actual personal supervision is possible; I know that now no European zemindar thinks it safe to be absent from his property as the quarter day comes near; I have frequently heard complains of the inconvenience thereby caused, and suggestions of the identical remedy which it is now proposed to provide. No provision of the Bill will, I am certain, be more popular than the one which enables the proprietor to dispense with the services of agents of all kinds, of whose honesty he can never

never feel fully assured. If, to enable him to do so, the law is compelled at the same time to empower him virtually to alter the nature of his tenure, and secure it to himself and his heirs for ever, free of all demands, I see no reason why it should hesitate to do so; he is entitled to the fullest security for his property, compatible with the safety of the public revenue, and I do not see how anything can be urged against the provision of the Bill under consideration on the score of danger to the estate's income.

12. The sections of the Bill last noticed provide for the security of the Sudder malgozar. I now come to those sections by which it is proposed to insure that of the sub-tenant also. This is to be effected by means of registration; the mode in which this registration is to be effected is prescribed in Sections XXXVI. and XXXVII. Sections of the Bill.

13. There can be no doubt that nothing has tended to shut out capital from land more than the insecurity of under-tenures; under the law, as it has hitherto stood, the great mass of under-tenures on an estate are quashed as soon as the estate is sold for arrears of revenue. It is needless here to do more than refer to the great amount of injustice, oppression, and fraud hereby rendered possible; every man who has had any experience in Mofussil practice knows what a powerful weapon this power of annulling under-tenures whenever he pleases is in the hands of a zemindar, and it is not allowed to rust for want of use. The question as to the best means for putting a stop to the improper exercise of this power, and for securing the under-tenant in the enjoyment of what is indisputably his property, has long attracted much attention, and various modes of solving it have been proposed at different times; so let us see how the Bill proposes to deal with it.

14. It proposes to except from avoidance and annulment, through sale of the estate, all under-tenures which may have been duly registered in one or other of the modes prescribed by Sections XXXVI. and XXXVII. of the Bill, according to the nature of the under-tenure. Security is to be obtained by registration, the process being as follows.

15. In the case of old talookdaree tenures existing for a certain period before, or at the time of settlement, the tenant must first present his application to the Collector, stating all particulars with regard to his tenure as far as they are ascertainable; on receipt of this application, the Collector is required to serve a notice on the recorded proprietors of the parent estate, and otherwise publish one, calling on all parties interested to appear within 30 days and prefer any objection he or they may desire to make. If no objection be preferred, nothing, of course, remains but to complete the registration; but if an objection be preferred, then an inquiry must be made; this inquiry will be summary, and the Collector's award is liable to be reversed by a decree of court.

16. In the case of new talookdaree tenures and farms for terms of years, the same course must be adopted, and in addition thereto, the following process must be gone through. On receipt of the application, the Collector is to cause whatever measurement, survey, or local inquiry he may deem necessary for the security of the Government revenue to be made, in order that he may be enabled to satisfy himself that the tenure was created in good faith, so far as the interests of Government are concerned, which he is bound to do before completing the registration.

17. The process of registration in the case of old talookdaree tenures is no doubt simple enough, and it may therefore be passed over without further remark, especially as it will be comparatively seldom employed, and will cease to be so after the lapse of three years from the passing of the Act; the mode of procedure, prescribed in the case of new talookdaree tenures and farms, requires some notice.

18. This process of registration differs from the other chiefly in this: that the Collector is bound, before completing the registration, to satisfy himself that the interests of Government are not endangered by the creation of the tenure; this, of course, he cannot do without a local inquiry. The Bill accordingly directs him to institute such an inquiry, and to make such survey, measurement, &c., as he shall deem necessary; but it does not say who is to bear the expense of such survey and measurement, nor does it in any way provide for the performance of the work by competent persons.

19. Looking at the instruments which the Collector must perforce employ in the conduct of this inquiry, and the manner in which such an opportunity is likely to be taken advantage of by them, it would, I think, be much better, if possible, to dispense with it altogether; the question is, is it possible to permit registration without such grievous inquiry? I think it is. The sole object of the inquiry prescribed by the Bill is the protection of the public interests; private interests, it is presumed, will be sufficiently well guarded by the parties themselves; the Collector must watch over those of the public, and his superintendence must be no mere thing of form, but close and vigilant; for this reason the Bill declares that, in case of an estate being at any future period thrown upon the hands of Government, it shall acquire the property subject to the provisions of the Bill, that is, in the case of permanently settled estates, subject to all encumbrances which may have been imposed upon it by the creation of under-tenures the permanency of which has been secured by registration. Such being the case, a really close and vigilant superintendence must be exercised by the officer who conducts the inquiry; otherwise the interests of Government will certainly be liable to suffer.

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20. The sole object of the inquiry being the protection of the public interests, it follows that, if any other sufficient means of protection can be discovered, the inquiry may be dispensed with, and it is not necessary to go far in search of them: let the present system of annulment of under-tenures on sale of the estate be continued in all cases in which an estate is thrown upon the hands of Government; and the Government interests are at once protected in the most efficient manner; they are secured in a way in which they never will be under the Bill. Nor would there be any injustice whatever in exempting the estate from the operation of the provisions affecting private purchasers; the original agreement made between the Government and the zemindar was that, so long as he continued to pay a certain amount of revenue, so long he should remain in undisturbed possession of the estate; the under-tenants are bound to the tenant-in-chief, and through them to the Government by similar agreements: there can be no injustice whatever in declaring that, if they fail in their part of the contract, they must pay the penalty; that, if one set of tenants fail in paying the stipulated amount of revenue, the Government will cancel the agreement made with them, and proceed to oust them and induct another set who will pay it.

21. To sum up briefly, I think all the provisions of the Bill excellent, with the exception of those which declare registered under-tenures not liable to annulment on sale of the parent estate to Government, and prescribe a local inquiry as the means by which Government interests are to be protected against any fraud in the creation of those under-tenures. In lieu of these, I would propose to substitute a clause declaring all under-tenures liable to avoidance in case of the estate being thrown on the hands of Government, and to allow the mode of registration prescribed in Section XXXVL of the Bill to be adopted in all cases.

I have, &c.
(signed) *E. C. Craster,*
Officiating Deputy Collector.

(No. 5.)

PETITION of Rajah Sutt Shurn Ghosaul, dated 19 November 1856.

To the Honourable Members of the Legislative Council of India.

The humble Petition of Sutt Shurn Ghosaul of Bhokoyloss, Zillah 24-Pergunnahs, a Zemindar in the Presidency of Bengal.

Most respectfully showeth,

THAT in continuation of his petition dated the 19th September last,* your petitioner begs to suggest to the Honourable Council to introduce in the proposed law a section to the effect that holders of under-tenures created since settlement, from whom no balance was due on the latest day of payment, should be entitled to damages from the defaulting proprietor, his successors, &c., in proportion to the loss sustained by them, by the avoidance of their tenures on the occasion of a sale of the zemindaree in arrear within a period to be judiciously and wisely limited by the Honourable Council.

Such a provision in your petitioner's humble opinion will tend much to realise the laudable object of the Honourable Council to protect the interests of the tenure-holders contemplated in the latter part of the Bill, and will not only suppress fraud and collusion, but it will also prove a preventive as well as a remedial measure.

And your petitioner, as in duty bound, shall ever pray,

Bhokoyloss, 19 November 1856.

Sutt Shurn Ghosaul.

No. (6.)

From the Junior Secretary to the Government of Bengal, to the Clerk of the Legislative Council, No. 864, dated Fort William, 28 December 1856.

Sir,

Revenue.

IN continuation of this office, letter No. 671, dated the 19th September last, I am directed to forward herewith, a copy of a letter No. 439, dated the 18th ultimo, and of its enclosure, regarding the proposed new sale law, from the officiating secretary to the Board of Revenue.

I have, &c.
(signed) *C. T. Buckland,*
Junior Secretary to the Government of Bengal.

* See further Papers (No. 3) relative to the Sale Law Improvement Bill.

From the Officiating Secretary to the Board of Revenue, Lower Provinces, to the Secretary to the Government of Bengal, Revenue Department, No. 433, dated Fort. William, 18 November 1856.

Appendix, No. 7.

LAND REVENUE.
W. Dampier and
H. Stainforth, Esqrs.

Sir,

In reply to your letter of the 1st ultimo, No. 696, I am directed by the Board of Revenue to forward, herewith, copies of the Minutes * of the Members on the Lieutenant-Governor's printed Minute on the subject of the proposed new sale law.

*Mr. Dampier's,
dated 31st ultimo.
Mr. Stainforth's,
dated 17th instant.

I have, &c.
(signed) *E. T. Trevor*,
Officiating Secretary.

Mr. Dampier's Minute.

I HAVE looked over the Minute of the Lieutenant-Governor regarding the proposed new sale law. I do not think any lengthened or detailed remarks on it necessary or called for from the Board.

I quite concur in the opinion expressed by Mr. Halliday as to the advisability, to use the least strong term, of fixing a limit to the amount of revenue paid by a shareholder which would give him the privilege of opening a separate account with the collector. Even under the present system of separation by butwarrah, several officers (the late Commissioners † of Bhaugulpore and Cuttack being, I think, amongst them) have represented the necessity of confining the operation of the butwarrah laws to sharers in estates paying not less than 50 rupees annual revenue to the Government.

† Messrs. Brown
and Samuells.

I would also confine the use of this privilege to recorded proprietors, and not have any inquiry as to possession by the collector as a rule. Possession and registration may be said always to go together; but where an heir was not registered and is in possession, there can be no injury done in making the registry of his name necessary before he can open a separate account; and this measure would also tend to check the entry of fictitious names or of benamie holders on the register.

I conceive it to be impossible that the intent of the proposed law is to alter the status of the dependant talookdars and other holders whose tenures' rents or revenue were fixed by the permanent settlement. If it is necessary to have a penalty for the non-registry of such tenures, it should be of the nature laid down in Section XXI. Regulation VIII. of 1800, to be inflicted on zemindars for non-registration of mutations in their holdings. The zemindars and these talookdars and others are alike protected by the laws of, and declared permanent by, the decennial settlement; and we have no more right to avoid such tenures for an arrear of rent, than we have to break up the permanent settlement of a zemindaree on the occurrence of an arrear of revenue.

I must say that, granting the expediency of rendering post settlement under-tenures more secure, it appears to me that this measure is proposed to be done without much reference to the right of the zemindars. It may be said that, as the zemindar cannot profit (excepting by fraud) by the annulment of such tenures by the sale of the estate for arrears of revenue, he is not actually injured, or a loser, but certainly the pecuniary value of such holdings is vastly increased by this measure; and had this permanency of tenure existed or been even thought likely to exist when the tenure was given, or if he had now the power of withholding the permanency, excepting on payment of an additional fine, a much higher price or consideration would have been or might now be levied by the zemindar—which he now is deprived of.

I must say that I am very much inclined to concur in the plan proposed by the Lieutenant-Governor; and even with that, and limiting the provisions of the law to tenures holding direct from the zemindar or other person paying revenue to the Government, I still think that the inquiries proposed by Sections XXXVI. and XXXVII. to be carried out by the collector will present difficulties almost, if not in many cases completely, insuperable.

It may also be a question by whom are the expenses attendant on such inquiries to be paid. By the Government who is not interested in the matter: by the zemindar whose interests are, if anything, injured by this security given to his under-tenant; or by the under-tenant himself? The last is the just course; for if, as a necessary part of the scheme, the under-tenure is to be protected from the time of application for registration, it will not be an object for even honest claimants to hasten the conclusion of the summary inquiries, whilst to dishonest or false claimants it would be an advantage to delay by any means their conclusion. The expenses of all kinds should, I think, in the first instance be levied from the claimants to registration, leaving the deciding officer the power of adjudicating any portion of them to be refunded by opponents and counter claimants.

31 October 1856.

(signed) *W. Dampier*.

Mr. H. Stainforth's Minute.

It certainly seems necessary to limit the separation of accounts in joint undivided estates, if the project of separating them is to become law. But I venture to recommend that it be abandoned, as the objects sought may, apparently, be more easily and effectually attained by allowing the collectors to receive petitions, presented within seven days from the latest

Appendix, No. 7. date for payment, by registered proprietors who have paid their quotas of the revenue (which should be ascertained, in order to carry out Section III. Regulation XV. of 1797, and are not liable to alteration saving in cases of specific portions of mehals under the butwarrah law); and to exempt from sale, at the time thereof, such portions as they may find, on such petitions supported by dakhilas, to be free from arrears of revenue.

Such a system would prevent influx, into the collector's offices, of work with which it might be impossible to cope, and it would at all events save a large amount of inconvenience, labour, and expense which it is difficult to estimate before-hand; moreover, it would be quite as effectual, as that proposed in the Bill, in preventing minute sub-division of estates by butwarrah.

It would also avoid the obvious conflict between Sections X., XI., and XII. of the Bill, and Sections IV., XXXIII. and XXXIV. of Regulation XIX. of 1814, which latter sections must apparently be rescinded if the former pass into law.

The remarks of the Lieutenant-Governor on the ante-settlement talookas have my entire concurrence. The talookadars were certainly required, by Clause 8, Section XV., Regulation VII. of 1799, to register all transfers of their talookas in the zemindar's cutcherry; but it was also incumbent on the zemindar to keep up such registers. This, however, it was not their interest to do, as it would have given firmness to the independent tenures, detracting from the value of their own, and there can be no doubt that both parties have failed in their duty in respect to these registers. Under such circumstances to require the talookadars to register their talookas in the manner proposed in the Bill, after so great a lapse of time, in a country in which the means of preserving documentary evidence are extremely defective, seems to me only another term for compelling them, in the great majority of cases, to expose their inability to defend themselves against claims for higher assessment, and most unjust.

I am strongly adverse to alteration of the law, so as to maintain post-settlement tenures after a sale for arrears of revenue and to cause the creation of such tenures in places where they do not exist at present, because I believe them to be, as I have already stated, bad for ryots. Moreover, I doubt whether even the plan, proposed by the Lieutenant-Governor in the 51st paragraph of his Minute in respect to such tenants, can be adopted with safety to the public revenue, for it strikes me that a zemindar may, by fraudulently creating several tenures in subordination, intercept such a portion of the rent payable by the ryot as will leave little receivable by the Government. It was found necessary to supersede Section VIII. Regulation V. of 1812, by Section XXIX. Regulation XI. of 1822; and we should, I submit, be most cautious in our proceedings now.

I trust that I may, without impropriety, add to the foregoing remarks on the Lieutenant-Governor's Minute, some further observations on the details of the Bill.

Section XII. I do not perceive why a collector should wait till an estate be notified for sale under Section VI., before he issues the proclamation prescribed in Section VII. Apparently the latter should be issued as soon as possible after the estate is ascertained to be in balance.

Sections X., XI., and XII. Referring more specially to the fact that $\frac{1}{2}$ of the sharers in joint undivided estates are notoriously unregistered, it seems to me that objections should be received from any persons who can show themselves to be sharers, whether they are registered or not.

Section XIV. I do not see how a collector is to proceed if two or more co-sharers are ready, each simultaneously, to pay up the arrears of a defaulting co-sharer.

"Section VII." should apparently be added after "Section VI." in the 14th Section.

Section XVIII. In the 18th Section I would prescribe a proclamation notifying to the ryots the removal of the attachment.

Sections XXXV. and XLIII. Section XLIII. of the Bill, founded on Section XXIX. Act I. 1845, contemplates giving to shareholders in estates under butwarrah, who may have saved their shares under Sections XXXIII. and XXXIV. Regulation XIX. of 1814, and who may purchase portions of estates sold in realization of arrears of revenue, greater rights than it allows to other shareholders who may purchase, but it does not explain what excess of right the former class of purchasers is to be held to acquire.

Section XXXV., too, of the Bill specifies the rights of purchasers of "entire estates," but neither in it, nor in any other part of the Bill, is there any specification of the rights of purchasers of portions of estates.

In the absence of such specification, it seems to me that purchasers to whom its 10th Section relates, can obtain no greater rights than those conferred on them by Section XXXIII., Regulation XIX. of 1814, which is recognised as living law by the 43d Section of the Bill, and yet it seems unquestionable that the framer of the Bill must have intended to give them rights not inferior to those which he intended to give to non-defaulting sharers who may purchase. What, however, he intended to give to these latter, he has left in doubt and uncertainty.

Obviously there should be a clear specification of the rights acquired by all descriptions of purchasers of portions of estates inserted in the Bill; and, in my judgment, these rights should be, in all cases, equal, even when the purchasers are non-defaulting sharers or persons previously unconnected with the estate.

No law hitherto passed has authorised annulment of tenures (not being farms) throughout an estate, on account of the sale of a portion of it; and I do not suppose that the author of the Bill intends to allow this. But application of the powers given in Section XXXV. of the Bill, so as to annul pottahs to the extent of purchase, will, I submit, give rise to much confusion and inconvenience.

It may happen, for instance, that the holder of a tenure, asserted to have existed more than twelve years before the decennial settlement, may have a decision passed against him in favour of a purchaser of a portion of an estate, cancelling his tenure quoad such portion; under such circumstances, I do not see how we could make a butwarrah of the estate. Section XXX, Regulation XIX. of 1814, tell us how to proceed in respect to two descriptions of estates, that is, those held by sharers in common right and interest, and those in which the shares consist of separate mehals; but the case contemplated would be of neither kind. We should have one portion in which the assets for allotment of the jumma would be a share of the rent payable by the ryots, and another portion in which they would be the rent paid by the intermediate tenant, which the proprietors of the unsold portion cannot alter, and for questioning which, until a further sale, there is no mode of proceeding whatever.

To me it seems that the only rights which should be conferred on purchasers of portions of estates are those granted by Section XXXIII, Regulation XIX, 1814. If, however, greater rights are given to them, it will apparently be necessary to alter Section X, Regulation I, of 1793, Section VIII, Regulation VIII. of 1801, and Section XXX, Regulation XIX, of 1814.

(signed) *H. Stainforth.*

17 November 1856.

(No. 7.)

PETITION of certain Zemindars of the 24-Pergunnahs.

To the Honourable the Legislative Council of India.

The humble Petition of the undersigned Zemindars of Zillah 24-Pergunnahs.

Showeth,

THAT your petitioners have viewed with deep concern the project of an organic change in the constitution of the landed system of this country contained in Sections XXXV. to XLI., XLVII., and XLIX., of a Bill entitled, "A Bill to improve the law relating to sales of land for arrears of revenue in the Bengal Presidency," read a second time before your Honourable Council on the 26th January 1856.

That your petitioners observe that the effect of the operation of the proposed law will be to ultimately dissolve the permanent settlement, and to destroy with it the various interests which have grown upon it.

That your petitioners submit with all due respect that your Honourable Council is not competent to entertain a project of law of this purport and tendency.

1. Because it is contrary to the spirit of the Statute of Parliament 24 Geo. 3, c. 24, s. 39, and to the command therein conveyed, the said section running as follows:

"And whereas complaints have prevailed that divers rajahs, zemindars, polygars, talookdars, and other native landholders within the British Territories in India, have been unjustly deprived of, or compelled to abandon and relinquish, their respective lands, jurisdictions, rights, and privileges, or that the tributes, rents, and services required to be by them paid or performed for their respective possessions to the said United Company are become grievous and oppressive. And whereas principles of justice and the honour of this country require that such complaints should be forthwith inquired into and fully investigated, and if founded in truth, effectually redressed. Be it therefore enacted that the Court of Directors of the said United Company shall, and they are hereby accordingly required forthwith to take the said matters into their serious consideration, and to adopt, take, and pursue such methods for inquiring into the causes, foundation, and truth of the said complaints, and for obtaining a full and perfect knowledge of the source and of all the circumstances relating thereto as the said Court of Directors shall think best adapted for that purpose, and thereupon according to the circumstances of the respective cases of the said rajahs, zemindars, polygars, talookdars, and other native landholders, to give orders and instructions to the several Governments and Presidencies in India, for effectually redressing, in such manner as shall be consistent with justice and the laws and customs of the country, all injuries and wrongs which the said rajahs, zemindars, polygars, talookdars, and other native landholders may have sustained unjustly in the manner aforesaid, and for settling and establishing upon principles of moderation and justice according to the laws and constitution of India, the permanent rules by which their respective tributes, rents, and services shall be in future rendered and paid to the said United Company by the said rajahs, zemindars, polygars, talookdars, and other native landholders."

2. Because your Honourable Council are in fact as well as in the eye of the law, the Governor-General of India in Council, that is to say, the same authority which guaranteed in the most solemn manner the maintenance in perpetuity of the settlement made in 1790.

Appendix, No. 7.

That the proclamation of the Governor-General of India in Council, by the which the permanent settlement was inaugurated, contained among other provisions the following :

ART. 6. " In the event of any zemindar, independent talookdar, or other actual proprietor of land with or on behalf of whom a settlement has been, or may be, concluded, or his or her heirs or successors, failing in the punctual discharge of the public revenue which has been, or may be, assessed upon their lands under the abovementioned regulations, a sale of the whole of the lands of the defaulter, or such portion of them as may be sufficient to make good the arrear, will positively and invariably take place."

ART. 9. " The Governor-General in Council thinks it necessary further to notify, in elucidation of the declarations contained in this article, (which are conformable to principles of the existing regulations,) that if any zemindar, independent talookdar, or other actual proprietor of land shall dispose of a portion of his or her lands as a dependent talook, the jumma which may be stipulated to be paid by the dependent talookdar will not be entered upon the records of Government, nor will the transfer exempt such lands from being answerable, in common with the remainder of the estate, for the payment of the public revenue assessed upon the whole of it, in the event of the proprietor, or his or her heirs or successors, falling in arrear from any cause whatever, nor will it be allowed in any case to affect the rights or claims of Government, any more than if it had never taken place."

The proposed law, therefore, militates in letter as well as in spirit against the law which established the permanent settlement.

That the power reserved in Article 7 of the abovementioned proclamation to the Governor-General of India in Council to enact such regulations as he may think necessary for the protection and welfare of dependent talookdars, ryots, and other cultivators of the soil cannot be so construed as to mean that the Legislature of India is at liberty to enact a law or regulation for the protection of any class of under-tenants that would endanger the permanence of the settlement of 1790.

That the argument founded on the plea that default on the part of a zemindar in the payment of the revenue assessed upon his estate dissolves the contract between him and the Government, and sets the latter at liberty to make any arrangement it chooses for realising the public revenue from the lands comprised in such estate, is equally untenable.

1. Because the defaulting zemindar is entitled to the full value of his estate, except so much of it as he may have parted with by his voluntary acts or the voluntary acts of those he represents or has succeeded, and any act of Government which would diminish the value of this interest of the zemindar would be an act of confiscation.

2. Because the dissolution of the contract between the defaulting zemindar individually and personally and the Government cannot alter or otherwise affect the zemindary character or tenure of his estate any more than default on the part of a putnedar can, by dissolving the contract between him and his zemindar, alter or affect the character or tenure of the putnee estate.

3. Because the argument, if allowed to be valid, would destroy the institutional character of the permanent settlement as apart from its fiscal character ; and that the settlement had such an institutional character apart from its fiscal character is a fact notorious and recorded in history and in State documents.

That your petitioners further deny that the proposed law is justifiable on grounds of expediency.

That the ostensible object of the proposed law is to give security to under-tenures of all sorts.

That the tenures enumerated in what are called the exceptive clauses of Section XXVL of Act I. of 1845 do not stand in need of such security, and these comprise the tenures by which the vast mass of cultivators hold the lands they cultivate, and almost all resident tenants hold the lands on which they reside.

That the supposed benefit of the proposed law is therefore chiefly intended for the holders of tenures intermediate between the zemindar and those referred to in the preceding class.

That the middle-tenures do not practically stand in need of greater security than the tenures of resident cultivators, a fact apparent upon the face of the official lists of zemindaries sold for the realisation of arrears of revenue since the law now in force for the realisation of the public land revenue was enacted, and clearly deducible from the circumstance of middle-tenures having been since the date of the permanent settlement continually increasing in number and value.

That the proposed law, if enacted, will not even give to middle-tenures that theoretical security which is said to be wanted for them ; for the Bill among other things contemplates and provides for the contingency of a state of things in which middle-tenures in defaulting zemindaries will have to be destroyed without any compensation to their owners.

That the immediate effect of the enactment of the proposed law will be the multiplication of these middle-tenures.

That the multiplication of middle-tenures is an unmitigated evil, a fact proved by the circumstance that rent is highest and the rights of the resident tenantry have suffered the most in those districts of Bengal in which middle-tenures abound, it being notorious that middlemen are the most oppressive and extortionate of landlords all over the world.

That

That the proposed law is unnecessary to the reasonable protection of under-tenures, the owners of which can under the law now in force obtain from the executive authorities, on cause shown, exemption from the consequences of a sale of the zemindary in which they hold.

That the proposed law is not called for by any valid considerations of justice towards the owners of under-tenures.

1. Because the proposed law is framed only to benefit the owners of tenures held immediately of zemindars.

2. Because the interests of the holders of all under-tenures, whether held immediately or mediately of zemindars, will be better secured by a law declaratory of the right of the holders of under-tenures to compensation for the loss of their tenures by the sale of zemindaries for the realisation of arrears of revenue.

That, therefore, your petitioners pray that the Bill for the amendment of the law relating to the sale of lands for arrears of revenue be passed without the Sections numbered XXXV. to XLI., XLVII., and XLIX., and that instead of the last-mentioned sections others be inserted therein declaring the right of all under-tenants to sue defaulting zemindars for compensation for loss sustained by them in consequence of such default.

And your petitioners, as in duty bound, will ever pray.

Twenty-five Signatures.

(No. 8.)

PETITION of Protestant Missionaries residing in or near *Calcutta*.

To the Honourable the Legislative Council of India.

The Petition of the undersigned Protestant Missionaries residing in or near *Calcutta*

Respectfully sheweth,

THAT your petitioners desire to express to your Honourable Council the satisfaction and gratitude with which they observed the introduction into your Honourable Council, on the 22d December 1855, by the Honourable J. P. Grant, of a Bill to improve the law relating to sales of land for arrears of revenue in the Presidency of Bengal; and their earnest hope that the leading principles and provisions of that valuable and important measure may be speedily embodied in a law.

2. That your petitioners beg leave to submit to your Honourable Council their views on the evils which that Bill is designed to meet; and generally, on the position of the cultivating classes in this Presidency; and they respectfully but earnestly solicit the favourable consideration of your Honourable Council to their representation of the claims of those classes of the community who are unable effectually to plead for themselves.

3. That your petitioners recognise in the perpetual settlement an important boon to the whole Presidency, in its limitation of the land tax, and they regard that settlement as the probable foundation of great national prosperity. But in the practical operation of the system, your petitioners observe two distinct classes of evils.

First. The under-tenures are insecure; the rents of the cultivating classes are capriciously varied; and the interests of those classes are virtually unprotected.

Secondly. The zemindars are armed with extraordinary and excessive powers.

4. That your petitioners believe it to be notorious that the intentions of the laws for securing leases to the tenants, for securing their receipts on their payments of rent, for limiting within just bounds the rents reserved in leases, and for checking the custom of exacting abwabs and other arbitrary additional charges and cesses, are commonly frustrated and defeated. On the other hand the power of the zemindars (as recognised in Regulation VII. of 1799, Section XV., Clause 8), to compel the personal attendance of their tenants, for the adjustment of rent and other purposes, is, practically, in many parts of the country, a substitute for the regular and ordinary processes of the law, and is virtually the subjection of the tenants to a state of slavery; and further, this evil is in many instances greatly aggravated by the estates being held in co-tenancy, so that several shareholders, who are often in a state of conflict, equally exercise an arbitrary and unrestrained authority.

5. That while this law thus presses severely on the tenants, your petitioners observe that, from the increased cultivation of the soil, and the greatly increased value of its produce, the zemindars, who were primarily regarded simply as collectors of the land tax or farmers of the revenue, entitled to a fair profit on the returns, derive now a revenue greatly in excess of the revenue which they pay to Government; and thus, contemporaneously, while the zemindar has been rising in wealth and power, the tenant has been sinking into penury and dependence,

Appendix, No. 7. dependence, subject to illegal and exhausting exactions, harassed by contending proprietors, and oppressed by the exercise of extra-judicial powers.

6. That your petitioners submit that this result was neither designed nor contemplated by the perpetual settlement. By that arrangement certain great advantages were secured. A moderate assessment was levied on the land in substitution for uncertain and unlimited demands; and an important class in the community, who were regarded as foremost in intelligence and influence, were placed in a position of responsibility, usefulness, and honour. But these zemindars have, since that time, not only acquired by law the power of enforcing their demands by *ex parte* proceedings, commencing with the arrest and imprisonment of the tenants, but have also received the sanction of the law, as already stated, to their custom of enforcing the personal attendance of their tenants at their pleasure; and both these powers, but especially the latter, your petitioners believe, they often greatly and shamefully abuse.

7. That in the practical and extended development of this system, it is manifest that the tenants suffer from a lax administration of laws passed for their protection; that they are oppressed by the execution of other laws, which arm the zemindars with excessive power; that they do not share with the zemindars in the advantages derived from the development of the resources of the country; that the profits thus monopolised by the zemindars are already incalculably valuable; and that, year after year, the condition of the tenants appears more and more pitiable and hopeless.

8. That your petitioners are compelled to add, that other evils increase the wretchedness of the condition to which a tenant is thus reduced. The village chowkeydars are the servants of his landlord; the Government police are corrupt, and he cannot vie with his landlord in purchasing their favour; the courts of justice are dilatory and expensive, and are often far distant from his abode, so that he has no hope of redress for the most cruel wrongs; and he is frequently implicated in affrays, respecting disputed boundaries, in which he has not the slightest personal interest. Ignorant of his rights, uneducated, subdued by oppression, accustomed to penury, and sometimes reduced to destitution, the cultivator of the soil in many parts of this Presidency derives little benefit from the British rule, beyond protection from Mahratta invasions.

9. That your petitioners believe that, under these circumstances, the interference of your Honourable Council is urgently demanded by justice and benevolence; and they view the present Sale Bill as an important step in the right direction.

10. That the objections of the zemindars to the measure appear to your petitioners entirely futile. It appears to your petitioners unquestionable that your Honourable Council may justly protect the tenant, provided only it leave the zemindar ample means of paying the Government revenue, and a fair profit on his collections. The elevation of this zemindary class, by extraordinary protective and fostering measures, is not a policy that can be wisely or equitably pursued, to the sacrifice of the great mass of the people.

11. That your petitioners confidently submit to your Honourable Council that the zemindars have not fulfilled the just expectations of the State, or the conditions connected with the perpetual settlement. The extension of cultivation in Bengal, for which they claim credit, your petitioners ascribe, not to the enterprise, capital, or public spirit of the zemindars, but to the great increase of population during the last hundred years of domestic peace. Far from accelerating the progress of the country, either in civilisation or material prosperity, the zemindars have generally checked the accumulation of capital by their tenants. They have not stimulated exertion by their own example, nor encouraged confidence by generosity and kindness. On the contrary, by arbitrary exactions, they have repressed the industry of their tenants, and by the exercise of their excessive powers under the Regulation VII. of 1799, they have destroyed every vestige of their independence.

12. That your petitioners are well aware of exceptions. They know that there are powerful middle-men, indigo planters and others, who have resisted and struggled with the zemindars, and against whom it is impossible to enforce the extraordinary powers which are mercilessly wielded against the poor. But your petitioners desire to be understood as speaking of the great mass of the cultivating classes constituting a large proportion of the entire population; and on these your petitioners believe that the oppressions of all the various grades of superiors, both middle-men and zemindars, have been practised, and are still practised, with lamentable effect, partly with legal sanction, and partly without it, but entirely, in nearly every case, without the slightest hope on the part of the tenant of legal redress.

13. That, in respect of the exactions of the middle-men, your petitioners believe that a considerable part must be ascribed to the uncertain tenures of that class. Having no permanent interest in the soil or the people, they are seldom the protectors of their dependent cultivators. If fixity or permanence of tenure were established, then, immediately, as your petitioners believe, the tendency would be to establish just relations between the landlord and the tenant from the highest to the lowest; and that principle your petitioners therefore earnestly desire to see adopted and carried out. At present it is infringed, in the first instance, by the right of the Government to sell the land for arrears of revenue, and thereby avoid the under-tenures with some few exceptions; and then, still more, by the entire

entire absence of protection to the tenants, and the undefined relations of landlord and tenant throughout the Presidency.

14. That in connexion with this subject, the Calcutta Missionary Conference, in the year 1852, requested one of its members, well acquainted with the subject, to prepare a paper on the redemption or commutation of the land-tax, and that document was published and circulated both in India and in England. Subsequently, the Missionaries of Calcutta, in their petition to Parliament in the same year, prayed for a measure having the redemption of the land-tax for its object, with the view at once to induce capitalists to invest in land, and to enable small holders to acquire permanent freehold rights.

15. That your petitioners have annexed to this petition a copy of the paper referred to, and respectfully submit its statements and arguments to the attention of your Honourable Council.

16. That your petitioners now find, with great satisfaction, that the Board of Revenue have unanimously approved of the 15th section of the present Bill, which provides that any recorded proprietor or co-partner of an estate, may, by deposit of Company's paper, secure his estate from sale for arrears of land revenue; and have distinctly recognised the expediency of permitting the complete redemption of the land-tax.

17. That your petitioners anticipate, from the adoption of the principle involved in that section, a powerful stimulus to exertion for the purpose of securing freehold rights; and as the result of the possession of those rights, the creation of that spirit of freedom which has always been the spring of enterprise, emulation, and social progress.

18. That your petitioners submit that the terms of the 15th section may be safely extended, by a provision for the payment of a definite rate of purchase money (which your petitioners apprehend might be twenty years' purchase of the recorded land-tax), in consideration of which that tax might be held to be absolutely redeemed for ever; and your petitioners further suggest that certain encouragements to such redemptions might be granted, in the form of partial remissions of arrears; an official survey of every estate redeemed, with an official certificate and record of boundaries; and a public notification, in the Government Gazette, of the names of all who avail themselves of this law.

19. That your petitioners believe that it is the interest of the Government both to facilitate and to encourage such redemptions, not only because an immediate saving will follow in respect of a reduction of the establishments for collecting revenue, but also because they will introduce a new and highly beneficial element into the landed system.

20. That your petitioners desire to express their conviction of the necessity for the provisions contemplated by this Bill for the protection of under-tenures by registration.

21. That, in respect of ante-settlement tenures, your petitioners submit that the security provided by the Bill is simply an act of justice and good faith, required by the perpetual settlement; and that, as the proposed registration will be voluntary on the part of the talookdars, no satisfactory objection can be urged to it.

22. That, in respect of some tenures, (both ante-settlement and post-settlement tenures,) your petitioners apprehend that they largely partake of the character of English copyholds, but with additional disadvantages attending them; and your petitioners submit that all the principal reasons which have been stated for the enfranchisement of those tenures in England, apply with greater force in support of the proposition for protecting and fixing tenures of the same nature in Bengal.

23. That, in respect of post-settlement tenures, your petitioners understand that the intention of the Bill is to protect, by registration, all which have been, or may be hereafter created *bonâ fide*; that is, on which the rent reserved is fairly and duly apportioned to the entire land tax of the estate.

24. That it is objected to this proposed law, that the inquiry into this apportionment will be attended with impracticable difficulties.

25. That your petitioners acknowledge that such might be the case, were the total land tax of the estates exactly, or nearly exactly, equivalent to their total rental. But in fact it is notorious that the rental of zemindaries is ordinarily more than double their total land tax or sudder jumma; and in all such cases it appears that it would be difficult to err. Any careful collector inquiring into a lease could, in such circumstances, form a sufficiently accurate estimate of the fairness of the rent reserved—the sole object of his inquiry being its proportion to the sudder jumma or land tax of the estate, and the aggregate value of the estate being, as already stated, so great, as to afford a large margin to cover all probable mistakes. Placing the case on the lowest ground, your petitioners submit, therefore, that fraudulent leases, sanctioned and registered by the collector, (created too in the face of the provision which renders them liable to be annulled and avoided, at any time within 60 years, on the ground of fraud), are not likely to be so numerous as seriously to endanger the Government revenue.

26. That your petitioners feel it to be unsatisfactory to argue the question on this ground,

Appendix, No. 7. or to consider, in detail, the probable number of such frauds, or their united ultimate effect on the aggregate land tax. They respectfully submit that your Honourable Council may be expected to rely, for the security of the land tax payable to Government under the perpetual settlement, not on the exact accuracy of the collectors and ameens, but on the gradual improvement of the country and development of its resources. In most parts of Bengal the assessment was originally moderate; the progress of the country has rendered it light; and, with a further advance of society and a further rise in the produce, the fixed Government revenue will be trifling, compared with the value and extent of the cultivated soil. A country which, like Bengal, already feeds upwards of 40,000,000 of people already exports annually produce to the value of at least 15,000,000 *l.* sterling, and already receives annually upwards of 5,000,000 *l.* sterling in bullion, as the balance of its trade, after paying the greater part of India's tribute to England, and in which there are still boundless resources undeveloped, cannot long feel as a burden a land tax of three millions and a half.

27. That your petitioners believe that no part of that tax will be lost through the operation of the present Bill; but if some hazard is inevitable, they respectfully inquire, if fear lest part of this tax may possibly, under this Bill, be sacrificed by some fraudulent leases remaining undetected in their creation, and undisturbed during the whole succeeding 60 years, should be regarded as a sufficient bar to the enactment of a measure which not merely gives fixity and permanence to all under-tenures, old and new, and immediately encourages all improvement, but also affords the promise of an accelerated progress in wealth and prosperity, in the course of which all landlords may be expected to liberate their land altogether, without loss to the Government?

28. That when your petitioners inquire for the alternative if this Bill be rejected, they find a proposition to establish and fix under-tenures, but subject in the ultimate contingency of a Government sale to disturbance and re-settlement—a proposition which, in their judgment, differs from this Bill entirely in spirit and effect. The one condition and qualification annexed to this proposed amendment, must, they fear, check the operation and expansion of the system which they desire to see established, and tend to perpetuate the plague of doubt and hesitation, which is now effectual in restraining the investment of capital in land and development of the resources of the country. It interposes a possible partial loss of the Government revenue in a doubtful contingency, as an impediment to the destruction of a vicious system, which is ruinous to a large portion of the population and crushes them into degradation and misery.

29. That your petitioners regard another objection to this Bill, namely, that it will tend to the multiplication of small holdings, as altogether illusory. The existing system certainly has that tendency, because it checks the accumulation of capital in the farming class; but the system contemplated by this Bill, if liberally expanded and carried out, will tend to the increase of wealth, and this, with other civilising causes, must lead to the investment of continually larger amounts of capital in land, and thereby to the consolidation of estates and the absorption of improvident and pauper proprietors.

30. That with these views your petitioners look with anxiety and earnest desire for the enactment of this proposed measure, but they are bound to state that they wish also to see additional measures carried with it.

31. That your petitioners believe that they have truly and accurately represented the condition of the cultivating classes. Your petitioners believe it to be true that, superadded to the evils they endure from a corrupt and inefficient police, and an administration of civil and criminal justice which confessedly requires extensive improvement, they are liable to be constantly harassed by the conflicting and unsettled claims either of contending shareholders of joint estates, or of contending neighbouring proprietors; by the severe laws of distraint and arrest; by the power of their superior landholders, whether zemindars or middle-men, to compel personal attendance at their pleasure; by illegal exactions; by the unfixed nature of their tenures; and by the prevalent custom of refusing both leases and receipts.

32. That for this class your petitioners believe themselves called upon to speak. Your Honourable Council receives petitions from many of those who consider their interests affected by this and other measures—particularly zemindars and indigo planters—and their representations reach the British Parliament. But the mass of the people—the cultivators of the soil, and those directly or indirectly dependent on them—are usually unheard and unrepresented. Yet your petitioners believe that the case of these numerous classes is such as urgently to demand consideration; and your petitioners, influenced by the desire that the British Government may be honourably distinguished in the blessed work of “showing mercy to the poor,” and affected by a deep sense of the social wretchedness prevalent in the land, and the fearful obstacles which it presents, alike to the progress of enlightenment and truth, and the advancement of the material interests of the country, are constrained to appeal earnestly to your Honourable Council; and to entreat your Honourable Council so to legislate, as to afford hopes of new and better days; to secure, with the blessing of God, the public tranquillity, which is now endangered through the sufferings and

and the irritation of the people; and to lay the foundations of general prosperity and freedom. Appendix, No. 7-

33. Your petitioners therefore pray your Honourable Council to pass the Bill to improve the law relating to sales of land for arrears of revenue in the Presidency of Bengal, and to pass such other measures as shall be necessary for the emancipation and protection of the cultivating classes.

And your petitioners will ever pray,
(signed) *Alexander Duff*,
And 20 other Signatures.

APPENDIX

Referred to in the foregoing Petition.

On the desirableness of Commuting the Government Land Tax.

It has long been the settled conviction of many missionaries labouring in Bengal, that the present condition of the rural population of that Province is not only a great impediment to the diffusion of Christianity in general, and to the development of a Christian character on the part of converts in particular, but also a social and political evil of great and growing importance, which, unless checked in time, must ultimately result in the universal prevalence of pauperism, servility, duplicity, and indolence. The causes to which the misery and degradation of the peasantry must be attributed are manifold; such as the long continued prevalence of Hindoo idolatry and Muhommadan oppression, of early marriages and the prejudices of caste; also the innate defects of the national character, and the density of the population. Causes like these cannot well be remedied by legislative enactments; but there is another which appears to admit of such a remedy, namely, the mutual relation between the zemindars and the ryots, to which the alarming deterioration of the peasantry must be in a great measure attributed, whilst at the same time it places the zemindars in a position which is calculated to prolong the evil to an indefinite period, without any prospect of improvement.

It would no doubt be an injurious as well as a difficult undertaking to attempt an abrupt and total abolition of the present zemindary and ryot system. The best means of providing a remedy for the actual state of things appears to be the application of a new principle to the tenure of land—a principle of such a nature that it should operate gradually and almost imperceptibly, and yet produce a beneficial change in the public mind, by leading the rural population to hope for that amelioration of their circumstances, of which at present they can see no prospect. It has long appeared to some men who have attentively considered the subject, that the principle of freehold tenure would be of such a nature, and that it might be introduced gradually, if an Act passed, allowing the commutation of the land tax; in other words, permitting capitalists to purchase estates, as opportunities might present themselves, by paying down, once for all, the capital which is represented by the Government land tax; with the understanding that estates, thus purchased, should never again be subjected to the land tax. The rate at which the capital might be calculated, could easily be fixed by a legal enactment. Supposing, for instance, that the land tax represents an interest of five per cent., the capital would be equal to 20 years' purchase. Or should it be thought that five per cent. is too low a rate of interest for India, the capital might be declared equal to the amount of sixteen years' purchase.

The capital represented by the land tax of Bengal is immense, amounting to more than 100,000,000*l.* sterling; and the number of capitalists ready to avail themselves of the contemplated arrangement would naturally be very small, especially at first. It is clear, therefore, that the operation of such an arrangement would be very gradual, and could not be productive of dangerous consequences.

The benefits would probably be considerable. The *bonâ fide* proprietors of freehold estates would naturally take a deeper interest in the profitable cultivation of the land and the general improvement of the neighbourhood, than can be expected of zemindars, whose tenure of estates is always more or less precarious, because if ever they fail to make the quarterly payment at the collector's office within the appointed time, the estate is put up to auction the next day, and disposed of to the highest bidder. The relation between *bonâ fide* landlords and tenants would be much less complicated, and therefore much less productive of animosities and disputes, than that between zemindars and ryots. Long leases might be given by a landowner, or portions of the estate sold out and out; and thereby a manly spirit of independence infused into the peasantry, to which at present it is an utter stranger. And if the boundaries of an estate, when thus sold out and out, were clearly defined by competent authority, the principal plea now advanced by zemindars in defence of their system of keeping up a body of clubmen would be neutralised; for they generally profess to hire these men, in order to settle, by physical force, the boundaries which the law has hitherto left unsettled in many parts of Bengal.

Appendix, No. 7.

It is very probable that a class of landholders, of a much better character, would be brought into existence.* At present, to become a landholder or zemindar is tantamount to involving one's self in endless litigation, besides running a great pecuniary risk. The purchaser of an estate must be prepared to contest numerous lawsuits with his neighbours, to keep in his pay a body of clubmen sufficiently powerful to overawe theirs, and to make two or three quarterly payments to the collector, before the estate has yielded him any income. It is owing to these difficulties that so few English capitalists have laid out their money in the purchase of land in Bengal, and that the few who have done so do not differ more in their character from native zemindars. These difficulties, again, have proved a great obstacle to persons who have wished to form Christian settlements, and from the nature of things they must continue a great hindrance to such designs. It is supposed that the introduction of the principle of freehold tenure would be very beneficial in this respect.

A commutation of the land-tax would not deprive the Government of any part of its revenue. The capital paid into the treasury by purchasers might be laid out in a number of ways equally productive. It might be applied to the reduction of the public debt, or to the construction of canals and railways, on which tolls might be levied: not to mention ordinary roads and bridges, in which Bengal is still so lamentably deficient.

There would, probably, be found some difficulties, at first, in the working of such a plan as that which is here suggested, but it is supposed that these would not prove very serious, much less insurmountable. The greatest difficulty, perhaps, would be that of dealing justly with the fair claims of those ryots who hold what is called paitrik (ancestral) land. It would perhaps be desirable to fix a rate at which such ryots might redeem their land from the zemindars.

Whatever may be thought of this particular proposal regarding the commutation of the land-tax, the following considerations will show that a change in the present system is desirable, or rather imperatively required.

The rent or land-tax which the ryots have to pay to the zemindar amounts on an average to about two rupees per beegah, or taking the beegah to be one-third of an English acre, to about 12s. per acre. Those who hold only paitrik land are more favourably circumstanced, because the rent for that does not generally exceed one rupee per beegah. But most of those ryots who hold paitrik land also hold land of a different description, for which they have to pay at the higher rate. And the rent for land which is fit for gardening or for being built upon, is higher than two rupees; so that this rate may fairly be considered as the average. It constitutes about 40 per cent. of the gross return in a good year. A beegah of land in a favourable year yields about five rupees. If the two rupees for rent are deducted, there remain three, which the ryot can call his own. It is believed that 12 beegahs is about the average amount which a Bengali ryot holds. The proceeds of that, after deducting the rent, amount to 36 rupees per annum. Out of this sum he has to provide food and clothing for himself and family, to keep his houses in repair, and to maintain the necessary stock of cattle and implements, besides paying for extra labour during the seasons of ploughing and reaping. Now it is barely possible for him to provide food and clothing with three rupees a month; but the means of meeting all other expenses must be derived from other sources, such as fishing or jobwork of various descriptions. All such sources are precarious and almost invariably insufficient. The consequence is, that the ryot is compelled to incur debt. The most common rates of interest at which he can borrow money from the zemindar or the money-lender, are three and four pice for the rupee per month, which are respectively an annual interest of 56 and 75 per cent. When about to plough his land, he is usually under the necessity of obtaining an advance of seed corn from the zemindar, to whom he has to repay it at the season of harvest with 50 per cent. interest, or for the twelvemonth with 80 per cent. interest. In this way he becomes more and more deeply involved in debt. And yet the basis of this calculation,

* The circumstances under which the writer originally drew up this paper, compelled him to confine his remarks exclusively to one subject. But he embraces the present opportunity for throwing out a few hints on some collateral topics. If Government really wish to encourage honest and conscientious men, and especially Europeans, to purchase estates in Bengal, the following improvements, among others, will be indispensable.

1. A comprehensive system of registration, the working of which should be entrusted to really able men. All documents relative to landed property should be registered; and when thus registered they should be regarded as authentic. Such a system has long been contemplated, but in order to be efficient, it should be accompanied by—

2. A thorough survey of the country, especially for the purpose of ascertaining the numberless disputed boundaries of estates. An able Government officer once remarked in a conversation with the writer, that "the reason why the Lower Provinces are called settled, must be, because everything in them (concerning boundaries) is unsettled, just as *lucus* is so called a *non lucenda*."

3. A "statute of frauds" should be enacted, declaring the prevalent practice of *benami* (anonymous or pseudonymous) possession to be illegal. The ostensible owner should be treated by the law as the real owner to all intents and purposes. The system of secret trusts, now prevalent, is a gigantic fabric of iniquity and fraud, to which the world probably cannot furnish a parallel.

4. The village police should be reformed. Its present state is infinitely worse than a state of utter inefficiency; it is so bad that one can scarcely venture to describe it.

A sub-division of the judicial districts is required. The scantiness of the means of communication throughout Bengal greatly increases the obvious disadvantages arising from the overgrown size and population of the present districts. Thousands of villages are situated at a distance of two or three days' journey from the magistrate's or judge's office.

The writer believes that the introduction of all these and similar reforms would be facilitated, and their efficiency increased, by the commutation of the land-tax.

calculation, five rupees as the gross return of a beegah, is, if anything, too high rather than too low. In the majority of years the amount realised is considerably less; for storms and inundations and droughts and murrain among cattle are calamities of frequent occurrence in Bengal; and seasons of sickness in the family are an additional source of difficulties.

The position in which the ryot stands to the zemindar is disadvantageous to both parties; but certainly more detrimental to the former than to the latter. The payment of rent for the current year, or of arrears, the repayment of advances of various kinds, and the payment of interest, constitute so many different heads of accounts between the two parties. Many estates are the joint property of a number of zemindars, of whom one may be entitled to one-half, another to a quarter, a third to the twelfth or sixteenth part of the proceeds. In such cases it is the usual practice for each shareholder to maintain a separate agency, and to keep separate accounts, so that every ryot has transactions with a number of landlords. In the majority of districts the zemindars give written receipts for the rent; but even there the ryot does not always find it an easy matter to obtain such receipts; and in some localities the zemindars never give them. It must be acknowledged that in innumerable cases the ryots are not only backward, but positively unwilling to pay; and the multiplicity or intricacy of their accounts, together with the fear (frequently well-founded) of being overcharged, constitutes an additional and very prolific source of disputes, which most commonly terminate in favour of the zemindar, although it is not denied that they occasion considerable loss to him also.

The position assigned to zemindars by the law is very peculiar. They are neither *bonâ fide* landowners, nor *bonâ fide* fiscal officers appointed to collect the land-tax. Perhaps the nearest approach to a correct description of their position would be to say that they are landowners, whose estates are mortgaged to Government, the mortgage being liable to be foreclosed, as soon as they fail to make their quarterly payments. They are almost all, however, in the habit of treating their ryots not merely as their tenants, but as their serfs. They call themselves rajahs or kings, and the ryots their subjects. They almost universally either claim more than their due, or else they claim it in an improper manner, for it is not easy to determine what really is their due. They exact contributions from their ryots when a marriage or a birth, or a death takes place in the family. They exact contributions for the avowed purpose of observing funeral rites in commemoration of their dead ancestors, and of celebrating the annual heathen festivals. These practices are almost universal. In numerous localities they exact from the ryots gratuitous labour in the field or at the oar; and compel the poor people to allow them, without payment, the use of their cattle or of their boats, if they possess any. It is not unusual, especially at a considerable distance from the civil stations, for zemindars to go still further in the abuse of their power, by inflicting imprisonment and torture upon any ryot who may have incurred their displeasure.

It is true that there exist laws of a most praiseworthy nature, which are intended to protect the ryot against unjust ejection from his tenure and against oppression generally; but these laws remain, to a great extent, a dead letter. Not to dwell upon the well-known fact that witnesses who will swear to anything can always be had in this country by the highest bidder, the ryot has very little money to spare for law suits. The advance which must be paid into court as a guarantee for the appearance—or *de facto* for the maintenance—of witnesses; the expense of a journey to the civil station, and of his own support, and that of his witnesses during their stay there, and the serious loss which such a stay must, at certain seasons, occasion to his property, and particularly to his crops: these are formidable obstacles to the ryot. He cannot, generally speaking, afford single-handed to contest a lawsuit with his zemindar, who possesses greater pecuniary resources, greater influence at head quarters, and greater experience in legal proceedings.

The powers with which the collector is armed, in order to enforce payment on the part of recusant ryots, are so great that they are a source of terror to the rural population. Some of the Government regulations, in which those powers are defined, are best known by the numbers which they bear. As an instance, that regulation which is usually called the seventh or huftun, may be mentioned. The enforcement of this regulation conveys to the Bengali ryot the same uncomfortable impression which is usually connected with the idea of being "quartered" or "decimated." When he sees that he is about to be "septimated," he makes every effort in his power to escape from his fate by flight, thereby risking the loss of all he possesses in the world. If these regulations were only enforced in those cases to which they were originally intended to apply, the evil would not, perhaps, be very great; but the zemindars frequently succeed in prevailing upon collectors (by false representations) to enforce them in cases to which they ought not to be applied at all.

In many cases the zemindars themselves are not aware of all the misery which is inflicted in their name upon the ryots by the agents whom they employ in collecting the rent. These middlemen are, in truth, the greatest tyrants. And as such middlemen would have to be employed by Government in case the ryotwari system should be substituted for the zemindari system, it is clear that such a change would not be of any great advantage to the ryots, probably of none at all. It is well known that the middlemen employed by humane European indigo planters, are in many cases as oppressive as those employed by native zemindars. What is wanted is, that the ryot should have direct access to his landlord, and that the interests of both should be the same. And this object would probably be accomplished, in process of time, if by legalising the commutation of the land-tax, the prospect of becoming freeholders was opened to capitalists.

It appears, therefore, desirable that the subject of the zemindari system should be examined into by the Committee now appointed by Parliament, and that this aspect of it should form a special topic of inquiry. The zemindars have taken measures to bring their grievance to the

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notice of Parliament; but it is greatly to be feared that the grievances of ryots, which even in this country are not extensively known to Europeans, will be passed over in silence, unless especial attention is directed to them. The contemplation of them has often caused the hearts of missionaries to bleed, and often led them to ask whether it is possible, in the present social condition of the majority of the population, for Christianity to take deep root in this country, and to produce those fruits of veracity, industry, prosperity, disinterestedness, generosity, and nobility of character, by which the Gospel is intended to become a blessing to mankind at large.

(No. 9.)

From the Secretary to the Government of Bengal, to the Clerk of the Legislative Council,
No. 1296, dated Darjeeling, 11 April 1857.

Revenue.

Sir,

IN continuation of this Office letter, No. 864 of the 8th December last, I am directed to

• No. 494, dated the 9th December 1856.	forward, herewith, a copy of five letters from the Board of Revenue, as
• " 22, " " 9th January 1857.	noted in the margin, in which are submitted the opinions and remarks of
† " 29, " " 16th " "	the Commissioners of Revenue in the Lower Provinces on the Lieutenant-
• " 40, " " 23d " "	governor's minute on the subject of the Bill to improve the law relating to
• " 60, " " 6th February "	sales of land for arrears of revenue.

I have, &c.

(signed) A. R. Young,

Secretary to the Government of Bengal.

From the Commissioner of Revenue for the Division of Rajshahye, to the Board of Revenue,
Lower Provinces, Fort William, No. 208, dated 13 December 1856.

Gentlemen,

I HAVE the honour to acknowledge the receipt of your letter No. 530 of the 9th instant, forwarding copy of one from Government dated the 1st October last, No. 696, together with a printed copy of the Lieutenant-governor's minute on the proposed new Sale Law, and in reply to submit the following remarks:

2. With reference to the 4th and 5th paragraphs of His Honour's minute, I would beg to observe that I am not aware of any special reasons why the district of Sylhet should be exempted from the operation of the proposed law. It is true that landed property is very minutely sub-divided there, but when I was in charge of that collectorship, many years ago, I found no difficulty in realising the revenue under the sale law then in force, Regulation XI. of 1822. Although the zemindars often withheld payment of the arrears due until the last moment, they almost invariably produced the money (sometimes only a few annas) when their estates were put up for sale. I am averse to any of the other modes of collecting the revenue, having seen in Cuttack how ineffectual the provisions of Regulation X. of 1818 were for the purpose, and how much oppression was occasioned by the "dustuck system" in that province.

3. I now proceed to consider the remarks of the Lieutenant-governor on Sections X., XI., XII., XIII., and XIV. of the proposed Bill.

4. I must confess that I am unable to see any valid reason for exempting shareholders under 50 rupees from a participation in the benefits proposed to be conferred on the whole body of landed proprietors by those sections; as justly remarked by the Legislative Council, † the object is to confirm the just rights of the sharer by securing his property when there is no default on his part, and a share paying 40 rupees may be of as much concern to the owner as are estates paying 40 lakhs of rupees to the rajah of Burdwan. I apprehend that the shareholders under 50 rupees constitute a much more numerous body than the shareholders above that limit, so that by admitting the latter only to the benefits of the law, we should be excluding the majority of the proprietary body from what all have an equal claim to, besides laying ourselves open to the imputation of legislating for the rich and not for the poor.

5. The suggestion of the Lieutenant-governor in regard to the omission from Section XII. of the direction to the collector to institute summary inquiry into the fact of possession, has however my full concurrence.

6. By restricting the benefit of the Bill to recorded shareholders we insure sufficient evidence of the fact of possession, which must, under the existing rules regarding dakhil kharij, have been ascertained before the name of the shareholder was recorded; a second inquiry on this point would therefore merely have the effect of opening a door for fresh litigation, besides giving unnecessary trouble to the collector.

7. It

* These are mere transmitting letters and are therefore not printed.

† An extract of this letter has been printed.

‡ See Mr. Grant's speech on first reading, Proceedings vol. I, column 354.

7. It would be advisable, I think, to allow the privilege of opening separate accounts to those co-partners only whose names have been recorded in the collector's office with a specification of their shares, for where there is no such specification, an inquiry would be requisite on that point before the sharer of an estate held in common tenancy could be admitted to the benefit of the Bill. In such cases, there is generally a dispute among the shareholders as to the extent of each person's share, and it is the province of the Civil Courts, and not of the revenue authorities, to decide such disputes.

8. I see no objection to the Lieutenant-governor's suggestion that the collector be empowered to charge an agency commission on drawing and applying interest of Government securities deposited with him under Section XV. of the Bill, but I would not deprive the zemindars of the permission, which it is proposed to confer upon them, of making such deposits, which would unquestionably be a great boon and protection to absentee landholders.

9. I now proceed to consider the remarks of the Lieutenant-governor on the sections of the Bill which provide for the registration of under-tenures, and constitute doubtless the most important portion of it.

10. With regard to the "ante-settlement" tenures referred to in the first and second clauses of Section XXXV., I cannot perceive that any injustice would be done to the holders by requiring them to register with the view of giving them "absolute security" against the encroachments of all future auction purchasers of the entire estate; the process prescribed for registration is neither difficult nor costly, and the advantages which would be gained by it would infinitely more than compensate the holders for any trouble and expense to which they might be put in placing their title upon a permanent and secure basis, while the just rights of the purchasers of the estate would be maintained. I cannot think that, with such great advantages in view, any *bonâ fide* holder of such tenures would consider it a hardship to be compelled to register.

11. Neither do I see how the rights of these under-tenants can be affected by such process. It is true that it exposes them to litigation, but it does so once for all; whereas, at present, their title is liable to be disputed by every successive auction purchaser.

12. But the objection suggested in the 20th and 21st paragraphs of the Lieutenant-governor's Minute is not so easily got over. It certainly looks very like imposing a new as well as a severe penalty for arrears of rent, to declare these tenures to be absolutely voidable by the auction purchasers, if any arrear, however small, should happen to be due on the latest date fixed for the zemindar's payment to Government; such a state of things might happen without any fault on the part of the tenant, for the time for realising the rents due to the zemindar from his under-tenants does not always correspond with that fixed by the Government for the recovery of its dues, and it seems hard that such a penalty should attach to a default which may be purely accidental and unintentional on the part of the under-tenant. Under the existing law, the zemindar has the power of bringing certain descriptions of under-tenures to sale with their privileges intact, and annulling others after obtaining a decree for arrears. I think, therefore, that the words "and whereon no arrear of rent was due on the latest day of payment of revenue as fixed under Sections III. and IV. of this Act" might well be omitted from the first, second, and third clauses of Section XXXV. of the Bill.

13. I now come to the question of registering the tenures created since the settlement, which, as remarked in my report of the 15th April last, No. 256, seems to me to be "the difficulty" of the Bill. The Lieutenant-governor has placed in a clear and forcible light, the extreme difficulty, not to say impracticability, of carrying out the provisions of Section XXXVII. with the agency at present available. I see no such difficulty as regards the tenures referred to in Sections XXXV. and XXXVI., but I conceive that the scheme of registering all descriptions of under-tenures created since the settlement, after such measurement, survey, and local inquiry, as may be necessary to satisfy the collector that the tenure "was created in good faith so far as the interests of the Government revenue are concerned, and that the rent payable by the holder is not less than is fully sufficient to afford a fair proportion of the revenue assessed upon the parent estate," must be abandoned from the impracticability of carrying it out.

14. It might perhaps be sufficient to enact that all tenures created since the settlement of the estate shall hold as good against an auction purchaser, as against the former proprietor, provided they were created in good faith, and that the rent is sufficient to afford a fair proportion of the revenue assessed upon the parent estate; and to leave it to the civil courts to decide any questions that might arise regarding the auction purchaser's right to set them aside. In such cases, a report might be required from the collector, as is done with regard to suits instituted in the civil courts under Regulation II. of 1819.

I have, &c.
(signed) F. Gouldsbury, Commissioner.

Appendix, No. 7.

From the Officiating Commissioner, *Burdwan* Division, to the Board of Revenue, Lower Provinces, Fort William, No. 193, dated Beerbhoom, the 17 December 1856.

Revenue.

Gentlemen,

I HAVE the honour to acknowledge the receipt of your Secretary's letter of the 9th instant, No. 530, forwarding copy of a letter from Government, together with a printed copy of the Lieutenant-governor's Minute on the proposed new Sale Law, and calling upon me for any further remarks I have to offer on the subject.

2. In reply, I would beg to say that I have no further remarks to make on the Bill in question, except that it seems to me, if I may be allowed to say so, that the Minute of the Lieutenant-governor on the subject is entirely unanswerable, and has completely exhausted the subject.

I have, &c.
(signed) *J. H. Young*, Officiating Commissioner.

From the Commissioner of Revenue, *Bhaugulpore* Division, to the Secretary to the Board of Revenue, Fort William, No. 137, dated Camp Booari, 30 December 1856.

Sir,

I HAVE the honour, in reply to your letter, No. 530, of the 9th instant, to give my opinion as follows on the points mooted in the Lieutenant-governor's minute on the proposed Sale Law.

2. Sections X. to XIV. will, if a limit is fixed, confer a great boon on shareholders, but if they are extended to those paying small sums, and if the collector is to institute a summary inquiry into possession, they will be productive of far more harm than good. Enormous establishments will be required to keep the accounts, and the proprietors will constantly be harassed by parties claiming to have their names recorded as separate shareholders, and consequent inquiries into possession and butwarras already far too numerous in some districts would become enormously increased. I would confine these sections to parties already recorded, or who may hereafter be recorded in the usual way, and the amount of whose revenue is over 100 rupees.

3. I am not aware of any serious objection to Section XV., as it probably will not be extensively worked.

4. With regard to Clauses 1 and 2, Section XXXV., they appear to me calculated to do great injustice and injury to the holders of tenures guaranteed against increase of rent at the time of the decennial settlement; and as to post-settlement tenures, unless Government are prepared to do the whole revenue survey over again, and much more minutely and correctly than before, and to add a large extra staff of collectors, deputy collectors, ameens, &c., for the purpose of settling disputes, calculating the assessments, &c., I do not see how the thing can possibly be done.

5. With regard to the proposals in paragraph 51 of the minute, it appears to me they are very good as far as they go, but they do not in my opinion go far enough. I wish to see some provision restricting the rights of present proprietors to increase at will or by a suit in the civil courts, the rent of tenures held with or without documents at a fixed jumma for a certain number of years, say twelve, before the attempt to increase was made. This would be going very little farther than is proposed by the registry provisions of the Bill now before the Legislative Council, and it would be unattended with the evils which registry and proportionate assessment as proposed must entail on a very great number of under-holders and zemindars and on Government itself, while the Government revenue on the Lieutenant-governor's plan would always be secured.

6. I trust the superficial manner in which I have given my opinion will be pardoned in consideration of the fact that I am daily marching and have a great deal to do with the Sonthals, whose business I cannot now postpone for other work.

I have, &c.
(signed) *G. U. Yule*,
Commissioner of Revenue.

Extract of a Letter from the Secretary to the Board of Revenue, Lower Provinces, to the Secretary to Government of Bengal, No. 29, dated 16th January 1857.

Para. 2. The Commissioner of Dacca has no remarks to offer on the subject.

From

From the Commissioner of Revenue, Patna, to the Secretary to the Board of Revenue, Calcutta, No. 1351, dated 1st January 1857.

Sir,

WITH reference to your letter, No. 530 of the 9th ultimo, forwarding a printed copy of the Lieutenant-governor's minute touching the proposed new Sale Law, I have the honour to submit the following observations:—

2. In my former letter recording my views on the subject and expressing my approval of the Bill, I referred to the general principles and anticipated results of the proposed law, rather than to the facility of carrying out its provisions in practice, which was a point I did not touch upon; the minute of the Lieutenant-governor throws strong doubts upon the practicability of giving due effect to the provisions contemplated, at least without overwhelming the executive department.

3. In the arguments recorded by the Lieutenant-governor in the 8th and following paragraph, I fully concur. The concession now proposed is, beyond controversy, the concession of a privilege and not the restoration of a right, and the Government has indisputable right to limit that privilege by whatever bounds or restrictions public policy or convenience may dictate.

4. Whether, therefore, his Honour's estimate of the practical difficulties or injurious effects of the law be carried or not, I cannot doubt the wisdom of trying the law on what the Lieutenant-governor calls "manageable terms."

5. The effect of the law in encouraging excessive sub-division is a question which appears to me exceedingly difficult to solve.

I scarcely think it can be assumed that the privilege of separate payment and account will necessarily have this effect. On the point mooted in the 13th and 14th paragraphs of the minute, I concur in the expediency of dispensing with the summary inquiry into the fact of possession.

6. The recorded proprietor should be the person with whom the collector deals, and if this has, as it will, the effect of ensuring a more faithful representation, it will be in itself no slight benefit.

7. Not that I can fully concur with Mr. Theobald in his enumeration of the supposed perplexities as to the meaning and interpretation of the word possession.

8. Common sense would, in most of the instances cited by him, be a sufficient guide, but the inquiries would undoubtedly be embarrassing from their frequency, and unsatisfactory in their result, while the other criterion appears sufficient for the purpose.

9. On the subject noted in the 15th paragraph I do not feel myself competent to pass any opinion worthy of acceptance.

The question of the under-tenures, viewed in the light of the Lieutenant-governor's very able comments, assumes a very important aspect, and the several arguments urged against the Bill are beyond all question worthy of the most careful consideration.

10. I propose to consider the points *seriatim*.

Paragraph 17. If the Lieutenant-governor's reasoning in regard to the ante-settlement tenures is sound, the objection raised, as far as regards these tenures, ought to prevent the Bill from passing into law.

11. The argument, as I understand it, is that, because the law of 1793 conferred certain rights on the holders of these under-tenures, and declared the revenue payable by them to be fixed for ever, therefore it is unjust to call upon them in 1856 to register their tenures.

12. On the same grounds the condition and penalty in regard to arrears is condemned as a violation of the privilege formerly conferred.

13. As far as regards the registration, I cannot concur in this reasoning. I cannot believe that, because the Legislature of 1793 conferred permanent privileges on the holders of certain tenures, that therefore the Legislature of 1856 may not reasonably and justly, in pursuance of a great public measure (beneficial to these persons as well as to others), call upon them to establish by registration the rights then conceded; and as no legislation can be efficient unless penalties are attached to a neglect or disregard of its provisions, I consider these penalties as a necessary and indispensable part of the enactment.

14. That the fulfilment of this demand on the part of the Legislature may, in some or in many instances, entail counter-claims and consequent litigation, does not appear to me to affect the question.

15. The demand itself is reasonable, and if it be indispensable to the attainment of the important end proposed, the mere fact that a refusal to comply therewith will entail a forfeiture of privilege formerly granted, is not, I conceive, a sound or logical argument against it.

16. I would fully admit that the holders of these tenures are entitled to precisely the same exemption from violation of their recorded rights as are the proprietors of estates under the

Appendix, No. 7. permanent settlement, and that the Lieutenant-governor is justified in comparing their status with the status of such proprietors; but I would say that in the case of both I should consider the Legislature entitled to demand the discharge of a reasonable duty like that of registration, in the furtherance of a great national good.

17. The objection as regards the post-settlement tenures is not one of principle, but refers to the practical difficulties which will attend the execution of the law.

18. As before observed, in recording my opinion on the Bill, I did not carefully consider this part of the question, but highly approving of the principle and purport of the proposed law, I confined my observations to those questions; but it is impossible to read the remarks of the Lieutenant-governor on this part of the question without feeling that, if one-half of his assumptions are correct, the difficulty of carrying out the law will be appalling.

19. It makes a moderate man shudder to read the catalogue of perplexities which His Honour has arrayed as the concomitants of this enactment, and I am certainly not prepared to deny the accuracy of the anticipation, though I consider the list of horrors somewhat overcharged; and if the present law is to entail such consequence, I certainly think the provisions suggested by the Lieutenant-governor will be better calculated to secure the end in view than those of the Bill.

I have, &c.
(signed) *W. Tayler*,
Commissioner of Revenue.

Land Revenue. From the Officiating Secretary to the Board of Revenue, Lower Provinces, to the Secretary to the Government of Bengal, No. 40, dated Fort William, the 23d January 1857.

Sir,

W. Dampier, Esq. IN continuation of my letter of the 16th instant, No. 29, I am directed by the Board of Revenue, to state that the Commissioner of Nuddea expresses his general concurrence in the sufficiency of the provisions which the Lieutenant-Governor has proposed for enactment in the 51st and 52d paragraphs of his minute.

I have, &c.
(signed) *E. T. Trevor*,
Officiating Secretary.

Revenue. From the Commissioner of Revenue, 16th Division, to the Board of Revenue, Lower Provinces, Fort William, No. 267, dated Chittagong, the 26th January 1857.

Gentlemen,

I HAVE the honour to acknowledge the receipt of your letter, No. 530 of the 9th ultimo, with a copy of a letter from the Secretary to the [Bengal Government, accompanied by a minute of his Honour the Lieutenant-Governor, on the subject of the new Sale Law.

2. I have not had an opportunity of seeing upon what grounds the Board have objected to the supersession of Regulation I. of 1801, but the grounds are, I doubt not, very cogent, as they apply to the state of the Sylhet district, and it may be some few others circumstanced as Sylhet is. As regards the districts of this division, however, Regulation I. of 1801 has been inoperative since the enactment of the present Sale Law, and I am not aware that any inconvenience has been experienced by restricting the mode of collecting the revenue to the uniform procedure laid down in Act I. of 1845. Whether therefore Regulation I. of 1801 is retained or not, is immaterial as regards this division, but if its cancelment can be shown, as no doubt the Board have fully shown it to be likely to be attended with serious difficulties and evil consequences in other places, a good reason would certainly seem to exist why Regulation I. of 1801 should not be struck out of the statute book as one of the modes for the recovery of the Government revenue.

3. There has, I suppose, been found no one to contend that, whatever advantages may be derived by it, the registration of separate shares, as contemplated in Sections X., XI., XII., XIII., and XIV., will be unattended with the effect of throwing a vast amount of extra labour upon the collectors and their establishments. The principle of the measures contemplated in these sections is however so just, that it ought to be conceded to all, if such extended concession is possible. To extend the boon to every sharer while the establishments of the collectors are upon their present too limited scale would be impossible, but the law provides also the means of affording an increased establishment in that it lays down fees for registration. These fees cannot fail, I should say, to amount to a considerable sum in every zillah, and from this source, to which there will be a continued income, it would, I think, be found that the necessary number of extra hands to carry out the scheme of separate registration for all, would not be attended with that increased expense to Government which ought to be regarded as an obstacle to the introduction of a measure of such wide utility as that contemplated by the Act.

4. To encourage and extend a "pauper proprietary" is certainly objectionable; but can that be helped, and is it certain that the new law will have that effect?

5. The object of allowing shareholders to register their shares separately is that the just rights of all may be secured to all. If it is just to guard the large proprietor against the risk of being sold out by the default of his smaller co-sharer, the same consideration should also make us mindful of the poorer partner's interests. Neither the rich nor the poor partner, neither he whose share of the public revenue is 1,000 rupees, nor he whose share is but a few rupees, have any right, certainly, to demand that separate accounts shall be kept with them, and that they shall be saved from the consequence of a default on the part of either; but if the consideration of its being right is allowed to be a good plea in contending for the boon to the larger sharer, the same consideration cannot be otherwise than sound and good when the case of the smaller sharer is under consideration. Sub-division of estates must continue so long as natives are the owners of them, and it will never seem fair to the people that the poor proprietor, and the one therefore who most needs protection, and the rich proprietor, are not treated on equal terms. As we cannot prevent sub-division of estates, as we are bound in justice to put all like classes upon the same footing, it is better that we even charge each sharer with the cost of maintaining an extra establishment under the collector (if that be necessary), than that we refuse to recognise as equal the rights of every class of proprietors, and so put what the public would consider an unfair limit to a measure to the benefits of which all have an equal claim.

6. But it is much to be doubted whether, from the great advantages talookdars will derive by the provisions of the new Act, the sub-division of estates will not hereafter be much less common than they have hitherto been. A petty proprietor is now, and must always be very much in the power of his wealthier and larger co-sharer. The one collects or not just as the other likes; if the larger partner so determines, the smaller partner can realise nothing of the rents of his share: as it is, the insignificant proprietor is completely subservient to his more powerful co-proprietor. The latter can, without incurring any penalty, stop the collections of the smaller sharer, put it out of his power to pay his quota of revenue, cause the sale of his share, and ruin him.

7. Hereafter, when the new Sale Law comes into operation, a petty proprietor, being a part owner with a wealthy and large proprietor, would make a good bargain who got as an under-tenure some portion of the joint estate, and gave up his interest in the superior tenure altogether. As a talookdar he would enjoy all the rights of the zemindar within his property. There would be no divided authority; his tenant would be his own, and his tenure would be safe for ever if its rent was a fair one.

8. I think, then, notwithstanding that it may seem to encourage the sub-division of estates to admit each sharer to the privilege of a separate proprietor, this effect will be in a great measure counteracted by the other contemplated provisions of the Act, and that there is reason to suppose that the sub-division of estates into small shares among poor proprietors will be rather checked by the operation of the new law, than that it will receive a new impulse to farther progression.

9. The Lieutenant-Governor is of opinion, whether the plan of a limit be adopted or not, that the direction to the collector to make a summary inquiry into the fact of possession ought to be omitted from Section XII.

10. In dakhil kharij cases it does not need that a proprietor should prove what the extent of his share is to obtain the registration of his name: he is registered as a joint proprietor if he is proved to be in possession at all. In cases where a proprietor's name is recorded jointly with others, without specification of what his share is, some means must be devised to ascertain this: either no proprietor ought to be registered under the new law in regard to whose share, and the extent of it, there was any dispute, or some means ought to be provided for ascertaining what the extent is, if the inquiry into the fact of possession, that is the extent of the thing possessed, was a matter of manifest difficulty. I suggested in the 8th paragraph of my letter, No. 308, of the 19th April last, that the collector might be empowered to refuse registration, and refer the parties to the Civil Court for the determination of the matter. I still think, under all the circumstances, that this would be the most advisable course.

11. The Lieutenant-Governor also questions the expediency of allowing a zemindar to deposit money or Government securities with the collector, so that the amount or the interest upon the securities may be used in liquidation of balances.

12. I cannot doubt that such a measure would be highly beneficial to very many of the larger zemindars, and that it would frequently be taken advantage of. In the case of the Calcutta Government agency its abolition was no doubt based on good grounds; probably one of those grounds was, that in Calcutta no such institution on the part of Government was wanted by the public, but in the mofussil the public are not so independent. Dishonesty on the part of mofussil native agents being of such common occurrence, and there being no public agencies at mofussil stations capable of looking after the interests of constituents, it would, so it seems to me, be no more than a reasonable, humane, and politic concession to the wants of a very large and a very important class of the public, to allow every collector to act as an agent for absentee zemindars, for the drawing and paying of money deposited with him in liquidation of balances due from the estates of the depositors. This might, and

Appendix, No. 7. no doubt would tend to raise the value of Government securities, but I confess that I am such a poor politician that I am at a loss to understand why a Government should shrink from a measure, the effect of which was that it would make its paper of higher value in the market. The current price of Government securities is the test of the measure of the prosperity of Government, and unless undue means are used, it seems to me to be the duty of every Government to promote by all means the value of its own securities.

13. I see no objection why a commission fee should not be drawn by the collector upon sums paid into the treasury by him on behalf of the parties by whom they were deposited as security for the Government revenue, and to be applied towards its liquidation.

14. Sections 16 to 27 of the Lieutenant-governor's minute treat of the case of ante-settlement tenures, which the Lieutenant-governor is desirous of having exempted from the necessity of inquiry and registration.

15. What is now wanted by all descriptions of landholders is a certainty as to what they possess. Tenants and zemindars are now all alike in the dark in this respect. A man when he buys a zemindaree does not know what it consists of; a tenant is not safe for a day. It is to make each more sure and safe in his possession that the new law is devised. A man buying a zemindaree is not safe if ante-settlement tenures are not recorded. If you exempt these from the process laid down for all subsequently created tenures you leave open the door to no end of fraud. A zemindar contemplating the sale of his zemindaree as certain will make all manner of forged deeds in support of ante-settlement tenures to which he will assert his right and possession. In some he may succeed, and whether he succeeds or not the new purchaser finds he must incur the expense of several lawsuits before he can oust the fraudulent and fictitious ante-settlement talookdars, and that, unless he does incur this expense, he is unable to obtain the just rents of a great portion of his estate.

16. There is therefore no security for any one purchasing a zemindaree as to what he purchases if ante-settlement talookdars are to be exempted from showing their title deeds, as an obligation which is to be imperative on all other classes of talookdars.

17. The case of zemindars and talookdars I take permission to say is not analogous: a talookdar, of whatever sort, is liable upon the suit of the zemindar to be called upon to prove his right to hold his talook on such and such conditions. The zemindar cannot be so called upon to do anything of the kind. To make the zemindar subject to certain new conditions provocative of litigation, would be to infringe upon his rights, and it could not be done with any show of reason or justice. But in the case of the ante-settlement talookdars, the only hardship they suffer is in being made to do that at once which they are ever liable to be called upon to do, and this small wrong may surely be inflicted for the advantages it will produce.

18. In what the Lieutenant-governor says in Sections 29 to 48 I altogether coincide.

19. The Lieutenant-governor, in the 49th paragraph of his minute, recommends that tenures which authorise the holders to collect portions of the rent of each ryot shall not be considered entitled to registration as protected tenures under the Act. Such an exclusion would however, it seems to me, be an interference with the private rights of parties, without any very good cause. Say that a man living in a village not being able to rent the whole, wants to rent quarter of it as a talook. What's the objection to such an arrangement? True, it may be more troublesome to the ryot to pay his rent in portions to two or three persons instead of to one, but his position renders him liable to this.

20. With the exception of the points above-mentioned, I consider that the draft which his Honour the Lieutenant-governor has drawn up on the subject of under-tenures is a decided improvement over the original draft Act, and that it will, as his Honour observes, "subserve all the essential purposes of the Bill" now under consideration, without incurring any of its most serious difficulties.

I have, &c.
(signed) C. Steer,
Commissioner of Revenue, 16th Division.

(No. 10.)

MINUTE by Mr. H. T. Raikes, Judge of the Sudder Dewanny Adawlut at Calcutta.

On the Bill "To Improve the Law relating to Sales of Land for Arrears of Revenue in the Bengal Presidency."

I SHALL not offer any remarks on the object and policy of this Bill, having merely considered its details with reference to the working of the law, in the Courts hereafter.

I observe that the same doubt and difficulty will exist under the provisions of this law as now exist regarding the effect of a decree of court annulling a revenue sale under the present law.

Section

Section XXIX. of the draft contemplates the annulment of a sale for informality by decree of court, but it does not provide for the execution of such decree by restoration of the estate, though it prescribes that "execution of such decree must be obtained before six months after the date thereof, otherwise the party obtaining the decree shall lose all benefit therefrom." What is the meaning of "execution of such decree must be obtained." The decree can go no farther than to declare the sale annulled. It then merely places the old proprietor in the same position he held just before the sale was made; he is still a defaulter and a new sale may be made; but it seems to me he has no act to perform, which can represent in any way obtaining execution of his decree. What then is he expected to do? The section goes on to say, "and when execution of such decree is duly obtained, the party obtaining it shall not be restored to possession until any amount of surplus purchase-money that may have been paid away, &c. &c.; and if such party shall neglect to pay any amount so recoverable within six months from the date of such final decree, he shall lose all benefit therefrom." To make this intelligible it should be explained how the decree-holder is to be restored to possession, as the court passing the decree can apparently do nothing either on its own motion or on the motion of the decree-holder. To give the intended effect to this section, it seems to me necessary that the law should declare the courts competent to annul sales if made in contravention of the provisions of the Act, and also to restore the estate to the defaulter on the conditions inserted in the section, provided the decree-holder applies to the court to give him full execution of his decree according to the exigency thereof within the period stipulated.

The only other point I would refer to is that Section XXXV. give us now the power of sweeping away all incumbrances created between settlement and sale. But I do not understand how this privilege is to be exercised when the purchaser is one of the class described in Section XI. Under the rule laid down in that section his own share is reserved, while he may purchase the remainder of the estate under Section XIV. What is the position of the tenantry who are probably holding under all the sharers who were then joint landlords? Does the sale give the sharer who purchases, the right of ejection and enhancement over the portion or share of the estate purchased, or over the whole? I should say, as far as the law provides, such right would extend only to the newly acquired shares. The purchaser would then be in a singular position with respect to a tenant who had held under the joint proprietors; he might be ejected to the extent of the share purchased and could not be meddled with as to the remainder reserved to the purchaser.

13 March 1857.

(signed) *H. T. Raike*, Judge.

(No. 11.)

From the Member of the Legislative Council for Bengal to the Junior Secretary to the Government of Bengal, dated Fort William, 3 September 1856.

Sir,

IN accordance with the opinion expressed by his honor the Lieutenant-Governor in your letter of the 7th July, I have abstained from making any attempt to proceed with the Sale of Under-tenures Bill. It will lie over until the Select Committee appointed to consider the Sale Law Amendment Bill shall have made their report on the resolution referred to them on the motion of Sir James Colville, relative to the protection of under-tenants of the second and inferior degrees against the consequences of a sale of the superior tenure for arrears of rent.

The Select Committee has as yet held no meeting. When the remarks of the Bengal Government on the proposed amendment of the sale law shall have been received, it will doubtless proceed at once to settle that Bill. But I do not think that it will be in a position to deal with the important question referred to it respecting tenures of the second and inferior degrees, until it is furnished with some information as to the extent to which such tenures prevail, their peculiar conditions, and the practice as respects their treatment on a sale of the superior tenure for arrears in the several districts of these provinces.

It is of course well known that the greater part of the land in Burdwan and Hooghly is let in putnee; that the putneedars have very generally granted under-leases to durputneedars, who again have sub-let to re-putneedars, and so on; and that the same state of things prevails to a considerable extent in Nuddea and some other of the neighbouring districts. The conditions of these sub-tenures and the effect upon them of a sale of the superior tenure are ascertained by law. It is also known that in the districts of Backergunge and Bhullooah there is very commonly, under the talookdars, a chain of Ousat talookdars, howalahdars, neem-howalahdars, &c.; and I have obtained some information of the condition on which these sub-tenures are held and the practice which obtains respecting them in case of sale. But I have no information as to the extent to which the practice of sub-letting may prevail in other parts of the country. There may probably be tenures subordinate to the talooks of Dacca, Tipperah, and Mymensing, to the jotes of Rungpore, the gantees of Jessore, the tickahs and chuchs of the 24-Pergunnahs, the mokuddumees of Cuttack, and the mokurrarees and shickmee talooks of Behar; but without some knowledge of the conditions of such sub-tenures, of the practice which may obtain respecting them in case of sale, and especially of the extent to which they may

Appendix, No. 7. prevail, it will, I apprehend, be impossible for the Select Committee to make a satisfactory report or one upon which any practical measure could be based.

Should the Lieutenant-Governor concur in this view, he will probably think it advisable to direct the Board to call upon the several Commissioners for information on the points above indicated, in order that it may be available to the Select Committee when they come to consider the question referred to them.

I have, &c.
(signed) *E. Currie*,
Member of the Legislative Council.

From the Secretary to the Government of Bengal, to the Member of the Legislative Council for Bengal, No. 13, dated Fort William, 6 January 1857.

Sir,

REVENUE.

WITH reference to your letter dated the 3d of September, I am directed to forward herewith a copy of a letter, No. 503, dated the 19th ultimo, and of its enclosure, from the Officiating Secretary to the Board of Revenue, on the subject of under-tenures in the districts of the lower provinces.

I have, &c.
(signed) *W. Grry*,
Secretary to the Government of Bengal.

From the Officiating Secretary to the Board of Revenue, Lower Provinces, to the Secretary to the Government of Bengal, Revenue Department, No. 503, dated Fort William, 19 December 1856.

Sir,

LAND REVENUE.
*W. Dampier and
H. Stainforth,
Esquires.*

IN reply to your letter of the 10th September last, No. 636, I am directed by the Board of Revenue to submit herewith a copy of an abstract of the returns from Commissioners to the circular issued by them on the 17th idem, calling for the information relative to under-tenures required by the Legislative Member of Bengal. The further report promised by the Commissioners of Rajshaye, Cuttack, and Bhaugulpore, will be forwarded on receipt.

2. The information given is of necessity defective, except for the district of Cuttack, where the under-tenures were defined and registered at the settlement, and the Board fear that fuller information cannot be obtained without great loss of time, and, with reference to the apathy and unwillingness of zemindars generally to let the state of their property be known, would, if obtained, be far from trustworthy.

I have, &c.
(signed) *E. T. Trevor*,
Officiating Secretary.

Abstract of Returns to Board's Circular, No. 29, dated 17 September 1856, on the subject of the Number and Conditions of Under-Tenures in Bengal, and the mode in which they are affected by the sale of the Parent Estate for Arrears of Revenue.

Commissioner of
Burdwan, 20th No-
vember 1856,
No. 164.

THE officiating Commissioner of Burdwan, Mr. J. H. Young, says that the exact number of tenures in each district cannot be ascertained without great delay, and, when obtained, would not add much to the sort of information required by the Legislative Member of Bengal.

The following memorandum has, however, been compiled from the best information available to the Collectors.

	Putnees.	Dur-putnees.	Seputnees.	Chahar-putnees.	Putees.	Tahoot-daree.	Mokurree.
Burdwan -	1,960	500	250	100	85	—	—
Beerbhoom -	436	1	4½	-	-	5	1
Hooghly -	424	589	—	—	—	—	—

The numbers for Bancorah and Midnapoor are not given. Of the Hooghly putnees, five pay revenue into the 24-Pergunnahs' treasury, as well as all the durputnees. Appendix, No. 7.

In Burdwan, about 14-16ths of the land may be estimated as being let out in putnee, more than 12-16ths of the malgoozaree area belonging to the Rajah. There are not at present any tenures below chaharputnees. In two pergunnahs, there are a few tenures styled putee, a word which the Collector considers a corruption of petee and identical in meaning with shikmee. These tenures existed prior to the decennial settlement and their area and the jumma paid to the zemindar are on record in the Collector's office. The holders are quasi shikmee talookdars paying their quota of the Government revenue to the recorded proprietor who is responsible to Government. As long as the fixed demand is paid, the tenures cannot be sold, and they are not liable to be cancelled on the sale of the zemindaree for arrears. A purchaser of a putee may at any time apply for mutation of names—when sold, the sales are not under Regulation VIII. of 1819, but under Act VIII. of 1835, and the purchasers succeed to the same rights as the former proprietors.

In Bancoorah, there are other inferior tenures as jumma pottah, jote, khoorfa or durjote, and the bhagjote or equal division of produce between the leaseholder and cultivator. The leases are generally granted for an unlimited term, and the tenures are liable to an increase of rent.

The tahotdaree tenures in Beerbhoom are liable to be sold on the sale of the estate to which they belong.

The Collector of Midnapore reports twelve different kinds of out-tenures in that district; namely, 1 kharposhie, 2 shikmee, 3 putnee, 4 durputnee, 5 mourosee yara, 6 maiadee yara, 7 kutkeena yara, 8 soodhooktan yara, 9 nizjote kundarra, 10 jotepottah, 11 jungle booree aymah pottah, 12 koordah lakhiraj bazeaftee, all of which are affected by the sale of the superior tenure. The putnee and durputnee are found in Midnapore proper only; the others prevail in Hidjellee also.

Seven descriptions of sub-tenures are reported in Dacca, namely, 1 putnee, 2 durputnee, 3 suputnee, 4 shikmee, 5 shikmee howla, 6 morasee pottah, 7 mussakushee pottah. The effect of a sale of the superior tenure on the first three is declared in Regulation VIII. of 1819. The remaining four are described to be tenures granted by the zemindars with or without a consideration, and, unless they existed for a period of 12 years prior to the decennial settlement as provided in Section XXVI. Act I. of 1845, are liable to be annulled by an auction purchaser at a sale for arrears of revenue. The Collector is unable to give even an approximation to the number of under-tenures in the district from the difficulty of communicating with the proprietors of the 8,460 small estates of which the district is chiefly composed.

Commissioner of Dacca, 28th November, No. 153.

Seven kinds of under-tenures are reported in Mymensing, 1 mourosee shikmee, 2 durshikmee, 3 mokureree shikmee, 4 pottae, 5 putnee, 6 kaim zhuck, 7 kaimjote. The first three are stated to be protected under Section XXVI. Act I. of 1845. Nos. 4, 6, and 7 are tenures liable to be annulled in the event of a sale for arrears of the superior tenure. No. 5 is provided for under Regulation VIII. of 1819. The Collector's records afford no data for ascertaining the extent to which under-tenures exist, and the information could not be obtained from the landholders without great delay and difficulty.

In Sylhet, the sub-tenure system does not prevail. In one pergunnah only about 30 putnees have been created by the proprietors. There are about 75,000 estates on the rent-roll, and the custom of the district is for proprietors not to create under-tenures but to dispose of portions of their interest by sale or otherwise, thereby creating innumerable co-sharers. In some instances the unrecorded shikmee sharers amount to no less than 800. These shikmeedars are not tenants of an inferior degree, but joint-sharers in the superior tenure and responsible for the Government revenue.

In Backergunge the following sub-tenures are reported to exist: 1 shikmee, 2 oosut, 3 neem oosut, 4 howlah, 5 oosut howlah, 6 neem oosut howlah, 7 teem (qy. neem?) howlah, 8 meeras malgoozaree, 9 putnee, 10 durputnee. A peculiar feature in this district appears to be that, generally, as many as six grades of tenants intervene between the zemindar and the ryot, though it occasionally happens that the zemindar, passing over the talookdaree grade (the first three), creates at once a howladaree tenure, and in such case the sub-tenures are reduced to three. All the sub-tenures above noticed are subject to sale for arrears of rent under Act VIII. of 1835, but a purchaser succeeds only to the right possessed by the defaulting talookdar or howladar, as the case may be, and cannot interfere with the tenures subordinate to the tenure which he has purchased. All the tenures above described, save such as may be protected under the provisions of Act I. of 1845, fall on the sale of the superior tenure for arrears of Government revenue. The few putnees and durputnees in the district are subject of course to the provisions of Regulation VIII. of 1819.

The deputy-collector of Furreedpore has not been able to obtain the necessary information from the zemindars, and has therefore submitted no report. The omission, the Commissioners observe, is not of much consequence, as all the permanently settled estates in Furreedpore are on the Dacca rent-roll.

In three years, 252 applications have been made in Nuddea for sale of putnees, but as applications are made twice a year, and putnees not in arrear are not included, the above number cannot be taken as the number of putnee tenures in the district. On reference to the debahundee or chowkeedaree register of the magistrate's court, out of the number of 2,934 villages in the district, 1,246 are held khas, 1,094 in putnee, 45 in durputnee, 527 in ijarah, 17 in pantee, and 5 in mourosee. It is not said in what year the register was prepared, or

Officiating Commissioner of Nuddea, 28th November, No. 329.

Appendix, No. 7. how far it can be depended on; if it be correct, three-fifths of the villages in the district are held on under-tenure.

The Collector of Jessore describes the gantee tenure as most frequent in that district. durputnees and durgantees are few, and seputnees and segantees fewer still. In one large estate there are 2,000 ganteedars paying a jumma of 200 rupees and upwards, and 80,000 paying under 200 rupees; the latter are called kaimee. The ganteedar, the Collector says, can exist immediately subordinate to the zemindar, the putneedar, the durputneedar, or the seputneedar, and is generally considered to reap by far the lion's share of the profits, and therefore seldom commits his interests to a durganteedar. Of course his most advantageous position is immediately under the zemindar, for when a zemindar has once given his land in gantee he cannot in any way enhance the rents, and it frequently happens that the ganteedar may be collecting rents ten times the amount which he pays to the zemindar. Should, however, the zemindar subsequently let out the land in putnee, his agreement with the zemindar is no longer a protection to him, except to keep him in legal possession, for the putneedar can re-measure the land and raise his rents accordingly. The same thing may be done by the dur and seputneedar. The holders between him and the zemindar may get rid of the ganteedar by being so severe on him as to compel him to retire, apart from the collection of rents; the ganteedar has other privileges, such as receiving fees for every marriage, birth, or death amongst his ryots. Where dur and seganteedars do exist, they have the same privileges also, but in a less degree. The bonus paid to the zemindar for a putnee tenure appears to be generally $2\frac{1}{2}$ year's jumma. Indigo planters are mentioned as holding land generally in farm.

The records of the 24-Pergunnahs do not furnish materials for giving the number of under-tenures in the district. One of the most common is the ticca tenure, which is a ryotee tenure, and the holder of which pays rent direct to the zemindar. Very few ticcadars hold pottahs, but their right is recognised by their neighbours and the zemindar. The tenures may be sold for arrears of rent, are recognised in civil courts as being liable to mortgage, may be transferred by gift or willed away, and, unless proof of possession can be adduced for 12 years before the decennial settlement, the right and title to the tenure is forfeited by the sale of the estate for default of revenue. Three species of ryotee tenure may be classed under the ticcadar; the kurfadar, the durkurfadar, and the sekurfadar, who hold their tenures under the ticcadar by virtue of a pottah and cultivate the soil, the sekurfadar being subject to the durkurfadar in the same rates as the durkurfadar is subject to the kurfadar, and the last to the ticcadar. If the latter's right preserve him from the effect of a sale of the zemindaree, then do the holders of the three above-mentioned under-tenures also escape injury. The chuckdaree tenure is a permanent one, and to be met with only in this district, in Jessore, and in Backergunge. These tenures are issued by the Soonderbuns grantees, and given principally with a view to the clearing of jungle at the expense of the chuckdars. The holders retain their rights though the grant in which they are situated may be sold, and the new purchaser cannot enhance their jumma. Deputy Collector Shib Chunder Deb, who has long been in the district, says, the extent to which the ticca tenure prevails is limited, or about $\frac{3}{5}$ th of the culturable area of the district, many tenures having been resumed by the zemindars, or having lapsed for want of heirs strong enough to maintain themselves.

The Collector of Moorshedabad describes the mourosee holdings of that district as consisting of jotes and gantees, chuck jummas, chowbiggas, and sebiggas. These, he says, are farms held on hereditary leases with a fixed jumma, and if created prior to the decennial settlement are not liable to enhancement, and are not affected by sale of the superior tenure. Chowbiggas and sebiggas are small holdings let at four and three biggahs per rupee; they are ancient tenures, originally rent-free, but resumed and settled at those rates in consideration of past services; more particular information, the Collector says, would require many months to collect.

The Commissioner has received no report from Baraset, Mr. Eden having only lately taken charge.

The commissioner (Mr. Grote) remarks that such information as is required by the legislative member could hardly be picked up even by an intelligent and attentive Collector after having been a year or more in the district. The manner in which the sale law affects under-tenures could only be known in the event of a purchaser suing summarily a tenant of the second degree, or distraining his property for a higher amount than had been agreed on between the tenant and his predecessor, and such cases seldom occur. Of 104 calls made on the Moorshedabad landowners, only 23 were imperfectly answered, and three Nuddea proprietors declined to furnish any information. Valuable information should however be forthcoming from the records of estates which have come under the Court of Wards, or under khas management, and which have been subjected to butwarrah or settlement. Mr. Grote concludes his report with the following partial statistics of some estates:—

"Such returns, however, as were made to the calls of the Moorshedabad and Nuddea Collectors give the following information. In the latter district 157 returns, representing, I presume, as many estates, gave an aggregate in the latter of 80 putnee, 24 ijarah, seven gantee, and 58 mocureree tenures. Mr. Lyon holds in ijarah all his lands in Moorshedabad, and adds, 'there are no putnee mouroseejotes, or other under-tenures within the lands with which I am connected, and, so far as I am aware, there are comparatively few such, with the exception of putnees, in the immediate vicinity of the banks of the Ganges.' Mr. Bishop, for Messrs. Watson, says that Hoodah Ecoonee, a large estate belonging in part to the

the latter, is divided into 34 putnees, three ijarahs, and 18 gantees, and that Rokunpore, another large estate of theirs, is all in putnee. Mr. Larruletta has let in putnee the only estate he has. I annex the original letter* of Baboo Poolinbeharry Sein, which is fuller than any other of the replies, and gives some interesting information on the subject of the prevalent under-tenures. Rajkissen Raie, another zemindar, returns about two-thirds of his villages as being farmed, while the rest is khas.

"12. The general complaint of the European landholders in Moorshedabad, whose letters I have perused, is the want of security for putneedars against sales of estates for wilful default, and this want will be amply supplied if the original Draft Act proposed by the Bengal Government becomes law.

"13. So far as my experience goes, I believe that in practice few subordinate tenures however old and good their titles, maintain themselves after the sale of the tenure on which they depend. The profits of such subordinate tenures must be in many cases too inconsiderable to render it worth the tenant's while to litigate in the Courts with the superior tenant, who again may, if strongly tempted, combine with the zemindar and sacrifice his own tenure in order to break up a really valuable subordinate tenure.

"14. In the 24-Pergunnahs the ticca tenures are I know extensively sublet, the subtenants being generally of the class referred to in Clause 3, Section XXVI. Act I. of 1845. The small estate of Gobind Chunder Dutt, under the Court of Wards, in part consists, I find, of 251-15 biggahs of ticca land for which the minor ticcadar pays an annual rent of 70 rupees 8 annas to different zemindars, while the rents payable by his sub-tenants are entered in the accounts of the estate at 510 rupees.

"15. In law the subordinate tenure, if the *bonâ fide* creation of a ticcadar protected by Clause 1, Section XXVI. Act I. of 1845, would, I imagine, stand under any transfer of the superior tenure."

Baboo Poolinbeharee Sing, in his letter to the officiating Collector at Moorshedabad referred to in paragraph 11 of the above extract, says that his zemindaree, and generally most others, contains the following classes of under-tenures:—1st, putnee, durputnee, and seputnee, the nature and conditions of which are well known. 2d, ijarahs and durijarahs or farms and under-farms, the nature and terms of which are also well known. 3d, mourosee ijarah, or farm held on a hereditary lease with a fixed jumma not liable to enhancement, provided the creation was anterior to or at the time of the decennial settlement. 4th, chuck jumma, or a certain quantity of land held in the lump at a fixed rent assessed without reference to prevailing rates. 5th, jote jumma. Most of the lands in most zemindarees are held in jotes under the following denominations—(1) Istemraree or mokureree jotes are hereditary tenures held at a fixed rent provided they were created more than 12 years before the settlement. Like the chuck jummahs, these tenures comprehend lands of all descriptions, and may be considered as small putnees. (2) Jotes consisting of one or more biggahs of land, generally culturable, held at a certain rent, liable to be increased on re-measurement of the village. 6th, charbiggas or land held at four biggas a rupee, sebiggas or land held at three biggas a rupee. Those tenures created before the decennial settlement are not open to resumption or enhancement of rent. Of the above descriptions of tenures, those created prior to the settlement are not so liable to enhancement of jumma, unless on a general measurement of the pergunnah they be found to comprehend more lands than the pottah specifies. In private or decree sales these tenures are not liable to enhancement, but under the sale law all the tenures, especially those of recent creation, are cancelled by sale, and the occupants may be ousted at pleasure by the auction purchaser. The mokureree, or istemraree jotes, and those that existed before and at the time of the decennial settlement, are the only ones that cannot be cancelled. Not having received returns from his zemindarees in several districts, and having no register of the under-tenures existing within, he cannot speak to the number of such in his estates, but in the portion situated in Moorshedabad one mehal has been let in putnee and one in ijarah.

Extract from letter from Deputy Collector of Baraset, who reports the existence in his jurisdiction of—1st, perpetual gantees or tenures under the zemindars which are saleable for arrears of rent as well as in satisfaction of decrees. They are transferable tenures, but the tenant does not lose his right on the sale of the zemindaree. 2d, durmourosee gantees, these are granted by the ganteedar in perpetuity, and are not affected by the sale of the superior tenure. 3d, chucks, these are held under the zemindar for the purpose of clearing jungle. They are saleable by the holder at pleasure, but are not affected by the sale of the zemindaree. They may be sold for arrears of rent or in satisfaction of decrees.

Nuddea, 9th December 1856, No. 342.

In Lohardugga there are only two estates, namely, Chota Nagpore and Purgunnah Palamow, the latter a Government purchase. The four largest under-tenures in the Chota Nagpore zemindaree are the jaghires of Boondoo, Burway, Sillee, and Tamar, created apparently before the British Government. These estates consist of from 80 to 250 villages each, and the jaghiredars pay a fixed rent to the Maharajah. Succession is strictly according to primogeniture in the male line. In each jaghire there are several sub-jaghires, some created by the jaghiredars, and others by the Maharajah of Chota Nagpore. The latter are not

Chota Nagpore, 24th November 1856.

* See an abstract of the information contained in this letter following this extract from the Commissioner's report.

Appendix, No. 7.

not numerous though very ancient and probably anterior to the jaghires, to which they are now attached. In the Tamar jaghire, where the inhabitants are chiefly Coles, almost all the under-tenures are held by mankees and moondas, who are in fact the proprietors of the soil. The moondas hold from two to ten villages, and over every four or five moondas there is a mankee. The moondas pay a certain fixed rent to the mankees, who make a proportionate fixed payment to the Rajah of Tamar. Most of the Cole tenures are of very ancient origin, though there are no written title-deeds. Similar tenures are found in other pergunnahs, especially Sonapore. Besides the above four large jaghires there are about 600 smaller ones in the Chota Nagpore zemindaree. Some of these jaghiredars hold only a portion of a village; but the tenures of others consist of as many as 150 villages. All pay a fixed rent to the Maharajah, and are hereditary in the male line. To almost all, conditions of service are attached, which are sometimes enforced and sometimes not. Several of these jaghires were created before the settlement, but the majority of them are believed to be posterior to that event. Within the larger jaghires there are sub-jaghires, but the number is not known; a few jaghires are for life only, but such tenures are rare. In every part of the same zemindaree there is a large number of petty bhoccharee tenures. The bhoccharees are descendants of the rude race which first cleared the jungle; their tenures are rent-free, but they are bound to render service to the Maharajah or the farmers holding under him. In pergunnah Palamow, a khas mehal, there are 130 jaghiredars and 102 hereditary ijarahdaree tenures, the remainder of the pergunnah consisting of khulshah villages leased to farmers for a fixed term. Most of the jaghires are held under conditions of service, and they, together with the hereditary ijarahs, pass to male descendants. After the purchase by Government, many of these tenures became by law liable to resumption, but the under-tenants were confirmed in their rights by Government. As the sale law is not likely to be introduced into this province, the Commissioner does not deem it necessary to enter into the question of the effect of the law on these under-tenures.

In Hazareebagh there are 5,858 under-tenures of different kinds, and probably more of a small kind, of which nothing is known. In the large estate of Ramgurrh there are 3,289 recorded under-tenures of various sorts. There are jaghires granted for the maintenance of the members of the Ramgurrh family, which have been held for generations; most of them on conditions of service, which have of late years been seldom enforced, and most of them pay only very small quit rents. There are in the same estate 22 rent-free tenures exempted at the time of the settlement. There are also several khyrat tenures not recorded in the Principal Assistant's Office, and probably created since the settlement. There are also several service jaghires held under the condition of guarding the ghâts and jungle passes. Some pay a small quit-rent; others, in places where the service is considered of the most importance, are held rent-free. About one-third of the Ramgurrh estate is held in jaghiredaree and rent-free tenure of different descriptions; the remaining two-thirds are in the zemindar's own hands, who lets portions in farm. In pergunnah Kurraekdia there are 2,114 under-tenures, of which 76 are rent-free mehals not assessed at the permanent settlement. Most of the oldest tenures in this pergunnah have been granted for the maintenance of the relatives of the proprietors of the guddees, but few under-tenures in this part of the country were in existence at the time of the settlement. There are a few farms for undefined periods given at low rates to money lenders, but the farms of villages are mostly for a limited number of years. In pergunnah Kendie there are 141 different under-tenures. A few are khyat and maintenance tenures, but many of the villages are farmed to persons who have lent money to the proprietor. In the confiscated mehal pergunnah Koderma, there are 94 under-tenures all leased to the heads of villages. In the rent-free feudal tenure of Koonda there are 220 under-tenures, some of which are khyrat and service tenures, but the most common under-tenures are farms for short periods.

In Maunbhoom there are a few putnee talooks and still fewer durputnees, the majority being in the Pachete zemindaree and of recent origin; but Regulation VIII. of 1819 is never put in force in this division. The zemindars realise rents by summary process and attachment. There are jaghiredars paying a small fixed rent to the zemindars, shikmee zemindars, mookurereedars, and durmookurereedars; also a few mankee and moonda tenures like those of Chota Nagpore, some of which are of very ancient origin. There is, however, a large number of police ghat-walee tenures, the tenants performing police service and paying a small quit-rent to the zemindars. Many of these ghat-walee tenures were in existence before the settlement.

In Singbhoom is the Dhulbhoom estate, the Rajah of which owns the whole pergunnah of Ghatsillah, with the exception of the ghat-walee and rent-free tenures therein. Each village is held direct from the zemindar, either in perpetuity or for a specified term, the tenant being styled purdhan. A purdhan rents one or more villages; occasionally a large village is divided amongst two or more purdhans. The purdhan is remunerated by a certain quantity of the best land in the village, held rent free. He cannot be ousted during his lease as long as he pays the stipulated rent. When the Rajah grants a lease of a turuff consisting of several villages to a farmer, the latter cannot interfere with the arrangements made with the purdhans, who pay their rents to him instead of the zemindar. When the zemindar creates a mookureree tenure, the mookurereedar acts as purdhan in his own tenure. The putnee tenure is unknown in the Dhulbhoom estate; the purdhanee system prevails everywhere, and there are no intermediate tenures of any kind. In Sonthal villages the purdhan is called manjhee, and in Cole villages moonda. Some of the ghatsillah, jaghiredaree, and ghat-walee tenures are of very ancient date; but there is no record of them in the Singbhoom office.

The

The following tenures prevail in Bograh: 1 muzkooree talook, 2 shikmee talook, 3 istemraree jote, 4 istemraree talook, 5 mukuree chuck jumma, 6 mukooree jote, 7 mourosee jote, 8 mourosee ijarah, 9 putnee talook. The first two were created before the decennial settlement, and the others were made since by the zemindars on condition that the lessee and his heirs are to hold them at a fixed rent in perpetuity; no sub-tenures of any description in this district, except durputnees, which are few in number, and the rights of sub-lessees are liable to be affected by the sale of the superior tenures under Regulation VIII. of 1819.

Appendix, No 7.

Rajshahce, 29th November 1856, No. 188.

In Dinagepore there are only about ten putnee talooks; but there are a great many istemraree jotes, all of which are affected by the sale of the superior tenure.

The under-tenures in Rajshahye are chiefly putnee and mourosee or permanent jote. The latter is subdivided into seven denominations: 1st, mourosee jote; 2d, mourosee ijarah; 3rd, mussurkus; 4th, mutkudamee jote; 5th, chuck jumma; 6th, shikmee talook; 7th, mooktah ooperputta jote. These distinctions are, however, merely nominal. The extent of the under-tenures may be estimated at one-fifth of the entire area of the district.

	No.	Rupees.
Putnee - - - - -	600	- jumma 2,50,000
Mourosee ijarah - - - - -	25	" 25,000
Kiemee mourosee jote - - - - -	500	" 5,000
Mussurkus - - - - -	100	" 5,000
Mutkudamee jote - - - - -	100	" 5,000
Chuck jumma - - - - -	200	" 20,000
Shikmee talook - - - - -	100	" 5,000
Mookta ooperputta jote - - - - -	50	" 2,000
	<u>1,675</u>	<u>3,17,000</u>

These tenures have generally been sublet in durputnee and durjote, and again in seputnee and duradojote: but such instances are exceedingly few. The sub-tenure holders exercise the same rights over the ryots as zemindars; they may enhance the jumma and alienate their rights in the tenure without the sanction of the superior landlord. In the event of sale of the superior tenure under Act I. of 1845, of putnees under Regulation VIII. of 1819, and of mourosee jotes, &c., under Regulation VII. of 1799, the sub-tenures of inferior degrees, except those mentioned in Sections XXVI. and XXVII., Act I., of 1845, are liable to be cancelled at the option of the purchasers, who, however, out of policy, do not at once oust the under-tenants, but make fresh arrangements with them. The effect of a sale of the superior tenure on sub-tenures is exactly in accordance with the law, and no other practice prevails.

The zemindarees in Rungpore are subdivided into jotes of greater or less extent. Some are of considerable size, the jotedars paying as much as from 5,000 to 20,000 rupees annually to the landholder. Portions are sublet by the jotedar to persons termed choohadars, who either cultivate themselves, or collect their rents again from under-tenants. These jotes prevail principally in pergunnah Baharbund; but they are to be met with all over the district, and their number it is difficult to estimate without a patient inquiry. On the sale of the superior tenure it is not customary for the purchaser at once to oust the choohadar, but he usually calls upon them to enter into fresh engagements. There are but 54 putnees (in which are three durputnees) in Rungpore, all created within the last 10 or 15 years, on the zemindaree of the Rajah of Danasnuggur. Of the number of istemraree and mukuree jotes, called in the district oopun chuckee, the Collector can give no accurate account. The last quinquennial register for 1222, B. S. gives a total of 572 such tenures; but there are probably more. Under tenures in oopun chuckee lands are affected much in the same way as in common jotes by the sale of the superior tenure. The effect on the dur and seputnee talooks is ascertained by law.

From the inquiries made by the Deputy Collector of Pubna it does not appear that there are any peculiar tenures in that district. About one-third of the district is let in putnee; but durputnees are not numerous, and seputnees or (as they are called in Pubna) durputnees are still fewer, if they exist at all. Both zemindars and putneedars very generally give leases of their holdings to ijarahdars for terms of years. Although the zemindars deny the existence of mourosee or mutkudmee jotes, there is no doubt that they do exist to some extent, and that many are summarily sold for arrears of rent, and some of the holders have gained decrees in the Sudder Dewanee to the effect that their jotes are of that nature, and are not liable to enhancement of jumma, or to annulment whilst the jumma is paid. One of these jotes in pergunnah Yoosufshye pays a rent of 10,000 rupees. The principle which is applied by law to under-tenures of the first degree is, in practice, considered to apply to all the sub-tenures. Thus, if the putnee tenure is transferred by private sale or under a decree of the Civil Court, the durputnees, farms, and under-holdings within it are held valid; but if the putnee is sold for arrears of rent under the provisions of Regulation VIII. of 1819, the purchaser is held to receive it free of all durputnees, farms, and incumbrances made by the late putneedar.

Rajshahce, 9th December 1856, No. 201.

The province of Cuttack is temporarily settled. The tenures and under-tenures of every estate are defined. The sum set apart as zemindar's allowance varies from 35 to 40 per cent. The following under-tenures are not voidable by the sale of the parent estate: 1st, mourosee mokudumee, being alienations prior to the British occupation, and of a hereditary and trans-

Commissioner of Cuttack, 21st November 1856, No. 393.

Appendix, No. 7.

ferable nature. The holders are proprietors, and can only be ousted by sale under Act VIII. of 1835, on default of payment of their fixed jumma, and after summary suit. They have either a whole village or a share in it, collect the rents, and receive an allowance of 20 to 25 per cent. out of the zemindar's allowance mentioned above. In the case of half-rentally settled lands, the allowance to the zemindar and mourosee mokudum is seven and a half per cent. each. The tenures are strictly subordinate, and no butwarrah can be claimed. 2dly. Mourosee surbarakaree tenures correspond with the first, except that the allowance is less to the holder, varying from 15 to 20 per cent. 3dly. Proostee. The difference between this tenure and the mourosee mokudum is only in name. The holders of some tenures of this name in Pooree have no recognised rights, but are mere servants of the zemindar. 4thly. Pudhane. These are also akin to the three previous tenures; they are found chiefly in Pooree. 5thly. Shikmee zemindaree, much the same as mokudum, the chief distinction being that, while the latter affects a village or share in it, the former applies as well to some portions of land as to an entire village. 6thly. Khureeda jumma bundee. These are divided into two classes, called awul and doam, or first and second. They do not affect the right of management in a village, or share of it, but the possession of a certain specified quantity of land. The holders of the first class, who purchased from the zemindar, receive an allowance of 30 per cent., the remaining 5 or 10 per cent. going to the proprietor of the parent estate; those of the second class, who purchased from the mokuddum or other holder of a sub-tenure, are regarded as representatives of the latter, and are allowed 20 per cent., 15 per cent. being allowed to the proprietor of the parent estate, or if the land be managed through a mokudum, then the per-centage is equally divided between him and the zemindar. The tenures of the first and second class, formed prior to the British acquisition of the province, are hereditary and transferable, and are not affected by the sale of the parent estate; those of subsequent formation are vitiated, unless otherwise provided at the settlement. 7thly. Ayma, exactly the same as khureeda jumma bundee. 8thly. Tunkee, or alienations at quit or fixed rents prior to the British occupation.

The following under-tenures are null and void on the sale of the parent estate for arrears: 1st. Meadee mokudum; 2d. Meadee surbarakaree. Both these were created since the British occupation. 3d. Shikmee zemindaree. There is only one tenure of this class ascertained, and no apportionment of profits was made, but the parties were left to settle it among themselves. 4th. Pudhane. Two tenures of this kind are reported in Cuttack; but the holders seem to have no rights of any kind, and to be mere servants of the zemindar, who has the right, under the settlement, to oust them for misbehaviour, and the common ijarah, or farm, usually of one or more villages for a certain number of years, is of subsequent date to the British rule.

LIST of Under-tenures in Zillah Cuttack.

	Number.	Mouzaha.	Area in Acres.	Mofussil Assets.	Jumma paid to Zemindar.
Not voidable:					
1. Mokudum	446	498	89,241	77,765	58,758
2. Mourosee Surbarakaree	236	266	43,880	41,541	33,087
3. Proostee	9	12	950	873	641
4. Shikmee Zemindaree	68	322	2,388	3,911	2,733
5. Tunkee	200	64	1,909	1,406	844
6. Khureeda Jumma bundee	8,537	2,335	23,562	31,636	23,893
7. Ayma	232	62	801	1,037	718
Voidable:					
1. Meadee Mokudum	45	49	3,726	3,081	2,312
2. Meadee Surbarakaree	34	37	7,194	6,276	5,519
3. Shikmee Zemindaree	1	1	582	322	322
4. Pudhane	2	2	1,923	244	189

The under-tenures in the province of Behar are, first, mokureree grants, of which there are four kinds. The first kind descends in hereditary succession, and are given out on receiving a specified sum, styled nuzurana, without any regard to the Government revenue, which is paid by the maliks. The second kind descends also in hereditary succession, on receipt of nuzurana, conditionally, on the holder complying with certain stipulations, on default of which the tenure is liable, by the wording of the deed, to be resumed by the malik. The stipulation generally is, that the holder pay the Government revenue, and that default of three kists at any time during the year authorises the malik to institute a summary suit for recovery, and to eject the incumbent; but if the tenure is hereditary, the courts have decided that the malik cannot eject the holder; but, on default, can only cause the sale of the mokureree rights. The third kind is only a life tenure, held without payment of nuzurana, conditionally, on the holder paying such a fixed annual sum as covers the Government roll, and ensures besides a certain profit to the malik. The fourth kind is of similar import, held only for life, and on payment of nuzurana.

2. Ijarahs.

2. Ijarahs.—These differ very little from ticcās. In ticcās the malik looks to some considerable profit over and above the Government roll. In ijarahs the malik is content with a very small profit, but demands, in compensation, a large sum as zurpeshgee. These ijarahs are always given for five, seven, or nine years, at the end of which time, if the zurpeshgee is repaid, the land lapses again to the malik; if unpaid, the land remains in the hands of the jarahdar till the debt is liquidated. No interest is given, the profits of the lease being considered an equivalent. These ijarahs are diversified by stipulations, according to the will and interest of the parties concerned.

3. Ticcās or Farms.—Of these there are eight or perhaps more kinds, but one general principle marks the whole. The first kind is let out at a stipulated jumma on payment of zurpeshgee without specification of time, and remains in force as long as the zurpeshgee remains unrecovered. The second is let out for a fixed period without zurpeshgee, but on payment of an annual sum to the malik. The third is leased out for a fixed term on payment of a large nuzurana conditionally, on the farmer paying the Government roll only. The fourth is let out for a stipulated period on payment of zurpeshgee, which is repaid at the close of the engagement. The fifth is leased out for a period on payment of zurpeshgee, which is repaid annually by deducting certain sums from the rent. The sixth appertains to mokureree wazoozash estates, paying a certain fixed sum to the State, as specified in Regulation VIII. of 1793; and which are leased out on the mokureree jumma on payment of nuzurana. The seventh is leased out at a fixed rate for the life-time of the ticcadar, on payment of a nuzurana. The eighth is leased out on payment of a stipulated number of maunds of grain in kind, for a fixed number of years, liable to resumption if the grain or an equivalent in money is not handed over to the proprietor at given periods. A summary suit is in this as in all the other instances, a necessary prelude to ejection.

There being no register of under-tenures, their number cannot be ascertained, but it is presumed that one-half of the land in the division is let out in under-tenures, a system which the large landed proprietors prefer to the trouble of seer management. Tenures derived from proprietors direct, are let and re-let over and over again. In each and every instance of under-tenures enumerated above, the sale of the parent tenure for arrears, cancels existing agreements. None are exempt from the ordeal but those protected by Section XXVI., Act I., of 1845.

4. Shikmee Tenures.—These are recognised at the time of settlement effected under Regulation VII. of 1822. They are the lands resumed under Regulation IX. of 1825, being found to have been held under invalid titles, or what parties entitled to a malikana immunity in lakheraj estates originally held as a tenth part of the estate by virtue of that right. These tenures are brought under settlement as dependant talooks, in accordance with the Board's Circular, No. 52, of the 7th August 1838, and are held to be transferable property by gift, inheritance, or sale. They are also let and sublet, and are sold in satisfaction of summary decrees for rent, under Act VIII. of 1835. The holders of these lands pay a fixed revenue to the zemindars, and are not affected by the sale of the parent mehal.

In Chittagong the tenures immediately above the holdings of tenants at will are successively as follows:—

- Third class istemreree, ryottee, chasa, and durtuppa;
- Second class itmauree and tuppa;
- Third class talook;

Commissioner of
Chittagong,
2d December 1856,
No. 200.

And above the talooks are the several denominations of sudder mehals which are under direct engagement with Government.

In Bulloah the tenures lowest in the scale, not reckoning jotes of cultivators, are vasat talook, neem talook, shikmee tuppa, neem howlah, mushkussee ryottee, gymokureree, merasee jote, and kursa jote: above these are howlah, puttaee talook, and shikmee talook. To these also may be added, because the holders pay their rents to the superior landlord, tuppas, jimba, and khood khast, and then come the estates which pay revenue to Government direct.

In Tipperah the tenures next above the ordinary jotes are duraghat talook, jimba, chuck-husta, mushkussee, and dur talook. Above them are aghut talook, khosbbash karkona, meeras, howlah, puttaee, and ousut talook; after which follow the several denominations of zemindarees.

In all the above classes the tenures under each class are like, or equal tenures, and are not gradations of tenures. The classes are grades of each other. All are understood to be permanent, hereditary, and transferable tenures. All lapse with the sale of the parent state, except those protected under Act I. of 1845. For sale on any other account than arrears of Government revenue, the inferior tenures do not fall. The sale of a superior tenure for arrears does not affect the lower tenures. Every description of tenure and under-tenure is subject to sale by summary process for arrears. Where there is no stipulation rendering the tenure liable to sale for arrears, a sale can only be resorted to after a decree obtained at the end of the year; where such a stipulation has been entered into, sales are made of the tenure in arrear without the necessity of a prior decree, just as putnee talooks are sold at the mere instance of the zemindar after a short notice. Indeed

Appendix, No. 7.

the same law is the authority in both cases; but, except in the case of putnees under Regulation VIII. of 1819, the holder of a lower tenure has no option or power to pay up the arrear of the tenure immediately superior, and save it from sale.

Besides the several tenures enumerated above, there are in all the three districts of the division putnee talooks: these are however not generally common. There are also in certain parts of the division a few tenures peculiar to the locality, of both superior and inferior grades, but they differ in no essential respect from those which generally obtain.

Commissioner of
Bhaugulpore,
6th December 1856,
No. 33.

The Collector of Bhaugulpore reports that there are very few mokurerees and no shikmee tenures in that district, and that he is not aware of any sub-tenures.

The Collectors of Monghyr and Tirhoot have misunderstood the point of the inquiry. The first mentions mokureree, takas, kutkeenas, and mortgages; the other gives a list of names of fifty descriptions of rent-free holdings. Further report has been called for, but to avoid delay, Commissioner says that, from what he can gather from the work which comes before him and otherwise, mokureree and shikmee tenures liable to be affected by the sale of the parent estate, are very rare in the districts in question, and that sub-tenures under them are almost unknown. Where they do exist they are merely for temporary periods.

Commissioner of
Assam, 5th De-
cember 1856,
No. 149.

All the land in Assam is held on the same tenure, that is, in full right of either possession or occupation subject to the payment of the Government revenue by the pottahdars. There are no under-tenures known to the regulation and requiring provision in the proposed law of sale. A small quantity of land is cultivated by ryots not proprietors, or not holding pottahs from the Collector, but all such are merely tenants at will or pykasht ryots. Other holders of land paying revenue may be considered as the actual landholders, liable to pay a tax for their land, or as khodkasht ryots paying rents, the Government being the zemindar.

(signed) *E. T. Trevor,*
Officiating Secretary.

From the Secretary to the Government of Bengal, to the Member of the Legislative Council for Bengal, No. 17, dated Fort William, 10 January 1857.

Sir,

REVENUE.

In continuation of my letter No. 13 dated the 6th instant, I am directed to forward herewith a copy of a letter, No. 7 dated the 7th instant, from the Officiating Secretary to the Board of Revenue, on the subject of the under-tenures of the districts of Balasore and Pooree.

I have, &c.
(signed) *W. Grey,*
Secretary to the Government of Bengal.

From the Officiating Secretary to the Board of Revenue, Lower Provinces, to the Secretary to the Government of Bengal, Revenue Department, No. 7, dated Fort William, 7 January 1857..

Sir,

LAND REVENUE.
W. Dampier and
H. Stainforth,
Esquires.

In continuation of my letter of the 19th ultimo, No. 503, I am directed by the Board of Revenue to submit the following particulars relative to the under-tenures in the districts of Balasore and Pooree, which were not given in the first return of the Commissioner of Cuttack.

	Balasore.	Pooree.
Not voidable:		
Mourosee Mokudumee - - - - -	123	452
Ditto Surburakaree - - - - -	205	197
Proostee - - - - -	3	—
Mourosee Khureeda Jumabundee - - - - -	2,132	94
Surburakaree - - - - -	50	—
Dur Shikmee - - - - -	6	—
Voidable:		
Pudhane - - - - -	—	281
Meadee Khureeda Jumabundee - - - - -	12	—
Ditto Mokudamee - - - - -	1	—
Ditto Surburakaree - - - - -	4	197

I have, &c.
(signed) *E. T. Trevor,*
Officiating Secretary.

From the Secretary to the Government of Bengal, to the Member of the Legislative Council for Bengal, No. 69, dated Fort William, 2 February 1857.

Sir,

In continuation of the office letter, No. 17, dated the 10th ultimo, I am directed to forward herewith a copy of a letter, No. 51, dated the 28th idem, from the Officiating Secretary to the Board of Revenue, on the subject of the tenures and under-tenures of zillah Maldah.

REVENUE.

I have, &c.
(signed) *A. R. Young*,
Secretary to the Government of Bengal.

From the Officiating Secretary to the Board of Revenue, Lower Provinces, to the Secretary to the Government of Bengal, Revenue Department, No. 51, dated Fort William, 28 January 1857.

Sir -

In continuation of my letter of the 19th ultimo, No. 503, I am directed by the Board of Revenue to forward a copy of a letter from the Commissioner of Rajshahye, dated the 31st ultimo, No. 224, on the subject of the tenures and under-tenures of zillah Maldah. The information is extremely meagre, but, for the reasons before stated, full particulars, cannot be had without an investigation almost inquisitorial.

LAND REVENUE.
W. Dampier, Esq.

I have, &c.
(signed) *E. T. Trevor*,
Officiating Secretary.

From the Commissioner of Revenue, Rajshahye Division, to the Board of Revenue, Lower Provinces, Fort William, No. 224, dated Rajshahye, the 31st December 1856.

Gentlemen,

HAVING now received the reply of the Officiating Deputy Collector of Maldah on the subject of the tenures and sub-tenures of his district, I have the honour, in continuation of my letter No. 188 of the 29th November last, to report that the information which that officer has been able to collect on the subject is to the last degree unsatisfactory and altogether fails to supply such data as alone would enable him to furnish a full and complete reply to your Board's call. To many of his requisitions addressed to different landholders in the district he has received no replies at all, and those that have been furnished either evade the question, or contain little beyond some general statements which convey no information upon it whatever. With such data to found upon, it is of course impossible to speak, he says with any degree of certainty that such conclusions as he may come to would be found correct, if severely tested; in fact he can do little beyond conveying his general impression on the subject.

2. He regrets that the information in his possession will not allow of his attempting to give any estimate of the number of tenures of the second and inferior degrees now existing in the district; all that he can say on the subject with any degree of confidence is that they appear to be considerably fewer in number than he had previously supposed. In many zemindariaries there are none at all, if at least the zemindars' statement of the case be correct, as indeed he believes it to be in many instances, the land being entirely in the hands of ryots who pay rent direct to the zemindar without the intervention of any middleman: this state of things appears to prevail to the greatest extent in the northern and eastern parts of the district.

3. In the southern on the other hand, and especially in the large pergunnah of Shershabad, sub-tenures of the kind referred to in Mr. Currie's letter are found to a large extent. A requisition for information on the subject addressed to the proprietors of this pergunnah not having elicited any answer as yet, he is unable to state the approximate numbers of these tenures, but he knows it to be large. In fact the general impression of people acquainted with the condition of the property is that it has been destroyed as a zemindary by the creation of these jotes as they are called. The jotedars of Shershabad, it is well known, swallow up all the profit that is got from the estate, and little or none passes by them into the hands of the zemindars.

4. He has been unable to ascertain to what extent sub-tenures of the lower degrees prevail in this and other properties. Of a number of requisitions, addressed to various jotedars on the Shershabad estate, one only has elicited an answer; the jotedar in this instance states that there are no shikmee jotes or durjotes on his property. Mr. Craster is inclined to think that sub-tenures of these lower degrees are not very numerous in his district, though what their number may be from total want of all data he cannot pretend to estimate.

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5. As to the manner in which the sub-tenures are affected by sale of the superior tenure in cases where the mehal is sold for arrears of Government revenue, all under-tenures, with the exception, of course, of those belonging to the classes specially protected by legal enactment, are annulled. The same rule does not apply to the cases of sub-tenures of the lower degrees: these, it appears, are not voided by the sale of the superior sub-tenure; the purchaser, it would seem, merely steps into the place of the late proprietor without acquiring any right or interest in the property beyond that of which his predecessor was in actual possession.

I have, &c.
(signed) *F. Gouldsbury,*
Commissioner.
