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THE
TALUQDARI LAW OF OUDH

THE TALUQDARI LAW OF OUDH

Being a Commentary on

1. The Oudh Estates Act of 1869 as amended up to date together with the Amending Acts (X of 1885 and III of 1910).
2. The Indian Succession Act of 1865 (Sections 49, 50, 51, 54, 55, 57—77, 82, 83, 85, and 88 to 98).
3. The Crown Grants Act of 1895.
4. The Oudh Settled Estates Act of 1900.
5. The Oudh Sub-Settlement Act of 1866.

BY

CHHAIL BEHARI LAL, B.A.,

VAKIL, SITAPUR, OUDH.

Together with the Learned Introduction by the late
Mr. J. G. W. SYKES, LL.B., Barrister-at-Law,
to his "Compendium of the Law especially
relating to the Taluqdars of Oudh."

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DEDICATED

(BY PERMISSION)

TO

E. M. D. CHAMIER, Esq.,

(BARRISTER-AT-LAW)

JUDICIAL COMMISSIONER OF OUDH,

IN GRATEFUL ACKNOWLEDGMENT OF THE INTEREST,
TAKEN BY HIM IN THE PUBLICATION
OF THIS WORK.

INDEX.

PAGE

Acknowledgment of signature—See *Will; Execution of will* 4.

See *Signature* 4.

Acts—

1. 1859, XXI.—See *Najibul tarfain*.
2. 1865, X.—See *Will*.
3. 1866, XXVI.—See *Sub-Settlement*.
4. 1885, X.—See *Oudh Estates Amendment Act*, 1885.
5. 1895, XV.—See *Crown Grants Act*.
6. 1900, II.—See *Settled Estate*.
7. 1910, III.—See *Oudh Estates Amendment Act*, 1910.
8. interpretation of —, aids to 250
9. date of commencement of —, what 252

Adopted son—

1. succession of a Taluqdar's or Grantee's 320
2. succession of the — of a Taluqdar's or Grantee's widow 322
3. whether included in the word son 319

Adoption—

1. Mahomedan Taluqdars and Grantees may make —, when 331
2. widow of Mahomedan Taluqdar or Grantee may make —, when 331
3. effect of 331
4. widow can make — only with the consent in writing of her husband 322, 331
5. husband's consent for — to be in writing registered 322, 331
6. how made 333

See *Settled Estate* 19.

Ahl-i-bradri—

- meaning of 317

Alteration in a will—See *Will, Construction of will* 1.

	PAGE
Amani —See <i>Land Tenure</i> 5.	
Ambiguity —See <i>Evidence</i> 2 and 3.	
Attestation —	
defined	255
See <i>Will</i> ; (c) <i>Attestation of will</i> .	
Award —	
1. under section 33 not affected by section 28	339
2. made by Financial Commissioner in his private capacity is not an award of British Indian Association	339
3. binding even if not filed within six months	339
4. relating to compensation and maintenance	337
5. rules of the British Indian Association relating to	338, 547
6. construction of awards and rules of the British Indian Association	338
7. committee of Taluqdars making — not a court	339
Baghat —	
rights of under-proprietors in	212
Bai Birt —See <i>Birt</i> 5.	
Baf Kitat —	
See <i>Chaharum</i> 2.	
See <i>Daswant</i> 3.	
Bequest —See <i>Will</i> .	
Birt —	
1. definition of	171, 187—194
2. holders of — entitled to sub-settlement	170, 171
3. Jiwan — is sir given for maintenance of junior branches of family	181, 194
4. whole villages assigned as Jiwan — called Bhayayi villages	181
5. bai — is created for money paid	188
6. bai — is an under-proprietary tenure	190
7. Bishnu — described	193
8. Jangal Tarashi — described	194
9. Marwat — described	194, 201
10. Sewa — described	194
Birt Jangal Tarashi —See <i>Birt</i> 8.	

Birt Jswan —See <i>Birt 3.</i>	
Birt Marwat —See <i>Birt 9.</i>	
<i>See Marwat.</i>	
Birt Sewa —See <i>Birt 10.</i>	
Bishnu Prit —See <i>Birt 7.</i>	
<i>See Shankalpa 4</i>	
Cirwi —	
Origin and description of	205
Blind person —	
can transfer or bequeath if able to know what he does	293
Brother —	
1. defined	317
2. succession of — and his male lineal descendants	321
3. of whole blood preferred to — of half blood ...	321
4. Amount of maintenance to	330
Burden of proof —	
1. of revocation of will	397
2. of insanity	294
Chaharum —	
1. is an under-proprietary right obtained by clearing jungle	208
2. known in the Fyzabad district by the name of bai-kitat	209
Circular —See <i>Record of Rights Circular.</i>	
<i>See Hard Case Circular.</i>	
Codicil —	
1. definition of	251
2. sections of the Indian Succession Act made applicable to Taluqdar's and Grantee's codicil ...	314
3. marriage does not revoke	315
4. a document referred to in a — becomes part of,	394
Coercion —	
1. definition of	295
2. transfer or will made under — void	293, 294
Conclusive evidence —See <i>Evidence 1.</i>	

	PAGE
Confiscation—	
1. estates exempted from	284, 344
2. effect of — of land in Oudh	50
3. effect of — on superior and inferior rights	122—128
Construction of documents—	
1. substance and not the form of a document to be considered	253
2. instrument using the word <i>Tamlik</i> construed as a will	253
Contract— See <i>Minor</i> 2 and 3.	
Creditor—	
saving of rights of	336
Crown Grant—	
1. is not affected by the Transfer of Property Act	458
2. takes effect according to its tenor	458
Crown Grants Act—	
1. does not affect the rule of succession to the estate,	263
2. section 3 of — does not revive the rule of succession laid down in the Primogeniture Sanad	264, 459
• See <i>Crown Grant</i> .	
Custom—	
1. presumption of family — in case of Taluqdars entered in list II	259
2. of Dhardhura applies to Taluqdars	284
3. included in the word "ordinary law"	326, 328
Dar—	
an under-proprietary tenure described	200
Daswant—	
1. is an under-proprietary right	208
2. origin and description of	191, 208, 209
3. is known in the Fyzabad district by the name of Bai Kitat	209
Daughter—	
1. nature of estate inherited by a Hindu	261
2. " " " " " Mahomedan	262
3. power of a Hindu daughter to transfer or bequeath	296
4. bequest to — how made	301
5. bequest to a son of — how made	301

INDEX.

	PAGE
Daughter—(contd.)	
8. maintenance of unmarried	330
See <i>Transfer</i> 10.	
„ <i>Will, (i) Special provisions of Act I of 1869 relating to wills 7 and 11.</i>	
Daughter's son— See <i>Daughter</i> 5.	
„ <i>Transfer</i> 10.	
„ <i>Will, (i) Special provisions of Act I of 1869 relating to wills 8 and 11.</i>	
Dead person—	
1. entered in list prepared under section 8 of Act I of 1869 is a Taluqdar	289
2. entry of name of —, effect of	289, 290
Deaf person—	
can transfer or bequeath, if able to know what he does	293
Declaration—	
1. by Taluqdars and Grantees entered in lists III and V to alter rule of succession	333
2. to take the estates out of provisions of the Act ...	335
3. by Taluqdars and Grantees entered in lists IV and VI to adopt the rules of succession prescribed in section 22	336
4. by a Taluqdar or Grantee that his property other than estate in the United Provinces is subject to Act I of 1869	337
See <i>Settled Estate</i> 8, 10, 11, 12.	
Descendant—	
defined	317
Dhardhura—	
custom of — applies to Taluqdars	284
Didari or Dehdari—	
1. how created	171
2. description of — tenure	172, 173
Dih—	
origin, description and meaning of	210
Document— See <i>Construction of document.</i>	
„ <i>Will, (a) Definition and form of will 1 to 8.</i>	
Dumb person—	
can transfer or bequeath if able to know what he does	293

Entail—See *Succession 1.*

Estate—

1. definition of ... 258
2. properties held not to be ... 259
3. nature of — inherited by a Hindu daughter ... 261
4. nature of — inherited by a Mahomedan daughter, 261
5. estates exempted from confiscation ... 234, 344
6. history of — and the law relating thereto ... 73—121
7. of Taluqdar heritable and transferable ... 262

Evidence

1. entry of a person's name in lists I and II prepared under section 8 is conclusive — that he is a Taluqdar or Grantee ... 291
 2. extrinsic evidence admissible in case of latent ambiguity ... 417
 3. extrinsic evidence inadmissible in cases of patent ambiguity or deficiency ... 418
- See *Judicial notice.*

Facsimile stamp—See *Signature 2.*

Fraud—

1. transfer or bequest obtained by — void ... 293
2. definition of ... 294

Gift—

1. power of Taluqdar and Grantee to transfer by... 292
2. by a Mahomedan Taluqdar or Grantee is governed by Act I of 1869 and not by the Mahomedan Law ... 297
3. procedure relating to — ... 300
4. to immediate heir how made ... 300
5. to persons other than immediate heir, how made... 300
6. must be followed by delivery of possession ... 300
7. in remainder, not invalid ... 303
8. procedure relating to — to charitable or religious uses ... 314
9. to an attesting witness or his or her wife or husband void ... 395
10. to unborn person invalid ... 406.

See *Transfer 10 and 11.*

Grand parents—See *Maintenance 4.*

	PAGE
Grant —	
resumption of	242-243
See <i>Birt</i> 9.	
See <i>Marwat</i> 2.	
See <i>Shankalp</i> 5.	
Grantee —	
1. definition of	253, 291
2. rights and liabilities of	285
3. preparation of lists of Taluqdars and Grantees	288
4. supplementary lists of Taluqdars and Grantees	297
5. publication of lists of Taluqdars and Grantees	290
6. none but persons named in the lists to be Taluqdars or Grantees	291
7. power of — to transfer and bequeath	292
8. procedure relating to transfers by gift by a	300
9. " " " bequest by a	301
10. special rules of succession relating to Grantees	318-326
11. general rules of succession relating to a	328
See <i>Transfer</i> 10.	
" <i>Will, &c. Special provisions of Act I of 1869 relating to wills</i> 11.	
" <i>Adoption</i> 1.	
Hard Case Circular	161-163
Heir —	
1. definition of	260
2. widow not an	260
3. mother not an	260
4. bequests to immediate —, how made	301
5. bequest to remote —, how made	301
6. gift to immediate —, how made	300
7. gift to remote —, how made	300
8. other than agnates how to be determined	324, 325
9. single — how determined	259, 326
10. of a Taluqdar, not a Taluqdar	257
See <i>Transfer</i> 10.	
Heirloom —	
1. inventory of —, not a public document	287
2. procedure of devolution of — along with estate	287

	PAGE
Huzoor Tahsil —See <i>Land Tenure</i> 3.	
different tenures of — lands 	
Ijarah or Mustajri —See <i>Land Tenure</i> 4.	
Importunity —	
1. transfer or bequest obtained by—void ... 293	
2. definition of 295	
Initial —See <i>Signature</i> 2.	
Inferior widow —See <i>Maintenance</i> 10.	
Inheritance .—See <i>Succession</i> .	
Insane person —	
may make a transfer or bequest during an inter- val in which he is of sound mind... ... 293	
Insanity See <i>Burden of Proof</i> 2.	
Interest —	
1. meaning of 306	
2. whether widow's right of maintenance is an ... 307	
3. junior widow's right to succeed on the death of senior widow is an 307	
Interlineation —See <i>Will</i> ; (<i>h</i>) <i>Construction of will</i> 1.	
Interpretation of Acts —	
1. preamble an aid to 250	
2. marginal notes not an aid to 251	
3. proceedings of the Legislature not an aid to ... 251	
Interpretation of Will —See <i>Wills</i> , (<i>h</i>) <i>Construction of will</i> .	
Inventory of heirloom —	
not a public document 237	
Jewan Birt .—See <i>Birt</i> 3.	
Judicial Notice —	
1. Courts to take—of lists of Taluqdars prepared under section 8 of Act 1 of 1839 ... 291	
2. Courts to take—of lists prepared under section 31 of Act 1 of 1869 336	
Khalsa or Crown Lands —See <i>Land Tenure</i> 3.	
Kushust Shankalp See <i>Shankalp</i> 2.	
Land Tenure —	
1. ancient history of — in Oudh not of much help in determining the present legal position of Taluqdars 1	

PAGE.

Land Tenure—(contd.)

- | | | | |
|---|-----|-----|---------|
| 2. general rule of —, a privilege conceded by the State in consideration of a payment in cash or kind | ... | ... | 3 |
| 3. division of — into Khalsa or Crown lands and Huzoor Tahsil lands | ... | ... | 4 |
| 4. Ijarah or mustajiri or contract system of —, what | ... | ... | 5 |
| 5. Amani or trust system of —, what | ... | ... | 5 |
| 6. Taluqdari system of — its origin | ... | ... | 5, 7-12 |
| 7. in Oudh before 1856 | ... | ... | 3-14 |

See *Birt*.,, *Didari or Dehdari*.,, *Sir*.,, *Nankar*.,, *Purwa Basana*.,, *Shankalp*.,, *Dar*.,, *Marwat*.,, *Chaharum*.,, *Duswant*.,, *Biswi*.,, *Rakhauna*.,, *Bayhat*.**Lease—**

- | | | | |
|--|-----|-----|----------|
| 1. kutchra and pakka, what | ... | ... | 151, 152 |
| 2. of settled estate not to exceed 7 or 14 years | ... | ... | 471 |

Legatee—

- | | | | |
|---|-----|-----|----------|
| 1. definition of | ... | ... | 260 |
| 2. rights and liabilities of | ... | ... | 309, 311 |
| 3. residuary —, how constituted | ... | ... | 439 |
| 4. property to which residuary — entitled | ... | ... | 440 |
| 5. of a Taluqdar, not a Taluqdar | ... | ... | 257 |

See *Transfer* 10.**Limitation—**

- | | | | |
|---|-----|-----|---------|
| 1. for claim of subordinate rights and zemindari rights discussed | ... | ... | 131-142 |
| 2. for redemption of mortgage | ... | ... | 14-145 |
| 3. rule of — in Record of Rights Circular | ... | ... | 14 |

List

Taluqdar's list, 7, 8, 9, 10 & 12.

Lists—(contd.)

- See *Grantees* 3, 4, 5, 8 & 10.
- „ *Evidence* 1.
- „ *Judicial Notice*.
- „ *Presumption* 2, 4, & 5.
- „ *Succession* 2, 5, 6 & 7.

Maintenance—

1. of surviving relatives of Taluqdars and Grantees... 323
2. conditions requisite for ... 323
3. charge on the estate ... 329
4. amount of — of grandparents ... 329
6. amount of — of parents ... 329
7. amount of — of senior widow ... 329
8. amount of — of junior widow ... 330
9. amount of — of brother and minor sons ... 330
10. amount of — of unmarried daughter and widows of sons and brothers and inferior widows ... 330
11. to continue in case of minor son or nephew till he ceases to be minor ... 330
12. to continue in case of daughter or widow till she voluntarily leaves the household of the heir or legatee of the deceased or would according to the custom of the country cease to be entitled to maintenance ... 331
13. to continue in all other cases, till the annuitant dies ... 331
14. Whether widow's right to — is an interest ... 307

See *Award*.

See *Settled Estate* 19.

Male agnate—

- 1. defined ... 317
2. nearest male agnate an heir —, when ... 324

Marginal notes—See *Interpretation of Acts* 2.

Marwat—

1. described ... 201
3. whether resumable ... 206, 207

Minor—

- 1. definition of ... 257, 294
2. contract with a — void ... 294
3. contract with a — not-validated by ratification, 294

	Page
Minority—	
definition of	257
Minor sons—See Maintenance 9.	
Mahomedan Law—	
does not affect power of transfer of a Mahomedan Tajudar and Grantee	297
Mortgage—	
1. redemption of — not barred by Sanad, in what cases	286
2. redemption of — not barred by ss. 3, 4 and 5 of Act I of 1869, in what cases	286
3. redemption of mortgages not barred by Govern- nor-General's orders dated 10th and 19th Octo- ber 18.9, in what cases	286
4. Fixing of term in a —, meaning of	286
See <i>Limitation 2.</i>	
Mother—	
1. not an heir	260
2. succeeds for lifetime only, when	324
Muafi Grants—See Grant 1.	
Mustajri—See Land Tenure 4 & 5.	
See <i>Summary Settlement 3.</i>	
Najibul-tar-fain—	
1. meaning of	317
2. converts are	317
Nankar—	
1. different uses of	182—184
2. Ismi—meaning of	184
3. Tankhai—meaning of	184
4. Possession of — does not entitle to sub-settlement	484
Nephew—	
1. Amount of maintenance of... ..	330
2. — an heir, when	321
Occupancy right—	
1. a right of property and not of contract	213
2. — not an under-proprietary right in Oudh	214
3. history of — in Oudh	214—241
4. rules as to	234—239

	PAGE
Official enquiry—	
1. replies to — as to succession held to operate as transfers, wills or trusts ...	253
2. replies to — as to succession not intended to derogate from the rights of the Taluqdar ...	253
3. replies to — as to succession do not confer estate upon the person named therein ...	253
Onus Probandi—See <i>Burden of Proof.</i>	
Ordinary Law—	
1. includes custom ...	326, 328
2. includes succession according to rule of lineal primogeniture where an estate is held under Primogeniture Sanad ...	515
Oudh Compromise ...	155, 156
Oudh Estates Amendment Act, 1885—	
what wills are not affected by ...	348
Oudh Estates Amendment Act, 1910—	
1. retrospective effect of ...	330
2. what suits are not affected by ...	380, 381
3. does not affect rights vested before its passing ...	381
Oudh Rent Act—See <i>Settled Estate 19.</i>	
Oudh Settled Estates Act—See <i>Settled Estate.</i>	
Oudh Sub-Settlement Act—See <i>Sub-Settlement.</i>	
Parents—	
amount of maintenance of ...	339
Perpetuity—	
1. rule against ...	297
2. object of the rule of ...	299
Possession—See <i>Gift 6.</i>	
Preamble.—See <i>Interpretation of Acts 1.</i>	
Presumption—	
1. in favour of sanity ...	294
2. arising from entry of name in list II ...	259
3. as to blanks, alterations, etc., in a will ...	398
4. that non-Taluqdari property descends to a single heir in case of Taluqdars in list II ...	259, 290, 311
5. no — as to descent of non-Taluqdari property in case of Taluqdars entered in list III ...	290

	PAGE
Primogeniture—	
1. history of — Sanad	267
2. form of — Sanad	514
3. means lineal primogeniture	515
4. Discussion as to the rule of primogeniture among Taluqdars	89—107
Proceedings of Legislature— See <i>Interpretation of Acts</i> 3.	
Procedure—	
See <i>Cift</i> 3, 4, 5, & 8.	
,, <i>Will</i> (b) 1 & 2, (c) 1, (d), (e) 2, 6 & 7, (f) 1, (i) 5—10 & 13.	
,, <i>Transfer</i> 12	
,, <i>Adoption</i> 6.	
,, <i>Settled Estate</i> 11.	
Proclamation of March 1858—	
1. estates exempted from confiscation by	284, 344
2. the basis of Taluqdar's title	41
3. history of	41
4. confiscation of land in Oudh by	50
5. propriety of — (discussed)	51
6. copy of	506
Public document — See <i>Heirloom</i> 1.	
Pukhtadari—	
holding of under-proprietor entitled to sub-settle- ment is	171
Purwa Basana—	
1. is an under-proprietary right	184
2. history and origin of	184—187
Zakhauna—	
a subordinate right	211
Ratification— See <i>Minor</i> .	
Record of Rights Circular—	
1. provisions of — regarding the rights of the holders of subordinate interest in Taluqas	129, 482
2. rule of limitation in the	131, 482
3. effect of — on the question of limitation considered	482
Redemption—	
See <i>Mortgage</i> 1, 2 & 3.	
,, <i>Limitation</i> 2 & 3.	

	PAGE
Registration—	
1. definition of	256
2. rules of — in force in 1871	257
3. first Registration Act in force in Oudh ...	348
4. distinction in the matter of — of wills under • clauses 2 and 3 of section 13 of the Oudh Estates Act	309
See <i>Wills, (i) Special provisions of Act 1 of 1869</i> <i>relating to wills 6, 10 & 13.</i>	
„ <i>Gift 4, 5 & 9.</i>	
„ <i>Adoption 5 & 6.</i>	
„ <i>Transfer 12.</i>	
Relationship—	
words expressing — denote only legitimate relatives, 262	
Relief— See <i>Taluqdars' Relief.</i>	
Reply to official enquiry relating to succession— See <i>Official enquiry.</i>	
Residuary legatee—	
1. how constituted	439
2. property to which — entitled	440
Resumption of Grants— See <i>Grant.</i>	
Retrospective effect—	
1. Section 13—18 and 19 of the Oudh Estates Act are not retrospective	308
2. of the Oudh Estates Amendment Act of 1910 ...	330
3. „ „ „ „ „ „ 1895 ...	347
Revival of Will or Codicil— See <i>Will (f).</i>	
Revocation of Will— See <i>Will (e).</i>	
Sanad—	
1. provisions relating to succession in — apply Suly to property mentioned in Sanad ...	263, 269
2. condition as to succession in — not revived by • Crown Grants Act	264, 459
3. what is a	267
9. two forms of	267
5. history of Primogeniture—	267
6. old or first — superseded by the new or Primo- geniture Sanad	268, 269
7. not a bar to suits for redemption	286
8: history of	80—120

INDEX.

xv

	PAGE
Sanad—(contd.)	
9. points of difference between the form of Sanad as proposed and as finally approved ...	83
10. effect of ...	88
11. conferred no new right ...	88
12. saving of the rights of the holders of subordinate interest under the ...	84
13. proposed form of ...	512
14. approved form of ...	513
15. Primogeniture —, form of ...	514
16. Grantees' — form of ...	516
17. whether rule of succession in the Primogeniture — revives when the Act ceases to apply ...	312
18. rule of succession in the Primogeniture — applies where the Act does not apply ...	268, 313
Settled Estate—	
1. meaning of ...	464
2. persons who may apply for permission to settle property ...	465
3. application for permission to settle property ...	465
4. power of Local Government to summarily reject the application ...	466
5. procedure if application is not summarily rejected ...	466
6. grant or refusal of permission discretionary with Local Government ...	466
7. application for permission to add to the ...	467
8. application for permission to revoke a declaration for ...	468
9. form, contents and publication of permission to settle or revoke property ...	468
10. declaration to settle property, how executed ...	469
11. procedure to be followed on execution of declaration ...	469
12. declaration to settle property made irrevocable, how ...	470
13. duties of registering officer and Collector in connection with the declaration to settle property ...	470
14. local Government empowered to exempt settled estates from the operation of the Oudh Settled Estates Act ...	470
15. transfer of — binding only for the lifetime of settler ...	471
16. lease of — not to exceed 7 or 14 years ...	471

	PAGE
Settled Estate—(contd.)	
17. jurisdiction of courts barred in certain matters relating to	472
18. devolution and bequest of	473
19. Settled Estates Act does not affect the right of the holder of estate to make adoption, or the right of any person to maintenance under the Oudh Estates Act, 1869, or the provisions of the Oudh Rent Act or the right of Local Government to recover land revenue	475
20. rules made by Local Government relating to	553
Settlement—See Summary Settlement.	
Shankalpa—	
1. meaning and description of	194—201
2. kushast meaning of	195—197
3. kushast — treated as rent-free grant	195
4. bishnuprit	197
5. whether resumable	200
Signature—	
1. definition of	254
2. includes affixing of facsimile stamp, thumb impression and initial	255
3. signature with the executant's authority	255
4. acknowledgment of — what amounts to	390
Single heir—	
how determined	259, 326
Sir or Seer—	
1. origin and description of	174—182
2. two kinds of	174
3. possession of — does not entitle to sub-settlement	484
Son—	
1. defined	317
2. whether includes adopted son	319
3. succession of	319—320
See <i>Adopted son.</i>	
Sound mind—	
definition of	294
Subordinate rights and interests—	
1. discussed	122—169
2. holders of — to be maintained in possession	124—128

	PAGE
Subordinate rights and interests—(contd.)	
3. holders of — how far affected by confiscation and grant, discussed ...	122—129
Sub-Settlement—	
1. payment of rent not necessary for ...	481
2. acknowledgment of some sort of subordinate interest sufficient to entitle a claimant to ...	481
3. mere length of time and undisturbed enjoyment will not entitle a claimant to ...	482
4. an ex-proprietor holding land at a favourable rent not entitled to ...	482
5. specific grant of under-proprietary rights or an acknowledgment by Taluqdar necessary to entitle a claimant to ...	482
6. rules entitling a claimant to ...	482—500
7. possession of seer or nankar lands does not entitle a demand to ...	484
8. what must a claimant prove to obtain ...	484—486
9. rights which entitle a claimant to ...	485
10. history of ...	170
11. rules as to — contained in the Oudh Sub-Settlement Act not exhaustive ...	491
Succession—	
1. discussion as to the rule of "entail" and "primogeniture" among Taluqdars ...	89—118
2. special rules of — to Taluqdari property of persons entered in lists II, III & V ...	318—326
3. general rule of — to Taluqdari property ...	328
4. general rule of — to non-Taluqdari property ...	327, 328
5. alteration of rules of — in case of Taluqdars and Grantees in list III or V ...	333
6. reverter to ordinary law of ...	334
7. alteration of rules of — in case of Taluqdars in list IV and Grantees in list VI ...	335
8. presumption as to rule of — to non-Taluqdari property ...	259, 390, 327
9. reply to official enquiry as to — treated as will, transfer or trust ...	253
See <i>Sanad</i> 1, 2, 17 & 18.	
See <i>Settled Estate</i> 18.	
Successor—	
Meaning of — as used in the Primogeniture Sanad ...	313

	PAGE
Summary Settlement—	
1. first	31—33, 265
2. second	69—70, 266
3. engagement as <i>mdstajir</i> does not amount to ...	259, 266
4. alone does not confer proprietary right ...	267
5. commencement and finality of second ...	267
6. Lord Dalhousie's letter containing principles for making first	15—17, 266
7. "Direction for Settlement Officers" for making first	17
8. results of first—discussed	33—69, 266
9. second—made on the lines of the Taluqdari system	69, 266
10. second—made on the basis of proprietary right ...	70
11. rights acquired by Taluqdars under	79, 88

Supplementary Lists of Taluqdar and Grantees—

See *Taluqdars* 10.

„ *Grantees* 4.

Taluqdar—

1. definition of	257, 265, 284, 291.
2. heir and legatee of Taluqdar is not a ...	257
3. rights and liabilities of	262
4. estate of a—hereditary and transferable ...	262
5. Hindu widow entered in lists I and II is a ...	265
6. distinction between—mentioned in sections 3 and 4	285
7. distinction between—mentioned in lists II and III	290
8. dead person entered in lists prepared under section 8 is a	289
9. lists of— and Grantees	288, 521—540
10. supplementary lists of	291, 541—545
11. powers of— to transfer and bequeath ...	292
12. special rules of intestate succession relating to ...	318—326
13. general rule of succession relating to ...	323

See *Transfer* 10.

„ *Will.* (i) *Special provisions of Act I of 1869 relating to will* 11.

„ *Adoption* 1.

Taluqdari Sanad—See *Sanad*.

	PAGE
Taluqdari Tenure—See Land Tenure 6.	
Taluqdar's Relief—	
history of law relating to	244-246
Tenure—See Land Tenure.	
Thumb impression—	
is a mark	389, 390
See <i>Signature 2.</i>	
Transfer—	
1. definition of	251
2. mortgage is a	252
3. reply to official enquiry to succession treated as...	256
4. power of Taluqdar and Grantees to make	292
5. persons incapacitated from making	293
6. by gift, procedure relating to	300
7. deaf, dumb, blind and insane person can make — when	293
8. void, when	293
9. power of a Hindu daughter to make a	296
10. result or effect of — by a Taluqdar or Grantee or his heir or legatee to another Taluqdar or Grantee or to an immediate or remote heir, or to his daughter and daughter's son or younger son	309
11. result or effect of — by a Taluqdar or Grantee or his heir or legatee to persons out of line of succession	311
12. procedure relating to — other than gift	313
13. of settled estate binding only for lifetime of settler	471
Transfer of Property Act—See Crown Grant.	
Trust—	
1. reply to official enquiry as to succession treated as creating a	253
2. not affected by the provision of sections 3, 10 and 11 of Act I of 1869	269
3. how created or presumed	269-284
Under-proprietary right or tenure—	
See <i>Subordinate Rights and Interests.</i>	
See <i>Sub-Settlement.</i>	
Unmarried daughter—	
amount of maintenance of	330

	PAGE
Valuable consideration—	
meaning of	206, 207
Village Communities—	
whether — exist in Oudh	19-30
Widow—	
1. not an heir	260
2. a Hindu — entered in lists I and II is a Taluqdar	265
3. when more than one, succeed in order of their respective marriages	323
6. defined	317
7. succeeds for her lifetime only	322
See <i>Maintenance</i> 7, 8, 10, 12 & 14.	
,, <i>Will, (c) Revocation of will</i> 5.	
,, <i>Adoption</i> 2 & 4.	
Will—See <i>Settled Estate</i> 18.	
(a) <i>Definition and form of will.</i>	
1. definition of	252
2. replies to official enquiry as to succession treated as — in Oudh	107, 253
3. instrument only partly testamentary is a ...	254
4. no technical words necessary for a ...	407
5. form of document immaterial	407
6. an entry in a wajibularz may amount to a ...	407
7. test for ascertaining whether a document is a ...	407
8. document referred to in a — is a part of the ...	394
9. unprivileged — meaning of	388
(b) <i>Execution of will.</i>	
1. unprivileged — how executed	388, 389
2. proof of execution of	394
3. testator's signature on the — to precede attesta- tion	390
4. acknowledgment of signature by testator, what amounts to	390
5. signature of testator includes initial, thumb im- pression and facsimile stamp	389-390
6. person interested in a — not disqualified as a witness to prove its execution or validity or invalidity	396

	PAGE
<i>(Will—contd.)</i>	
7. executor of a will not disqualified as a witness to prove its execution or validity or invalidity	396
<i>(c) Attestation of will.</i>	
1. how to be attested	389, 391, 393
2. witnesses to — to sign and not to put mark ...	393
3. is sufficiently attested though benefit given thereby to a person attesting it or to his or her wife or husband	395*
4. witness not disqualified to prove the execution of — by reason of interest in or of his being an executor of will	396
5. no particular form of attestation necessary ...	389, 393
6. strict proof of attestation not necessary in all cases	390
7. attestation in presence of testator, what ...	391
8. person signing for a testator not competent to attest	392
9. witness attesting a codicil does not lose his legacy under the — which is confirmed by the codicil	395
10. a legacy to attesting witness void whether attestation of the witness is dispensible or not	395
11. gift to attesting witness, what amounts to ...	395
<i>(d) Registration of will.</i>	
<i>See Registration 4.</i>	
<i>" Wills (i) Special provisions of Act I of 1869 relating to wills 6, 10 & 13.</i>	
<i>(e) Revocation of will.</i>	
1. marriage does not revoke a	315, 395*
2. how revoked	316, 396
3. may be revoked or altered at any time ...	387
4. testator may revoke his — though he promised not to do so	387, 388
5. a widow may revoke her — though executed in accordance with her husband's wish ...	388
6. unprivileged —, how revoked	396
7. privileged —, how revoked	398
8. a subsequent — not forthcoming does not necessarily revoke a previous	396
9. burden of proving revocation of	397

Will—(contd.)

(f) Revival of will or codicil.

1. unprivileged — or codicil how revived ... 399
2. extent of — partly revoked and afterwards
• wholly revoked ... 399

(g) Validity of will.

1. a — not duly registered but referred to in an addendum executed as a — and registered the same day is good and valid ... 399
2. — signed by testator valid though name and description of testator is not given at the head of document ... 399
3. — obtained by fraud void ... 399
4. — attested by legatee invalid ... 395

(h) Construction of will.

1. effect of obliteration, interlineation or other alteration in a ... 397, 398
2. general rules of construction of ... 400—407
3. clear and unambiguous dispositive words are not to be controlled or qualified by general expression of intention ... 400
4. technical words or words of known legal import must have their legal effect ... 400
5. words in general to be taken in their ordinary and grammatical sense ... 400
6. unambiguous language not to be strained for the purposes of giving effect to what possibly might have been the intention of the testator, ... 400
7. generality of the disposition not to be cut down, ... 400
8. to be construed as a whole ... 401
9. language to receive literal construction ... 401
10. words of the — and the surrounding circumstances to be considered ... 401
11. courts to give effect to plain language ... 401
12. where both legal and equitable estates are given to the same person, the person takes the legal estate ... 402
13. the words "in trusts" do not invariably create a trust ... 402
14. the words "as to her may seem best" mean as she may think fit ... 402
15. the words "as he may require" used with reference to drawing of money mean as may be necessary for the purpose ... 402
16. rule against perpetuity not applicable to charitable bequests ... 403

	PAGE
Will—(contd.)	
17. construction of Hindu wills	403
18. ordinary notions and wishes of Hindus with respect to the devolution of property to be considered	404
19. the words "shall become malik" convey an heritable and alienable estate	404
20. the words "putra putrade krame" convey an estate of inheritance	404, 406, 422
21. the question as to whether a Hindu widow acquires an absolute or a limited estate is to be decided upon the terms of the devise	405
22. a will cannot institute a course of succession unknown to Hindu law	406
23. a gift to person unborn invalid	406
24. question as to object or subject of — how to be determined	407
25. where misnomer or misdescription of object does not prevent the legacy from taking effect	409
26. bequest held operative in spite of misdescription of the legatee	410
27. distinction between what is description only and what is the reason or motive for gift	410
28. bequests held inoperative because of misdescription of legatee	412
29. erroneous particulars in description of subject to be rejected, when	416
30. omission of material words in a — may be supplied, when	416
31. part of description of a thing bequeathed may not be rejected as erroneous, when...	417
32. extrinsic evidence admissible in case of latent ambiguity	417
33. extrinsic evidence inadmissible in case of patent ambiguity or deficiency	418
34. meaning of any clause to be collected from entire	419
35. words may be understood in a restricted sense, when	421
36. words understood in a wider sense, when	421
37. "money" interpreted as meaning whole of testator's personal estate, when	422
38. which of two possible constructions to be preferred	422
39. no part of a — to be rejected if it can be reasonably construed	423
40. same words must have the same meaning, in the absence of intention to the contrary	423

	PAGE
Will—(contd.)	
41. testator's intention to be effectuated as far as possible	423
42. the last of two inconsistent clauses prevails ...	423
43. uncertain wills or bequests void	424
44. words describing subject of — refer to property answering that description at testator's death ...	429
45. bequest without words of limitation pass the whole of the interest of the testator ...	429
46. in bequest in the alternative, the legatee first named is entitled to the legacy	437
47. when bequest is to a class of persons under general description only, those only take who come under the description	437, 4
48. rules of construction where — purports to make two bequests to same person ...	438
49. residuary legatee how constituted ...	439
50. residuary legatee entitled to what property ...	440
51. time of vesting of legacy	441
52. in what cases legacy lapses	442
53. legacy does not lapse if one of two joint legatees die before testator	444
54. where the interests of the legatees are distinct and one of them dies before the testator, so much of legacy as was intended for him shall lapse	446
55. when lapsed share goes as undisposed of ...	446
56. when bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime	446
57. bequest to A for benefit of B does not lapse by A's death	448
58. survivorship in case of bequest to described class	448
<i>(c) Special provisions of Act I of 1869 relating to wills.</i>	
1. deaf, dumb, blind, and insane persons may make a — when	293
2. Taluqdar's and Grantee's power of bequest ...	292
3. persons incapacitated from making bequest, when	293
4. power of bequest under section 11 not controlled by the proviso to section 19 ...	237
5. procedure relating to wills in favour of immediate heir	301
6. procedure relating to wills in favour of remote heir	301

INDEX.

	PAGE
Will—(concl'd)	
7. procedure relating to — in favour of daughter...	301
8. procedure relating to — in favour of daughter's son	301
9. procedure relating to — in favour of younger son	301
10. procedure relating to — in favour of other persons	302
11. result of bequest to Taluqdars, Grantees, immediate or remote heirs, daughters, daughter's son and younger son	309
12. result of bequest to person out of line of succession	311
13. procedure relating to bequest to religious or charitable uses	316
14. power of a married woman to make a... ..	293
15. sections 49, 50, 51, 54, 55, 57—77, 82, 83, 85, 88—98 of the Indian Succession Act apply to Taluqdars' and Grantees' wills and codicils ...	314
Witness—See Will; (c) Attestation of will.	
Younger son—See Will; (i) Special provisions of Act I of 1869 relating to wills 9 & 11.	
See Transfer 10.	

PREFACE.

THIS book has been written mainly from the standpoint of a practising lawyer. Its chief object is to place before the legal profession an edition of the Oudh Estates Act (Act I of 1869) showing at a glance the amendments made therein by Act X of 1885 and U.P. Act III of 1910, and explaining the reasons for and effect of the changes introduced by the Amending Acts. The amendments made in the text have, therefore, been printed in italics and are followed by notes in which the original Act and the case law have been fully discussed. For facility of reference I have also reproduced *in extenso* the Amending Acts of 1885 and 1910, and as the latter Act introduces many important amendments in Act I of 1869, I have, in my notes to the Act of 1910, quoted at some length from the proceedings of the Legislative Council showing the changes made in its draft stages before it passed into law. The alterations made by the Select Committee in the Bill as originally introduced into the Legislative Council are indicated by the use of the italics and the history of the Act as passed is told in the words of the Legislature itself.

While the book was in course of preparation it was suggested by some of my friends that I

might with advantage reproduce in it, with short notes, parts of the Indian Succession Act applicable to the Oudh Taluqdars, the Oudh Settled Estates Act, the Crown Grants Act, and the Oudh Sub-Settlement Act, and I have complied with their wishes.

I had not proceeded far in my work when I found that I was compelled to make frequent references to the late Mr. Sykes's valuable "Compendium of the Law specially relating to the Taluqdars of Oudh" and in particular to his elaborate and learned Introduction which is a work of abiding interest to every lawyer in Oudh. The Compendium, however, is now out of print. It seemed to me that short references to Mr. Sykes's Introduction would be of little use to my readers, mostly lawyers—and we all know a lawyer's fondness for the original authority—as it would be impossible for them to obtain copies of the work. I therefore applied to the representatives of the late Mr. Sykes (his daughters) for permission to incorporate his Introduction in my book, and for the permission readily granted by them my best thanks are due. In view of later legislative enactments and judicial decisions, I have made some slight amendments in the Introduction which are printed within rectangular brackets. I have also given in the margin the corresponding pages of the Introduction as originally published.

I have spared no pains to make the book as complete and practical as I could, and for any mistakes or omissions that I may have made I must rely on the indulgence of my professional brethren. It now only remains for me to acknowledge the valuable assistance rendered to me in the preparation of the book by Babu Rudra Narain, B.A., B.Sc., Babu Madho Prasad, B.A., Babu Sidh Prasad, B.A., Babu Uman Prasad and my other friends of the local Bar and to all of them I offer my most hearty thanks. I also avail myself of this opportunity to express my sense of obligation to Mr. H. J. Bell, I.C.S., the District Judge of Sitapur, for the interest he has taken in the work.

SITAPUR :
September 1910. }

C. B. L.

CONTENTS.

	PAGE
Preface	i
Table of contents	v
Abbreviations and references	vii
Table of cases	ix
Errata	xvii
Introduction	1
The Oudh Estates Act of 1869	249
The Oudh Estates Amendment Act of 1885	347
The Oudh Estates Amendment Act of 1910	351
The Indian Succession Act of 1865 (Sections 49 to 51, 54, 55, 57 to 77, 82, 83, 85, 88 to 98)	387
The Crown Grants Act of 1895	457
The Oudh Settled Estates Act of 1900	463
The Oudh Sub-Settlement Act of 1866	479
Appendices	506

ABBREVIATIONS, AND REFERENCES.

- BAL.**—Privy Council Judgments not reported in the Indian Law Reports, by Baldeo Ram Dave, printed at the Indian Press, Allahabad, 1897.
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TABLE OF CASES.

	Page
Abbot v. Middleton	420
Abbu v Kuppamma!	415
Abdul Karim v. Salimun	255
Abdul Razzak v. Amir Haidar	307.
Abdussamad v. Qurban Husain	289, 290, 292
Achal Ram v. Udaipartab Aditya Dat Singh	259, 327
Administrator-General of Madras v. Money	419, 425
Ajudhia Baksh v. Musammal Rukmin Kuar	307, 308
Akhay Chander Bagchi v. Kalapahar Haji	421
Alangamonjori Dabee v. Sonamoni Dabee	450
Amarendra Nath Chatterjee v. Kashi Nath Chatterjee	390, 394
Ammayee v. Yalumalai... ..	389, 393
Anant Bahadur Singh v. Thakurain Raghunath Kunwar,	253, 279
Anand Rao Vinsayak v. The Administrator-General of Bombay	421, 432
Amirthayyan v. Ketharamayyan	421
Avabai v. Pestanji Nanabhai	393
Azmat-un-nissa Begam v. Shah Aga Begam	252, 258, 260, 267, 288
Baboo Bhairon Bax v. Ganga Din	179
Baboo Ganesh Dutt Singh v. Maharaja Mahesur Singh	101
Babu Abul Qasim Khan v. Babu Hari Singh	318, 319
Babuain Sukraj Kuar v. Babu Sheo Sahai Singh	308
Bachman v. Bachman	442
Bai Bapi v. Jannadas Hathi Sang	425
Balbhaddar Singh v. Sheo Narain Singh	253
Balgobind v. Barisal Singh	196, 200
Balraj Kunwar v. Jagatpal Singh	251, 261, 303, 310, 321.
Basant Singh v. Muna Koer	388, 405, 435
Benodi Behari Maulik v. Sita Ram Naik Daji Kalia	423
Besheshur Baksh Singh v. Ran Bejai Bahadur Singh	320
Bhagwandatt and Ram Sarup v. Jagat Nurain	400
Bhai Narindar Bahadur Singh v. Achal Ram	289
Bhasba Rabidat Singh v. Indar Kuar	304, 323

	PAGE
Bhaiya Ardlawan Singh v. Udaipertab Singh ...	339
Bhaya Tirbhawan Dat Ram v. Bhaya Shambhu Dat Ram ...	304
Bhaya Udit Singh v. Maharani Indar Khar ...	483
Bhoba Tareni Debya v. Peary Lal Sanyal ...	423, 437
Bhuggobutty Prosonno Sen v. Goroo Prosonno Sen ...	401, 403
Bireswar Mukerji v. Ardha Chander Roy ...	412
Bissonath Dinda v. Doya Ram Jana ...	390
Brij Indra Bahadur Singh v. Rani Jauki Koer ...	263, 265, 453
Camani v. Barefoot ...	441
Chand Mal v. Lachhmi Natrain ...	254
Cheda Lal v. Govind Ram ...	422
Chedi Lal v. The Deputy Commissioner of Bara Banki (Select Case 244) ...	207
Chuni Lal v. Bai Mauli ...	432
Chursandas Govindji v. Vendravandas Purshotam and F. L. Lathan ...	424
Dalip Singh and Ranjit Singh v. Babu Danbahadur Singh ...	179
Debi Baksh Singh v. Chundrabhan Singh ...	515
Deo Narain Rai v. Kukur Bind ...	255
Devshankar Naranbhal v. Moti Ram Jageshvar ...	425
Dewan Ranbejay Bahadur Singh v. Rai Jagatpal Singh ...	326
D. Fernandez v. R. Alves ...	393
Din Tarini Dabi v. Krishna Gopal Bagthi ...	403, 407
Dwarkanath Bysack v. Burroda Persaud Bysack ...	427
Erasha Kaikhasru <i>alias</i> Kharsedji, minor, by his guardian Kaikhasru, <i>alias</i> Kharsedji Dosabhai v. Jerbai, wife of Ratonji Rastomji ...	414
Esias v. Gabriel ...	389, 391
Fanindra Deb Raikat v. Rajeshwar Das ...	410, 412
Gajadhar Sukul v. Sitla Bax and Shankar Singh ...	196, 200
Gajraj Singh v. Nownihal Singh ...	231
Gandharv Singh v. Thakur Nirman Singh ...	283
Ganga Baksh v. Dalip Singh ...	358, 339
Ganga Dei v. Shiam Sunder ...	255
Gangai, wife of Mir Muhammad, Dattu Bhai v. Thavar Mulla, Executor of Rahmatbal, widow of Sayjan Mir Ali ...	421, 426
Ganendro Mohan Tagore v. Juthendro Mohan Tagore ...	300
Gaurishankar v. Maharaja of Balrampur ...	481, 487, 493
George v. George ...	400

TABLE OF CASES.

xi

	PAGE
Girianna Murkundli Naik v. Honama ...	428
Gobinda Chander Gupta v. Benode Chunder Dutt ...	402
Gokool Nath Guba v. Issuar Lochan ...	425, 426, 429
Gonendra Mohan Tagore v. Jotindra Mohan Tagore ...	300, 429
Grindra Nath Mukerji v. Bejoy Gopal Mukerji ...	255
Gurusami Pillai v. Shivakami Amal ...	401
Haider Ali v. Tassadduk Rasul Khan ...	259, 317, 322
Haider Ali Khan v. Nawab Ali Khan ...	283
Haji Abdul Razzak v. Munshi Amir Haider ...	119, 256, 248
Hardeo Baksh v. Jawahir Singh ...	274
Hardeo Bux v. Jawahir Singh ...	275
Harmongal Narain Singh v. Ganaur Singh ...	392
Har Parshud v. Sheo Dial ...	107, 253, 272 308, 315
Hasan Jafar v. Mohamad Uskari ...	280
Har Shanker Partab Singh v. Lal Baghuraj Singh ...	339
Horendranarain Acharji Chowdhry v. Chandra Kanta Lahiri ...	392, 393
Hub Ali v. Wazir-un-nisa ...	318
Hurro Sundari Dabia v. Chundra Kant Bhattacharji ...	393
Indar Kunwar v. Jaipal Kunwar ...	303, 307, 352 ⁷ 409, 419
In the goods of E. Porthouse ...	389
In the goods of Roymoney Dossee ...	393
In the goods of Wynne, deceased ...	ib.
In the matter of the petition of Hemlota Dabee ...	ib.
Ishri Singh v. Baldeo Singh ...	94, 297, 319, 326
Itraj Kuar v. Bacha Mahadeo Kuar ...	304
Jagdish Bahadur v. Sheo Partab Singh ...	320, 327
Jamshedji Cursetjee Tara Chand v. Soonabai ...	402
Jatindra Mohan Tagore v. Gonendra Mohan Tagore ...	300
Javerbai v. Kabilbai ...	453
Jageswar Narain Deo v. Ram Chandra Dutt ...	452, 440
Jitu Lal Mahta v. Binda Bibi ...	447
Kali Das Mullick v. Kanhaya Lal Pundit ...	421
Kali Tara Dossia v. Nobin Chunder Kur ...	394
Kamaraza v. Venkataratnam ...	432
Kandhai Dube v. Barisal Singh ...	106, 200
Karamsi Madhowji v. Karsandas Natha ...	413
Kedar Nath Dutt v. Atul Krishna Ghose ...	427

	PAGE
Krasha Kaikhasru v. Jerbai	449
Kishan Dajal v. Musammat Champa Kuar	388
Krishnanand Misra v. The Superintendent of Encumbered Estate, Mehdowna	481
Krishnarao v. Bena Bai	401, 402
Krishtoromoni Dasi v. Narindro Krishna	406
Kumidrasami v. Subbaraya	429
Kuppayammal v. Ammani Ammal	394
Lachman Singh v. Umrao Singh	253, 254, 316, 306
Lakshmbai v. Herabai	403
Lala Ramjewan Lal v. Dal Koer	431
Lali v. Murlidhar	407, 416
Lalit Mohaq Singh Roy v. Chukkhan Lal Roy	400, 404, 422
Lalta Prasad v. Salig Ram	411
Maharaja Jagatjit Singh Bahadur v. Suraj Baksh Singh	500
Maharaja Partab Narain Singh v. Maharani Subhao Koer	317, 352
Maharani Indar Kuar v. Maharani Jaipal Kuar	307
Maheshur Pershad v. Mohamad Ewaz Ali Khan	501
Majid Husain v. Fazl-un-nissa	257
Mangal Das Parmanandas v. Tribhuvandas Naradas	451
Manickbai v. Hormasji Romanji	390
Manikya Mala Bose v. Nandu Kumar Bose	407
Manorania Dassi v. Kali Charan Banerji	426
Mary Harriett Annie Wilson v. George Dukes	400, 401, 402
Mata Din Sah v. Ahmad Ali	234
Mathura Das v. Bhikhan Mal	407, 433
Mirza Haider Ali Beg v. Raja Jang Bahadur Khan	255
Mohomed Abdussamad v. Kurban Hosain	231
Mohamad Ewaz Ali Khan v. Maheshur Pershad	501
Mohamad Imam Ali Khan v. Husain Khan	284
Mohari v. Dharmo Das	294
Morarji Cullianji v. Nenbai	424, 427
Moulvi Mohamed Shumsool Haider v. Sewak Ram alias Roy Doorga Pershad	404, 430
Mulji Bhaishanker v. Bai Ujam	428
Murad Bux v. Raja Mumtaz Ali Khan	481
Murari Lal v. Kundan Lal	411
Musammat Najban Bibi v. Syed Raza Husain	315
Musammat Parbati Koer v. Rani Chandrapal Koer	264, 459
Musammat Salta v. Kashi Nath	406, 435
Musammat Sarwari Begam v. Musammat Khatun-un-nissa	318

TABLE OF CASES.

xiii

	PAGE
Musammāt Surajmani v. Rabi Nath Ojha	405
Musammāt Thakurain Sukhraj Koer v. The Government of India	269
Najban Bibi v. Syed Raza Husain... ..	315
Narayanāsami Gramani v. Periathambi Gramani	426, 429
Narinder Bahadur Singh v. Achal Ram	326, 327, 328
Navroji Manockji Wadia v. Perozbai	445
Nawab Malika Jehan v. Deputy Commissioner of Lucknow	53, 509
Nidhoomani Debya v. Saroda Pershad Mookerji	411
Nirmal Chunder v. Sarat Moni Devya	255, 390
Nitye Gopal Sircar v. Nagendra Nath Mitter Mozumdar,	303
Padam Lal v. Tek Singh	431
Pandurang Hari Vaidya v. Vinayak Vishnu Kane	398
Parbati Bibee v. Ram Baran Upadhyā	426
Partab Koer v. Rani Chandrapal Koer	326, 328
Pirthipal Singh v. Jawahtr Singh	277
Prince Mirza Jehan Kadr v. Nawab Afsar Bahu Begum	53
Puranmashi v. Baboo Hardat Singh	109
Queen-Empress v. Bal Ganga Dhar	251
Queen-Empress v. Indrajit	250
Queen-Empress v. Sri Churn Chungo	251
Raja, Bhagwan Bax v. Mazar Husain	482
Raja Kishundat Ram v. Raja Mumtaz Ali Khan	171, 487
Raja Mohammad Mumtaz Ali, Khan v. Murad Bax	190
Raja Rameshwar Baksh Singh v. Babu Bhagwan Baksh Singh	338
Raj Indar Bahadur Singh v. Rani Raghubans Koer	261, 268, 269
Rama Chandra Naiker v. Vijaya Ragavalue Naidu	434
Ramamirtham v. Ranganathan	448
Ram Bai Singh v. King-Emperor	251
Ramdhan v. Manibai	421
Ramji Haribhai v. Bai Parwati	255
Ram Lal v. Jani Begam	297
Ram Lal Mookerji v. The Secretary of State for India in Council	406
Ram Lal Sett v. Kanai Lal Sett	451
Ram Moni Das v. Ram Gopal Saha	407
Ram Prasad v. Jokhu	394

	PAGE
Ram Singh v. The Deputy Commissioner of Bara Banki...	283
Rani of Chilari v. The Government of India ...	267
Rauchardas Vandravandas v. Parbatibai ...	424
Rohan Singh v. Surat Singh ...	241
Sahib Mirza v. Umda Khanum ...	397
Sahib Mirza v. Guuna Khanum ...	397
Saroda Sundari Dassi v. Kristo Jeban Pal ...	431
Satrupa Kunwar v. Hulas Kunwar ...	309, 394
Sayed Mir Wahid Ali v. Rani Sadha Bibi ...	489
Seth Jai Dial v. Seth Sita Ram ...	279
Seth Mulchand Badharsha, deceased, his heirs Ghela Bhai Mulchand v. Bai Manehu, widow of Seth Nagin- das Mayachand ...	432
Shamu Patter v. Abdul Qadir ...	255
Shankar Bux v. Hardeo Bux ...	282
Theopartab Bahadur Singh v. The Allahabad Bank ...	262, 282, 297
Sheo Singh v. Rani Raghubans Koer ...	313
Shoolmay Chundra Dass v. Manohari Dassi ...	421
Sibo Sundari Debi v. Hemangini Debi ...	391
Sir Drigbejai Singh v. Gopaldatt Pande ...	171, 482, 483, 487, 488
Sir Drigbejai Singh v. Umanpal Singh ...	171, 481, 488
Sitla Baksh v. Brij Raj Kuar ...	403
Sri Raja Rao Venkata Surya Mahipati Rama Krishna, Rao Bahadur v. The Court of Wards, and Venkata Kumari Mahipati Surya Rao ...	411
S. M. Hara Kumari Dasi v. Mohim Chandra Sarkar ...	421, 434
Subbaryar v. Subbammal ...	412
Surbomungola Dabee v. Mohendronath Nath ...	425
Surendro Keshub Roy v. Doorgasoondery Dossee ...	414
Syed Abu Jafar v. Maharaja Sri Partab Narain Singh ...	284
Syed Ghazaffer Husain v. Sobha Singh ...	497
Tarokessur Roy v. Soshi Shikuressur Roy ...	404
Thakur Hardeo Singh v. Thakur Jawahir Singh ...	303
Thakur Ishri Singh v. Baldeo Singh ...	254, 259, 290 315, 327
Thakur Kalka Singh v. Thakur Debi Singh ...	287
Thakur Nawab Ali Khan v. Wahid Ali ...	339
Thakurpershad v. Jamna Koer ...	405, 431
Thakur Rohan Singh v. Thakur Surat Singh...	10, 241, 482, 487, 493
Thakur Sheo Singh v. Rani Raghubans Kunwar (Maharwa case) ...	265, 332, 352

TABLE OF CASES.

XV

	Page
Thakur Sher Bahadur Singh v. Raja Rameshur Baksh & Singh (Samarpha case)	319
Thakur Sher Bahadur Singh v. Thakurain Daryao Kuwar	277
Thakur Surat Singh v. Jawahir Singh	331, 338, 339
Thakur Surat Singh v. Thakur Rolan Singh...	206
Thakurain Chhabraj Koer v. Babu Gopal Lal...	304
Thakurain Ramanand Kuwar v. Thakurain Baghonath Kunwar	253, 279
The Administrator-General of Bengal v. Prem Lal Mulick,	251
The Advocate-General of Bombay v. Hurmasji Noshir- wanji, Wakil	424
The Administrator-General of Madras v. Lazar Stephen Lazar	395.
The Muscoorie Bank, Limited, v. Albert Charles Raynor,	429
Trikundas Damodhar v. Hari Das	424
Tupeee Singh v. Ram Saran	252
Umutul Fatima v. Asghar Ali Khan	259, 292, 303, 310
Vinnicombe v. Butler	391
Vundravandas Purshotamdas v. Gursondas Govindji ...	424
Widow of Shankar Sahai v. Raja Kashi Pershad ...	271, 285

ERRATA.

- Page 15, line 27, for "Staney" read "Stanley."
- " 28, " 33, " "decendants" " "descendants."
- " 50, " 29, " "Lordsbid" " "Lordship."
- " 59, " 28, " "countr" " "country."
- " 82, " 26, " "orce" " "force."
- " 114, " 3, " "pproval" " "approval."
- " 126, " 4, " "land" " "hand."
- " 144, note (a), for "Poth" " "Both."
- " 150, line 26, insert "[139]" on the margin.
- " 152, " 25 " "[141]" " "
- " 159, " 31, for "enjoyed" read "enjoyed"
- " 161, " 9, "insert "[149]" on the margin.
- " 166, " " for "tha" read "that."
- " 171, note (a), line 3, for "V Cal. 281" read "VI Cal., 218."
- " 180, line 16, for "is," read "his."
- " 197, " 23, " "handng" read "handing."
- " 251, note (3), line 3, for "130 Cal.," read "13. O. C."
- " 253, " (3), for "227" read "228."
- " 260, line 3, omit "clause (a)."
- " 271, " 26, for "troduce" read "to produce."
- " 307, " 4, " "he" " "the."
- " 340, " 7, " "19" " "10."
- " 352, " 9, " "1859" " "1869."
- " 355, " 3, omit "or" before "by."
- " 360, omit "note (1)."
- " 364, line 6, for "improvement, read "improvement."
- " 366, " 20, " "substitute," read "substituted."
- " 370, " 22, add "to" before the word "their."

- Page 371, line $\frac{25}{26}$, for "respectives" read "respective."
 " 390, " 13, " "papet" read "paper."
 " 390, " 14, " "sufficienr" read "sufficient."
 " 392, " 21, " "word" read "words."
 " 401, " 22, " "or" read "a."
 " 458, last line, " "supersedd" read "superseded."
 " 459, note (2), insert "O. C." before the figure "94."
 " 509, add "(a)" after "1858."
 " 524, opposite No. 99 in column 3, for "28" read "38."
 " 527, " " 180, for "C. S. I." read "K. C. S. I."
 " 527, " " 192, " "Bohnath" read "Bishnath."
 " 528, " " 214, column 2, for "V" read "IV."
 " 543, last line, for "299" read "279."
 " 544, supplementary list No. III, for "99" read "90."

INTRODUCTION.

CONTENTS.

	PAGE
CHAPTER I.—Historical and Comparative ...	1—72
CHAPTER II.—Estates	73—121
CHAPTER III.—Subordinate rights in Taluqas...	122—212
CHAPTER IV.—Occupancy rights in Taluqas ..	213—241
CHAPTER V.—Resumption of grants rent-free or at a favourable rate of rent	242—243
CHAPTER VI.—Taluqdars' Relief	244—246

INTRODUCTION.

CHAPTER I.

HISTORICAL AND COMPARATIVE.

It would not greatly help towards a correct understanding of the present legal position of the Taluqdars of Oudh to enquire very deeply into the ancient land tenures of the Province. This is fortunate, for the records requisite for such an enquiry are not forthcoming; the task of reading the traditional history of Oudh bearing on the subject into an intelligible and fairly certain meaning being one of insurmountable difficulty; most, if not all, of the information regarding land tenures in Oudh, which was at an immense expense of labour obtained and recorded in the course of the enquiries made after the assumption of the Government of Oudh by the British in 1856, having been destroyed in the mutiny, which ensued before they were completed (a) and much of that as it stood having been liable to misconception owing to the haste with which the Summary

(a) Montgomery §§ 321—2; O. P., Cal., 1865, p. 559; O. P., 426, 1861, p. 17, § 20. It is not easy to realise the completeness of the destruction of these records. The official accounts of it quoted in the notes (post) regarding the results of the Summary Settlement of 1856, give reliable information regarding it. At the same time it must be mentioned regarding one class of papers that the Chief Commissioner, on 13th July 1859, reported to the Government of India that the accounts of the assessments under the Summary Settlement of 1856, were invariably found in the hands of the Kanungoes, and that this very greatly facilitated the making of the Summary Settlement of 1858-9 (O. P., Cal., 1865, p. 43). But in 1864 one experienced Settlement

Settlement of 1856 was attempted to be carried out; (a) to the assumption of some of the officers who made the enquiry being incorrect, both from want of experience on the part of some of the enquirers and from preconceived notions and prejudices with which the officers as a body came to the investigation in consequence of their previous training in the North-Western Provinces School of Bird and Thomason (b), and of the directions from superior authority impressed upon them as undoubtedly giving the true basis from which such enquiries should proceed (c). Further such an enquiry, if it could now be efficiently conducted, would inevitably tend to re-awaken the strife and animosity which in Oudh has always been most deeply felt in disputes regarding Land Tenures (d), and which seems to have somewhat infected those who have written on the subject, whether on the aristocratic or on the popular side; each set of writers treating the other as mere apologists for the side on which they have written—the Taluqdari or Zamindari side, as the case may be.

Officer, Mr. Capper, spoke of these papers as "generally unreliable" (*Id.*, p. 514) and another Colonel (then Captain) MacAndrew speaks of "The disgraceful and palpable falsity of the old Sidhour Kanungoes," and adds, "The unreliability of their testimony is the chief difficulty in deciding disputed claims in this peggannah" (*Id.*, p. 536). See also § 98 of the report of the Settlement Officer, Mr. P. Carnegie, of the Faizabad Settlement, during the year 1863-4 (*Id.*, p. 488). It may therefore be said as a general statement requiring little or no qualification that the whole of the records of the Summary Settlement of 1856 were destroyed.

(a) *Cf.* post.

(b) O. P., 426, 1861, p. 16, § 17; p. 18, § 24; p. 22, § 14.

(c) Letter of 4th February 1856, §§ 14, 15, 22, 26, 34, and 35, post. O. G. I., Bennet's Intro., p. LV; O. P., 426, pp. 16-19, §§ 17-27.

(d) Sleeman, vol. I, p. 57. "The ousted proprietors fight to the death to recover possession." *Id.*, p. 167, "I have never seen enmity more strong and deadly than that exhibited by contending co-sharers and landholders of all kinds in Oudh." Irwin, pp. 5 and 6, speaks of the Oudh Yeomen as "passionately clinging to the remnants of their rights in the soil," and adds, "The Oudh Yeoman can hardly be said to have a political consciousness. What he does beyond all question care for.

Happily, too, the discussion of questions of policy, as such, would be out of place in a law book, for however well the conclusions from such an enquiry might be obtained, and stated, they would, from a lawyer's point of view, be open to Lord Bacon's censure "*ab usu remota*."

The fact of the changes of policy, however, must be stated, and something must be said regarding the earlier forms of Land Tenures in Oudh, in explanation of some of the existing rights and obligations, which obtain between the Taluqdars and others, and to render intelligible some portions of the Acts of the Indian Legislature brought together in this volume. To do this as briefly as possible, we may start with the proposition that it has not been shown that in the earlier periods of its history, Oudh furnished any exception to the general rule of Land Tenure in India; where (as in the greater part of the world at some stage of development) Land, [save in the exceptional case of revenue-free (*muqfi*) grants, where the *muqfi-lar* was assignee of the land revenue], did not form the property, using that expression in its strictest legal sense, of any class; the right of cultivating or holding any given portion of it being a privilege conceded by the State in consideration of a payment in cash or kind, which formed the Revenue of the State (a). When Oudh was formed into a Soobah or province by the Emperor Akbar, being one of the fifteen provinces into which he divided his Empire, he fixed the proportion of the produce which was to go in this way to the State at one-third, and the rule in Oudh during historical times has been for the holder of the soil to pay one-half

what he is often ready to give his own life, or take the lives of others in order to retain, is his land or the land which once was his." Sir Charles Wood (Despatch, 24th April 1861, § 8; O. P., 426, 1861, p. 43; O. P., Cal., 1865, pp. 581-7). "There is nothing in the East to which the people are more thoroughly attached than to their rights in the soil."

(a) Camb. Cobden C. Essay, pp. 151 and on.

of the produce after deducting the cost of cultivation, an arrangement by which the State got about one-third (a). Coming to a time regarding which more accounts are available, when a protective alliance with The East India Company was secured by the then Soobahdar of Oudh, Sujah-ood-Dowlah, on the 16th August 1765, after his defeat by the British force at Buxar in the previous year, when he was unsuccessfully attempting to extend his dominions towards Bengal, the land in the Province was generally divisible into two descriptions, viz., the *Khalsa* (b) or Crown lands and the *Huzoor Tehsil* lands or those for which the holders paid their revenue direct into the *Huzoor Tehsil* or Nawabi Treasury. Of the latter, some land was held (i) by large landholders under direct grants from the King of Delhi (c), (ii) some by the chief friends and supporters who had adhered to the earlier Subahdars and Nawabs of Oudh, and had acquired grants of their estates much in the same way as the Chief men of William the Conqueror, his barons, are commonly stated to have obtained their Estates in England, (iii) some perhaps by village proprietary communities, and (iv) the rest by individuals or families not coming within any of the three classes just mentioned (d). But the twofold divisions into

(a) O. G. I., Bennet, Intro. pp. XLVI—XLVII

(b) The term *Khalsa* has a wider signification of "belonging to the Crown" in which sense it would of course include all lands in Oudh, whether held by the Nawabs as their immediate Crown lands, or given into the possession of those who paid revenue for them direct into the Nawab's Treasury or to the *mustajir* or *amin* whose functions are explained in the text. In the Bahraich Settlement Report, p. 109, it is said, "The word *Khalsa* seems to have had its origin in the Kanungoo's Office and to have been applied originally to all those estates, the accounts of which were kept distinct from those of the more influential Taluqdars." And see Wilson adverb, "Khalisa."

(c) Mr. Charles Currie's Memorandum on the principles on which subordinate rights in land in Oudh are recognized. O. P., 62, 1865, p. 217; O. P., Cal., 1865, p. 427; Elliot, pp. 95—102 and Chapter V.

(d) Montgomery, pp. 12 and 13, §§ 73—70.

Khalsa or Crown lands and Huzoor Tehsil lands may be taken to state fairly the division of the holdings in Oudh in the time of Sujah-ood-Dowlah. The inveterate extravagance and rapineness of the Oudh Rulers soon led, however, to alterations in the manner in which the collection of the revenue payable by the holders of Huzoor Tehsil lands was attempted to be made. To rid themselves of the trouble of making the collections, a system was early introduced by the Nawabs of Oudh of farming out tracts of country to influential men, some of them the holders of estates themselves and the original ancestral Taluqdars of Oudh. This was the *Ijarah*, *Mustajiri* or contract system under which a powerful landholder contracted to pay a certain amount of revenue for the tract of country allotted to him, realizing this, and as much more as he could, from the immediate holder of the soil. The system was thus advantageous to the Oudh Government which was saved the cost of collection and more assured of the payment of the assessed amount, but was distinctly disadvantageous to the immediate holder of the soil. Consequently the representatives of the British Government repeatedly recommended the substitution for the *Ijarah*, *Mustajiri* or contract system of the *Amani* or trust system (a) under which a Chakladar or Nazim was appointed to collect the revenue of a vast tract of country in trust for the Government or as an Amil or Amin. This system was tried from time to time under different Oudh Rulers, and with the greatest degree of success by Saadut Ali, the sixth Nawab of Oudh, between the years 1798—1814 (b). Under Nawab Saadut

(a) This recommendation was repeatedly made from at least as early as the year 1793. On the 12th August of that year Lord Cornwallis was strenuously urging the *amani* system on Nawab Asaf-ood-Dowlah, and this is the earliest suggestion I have met with on the subject (O. P. 13 of 1837, pp. 11, 12, 19, 20, 21; and see per Lord Wellesley, O. P. 23 of 1837, pp. 25, 26.)

(b) MacAndrew quoted Irwin, 103-9; Ene Bareli Sett. R. Appendix K., § 40 and on. In the Bahraich Settlement Report, p. 102, it is said

Ali this change was a genuine reform. He increased the number of Chaklas making them correspondingly more manageable (a) and kept up so keen a personal supervision of the Chakladars or Amils placed in charge of them, that it is said that during his reign a single cannon shot could not be fired by a Chakladar in attempting to realize the revenue without being followed by immediate enquiry from Lucknow as to its cause (b); though within a few years of his reign the cannonading of forts and villages by the Chakladars was an every-day occurrence (c). One result of Nawab Saadut Ali's rigorous administration was that on his death, on the 11th July 1814, he left in the Treasury, which he found empty on ascending the *masnad*, on the 21st July 1798, a sum of thirteen or fourteen crores of rupees, or then equal to 14 millions sterling, with all establishments paid up and his just debts liquidated (d); another result was that under his successors the increased number of Chaklas increased the number of oppressors of the zemindars (e).

The general result of a resort to this *Amani* or trust system of management was loss to Government and increased oppression of and extortion from the holder of the soil; for whilst the Amil, Chakladar or Nazim exacted from the holder of the soil as much as he could, with the greater power of extortion derived from his acting

"Saadut Ali Khan had on his accession instituted the contract system." This seems to be an error: he found it in existence, substituted the *amanî* system, and supervised it so carefully, that for the most part he obtained the amount of his assessment which fact gave colour to the notion that he had adopted the contract system under which a fixed amount was due to Government, whatever might be the collections.

(a) Elliott, p. 131.

(b) Dr. Butter, p. 102.

(c) *Id.*, O. P., 1834, pp. 11, 26.

(d) Sleeman, vol. I, 309; Montgomery, § 66, p. 12.

(e) Elliott, p. 133.

under colour of right, and under the protection and on behalf of the Oudh Government, and with the aid of its forces, at the same time not being liable, like the contractor, to pay any fixed amount, he paid what he chose into the Government Treasury (a). A further result, and one important to be noticed in tracing the growth of the Taluqdari estates in Oudh, was that independent proprietors or proprietary village communities, if any such existed in Oudh, using the expression as it is ordinarily understood in England, and if not

(a) This is not Mr. Elliott's view. Speaking of the outbreak of the old reign of oppression, tyranny and violence after Nawab Saadut Ali's death, he says (pp. 133-4): "The minute sub-division of the new chaklas increased it, because the country had now many tyrants instead of few. The contract system gave new ferocity to it by adding the instinct of self-preservation to the propensity to oppression. A mere collector of revenue had no need to be overbearing, and if cruel he was so out of mere wantonness of cruelty. If the harvest failed or sickness broke out, he had but to state the impossibility of collection and the amount was remitted. But a contractor could not do this. No such excuse would be valid from him; he was bound by the strict letter of his bond to pay up the uttermost farthing. If any one was ground down to take a contract on high terms or had taken it (as often happened) on speculation without accurate knowledge of the gross-rental, he was absolutely forced in self-preservation, to extort more than was due from the tax-payers. The dilemma, shall I want or thou want? And while we blame the Chakladar if his choice was a selfish one, we cannot too strongly censure the Government which put these men in possession of unlimited power, ground them down to the payment of enormous sums, and then steadily shut its eyes to the way in which they reimbursed themselves.

"This state of things was peculiarly favourable to the growth of Talookas. A man who is pinched for money is not partial to impoverished tenants; and the great aim of the Chakladars was to get rid of the small zemindars, and have nothing but large land-owners in the country. This would simplify business and save trouble, besides making the receipt of the revenue much safer. They ran the risk indeed of the Talookdars going into rebellion, in which case a large amount of revenue would be imperilled, but they reduced the risk to a minimum by throwing him the sop of an extra village or two at judicious moments. The

then proprietary communities of the restricted character explained later on, who could not of themselves withstand the oppressive action of the Chakladars, Nazims or Amils, made over their estates to their more powerful land-holding neighbours to be held in subordination to them; whilst many gave up their estates without making any such arrangement leaving them to be taken up as derelict property by the first comer who cared for them and had power to hold them to his own advantage.

At the same time that these influences were at work to swell the estates and increase the importance of the Taluqdars, all matters in Oudh, relating to property during the Nawabi resting not in legal or moral right,

Talookdars were nothing loth to accept these sops and the old Talookas waxed fat and new ones sprang up on all sides under this vivifying influence." Mr. Elliott adds in a note: "I have been told, but have not any data to prove it, that in 1814 no estate in the Fyzabad District paid a revenue of Rs. 10,000. In 1856 one estate paid 2 lacs, two paid Rs. 70,000, one Rs. 50,000, several Rs. 30,000, and so on."

But in this passage Mr. Elliott gave the collectors under the Amani system a credit which with one or two admirable exceptions they never deserved. No doubt there would have been immense advantage in that system, had not the Amils been generally both corrupt and cruel; but the consensus of authority is clear that oppression and extortion were as rife under that as under the contract system, if indeed they were not greater under the former. Mr. Elliott is so careful a writer that I specify some of the authorities for the other view given in the text, and they might be multiplied almost indefinitely. "That the agency of British troops should be the means by which the Zemindars and Malgozars, who are unable or unwilling to satisfy the undue demands of the King's Amils for revenue, should be subjugated by force, disabled from future resistance by the demolition of their forts, subject to all manner of extortion and oppression, and, finally in too many instances, expelled from their possessions and driven by desperation to betake themselves to a predatory life, is a state of things so unworthy of the character of your Government, and so discreditable to the British name, that there are

but simply in the strong arm with which he took, who had the power, and he kept who could, there were also others at work in the same direction and the Taluqdar's estates likewise increased by (i) the Taluqdar's forcible encroachments on the estates of his weaker neighbours; (ii) fraudulent means as diverse in their character as fraud

few sacrifices which we should not be willing to make rather than it should continue." (Despatch of Court of Directors, 1st October 1824, O. P., 1834, p. 19.) "Amaanee management, if the Ameen employed happens—a rare case—to be a person qualified for such a trust, is, in principle, somewhat similar to the British system of collection" (O. P., 1834, p. 37). Colonel Low, the Resident, reported (15th July 1841) against urging the substitution of the amani for the contract system which latter he observed "with many defects, has still something to recommend it under a native (Government, where it is almost impossible to find honest men to conduct the amanee system" (O. P., 1856, p. 20, note). Sir W. Sleeman says (Report, 24th September 1849, before his tour) "Several experiments have been made of converting the contract into the amanee system over extensive districts of Oudh; but the result has been always the same, a falling off in the revenue and disappointment to the Government and the people (O. P., 1856, pp. 20 and 170, 171). Later in his tour he writes:—"But there is virtually little or no change in the administration of such districts, (i. e., under amani management), "the person who has charge of a district under it is obliged to pay the same gratuities to public officers and court favourites, and he exacts the same or nearly the same from the landholders; he is under no more check than the contractor, and the officers and troops under him abuse their authority in the same manner, and commit the same outrages upon the suffering people." Security to life and property is disregarded in the same manner; he confines himself as exclusively to the duties of collecting revenue, and is as regardless of security to life and property, and of fidelity to his engagements, as the landholders in his jurisdiction. The trust management of a district differs from that of the contractors only as the *wusoske kubaz*, " (i. e., 'pledge to pay the collector or troops the precise sum which the commandant may be able to collect from the estate put under him,') differs from the *lakalami*;" (i. e., 'pledge to collect and pay a certain sum for which the estate is held to be liable') "though he does not enter into formal contract to pay a certain sum, he is always expected to pay such a sum, and if he does not, he is obliged to wipe off the balance in the same way, and is kept in gaol till he does so, in the same way. Indeed, I believe the people would commonly rather be under a

10] itself in its nature; (iii) forced private sale-deeds (a); (iv) forced sales by auction for the realization of arrears of revenue; (v) *bonâ fide* sales by the holders to realize the revenue demanded by the contractor (Mustajir) or the Government representative under the Amani (Trust) system, that is, the Amin, or Amil, whether styled Chakladar or Nazim, or for other purpose; (vi) by the falling in of mortgages executed for the like

contractor, than a trust manager under the Oudh Government; and this was the opinion of Colonel Low, who, of all my predecessors, certainly knew most about the real state of Oudh" (Sleeman, vol. I, p. 202; p. 140). "The same abuses prevail under the one system as under the other" (Sleeman, vol. II, p. 207). In March 1855, the Resident Colonel Outram reported that the most experienced European Officers under him were unanimous in declaring that the ryots are far worse off under the present amanee system than they were before; and they each support their assertions by incontrovertible figures and facts" (O. P., 1856, p. 22). One cause of this undoubtedly was the precarious tenure by which the Amils held their posts, being changed without any proper reason and after the shortest intervals (O. P., 1834, p. 14, Sleeman, vol. II, pp. 57, 58). The principle of self-preservation operated too as fully on the Contractor in the direction of not driving the landholders off their lands by extortion as on the Amil, for only so could he recover the revenue due from him to Government for the current term under his contract.

(a) The reader familiar with the state of Oudh, during the latter half of the Nawabi, may have wondered why the Taluqdars should have cared to obtain title-deeds from their weaker neighbours whom they constantly despoiled with no apparent compunction. In a recent appeal before the Judicial Committee of the Privy Council, some of their Lordships expressed surprise that a grant by a Taluqdar to a relative of a retainer alleged to have been made about 1826 A.D., should not have been evidenced by a writing. It was urged on behalf of the would-be grantee, that such a document would not have availed him; the Taluqdar of the time, being not only strong enough to give what belonged to him, but also to take from those weaker than himself what belonged to them. Their Lordships were not altogether prepared to accept this view. (Thakur Rohan Singh vs. Thakur Surat Singh, L. R. 12, Ind. App. 47; I. L. R., 11 Cal., p. 318.) It receives, however, some support from an official publication of some dozen years later than the alleged date of the grant. Dr. Buttar says (p. 108), "A bond is of no use unless its holder is (a zor-wala) under protection, either

causes and the sale clauses of 'by-bil-wafas' (mortgages by way of conditional sale) taking effect, and (vii) by other causes of a like nature (a).

In some instances of the growth of Oudh Taluqas, there seems to be no sufficient evidence to found a suggestion of anything in the nature of force or fraud on the part

by having native friends at court, or by being in the Company's Service, and having his claims preferred through the British Resident. Money, therefore, is almost universally borrowed on pledge of property, either personal or real. In the case of real property being pledged the deed is witnessed and sealed by the Kazi and Kanungo, also by two mahajans and two zemindars, one for each party to the deed. Twelve per cent. is the usual rate of interest agreed upon. The borrower frequently re-possesses himself by violence of the ground pledged, if he sees the influence of the lender on the ebb with the Chakladar. The minister (Suba Na'ib) will not investigate a case of this kind, unless he receives a Nazar, when summary justice is done by the despatch of a note to the Chakladar who dares not disobey an order of this kind." In short, possession with power to keep was the only security during the Nawabi; and if this was so in case of persons dealing on the footing of banker and client, much more may it have been so as between a powerful donor and his retainer. The explanation of the apparently unreasonable difference between the case of the 'Zor-wala' and the 'Kamzor-wala' in this respect is that the opulent landholders of a district being in a compact alliance against the revenue collector and aiding one another constantly with *Gohars* or auxiliary trained bands (Sleeman, vol. I, p. 27; vol. II, p. 16; O. P., 293, 1866, p. 9, § 39) rarely or never attacked one another finding sufficient scope for their energies in preying upon their weaker neighbours; so that though a deed of grant would not have benefited the latter, it was of use to the Taluqdar against his equal as showing an earlier act of misappropriation, and against the Government as showing his title to engage for the revenue of his particular village or villages and against the executant in case of his resorting for redress to the Durbar; and see O. P., 1856, p. 266, § 30.

(a) Montgomery, Chap. III, (*Id.*), p. 38, §§ 335-339; Elliott, p. 154.) The reader who would see concrete instances of the way in which Oudh Taluqas were formed, will perhaps do so best in the pages of Sir William Sleeman's *Journey*. I am much indebted to that work in respect to the period to which it relates, and it is right therefore, to say what I conceive its authority to be; for attempts were not from the first wanting to discredit it. Thus Major Bird, attempted in the 7th Chapter of his *Dacoitee in Ercelais*, with an unworthy flippancy and

of the Taluqdars making the acquisition of the property of a less fortunate and weaker neighbour. Thus, for instance, enquiry directed owing to the absence of claims to under-proprietary rights in the important Estate of Morawan,

in a manner unsuited to the subject he had in hand, to show that the Journey was written with a view to inculcate the Oudh Government, and justify the application to Oudh of "Lord Dalhousie's annexation policy"; a suggestion fully met by the correspondence of Sir William Sleeman published along with the Journey (Vol. I, p. xxi.; Vol. II, pp. 353, 377-9, 388-398. and which Major Bird found it right subsequently to withdraw (*Id.*, Vol. I, p. xxii.) So too the Chief Commissioner, Mr. Wingfield, whilst he was ready to admit the accuracy of Sir William's information upon some points and even to take action upon it, particularly upon that relating to the subject of female infanticide where concealment and distortion of facts might have been looked for (O. P., 62, 1865, p. 4), yet expressed his opinion that in one sense at least the offences of the Taluqdars under the old régime of the Nawabi had been much exaggerated, and that their violence, rapacity and oppression commented on by Sleeman had been of rare occurrence (O. P., 426, p. 44; O. P., Cal., 1865, pp. 581-7). But certain it is, not only that General Sleeman did not write with a view to justifying the Annexation of Oudh, or with feelings inimical to the existence of a body of middle men, like the Taluqdars (Vol. II., pp. 413-4), but also that Sir William had too profoundly studied the native character during forty years spent in the Indian service to be easily misled by, or place too great reliance upon, the reports communicated to him during his tour. And though the reader of the Journey may feel that Sir William was too ready to listen to the reports of those he met, such reports as he did chronicle have been fully justified, where the matters related have been the subject of judicial enquiry either at the time or subsequently. It is strange, too, that no specific instances of exaggeration are pointed out by those who charge that fault against the diary. Furthermore, Sleeman's picture of the condition of Oudh in 1819-50 does not rest merely upon the information communicated to him during his tour, but is much the same as that to be drawn from official documents both of an earlier and later date, such as the Oudh Blue Books of 1806-7 and 1831, Dr. Butter's official report on the Topography and Statistics of the Southern Districts of Oudh in 1838 (published 1839) and the Blue Book of 1856. When the power of the refractory landholders was such as is disclosed in the Blue Books of 1806-7 (See particularly O. P., 31 of 1859, pp. 132-4, and O. P. 182 of 1859, which relates to the stout opposition of zemindars to the British Government in the Provinces ceded in 1801, those zemindars differing in no way from those in the rest of the Oudh territories); when the Resident, Mr.

showed that three-fourths of the estate was acquired by the Taluqdar by purchase (a).

From the joint operation of the causes which have been specified, Sir William Sleeman, when Resident, calculated

Maddock, could report in 1831, that the powerful zemindars paid as revenue as much or as little as they chose, that attempts to coerce them were met by an armed resistance so much so that in the previous cold season "hardly a day elapsed that we could not hear at Lucknow, the fire of Artillery at places which the King's troops were besieging or in engagements between them and the zemindars"; and that it was frequently necessary to make use of the British troops employed under the Treaty of 1801, to coerce the refractory Taluqdars and Zemindars, and to aid in obtaining payment of the revenue (O. P., 1834, pp. 23—36); when we find the same state of things described by Dr. Butler, writing in 1838, when he speaks of the cannonading of the forts and villages of land-holders by the Chakladars as an every-day occurrence (p. 102); when he can tell the same tale, as Sleeman of the flight of the landholders to their jungles to escape from the Chakladars and of their remaining there for three years or a dozen years if necessary supporting themselves partly by the produce of their flocks, partly by cultivation of detached pieces of ground in the depths of the jungle, and partly by plunder (p. 8); when he can testify to "an almost absolute denial of justice in all matters, Civil or Criminal; and an overwhelming British force distributed through the provinces to maintain the faith of an ill-judged treaty, and to preserve—Peace" (p. 97.); and can tell us of a force of 9,000 men kept up by three brothers, zemindars, to meet the attacks of the Chakladar (p. 101); when we consider the undoubted encroachments of the Taluqdars on the Khalsa lands, the especial demesne of the Crown;—when we take these matters into account we are prepared for the revelations in the Journey of the treatment experienced by the inferior holders of land, and I have no hesitation in saying that the statements of Sleeman may be taken as not only generally and substantially true, but in the main accurate; hence the many and important quotations from the Journey in the Government Gazetteer of the Province of Oudh. Cases of the different causes of the increase of taluqas will be found throughout the work, but the following references may be useful. The great landholders in open resistance to the Government in 1849 (vol. I, p. lxii.; Acquisitions by violence (vol. I, p. 20-1—24; vol. II, pp. 35—37.; Collusion (vol. II, p. 118); Fraud (vol. II, pp. 218—224); Violence, Fraud and Collusion (vol. I, pp. 24—244).

(a) Mr. Elliott says this Morawan Estate of Raja Gouri Shankar, "though acquired with less violence than those of his fellows, is hardly

that, in 1850, four-fifths of the *Khalsa* or allodial lands forming the especial domain of the Crown had been absorbed by the greater landholders from their weaker neighbours who had been the proprietors or holders of them under the Crown, and he states that having thus absorbed them the Taluqdars did not pay for them to Government, one half of the rent (revenue) which had been paid for them by the original holders, and which was then rightly payable for them (a). The proportion of other lands similarly absorbed was not likely to be less, but if anything, much greater, seeing that the Nawab's interest in them was less immediate and direct.

Such was the nature of the holding of land in Oudh, when in 1856 "the assumption of the Government of Oudh," as it was euphemistically styled in the political papers of the time, or as it has been known since it was carried out, and when there was no longer any object to be gained by the political refinement between assuming the Government and annexing the territory, by a terser and pithier and not less

free from the hand of fraud" (p. 135, which was evidenced by the banker having been at hand, with ready money to take up the estates of zemindars oppressed by, and in difficulties with, the Chakladars or Nazims (pp. 135-143), but no specific instance of this sort is given. Sleeman had said (vol. I, p. 269) of Chundun Lall, the founder of the Taluqa of Morawan, "He is a very sensible, well-informed man, but not altogether free from the failing of his class—a disposition to abuse the confidence of the Government officers; and in collusion with them, to augment his possessions in land at the cost of his weaker neighbours"; and as Mr. Elliott borrowed from Sleeman, he may have based his statement on this passage. Anywise there is nothing very tangible in the charge thus loosely made; whilst the entire absence of claims to sub-settlement in a considerable portion of the estate was accounted for by the fact that nearly the whole estate was acquired by purchase from the proprietors (Chief Commissioner's letter to Government of India, 5th November 1864, O. P., 62, 1865, p. 242, § 7; O. P., Cal., 1865, pp. 555-6) which goes a long way towards disposing of the suggestion of fraudulent acquisition.

(a) O. P., 1856, p. 161.

true expression "the annexation of Oudh" by the East India Company was irrevocably determined on. This annexation of Oudh by the East India Company was effected on the 13th February 1856, and the circumstances which attended it and which are matters of general history are too well known to require any recapitulation of them here. An interesting and authentic account of them will be found in the Oudh Blue Book of 1856.

In anticipation of the change of Government the well-known letter of instructions of the Governor-General, Lord Dalhousie, of the 4th February 1856 (a) was sent to General Outram, the Resident, for his guidance in the administration of the Province. The paragraphs of that letter bearing on this subject are the following :—

" 14. The Settlement should be made village by village
 " with the parties actually in possession, but without any
 " recognition, either formal or indirect, of their proprietary
 " right. The term of the Settlement should be fixed for
 " three years certain from the 1st of May 1856, and a stipu-
 " lation should be added that it will remain in force, and
 " binding on those entering into engagements beyond that
 " period, until another Settlement, whether summary or
 " regular, shall be made." * * * * *

" 15. It must be borne in mind, as a leading principle
 " that the desire and intention of the Government is to deal

(a) O. P., 1856, pp. 259 and on. This Despatch is wrongly attributed by Lord Stanley when Secretary of State for India to Lord Canning (O. P., 426, 1861, p. 3, § 3; p. 5, § 11; p. 6, § 12; p. 7, § 16.). It is strange that Lord Lawrence, the almost immediate successor to Lord Canning, makes the same mistake possibly from reference to Lord Stanley's Despatch (O. P., 62, 1865, p. 161; O. P., Cal., 1865, pp. 197—204); a mistake which in effect charges Lord Canning with a complete change of front and revulsion from a policy which, in fact, he never held, and which may in some degree have effected the censure of Lord Canning's policy.

“with the actual occupants of the soil; that is, with village zemindars or with the proprietary co-parcenaries, which are believed to exist in Oudh and not to suffer the interposition of middlemen as Talookdars, farmers of the revenue, and such like. The claims of these, if they have any tenable claims, may be more conveniently considered at a future period, or brought judicially before the Courts competent to investigate and decide upon them.”

“22. The tenures in land, the distinctive characteristics of proprietary village communities are believed to be identical with those in the North-Western Provinces.”

“26. If, as there is no reason to doubt, the conjecture of the Governor-General in Council, as to the existence of co-parcenary village communities in Oudh should be correct, there can be no necessity for detaining you with any detailed instructions on the plan of Revenue Administration which is to be adopted. The ‘Directions for Collectors of Land Revenue’ published under the orders of the late Lieutenant-Governor of the North-Western Provinces, form an admirable body of instructions, adapted to any province where the village system obtains.”

“34. There are only two points connected with this subject which call for consideration. The one is the system of Settlement which shall be followed; and the other, the agency by which it shall be executed.”

“35. On the first point there is hardly any room for difference of opinion or discussion. The tenure being identical, the existence of co-parcenary communities of village proprietors being certain, and the nature of the country, as well as agricultural usages of the people being similar, the system of village settlements in the North-

“Western Provinces, as fully and lucidly elaborated and explained in the ‘Directions for Settlement Officers’ and “as modified in its application to the Punjab, by the employment of a different agency in the execution of village measurements, should unquestionably be adopted.” (a).

Amongst the “Directions for Settlement Officers” which were directed to be adopted were the following :—

“Para. 108. It must be remembered that the inferior rights have been in abeyance, not lost. Their existence has been admitted, and their recognition promised and deferred by no default of the owners, but by neglect of the ruling power. No prescription therefore is good against them, so far as the period of our rule extends. During this time, the superior has been permitted to occupy the place of the Government towards the inferior proprietors, and to exercise over them all the powers inherent in the Government. He was not bound to limit his demand by any fixed rule any more than the Government itself originally was, in whose place he stood. When the Government soon after the acquisition of these (the North-Western,) Provinces voluntarily bound itself to restrict its demand within fixed limits, it omitted to bind the Talookdar to restrict his demand upon the villages within his Talook, although it reserved to itself the right (which it afterwards exercised) of legislating at a future period upon the subject. There was therefore nothing to prevent the Talookdars from exacting an exorbitant sum from any village or from making it over to a stranger or holding it *kham*. The only clear right which the original proprietors

(a) Oudh Blue Book, 1856, pp. 259—264; Oudh Papers, Cal., 1865, pp. 3, 4, 6, 8 and 9.”

“ possessed, was the cultivation of their own fields at reasonable rates.”

“ Para. 109. It may then so happen that the members of an inferior village community, possessing all the rights of proprietors, are found to all appearance simple cultivators divested of all proprietary right ; and it may be difficult to determine, whether or not, under these circumstances, their rights should be recognised. It will be necessary to refer to the history of the village, to trace the origin of those claiming the right ; to ascertain whether proprietary rights were formerly exercised by the resident cultivators, before they came under the Talookdar and by whom amongst them ; and how those rights were exercised, and when and from what cause they ceased. Traces of the right may probably be evident in gardens they had formed, wells they had dug, or public works they had constructed ; they may still enjoy the *sayer*, and perhaps divide it according to the village rule. All these points must be inquired into, and the best decision given that the case admits of.” (a).

It will not have escaped the reader that in the passages quoted from the letter of the 4th of February 1856, the existence of the proprietary village communities in Oudh as they have been described by Elphinstone as existing in Southern India (b) and subsequently by Sir Henry Maine as existing in India generally (c) is

(a) Directions to Revenue Officers, etc., 1850, *in loco*.

(b) Hist. of India, Vol. I, 126.

(c) For facility of reference in connexion with the remarks which follow in the text, I append portions of Sir Henry Maine's account of Indian Village Communities, and I choose his account of them, rather than others, as it is from his writings that Englishmen mainly derive their views on this subject. In his Ancient Law first published in 1861, in remarks which in their full extent can only rightly apply to the Hindu portion of the population of India, Sir Henry

assumed and asserted as certainty. Their existence in Oudh, in particular, is likewise assumed by Sir Henry

Maine says (pp. 261, 262): "The mature Roman Law and modern jurisprudence following in its wake look upon co-ownership as an exceptional and momentary condition of the rights of property. This view is clearly indicated in the maxim which obtains universally in Western Europe, '*Nemo in communione potest invito detineri.*' ('No one can be kept in co-proprietorship against his will.') But in India the order of ideas is reversed, and it may be said that separate proprietorship is always on its way to become proprietorship in common. The process has been adverted to already. As soon as a son is born, he acquires a vested interest in his father's substance, and on attaining years of discretion he is even, in certain contingencies, permitted by the letter of the law to call for a partition of the family estate. As a fact, however, a division rarely takes place even at the death of the father and the property constantly remains undivided for several generations, though every member of every generation has a legal right to an undivided share in it. The domain thus held in common is sometimes administered by an elected manager, but more generally and in some provinces always, it is managed by the eldest agnate, by the eldest representative of the eldest line of the stock. Such an assemblage of joint-proprietors, a body of kindred holding a domain in common, is the simplest form of an Indian Village Community, but the community is more than a brotherhood of relatives and more than an association of partners. It is an organised society, and besides providing for the management of the common fund, it seldom fails to provide, by a complete staff of functionaries, for internal Government, for Police, for administration of justice, and for the appointment of taxes and public duties.

The process which I have described as that under which a village community is formed may be regarded as typical. Yet it is not to be supposed that every village community in India drew together in so simple a manner. Although, in the North of India, the archives, as I am informed, almost invariably show that the community was founded by a single assemblage of blood-relations, they also supply information that men of alien extraction have always from time to time been engrafted on it, and a mere purchaser of a share may generally, under certain conditions, be admitted to the brotherhood." "Yet in all these brotherhoods, either the tradition is preserved, or the assumption made of an original common parentage" (p. 263). "The village community then is not necessarily an assemblage of blood-relations, but it is either such an assemblage or a body of co-proprietors formed on the model of an association." "There was always the assumption of a common origin, an assumption sometimes notoriously at variance with fact, and

Maine, (a). But with all the respect due to the high authority of his name, I cannot but venture so far as

to repeat the historian's words, 'if a family became extinct, its share returned to the common stock' (p. 264). In "Village Communities" first published in 1871, in which Sir Henry Maine assumes the existence of village communities in Oudh (p. 12, 4th Ed., 1881), he repeats of the Indian village community, "It has the same double aspect of a group of families united by the assumption of common kinship, and of a company of persons exercising joint ownership over land" (p. 12). "India has nothing answering to the assembly of adult males which is so remarkable a feature of the ancient Teutonic groups except the Council of Village Elders. It is not universally found. Villages frequently occur in which the affairs of the community are managed, its customs interpreted and the disputes of its members decided, by a single Headman, whose office is sometimes admittedly hereditary but is sometimes elective; the choice being generally, however, in the last case confined in practice to the members of one particular family, with a strong preference for the eldest male of the kindred if he be not specially disqualified. But I have good authority for saying that, in those parts of India in which the village community is most perfect and in which there are the clearest signs of an original proprietary equality between all the families composing the group, the authority exercised elsewhere by the Headman is lodged with the Village Council. It is always viewed as a representative body and not as a body possessing inherent authority, and, whatever be its real number, it always bears a name which recalls its ancient constitution of Five persons" (pp. 122-3). In a later passage the difficulty of the position regarding the assumption of a common lineage is suggested thus—"At the outset, they seem to be associations of kinsmen united by the assumption (doubtless very vaguely conceived) of a common lineage, sometimes the community is unconnected with any exterior body, save by the shadowy bond of caste. Sometimes it acknowledges itself to belong to a larger group or clan. But in all cases the community is so organized as to be complete in itself. The end for which it exists is the tillage of the soil, and it contains within itself the means of following its occupation without help from outside. The brotherhood, besides the cultivating families who formed the major part of the group, comprises families hereditarily engaged in the humble arts which furnish the little society with articles of use and comfort. It includes a village watch and a village police, and there are organised authorities for the settlement of disputes and the maintenance of civil order.

(a) Village Communities, Ed. 1881, p. 124.

Oudh is concerned, to come to a different conclusion from that at which Sir Henry Maine has arrived, and I cannot but feel that in his treatment of this matter Sir Henry Maine has fallen into the error which he has more than once charged against Oudh Officials of making assumptions

"But when the Indian village communities are more carefully scrutinised a more complex structure discloses itself. I told you that some dominant family occasionally claimed a superiority over the whole brotherhood, and even over a number of separate villages especially when the villagers form part of a larger aggregate tribe or clan. But, besides this, the community itself is found, on close observation, to exhibit divisions which run through its internal framework. Sometimes men of widely different castes or Mahomedans and Hindoos, are found united in the same village group; but in such cases its artificial structure is not disguised and the sections of the community dwell in different parts of the inhabited area. But the most interesting division of the community though the one which creates most practical difficulty—may be described as a division into several parallel social strata. There are, first, a certain number of families who are traditionally said to be descended from the founder of the village; and I may here repeat a statement made to me that the agricultural traditions of India, differing in this from the heroic traditions which furnish a subject to the great Sanscrit poems, imply that the occupation of the rich Indian plains was a process rather of colonisation than conquest. Below these families, descended from the originators of the colony, there are others distributed into well ascertained groups. The brotherhood, in fact, forms a sort of hierarchy, the degrees of which are determined by the order in which the various sets of families were amalgamated with the community. The tradition is clear enough as to the succession of the groups, and is probably the representation of a fact" (pp. 175 - 177). In 1874 when he first published his work on the Early History of Institutions, Sir Henry Maine seems to have been still further impressed with the difficulty besetting his theory of the element in Indian Village Communities of the assumption of the common descent of the members. There he says:—"In India though the villagers are still a brotherhood, and though membership in the brotherhood separates a man from the world outside, it is very difficult to say in what the tie is conceived as consisting. Many palpable facts in the composition of the community are constantly inconsistent with the actual descent of the villagers from any one ancestor. Accordingly private property in land has grown up, though its outlines are not always clear; the periodical re-division of the domain has become a mere tradition or is only practised among the ruder

instead of investigating and recording facts (a). The matter is of such importance in reference to the nature of the change made in Oudh by the establishment of the Taluqdari system of land tenure, since much of the sympathy with the Zemindari element and opposition to the Taluqdars has

portions of the race; and the results of the theoretical kinship are pretty much confined to the duty of submitting to common rules of cultivation and pasturage, of abstaining from sale or alienation without the consent of the co-villagers and according to some opinions) of refraining from imposing a rack-rent upon members of the same brotherhood. Thus the Indian Village Community is a body of men held together by the land which they occupy, the idea of common blood and descent has all but died out. A few steps more in the same course of development—and these the English Law is actually hastening—will diffuse the familiar ideas of our own country and time throughout India; the Village Community will disappear, and landed property in the full English sense will come into existence. Mr. Freeman tells us that Uffington, Gillingham, and Tooting were in all probability English Village Communities originally settled by the Uffingas, Gillingas and Totingas, three Teutonic joint families. But assuredly all men who live in Tooting do not consider themselves brothers, they barely acknowledge duties imposed on them by their mutual vicinity; their only real tie is through their common country" (pp 81—83). In a further passage Sir Henry Maine again speaks of the Panchayet as one of the institutions of an Indian Village Community. He says:—"The Council of an Indian Village Community most commonly consists of five persons and throughout the East the normal number of a Jury or Board of Arbitrators is always five—the Panchayet familiar to all who have the smallest knowledge of India" (p. 221).

The latest expression of Sir Henry Maine's view of the matter with which I am acquainted is given in a paper in the "Nineteenth Century" and reprinted in 1883, as the eighth chapter of his work on Early Law and Custom. There in a passage which a reference to the index shows to have been intended to apply to Indian Village Communities, though the passage itself does not clearly do so but is ambiguous, Sir Henry Maine says:—"In the Village Community however the bond of common origin and kinship though still recognised in language and to some extent in feeling, is feeble, and indistinct; the model has been too often simulated by fictitious for the sense of reality to be very strong" (p. 240).

(a) O. L., 62, 1865, p. 171, §4.

arisen from the feeling that by them proprietary village communities indigenous not only to Oudh but to India generally, and having their exact counterpart in Western Europe and even amongst ourselves, were being displaced. It has a further practical value in reference to claims involving questions of hereditary right in Oudh lands, so that I make no apology for the space taken up by the subject in this introductory sketch. The modification in Sir Henry Maine's views and expressions is made clear in the extracts from his works given in the notes; but in common fairness it must be added that throughout his writings the caution is never wanting that in speaking of a country so vast as India and peopled by races so various, no general statement can be true without many qualifications. It is such a qualification that I now seek to engraft on what Sir Henry Maine has said, and said so well, and what may be true of other parts of India but is at least open to great doubt when applied to Oudh, and certainly some of the papers to which Sir Henry Maine had access when Law Member of the Governor-General's Council ought, if not, to have led him to a different conclusion, at least, to have made him doubt of the existence of village communities in Oudh. Amongst those papers and after investigation, it was asserted that proprietary village communities were wholly unknown in the extensive Bahraich District of Oudh where they would have been as likely to exist as elsewhere in Oudh(a). Nor is this fact in any way weakened by the tenure of a Zemindar's 'sir' in that district, being found by the Settlement Officer

(a) O. P., Cal., 1865, Vol. II, pp. 20, 21; O. P., 62, 1865, p. 29; O. P., 426, 1861, p. 17, § 22.

It is right however to state that some, as Mr. Martin Gubbins, the Financial Commissioner of Oudh, considered that there is a sufficient explanation of the non-existence of Village Communities in this part of Oudh and that it is to be accounted for by circumstances not affecting the rest of Oudh. He says (Mutinies, p. 68):—"The only exception

to be comparable with that existing in England and Scotland with respect to commonable fields (a). On *a priori* grounds, too, any one at all acquainted with the institution of caste, as it exists as fully in Oudh as elsewhere in India, would doubt the possibility of such communal holding of villages by Brahmins, Rajpoots, and the lower castes and out-castes as forming together one body and a brotherhood (b). And in the course of practice in Oudh 'giving some acquaintance with the nature of the holdings of village lands, and when any signs of the proprietary village community as described by Maine and others would have been likely to arrest attention from the interest in the subject awakened by Maine's writings, the nearest approach which I have found to the village community of Maine and others is that of Hindu joint families, which give, he says, the simplest form of the village community. Similar is the case of Hindus not only assumedly, but actually, descended from a common ancestor who have effected an imperfect partition of the family property and hold lands under it with certain communal incidents; or again, the case of Mahomedans also descended from a common ancestor, where the cadet members of the family have been allotted portions of the family lands to provide them with a maintenance

to the Hindoo village system which was formed in Oudh was the sub-montane tract of country north of the Ghogra, included in the Ereytch division. Here few of these original tenures were found to exist. From traces still remaining, it appeared that an ancient and bygone civilization had once existed. This had been swept away; a forest the growth of centuries had overspread the country, until in late times the Delhi Emperors had made grants of these forest lands to various Rajpoot Chiefs, on condition of their being cleared; and by them the habitations of man had been restored."

(a) O. G. I., 186-7.

(b) In Lord Metcalfe's description of the bonds which unite the members of an Indian Village Community together, there is no suggestion of any assumption of brotherhood. See O. P., Cal., 67, 935.

allowance, in a form not only most acceptable to them, but at the same time providing them with some employment, for which they are fitted by habits and education, to be held in accordance with the customs of the family or rules fixed by the chief member of the family at the time of making over the land in satisfaction of the claim to maintenance, and where those customs or rules have introduced communal incidents. I much doubt if any properly authenticated instances could be given where, in Oudh, men of alien extraction have ever been engrafted on the community formed by the Hindu family so as to have communal rights of brotherhood, and in the village lands. Strangers who have acquired a share in an Oudh village as by purchase have proprietary rights or under-proprietary rights but they hold them not as members of, and in community with, the brotherhood to whom they are aliens; whilst others of the village residents who are essential to the village life are neither members of the brotherhood nor have any proprietary or under-proprietary rights at all, but are, at most, mere cultivating tenants-at-will. Beyond the family, there is no assumption of a common brotherhood, nor are aliens, required for their labour or to render the community self-sufficing, ever brought in and engrafted on the community. It is difficult to see how they ever could have been engrafted on Hindu communities; and although with a proselytizing religion like Mahomedanism a different rule might have been looked for; amongst Mahomedans they do not seem to have introduced any such permanent divergence; indeed where conversion to Mahomedanism did operate at all, as amongst the Ahbans of Kheri, to affect the holding of land, it was in the opposite direction of primogeniture and that, only so long as Mahomedan rule forced the principle of primogeniture upon the converts who reverted to their old

methods as soon as they could safely do so (a). When strangers got proprietary rights they were not communal rights, in the sense of Maine: those who came to a village merely with their labour and products generally got no proprietary rights at all.

Neither do the punchayets alluded to by Maine introduce any new element into the question, at least so far as Oudh is concerned, for "their jurisdiction was quite independent of village boundaries and derived from another source than the local political organization" (b). So also the reverter of property into that of the remaining holders on the extinction of any one branch is as easily traceable to principles of survivorship or escheat as to those of village community.

Sir Henry Maine's principal statements regarding village communities were submitted to Sir George Campbell, who was well acquainted with Oudh, and was for some years Judicial Commissioner of the Province, and he stated that they coincided in the main with his own experience and observation (c). But I do not understand from his own writings that Sir George Campbell can be claimed as an authority for the existence in Oudh of the village communities of Maine (d). However that may be, the view I have derived from a practice at the Bar in Oudh is one which to a great extent forced itself on the minds of the District Officers, who came to the first Summary Settlement of 1856 with preconceived notions the other way, so that the Chief Commissioner, in his

(a) O. G., II, pp. 253—264.

(b) O. G., I, Intro., pp. 583-4.

(c) Village Communities, Pref. VIII.

(d) Campb. Cobden C. Essay, pp. 159—162; Campb. Modern India *in loco*.

report to the Government of India, dated 17th October 1859, stated his recollection of "the dismay of the Deputy Commissioners at not finding the village co-parcenaries they had been led to expect in all Talooquas" (a). The view is likewise one shared by Oudh Officials who have subsequently given the matter careful and special attention. So Mr. Charles W. McMinn, who was long connected with the Province, and had many years' experience as a Settlement Officer, and very great and peculiar opportunities of forming a correct opinion on the matter, during the period when he was entrusted with the preparation of the Government Gazetteer of Oudh, expresses the same conclusion in observations which have been printed but not published, and which are so valuable not only in connexion with the question immediately in hand, but generally in regard to village communities in the East, that I gladly avail myself of permission to use them by giving the reader the benefit of them in the foot-note which is appended (b). Similarly Mr. Benett, a thoroughly

(a) O. P., 426, 1861, p. 18, § 22. •

(b) "No account of Oudh would be complete without some reference to the Village Communities into which the population is divided. The following account is constructed from facts within my own experience. I offer it as the one which seems to be best supported by actual facts. I am aware that my view differs from that which has been entertained by authorities, and I regret that in Oudh we have but faint traces of the village republics described by Elphinstone, and none at all of the proprietary communities described by Maine and believed by him to be analogous to the Manors of the West. Villages in Oudh are, it is true, being founded every day. The system is in full force. The Settlement Officer ought to be the most trustworthy witness as to its details for he has a double capacity. He determines the Government Revenue upon each township, for this purpose visiting and inspecting the lands and sites occupied by the Community, he has also to prepare an elaborate record of all their mutual rights and interests in the arable land, of the water privileges, the grazing, the forest rights, of any peculiar custom in inheritance or division of property, ouster of tenants, payment of village servants. He has

- [25] able officer, and the one selected by Government to write the Introduction to the Gazetteer of Oudh, came to a like
 [26] conclusion, though the points of divergence and resem-

therefore analyzed on the spot with every aid to a correct study the internal system of each village socially and legally. The present writer in the course of many years' settlement-experience has been repeatedly present at the foundation of villages and has as often seen communities abandon their ancient township and seek a more healthy and fertile residence. He has therefore examined village communities in all stages not only in British territory but also in Nepal, and the very plain and simple conclusions to which he has come are the result of minute enquiry. The majority of the villages of Oudh appear to have been founded each by one or two individuals, who either claimed the proprietary right or became the lessees or fieftees of those who were. They were all at some time or other clearings in the forest or prairie. Such lands possessed hardly any pecuniary value; some Raja or body of Zemindars not many miles off would have a real or pretended title to the manor. Estates were not clearly defined; there were no boundary pillars in the forest; even if the claim was an unjust one, it would not do for the settler on first taking up his dwelling in the forest to have a too powerful neighbour his enemy. The new settler would therefore acquiesce in the claim and pay either rent or service of some kind to the lord whose tenant in many cases he had previously been. He would bring with him sometimes, particularly if of low caste, several of his brotherhood, but they would by no means be share-holders necessarily. The "Mokuddim," the descendant or representative of the man who founded it, is still found in most villages; he has certain rights and privileges, but he does not share them even with his own relatives far less with those strangers who settled with him or after him. The proprietary right of the individual excludes those of the commune. In fact the assumption made by Sir Henry Maine that the village residents are a commune, the descendants of one ancestor sharing the common land, subject to an internal elective government of their own, is not only foreign to all that exists in Oudh, but it is opposed to certain first principles of society in North India. It is inconsistent with the sovereign's exclusive authority and dominion over the land, with the caste system which renders it almost impossible that the settlers in any one village should all belong to any one family and inherit one ancestral property, and it is not reconcilable with the system of more or less complete servitude which has always kept a large portion of the population in a mild slavery. Communal property can only exist among a homogeneous race, and where there has been no blending of conquering and conquered races.

blance between the village communities of Maine and the nearest approaches to them to be found in Oudh, which he notes, are in some respects different from those to which Mr. McMinn directs attention. Mr. Bennett states (a):—

“The oldest and latest form of native society with which, we are acquainted, either contained the single lord or the tribe of ruling clansmen as an essential part of the body politic, and the only trace of anything corresponding to the mark unit, described by Maurer and Sir H. Maine, which I have met, is to be found in the non-Hindu communities of Tharus.” * * * “It is certainly erroneous to suppose that the Hindu raja bore the slightest resemblance to the mediæval beneficiary. Instead of being created by, he

[27]

If then the village is not a unit of property, if it is not the form which rights over the land ordinarily assume, why do we find in Oudh a body of men residing together in one village site and occupying lands jointly in one township surrounding that site? Simply for convenience, safety, and comfort; there is no idea whatever of communal right. In the archaic condition of India the united action of a body of men was a necessity of existence. In the forest the rains were heavy, the land was swampy from meteorological conditions now altered, herds of wild elephants roamed over the country, the crops of the year would be destroyed in a night if a large body of men with shouts and torches could not frighten the animals into flight. Again, the caste system forbade the cultivators to weave their own cloth, to make their own ploughs, to sharpen their mattocks, to skin their own dead bullocks; even the next village through the forest was perhaps many miles distant, the villagers, unlike the Pioneers of Western Prairies, who can turn their hands to everything, settled in bodies, taking with them a professor of each of the absolutely essential crafts. The people were so bound by caste usage that they could not shift for themselves on an emergency; the paths through the forest were dangerous from wild beasts, travelling artisans were unknown. So the village system, looking at it from a merely residential point of view, grew out of the needs of Indian life, impelled also no doubt by the timid, sociable and helpless disposition of the people. Whatever services were not constantly in requisition were not rendered by village servants. The grain dealer was only wanted twice a year, so

(a) O. G., III, pp. 583-4, Art. "Utraula."

" was countless centuries anterior to the Muhammadan
 " Emperors and if they were able to establish certain fami-
 " lies in that position, any argument from analogy would
 " raise a presumption that in Europe also, the courts of
 " Charlemagne and his successors owed their stability and
 " independence to the fact that they succeeded to an in-
 " digenous institution of chieftainship to the forms of which
 " they naturally accommodated themselves. Hence we find
 " in Utraula facts at irreconcilable variance with the
 " received view of village communities. Nothing could be
 " further from the truth than to suppose that the village
 " council was the sole tribunal. Such was undoubtedly the
 " case with villages held by Zamindari communities, but
 " that, as I have already said, was a complex and abnormal

many villages have none. Sir Henry Maine speaks of the village
 priest, the village dancing girl, the village accountant, and doubtless if
 his idea of the independent commune were a correct one such persons
 were necessary; but (and this a proof that the village is not the unit
 of property) as a rule in most of Oudh several villages have not several
 priests or dancing girls, one priest will make rounds through half a
 dozen villages attending to the spiritual needs not of any one village but
 of some particular clan or a caste residing in a number. Similarly three
 or four villages have one accountant, and the dancing girl is a retainer
 of the temple or the landlord not attached to any village. What then
 about the villages as a commune, as a unit of property held in joint
 ownership? There is nothing of the kind in Oudh. A village consists
 of an aggregate of several tenancies, a number of men whose only bond
 of union is neighbourhood with the natural assistance and neighbourly
 offices which naturally spring therefrom. They have their separate
 small farms round the village site." * * * "The mistake which it
 seems to me has been throughout lies in regarding temporary powers
 derived from the State or the landlord and entrusted to a few members
 of the community as the eternal and inalienable rights of all the
 residents on the commune. Not only is such an idea of property, such
 a complete unit, inconsistent with the general anarchy and disorder
 which have always prevailed in Oudh, but it is alien to its caste system
 and jurisdiction, foreign to the few principles which have moulded its
 society and cannot be reconciled with what history tells us of the
 ethical divisions from which the nation as we now see it was
 composed."

“form of society where a ruling clan exercised corporately the rights of the feudal lord. In Utraula there was no such thing as a standing council of village elders, many disputes were settled by friendly arbitration, but the arbitrators could enforce their decision by no sanction, and the real court was the raja's kachahri, whose orders were backed by ample force. Caste panchayats are left out of consideration, as their jurisdiction was quite independent of village boundaries, and derived from another source than the local political organization. Neither do we find anything like the arable mark with its frequent re-divisions according to fixed shares among the cultivating freemen. Indeed, there was no distinction between free and outside cultivators, all were equal, and though the fields under cultivation were commonly changed they were distributed on no more regular principle than that of adaptation to the agricultural capital possessed by the several members of the community.”

From this digression, which is unwarranted and unjustifiable, if I am wrong in supposing that it has an important bearing on the present legal aspects of the matter in hand, I return to the historical sketch which I am attempting.

On the assumption of the Government of Oudh, on the 13th February 1856, and after arrangements for the Spring harvest collections had been made, the task of summarily settling the land revenue of the Province for a period of three years was rigorously taken in hand; the Settlement attempted being with the parties in actual possession without any recognition of proprietary right (a). The orders of the Supreme Government contained in the letter

(a) Montgomery, §§ 156—315. O. P., 1856, p. 259, § 14.

of 4th February 1856 were implicitly obeyed (a). The statement, however, of Mr. Benett in his introduction to the Gazetteer that "the chieftains were stripped of nearly all their villages and a settlement made in which they were entirely left out of consideration" (b) is pure hyperbole, probably intended to point the antithesis between the Zemindari and the Taluqdari systems; for we find that in 1856 out of 23,543 villages included in Taluqas at annexation 13,640, paying a revenue of Rs. 35,06,519, were settled with Taluqdars; while 9,903 villages paying Rs. 32,08,319 were settled with persons other than Taluqdars (c). To take a concrete instance of the 1,500 villages and hamlets, of nearly all of which the subsequently notorious Raja Loni Singh had possessed himself by usurpation, about 70 only were restored to the original owners, the rest being settled with the Raja (d). Still at the same time, the instructions of the Supreme Government were well acted up to, no intentional consideration was shown to the Taluqdars, "and only those Talookdars who could prove very antiquated title as village proprietors to the estates they held were allowed to retain their tenure, and even then they were settled with, not under the superior title of Talookdar, but as owners by prescriptive right of the

(a) Montgomery, § 158

(b) O. G., Intro. lv.

(c) O. P., Cal., 1865, p. 80. In the Summary Settlement of 1858-9, out of 23,564 villages, paying Rs. 66,04,315, 22,658 villages, paying Rs. 61,93,559, were settled with Taluqdars, and 906 villages, paying Rs. 4,10,756, with sub-proprietors. The figures in respect of the villages thus settled with Taluqdars, however, include confiscated villages, only some of which were re-settled as Taluqas. (*Idem*). But if the figures given above show the exaggeration in Mr. Benett's statement, surely they also show as great exaggeration in the statement of the Chief Commissioner in his letter of 17th October 1859, that the settlement of 1856 "was nearly as much Taluqdaree" as that of 1858. (O. P., 426, 1861, p. 17, § 22). Irwin, p. 180.

(d) O. G., II, p. 261, Art. "Kheri."

"villages" (a), and they were "not only excluded in favour of village proprietors of really independent origin, but often deprived of their own hereditary villages, which their ancestors had actually founded." "So impressed indeed were the authorities with the idea that it was their bounden duty to exclude the Talookdar that they were not satisfied with giving redress to those who applied for it, but they would not permit the village proprietors to decline the proffered benefits." "Inferior proprietors were diligently searched out and engaged with" (b). In this state of affairs, and before this Summary Settlement was perfect, and whilst the Financial Commissioner Mr. Gubbins' revision of the assessments was still incomplete (c), the Mutiny broke out at Lucknow, on 30th May 1857, and by the 10th June, the entire Province was in arms against the British (d). The Taluqdars at once resumed their influence and position (e), and the results of this attempted settlement were almost entirely swept away, so much so that hardly any record of it remained (f). In the same month of June, Zemindars who had

(a) Montgomery, § 330.

(b) O. P., 426, 1861, p. 17, §§ 20-21 (Chief Commissioner).

(c) O. P., Cal, 1865, p. 559, §§ 6, 7, and 8, and see Gubbins' Mutinies in Oudh, Preface v and vi.

(d) Montgomery, p. 25, § 224, p. 26, § 229; Irwin, p. 183.

(e) Montgomery, p. 39, § 343; O. G. Intro., p. lv.

(f) "It is to be lamented that the labours of the different officers in this work" (Summary Settlement of 1856) "perished in the revolt, and scarcely any of their valuable records have been saved from the general ruin" (Montgomery, p. 38, § 332). This further appears and is explained in the correspondence between the Court of Directors and the Governor-General upon the subject. On the 22nd June 1858, the Court of Directors wrote:—"We desire that with as little delay as possible you will forward to us, in the Foreign Department, papers relating to the operations of the questionable Summary Settlement made with the Talookdars and other proprietors in Oudh on our assumption of the administration of that country. The papers already

recovered their villages from the Taluqdars at Settlement were writing to the Taluqdars to propitiate them or preparing

forwarded to us are extremely defective and we regret to find that it is only by incidental references in letters relating primarily to other subjects that any light is thrown upon the important matter of the Summary Settlement."

To this the Governor-General on the 27th August 1858 replied in the following despatch:—

"I have had the honor to receive your despatch no. 20 of 1858, in the Political Department, dated the 22nd June, in which you desire me to forward to you 'papers relating to the operations of the questionable Summary Settlement made with the Talookdars and other proprietors in Oudh on our assumption of the administration of that country.'

"2. I regret to inform your Hon'ble Court that no papers of the nature referred to are on record in this Department, and that those which were in the Offices of the Chief and Financial Commissioners of Oudh have been destroyed in the course of the rebellion in that province.

"3. It will be in the recollection of your Hon'ble Court that we assumed the administration of Oudh in the middle of the Fusly year 1263. Under the native Government the land revenue was paid in twelve monthly instalments (not necessarily of equal amount) according to the months of the Fusly year. The records of the native Government as they came into the hands of our Officers were so imperfect that the revenue for which each estate had been liable could not be ascertained without much enquiry. It was ruled by the local authorities, with the approval of the Government of India, that we were entitled to realize the last 4½ instalments, which fell due after we entered the province. But in the absence of reliable records or accounts there were few or no data upon which the amount of the revenue thus realizable could be determined, and the first and most pressing duty which devolved upon the Commissioners and District Officers was to fix the limit of this demand.

"4. While this difficult and laborious operation was in progress, it was resolved, after some correspondence (which has been reported to your Hon'ble Court, to realize the arrears of revenue which were due to the native Government on account of unpaid portions of the first 7½ instalments of 1263 Fusly, with a view to the appropriation of the proceeds to the liquidation *pro tanto* of the liabilities of that Government. This measure called for extensive and intricate investigations and added greatly to the labours of the District Officers, who had at the same time to organize their establishments, and introduce our system of administration in all its branches.

for flight(a); but it is too much to conclude from this or from anything else done by the village proprietors, as Sir Robert Montgomery and others have done, that freedom from subordination to the Taluqdar was not universally desired by the village proprietors, and that they voluntarily returned to the *status quo ante* and abdicated their rights

"5. Superadded to all this weight of pressing business was the formation of the three years' Summary Settlement, which it was determined should take effect from the beginning of the Fusly year 1264, corresponding with September-October 1856.

"6. This Summary Settlement was necessarily formed on very insufficient data, and no long time had elapsed before it was found that in many parts of the province, if not generally, the assessments were excessive; and Mr. Gubbins, the Financial Commissioner, thought it incumbent upon him to revise them systematically and thoroughly before reporting the completion of the settlement for the confirmation of the Government. Mr. Gubbins with this purpose personally visited several districts during the cold season of 1856-57, and he was still engaged on this revision when the mutinies broke out and our authority was suspended.

"7. It has thus happened that no report on the Summary Settlement of Oudh has been submitted to the Government

"8. Our administration in Oudh existed for little more than fifteen months. It began on the 7th February 1856, and the siege of the Lucknow Residency commenced on the 4th June 1857, though the place was not closely invested until a month later. It may be said that during the whole of this period settlements of the land revenue, in one form or another, were in progress. First there was the settlement of the demand on account of the 4½ instalments of 1263 Fusly, to which the British Government was held to be entitled. Next came the enquiries relative to outstanding arrears due to the native Government, on account of the 7½ instalments of the same year. Then followed the formation of the Summary Settlement for three years, and after that the revision of the assessments thus made under the personal direction of the Financial Commissioner, which revision was incomplete when the mutinies in Oudh commenced.

"9. Having regard to these circumstances and to the fact that the labour incidental to the introduction of our administration in a newly acquired province was superadded, I cannot think that any blame can attach to the Civil Officers of the province for the omission to

(a) See O. P. (62), 1859, p. 7, § 27; Pro. 17th July 1867, Cal., p. 286.

* Sic.

by their own voluntary act in favour of their feudal chief, the Taluqdar (a). That view was sufficiently disposed of by the Secretary of State for India, Sir Charles Wood (Lord Halifax), in his despatch of the 20th of April 1860, by the remarks :—" I do not consider that there is any real force " in the plea that the village communities announced their " predilection for the feudal system of tenure by rallying " round the Talookdars during the mutiny. The facts must " not be forgotten, that as the kinsmen or co-religionists " of the mass of the mutineers, they identified themselves " with the cause. They found the Talookdars with strong " forts and numerous retainers and were glad to place these " chiefs at their head in a struggle which they must have

report upon the details of the Summary Settlement or upon its operation. Indeed, so brief was the period of its currency, that I doubt whether a report could have been prepared upon which the Government could have placed reliance, as exhibiting the effects of the settlement in question."

On 15th November 1858, the Secretary of State for India, Lord Stanley, referred to this explanation in the following terms :—

"8—Your Letter No. 34," &c., "The Governor-General states that there are no such papers on record, and alleges that circumstances were such as fully to account for their absence. It is contended that as the settlement was not complete, it had not properly become matter of record, but it appears to me that in such cases it is always desirable to report the progress of operations, and to enunciate clearly the principles on which they are based. Enough had been done to create a great proprietary resolution, and therefore more than enough to form a subject of report to your Government. If proceedings of this nature are not to be reported until they are complete, you can have little control over the operations of your agents. It is of comparatively little use to be made cognizant of mischief after it is done. It has been a source indeed, as much of embarrassment as of surprise to me to find, in the mass of papers forwarded to your Government by the Oudh Commissioner from the time of the departure of Sir James Outram to that of the arrival of Sir Henry Lawrence, so little that throws any light upon the measures which most affected the interest of different classes of the community and our own national character for justice and good faith." (O. P., 1865, pp. 559-560.)

(a) Montgomery, p. 39, § 343; p. 42, § 370.

“seen required the united effort of the country to prove successful. Their conduct proved that they hated and feared the British power, under the circumstances of the times, more than they disliked the Talookdar, but not that they preferred his rule to their own independence” (a).

It needs but little knowledge of the people to understand that the assumption adverted to was not warranted by the facts, and that the Zemindars' return to a state of vassalage was as involuntary as it well could be. On the one hand were the Taluqdars, backed by the ample force of their armed levies, whose power had enabled them, in the anarchy of the Nawabi, to usurp the property of the village proprietors; on the other, were the village proprietors who had been too weak to resist the Taluqdars at a time when there was a Government, however weak and inefficient that Government might be; and these men, barely settled in their estates and holding them, independently of the Taluqdar, simply and solely by virtue of the British power, were expected to come forward to aid in resisting and overcoming the Taluqdars, during a period of universal rebellion, and when the very power they held by was temporarily overborne. Then again how were they recognized in this Summary Settlement? As entitled to pay the revenue assessed upon their estates, direct to Government, for a period of three years, without regard to the question of proprietary right and without even a constructive promise that the state of things under the Summary Settlement of 1856 should be continued (b); a recognition as easily referable in their minds, from an acquaintance with the proceedings of the contractors and the Nazims and Chakladars of the native rule, to a desire to obtain the revenue, and the

(a) O. P. (426), 1861, p. 43, § 8.

(b) Secretary of State (Lord Stanley) O. P., 426, 1861, p. 7, § 16.

whole of the revenue assessed on their estates; and to attribute to them, as a body, any knowledge of the benevolent intentions of Government towards them, as shown in Lord Dalhousie's letter of the 4th February 1856, is absurd (a).

It is strange, indeed, that such a notion as that of Sir Robert Montgomery should have commended itself to Lord Canning, who spared no pains to make himself fully acquainted with the affairs of Oudh, before forming a decision as to the mode of dealing with the Province, and who in January 1858, when the army of the Commander-in-Chief began to be concentrated on Lucknow, moved his head-quarters from Calcutta to Allahabad, with the view of obtaining full, accurate and recent information on the subject from those best qualified to give it (b). Among Lord Canning's sources of information was a memorandum by Sir James Outram, the first Chief Commissioner of Oudh, who was absent from the Province at the outbreak of the rebellion (c), which he addressed to the Government of India on the 5th January 1858, and in which the following passages occurred, which I state in full, as Sir James Outram, subsequently on 17th August 1858, objected that a fair use had not been made of his memorandum by the Governor-General in his letter of 17th June, hereafter to be referred to (d):—

“ *The system of settlement with so-called village proprietors will not answer at present, if ever, in Oudh.* ”

(a) At the present day there are parts of Oudh where, amongst this very class, the fact of the assumption of the Government of India by the Crown in 1858, though proclaimed, is still unknown, and where the East India Company, the *Kampani Bahadur*, is still spoken of as though it were the ruling power.

(b) Montgomery, p. 23, § 220.

(c) East India (Oudh Proclamation) 62, 1859, p. 5, § 17.

(d) O. P., 237, 1859; O. P., 62, 1859, p. 8, § 36.

“ These men have not influence and weight enough to aid us in restoring order. The lands of men who have taken an active part against us should be largely confiscated, in order, among other reasons, to enable us to reward others in the manner most acceptable to a native. But I see no prospect of returning tranquillity except by having recourse for the next few years to the old Talookdaree system.

“ Talookdars have both power and influence to exercise either for or against us. The village proprietors have neither (a).

“ Talookas should only be given to men who have actively aided us, or who, having been inactive, now evince a true willingness to serve us, and are possessed of influence sufficient to make their support of real value. There will be no difficulty in settling the rent to be paid from each Talooka, and this should be distributed rateably over the several constituent villages, the exact amount to be paid by each villager to be settled among themselves. By this arrangement the Talookdar will be unable to raise his rents, and he should moreover be given to understand that on his treatment of the people under him, his admission to engage at the revised Settlement would in a great measure depend. This in my opinion would suffice for the protection of a body of men, not one of whom, not even those with whom the Settlement was made to the exclusion of the old Talookdars (some of 80 years' possession), have come forward to aid us in this juncture. The Talookdar should be responsible for the disarming of the population, the destruction of the forts, and the apprehension of

(a) O. P., Cal., 1865, pp. 40, 41. The memorandum though dated 15th January was not forwarded to the Government of India till 29th January 1858 (p. 34), O. P., 237, 1859, 3 and 4.

“ offenders, within the limits of his estate. He should be
 “ made to feel that he holds upon a strictly ‘service
 “ tenure,’ dependent entirely on the punctual discharge of
 “ his duties as land-holder ; *very* influential men, or men
 “ who have done real good service during the present crisis
 “ might have a portion of land in Jagher, conditional on
 “ constant and zealous service. This measure would enlist
 “ this powerful body of men on our side, while it entails no
 “ injustice on the cultivators of the soil, who have been
 “ accustomed all their lives to the Talookdaree tenure with
 “ power on the part of the Talookdar to raise his rents
 “ *ad libitum*. In a word, the men capable of restoring order
 “ and confidence will be gained over while the men who will
 “ be benefited by the restoration, but who will never
 “ move a hand or a foot to obtain or hold such a blessing
 “ for themselves, will suffer no hardship, and be in a much
 “ better condition than they were before annexation.”

On the 15th February, that is about a fortnight after the despatch of the memorandum from which this extract is taken, the Chief Commissioner again wrote saying :—
 “ The Chief Commissioner feels himself in a very embar-
 “ rassing position. His Lordship is aware that he does
 “ not regard the rebellious Oudh Talookdars in the same
 “ light as the mutineers, and would be disposed to let by-
 “ gones be by-gones to all those men who may have
 “ taken no part in the atrocities, conditional on present
 “ and future good service ” (a).

After several weeks’ anxious consideration of the matter, Lord Canning arrived at the following conclusions :—

(i) That all question of punishing with death or even with transportation or imprisonment, rebels who, however

(a) O. P., 237, 1859, p. 2.

inveterate and unceasing their hostility had been, were free from the stain of murder, should be set aside.

(ii) That the one declared punishment for rebellion should be the confiscation to the state of the proprietary right in the soil to whomsoever appertaining, for all classes as such, had sinned equally; this being a punishment repeatedly enforced against rebels in India, both by native rulers and the British Government, and one admitting of being easily tempered and relaxed according to consideration of policy or mercy, and the past or future conduct of the persons to be punished and in no way affecting the honour of the most sensitive Rajput or Brahmin, whilst at the same time providing Government, with the means of rewarding, in the manner most acceptable to the natives of India, the services of those who should be found to deserve reward, and tending to the final settlement of many of those disputes respecting landed rights which have been the source of so much strife and animosity in Oudh.

(iii) That if a proclamation were issued on the capture of Lucknow (of which Lord Canning doubted to the last moment) it should not threaten confiscation but declare it; pointing out, however, how relaxation and indulgence would be obtainable; but not indicating the measure of it which might be conceded in particular cases (a).

The decision was eventually taken to issue the proclamation, and as this document is of the utmost importance in connexion with this subject, and is at the basis of the Taluqdars' title to their estates, the following circumstances in its history may be mentioned. They will help to a

(a) E. I. O. Pro. 62, 1859, pp. 5, and 6, §§ 17, 20 and 23; p. 8, § 30; *Idem*, p. 13, §§ 5 and 6.

proper appreciation of its effect and explain the decisions which have been passed upon it in cases where it has operated; and though a justification of Lord Canning's Oudh policy is no part of the object of this sketch, it will not be objectionable if the mention of them does at the same time correct an impression which may possibly be the result of even a careful study without them of the official correspondence on this much discussed subject, that, notwithstanding Lord Canning's assertion, that "no taunts or sarcasms, come from what quarter they might, would turn him from the path that he believed to be that of his duty," as he did in the course he took at the outset in Oudh (a), there was inconsistency and wavering on his Lordship's part and a change of front, consequent on the censure of his policy by the Home Government. There is the more need to call attention to these circumstances since even as late as 1867, Mr. Strachey, who as Chief Commissioner should have been aware of them, in moving for leave to bring The Oudh Estates Act, could say without correction, of the Proclamation. "This proclamation has altogether a strange history. When it was first issued there is not a doubt that it was intended as a measure of coercion and of punishment, and especially as a measure of punishment to the rebellious Talookdars. It would have seemed incredible in March 1858, that this proclamation should come to be looked upon by the Talookdars as the *Magna Charta* on which all their rights depend." * * "In truth, however, this proclamation, although it was never carried into effect according to the intention with which it was issued, turned out to be something very different from a menace. It became the means of rewarding and benefiting the very men, the

(a) O. P., 62, 1859, p. 3, § 5.

“ Talookdars, whom Lord Canning had originally desired to punish and of placing them in a far better position than that which they had held under the Native Government. This was the result of the measures taken by the Chief Commissioner, Sir Robert Montgomery, for the pacification of the province” (a).

The facts are that the proclamation as originally prepared by Lord Canning was sent to the Chief Commissioner, Sir James Outram, with a letter, dated 3rd March 1858. In that letter Lord Canning repeatedly pointed out that the proclamation was only addressed to the chiefs and inhabitants of Oudh, and not to the mutinous sepoy. Submission was to be required from all, but as the guilt of the former class varied, so their ultimate condition was to be subsequently determined. Voluntary submission by the mutinous sepoy, who were not covered by the proclamation, was to count in mitigation of punishment, but was in no way to debar Government from awarding such punishment in each case as it might deem fitting (b).

Possibly a careless reading of the latter portion of this letter of Lord Canning's may have led to Mr. Strachey's observation (c).

(a) Pro., 1867, p. 287.

(b) O. P. 265, 1858, pp. 1-3.

(c) Mr. Strachey's view got some colour of support from the fact that on 16th April 1858, that is, before the letter of censure was even written, Lord Canning was forwarding to the Court of Directors a letter of the Deputy Commissioner of Zillah Poorwah as bearing on the question whether the hostility of the Taluqdars was provoked by the injustice with which they had been treated, and as citing the cases of several Taluqdars who rebelled, although the arrangements made at the time of the Settlement preceding the Mutiny were peculiarly favourable to them (O. P., 334, 1858, p. 1.)

The Chief Commissioner, Sir James Outram, by a letter dated 8th March, and received by Lord Canning on 10th March, reported that the issue of the proclamation would render hopeless the attempt to enlist the Taluqdars on the side of order and drive them to a desperate resistance and that it would be better that such land-holders and chiefs as had not been accomplices in the cold-blooded murder of Europeans should be enlisted on our side by the restoration of their ancient possessions, subject to such restrictions as would protect their dependents from oppression, and Lord Canning was in consequence induced, on the same 10th March, to insert in the proclamation the paragraph promising indulgence on prompt submission, whilst feeling it impolitic to adopt Sir James Outram's suggestions in full (a).

On 31st March Lord Canning fully explained why he declined to adopt the course advocated by Sir James Outram. In the Secretary's letter of that date it is stated :—

“ I am now directed by his Lordship to explain the grounds upon which the course advocated in your letter, viz., that such land-holders and chiefs as have not been accomplices in the cold-blooded murder of Europeans should be enlisted on our side by the restoration of their ancient possessions, subject to such restrictions as will protect their dependents from oppression is in the opinion of the Governor-General inadmissible.”

“ 3. The Governor-General entirely agrees with you in viewing the Talookdars and land-holders of Oudh in a very different light from that in which rebels in our old provinces are to be regarded. The people of Oudh had been subjects of the British Government for little more

(a) O. P., 62, 1859, p. 8, §§ 33—35; O. P., 239, 1858, p. 2.

“ than one year when the mutinies broke out; they had
“ become so by no act of their own. By the introduction
“ of our rule many of the chiefs had suffered a loss of pro-
“ perty, and all had experienced a diminution of the
“ importance and arbitrary power which they had hitherto
“ enjoyed; and it is no marvel that those amongst them who
“ had thus been losers should, when they saw our authority
“ dissolved, have hastened to shake off their new allegiance.

“ 4. The Governor-General views these circumstances
“ as a palliation of acts of rebellion, even where hostility
“ has been most active and systematic. Accordingly punish-
“ ment by death or imprisonment is at once put aside by
“ the proclamation in the case of all who shall submit them-
“ selves to the Government, and who are not murderers;
“ and whilst confiscation of proprietary rights in the land is
“ declared to be the general penalty, the means of obtaining
“ more or less of exemption from it, and of establishing a
“ claim to restitution of rights have been pointed out, and
“ are within the reach of all without injury to their honour.
“ Nothing more is required for this than that they should
“ promptly tender their adhesion, and help to maintain peace
“ and order.

“ 5. The Governor-General considers that the course
“ thus taken is one consistent with the dignity of the
“ Government and abundantly lenient. To have followed
“ that which is suggested in your Secretary's letter would,
“ in his Lordship's opinion, have been to treat the rebels,
“ not only as honourable enemies, but as enemies who had
“ won the day.

“ In the course of the rebellion, most of the leaders in
“ it, probably all have retaken to themselves the lands and
“ villages of which they were deprived by the Summary
“ Settlement which followed the establishment of our Govern-

"men in Oudh. If upon the capture of Lucknow by the
 "Commander-in-Chief, before our strength had been seen
] "or felt in the distant districts, and before any submission
 "had been received or invited from them, the rights of the
 "rebel chiefs to all their ancient possessions had been
 "recognized by the Government, it is not possible that the
 "act would not have been viewed as dictated by fear or weak-
 "ness. It would have led the people of Oudh, and all who
 "are watching the course of events in that province, to the
 "conclusion that rebellion against the British Government
 "cannot be a losing game, and although it might have
 "purchased an immediate return to order, it would not
 "assuredly have placed the future peace of the province upon
 "a secure foundation.

"6. You observe, indeed, that the land-holders were
 "most unjustly treated under our settlement. The Governor-
 "General desires me to observe that if this were unre-
 "servedly the case, or if the proceedings of the Commission-
 "ers by which many of the Talookdars were deprived of
 "portions of their possessions had been generally unjust, he
 "would gladly have concurred in your recommendation, and
 "would have been ready, at the risk of any misinterpretation
 "of the motives of the Government, to reinstate the Talook-
 "dars at once in their old possessions. But it is not so.
 "As a question of policy, indeed, the Governor-General
 "considers that it may well be doubted whether the attempt
 "to introduce into Oudh a system of village settlement
 "in place of the old settlement under the Talookdars was
 "a wise one; but this is a point which need not be dis-
 "cussed here. As a question of justice, it is certain that
 "the lands and villages taken from the Talookdars had, for
 "the most part, been usurped by them through fraud or
 "violence.

“ 7. That unjust decisions were come to by some of our local officers in investigating and judging the titles of the land-holders is, the Governor-General fears, too true: but the proper way of rectifying such injustice is by a hearing where complaint is made. This, you are aware, is the course which the Governor-General is prepared to adopt, and to carry out in a liberal and conciliatory spirit. It is a very different one from proclaiming that indiscriminate restitution of all their ancient possessions is at once to be yielded to the land-holders.

“ 15. The penalty of confiscation of property is no more than a just one in such cases as have been above recited (of those who had suffered no loss or injustice at settlement); “ and although considerations of policy and mercy and the newness of our rule prescribe a relaxation of the sentence more or less large according to the features of each case, this relaxation must be preceded by submission, and the Governor-General cannot consent to offer all, without distinction, an entire exemption from penalty, and the restoration of all former possessions, even though they should not have been guilty of the murder of “ Europeans ” (a).

That Lord Canning insisted on submission as a preliminary to all dealings with the land-holders in no way militates against his having originally had the intention, when issuing the proclamation, of establishing the Taluqdari system. But we may go further, for the matter is placed beyond all doubt by unimpeachable testimony, that of Sir George Campbell. The proclamation was, before its publication, shown to Sir George Campbell, either in its original

(a) O. P., 289, 1858, pp. 3-5.

form of with the addition made after the representations of Sir James Outram, and though Sir George Campbell speaks of what he saw as the original draft, it was probably the draft with the addition, for he says Lord Canning's course was taken and the proclamation of which he saw the draft issued. Sir George Campbell's testimony so completely disposes of the idea that there was any such radical change in Lord Canning's intentions as to the effect of the proclamation, as Mr. Strachey and others of his way of thinking have asserted, and that any portion of Lord Canning's explanation of his policy was an after-thought and mere special pleading, that I give it in Sir George Campbell's own words. He says (a), "As soon as the military strength of the rebellion was broken, Lord Canning came out with his famous proclamation confiscating all the lands of Oude. As there has been so much discussion on this subject, I may state that, being then in immediate communication with Lord Canning, he showed me the original draft of the proclamation in his own handwriting and I then had it from his own lips (before the proclamation was published) that his object was not really to confiscate finally the rights of the Talookdars, but to get rid of all the engagements into which we had entered after annexation, and to obtain a '*tabula rasa*' which would enable him to restore the great land-owners, and redress the injustice which he thought they had suffered, on condition of their full and complete allegiance. In fact the step was taken in pursuance of a policy the opposite of that which had before prevailed, and in order to clear the ground for the new system."

• "The advice which I ventured to tender to Lord Canning was, that it would be better to avoid the appear-

(a) Cobden Club Essay, pp. 221-2.

“ance of extreme severity on the one hand and the extreme
“of concession to those who had rebelled on the other; that
“it would be enough to assure the Talookdars that by-gones
“should be by-gones; that their property and reasonable
“claims should be respected; that the whole question of
“landed rights should be again gone into, and that any
“injustice of which they could fairly complain should be
“redressed. But the Governor-General had taken his
“course.” On the capture of Lucknow, the proclamation
was accordingly issued, on the 15th March 1858. The
entire text of the proclamation is given for ease of reference
as Appendix A. By the proclamation the proprietary
right in the soil of the province of Oudh, with the exception
of that forming the estates of six persons, was declared con-
fiscated to the British Government, which would dispose of
it as it should see fitting. The special exemption of the lands
of the six persons was made as a reward for their supposed
loyal services (a), but it was subsequently seen that this was a
very questionable advantage; the lands not having been
affected by the general confiscation, and it being at least
doubtful, on the wording of the proclamation, whether their
estates were not left with such rights and interests in them as
they had acquired in the Nawabi, rather than as resting on
the unassailable title as absolute proprietors by a direct grant
from the British Government, after the property had vested
in it by confiscation. This was subsequently remedied.

Soon after the issue of the proclamation, the Chief
Commissioner, Sir James Outram, was informed that the
Governor-General “wished him to give the most liberal

(a) One of these six estates, Padnaha, was subsequently confiscated
in consequence of discoveries regarding the conduct in the Mutiny of
its owner, Kulraj Singh, and now forms part of the Naipal Tara
(Irwin, pp. 195-6).

interpretation to the proclamation," and it was explained to the Chief Commissioner by a telegram dated 24th. March (a), and by word of mouth through the Military Secretary of the Governor-General, "that, for instance, "the proclamation left it free to him to notify to any "Talookdar who was deserving of consideration, that if he "made submission and supported the Government, the "confiscation of his lands would not take effect, and that "his' claims to property, of which he might have been "deprived upon the annexation of the province, would be "re-heard; and that in case of these having been resumed "by him, he might retain them till the re-hearing". (b).

That the confiscation would and did take effect, save in the six specially exempted estates, there can be no doubt; that it had taken effect, the proclamation declared as an accomplished fact; henceforth the title to land in Oudh was to be traceable to the vesting of the proprietary right in the soil in the British Government on the 15th March 1858; but, what Lord Canning manifestly meant was that the sentence would not take effect as one of confiscation in the sense of a permanent deprivation. Lord Canning, indeed, has explained that it was in this sense that he used the expression (c).

Soon after the issue of the proclamation Sir James Outram left the province, which had been annexed under his auspices, being succeeded on the 3rd April 1858, by Mr. (afterwards Sir Robert) Montgomery who at Lord Canning's request, before going to Lucknow, visited him at his head-quarters at Allahabad, when his Lordship impressed on the new Chief Commissioner his wish that

(a) O. P., 237, 1859, p. 3; E. I. (O. P.) 62, 1859, p. 9, § 38.

(b) E. I. (O. P.) 62, 1859, p. 9, § 38.

(c) E. I. (O. P.) 62, 1859, p. 8, § 31; O. P., 62, 1865, p. 27.

his dealings with the chief rebels should be as conciliatory as was consistent with the dignity of the Government, and that he should treat liberally and generously all those who tendered their allegiance and supported his authority, and the new Chief Commissioner, who had expressed his intention to take the matter into his own personal management, spared no pains to carry out Lord Canning's wishes (*a*).

It is well known that the propriety of the proclamation was much discussed in England. So far was the proclamation and the publication of the secret despatch made an Imperial question that the fate of the Government of the time was involved in it and the Government only escaped defeat in the Lords by the narrow majority of 9 out of a House of 325; whilst in the Commons the vote of censure on the Government for the publication of the despatch and the amendment were only withdrawn after four nights' debate. Many who did not know the use that was intended to be made of it and who were ignorant of one of the chief objects which Lord Canning had in view in issuing it inveighed against it in Parliament with all the invective of party politicians (*b*). The proclamation was condemned in the strongest terms by the Conservative Government of Lord Derby, in the despatches of his son, Lord Stanley, as Secretary of State for India (*c*). These censures were greatly modified by a resolution of confidence in Lord Canning passed by the Court of Directors on the 10th May 1858 (*d*), and still more after Lord Canning's dignified explanation and vindication of his policy in

(a) E. I. (O. P.) 62, 1859, p. 9, §§ 39, 40; Montgomery, p. 27, §§ 231, 232.

(b) See Hansard, 3rd Series, Vol. CL.

(c) E. I. (O. P.) 62, 1859, p. 3, § 1; Despatch No. 1954 of 19th April 1858.

(d) E. I. (O. P.) 62, 1859, p. 14, § 2; O. P., 282, 1858.

his letters No. 26½ of the 17th June 1858, to the Secret Committee, and No. 17 A. of the 4th July 1858, to the Court of Directors (a), and that policy was partially, at least, formally approved and confirmed in the Queen's Proclamation of the 1st November 1858, where it is referred to in the following terms:—"Already in one province, with a view to stop the further effusion of blood, and to hasten the pacification of our Indian dominions our Viceroy and Governor-General has held out the expectation of pardon, on certain terms, to the great majority of those who in the late unhappy disturbances have been guilty of offences against our Government, and has declared the punishment which will be inflicted on those whose crimes place them beyond the reach of forgiveness. We approve and confirm the said act of our Viceroy and Governor-General" (b).

Her Majesty's Government at the same time adhered to its opinion of the impolicy of declaring a confiscation (as they understood) not intended to take effect. "They cannot" (says Lord Stanley in his despatch No. 5 of 9th December 1858) "think it wise for a Government either in Asia or Europe to utter threats on which it is not meant to act." "While Her Majesty's Government adhere to the opinion expressed by them respecting that declaration, it seems to them needless further to comment on a document which has been practically cancelled by yourself" (c).

This view that there had been any cancellation of the proclamation—possibly due to Lord Canning's own langu-

(a) O. P., 62, 1859, pp. 3—14.

(b) E. I. (O. P.) 62, 1859, p. 16.

(c) E. I. (O. P.) 62, 1859, p. 14, §§ 4 and 5. In Oudh this notion would have been more easily defensible; for in a proclamation issued by him on the 22nd March 1858, the Chief Commissioner, Sir James Outram, used language indicating that no confiscation had then taken place in Lucknow, under Lord Canning's proclamation of the week

age on which I have already remarked—was corrected by his Lordship in a minute, dated the 22nd April 1859, of which the following paragraphs are important:—

“ 2. I have had before me for some time the Despatch of the Secretary of State, dated the 9th of December, in which his Lordship notices the Despatches which, on the 17th of June and 4th of July, I had the honour to address to the Court of Directors regarding the policy pursued under my orders in Oudh, and especially, regarding the proclamation issued on the recovery of Lucknow.

“ 3. I do not seek to prolong the discussion of these topics, but there are some passages in the above mentioned Despatch of his Lordship upon which I desire to write a few words. So far as those words are my own, they shall be very few indeed.

“ 4. The passages to which I refer are those in which it is said that the policy indicated in the Proclamation as regards the claims of the Talookdars, and other proprietors in Oudh was not in practice adopted by me; that the sentence of confiscation which the Proclamation pronounced has not been put in force, and that it would appear to have been merely a menace; and, lastly, that the Proclamation has been cancelled by myself.

before. The wording of the proclamation was according to a certified translation as follows:—“ It is hereby notified for those who have fled from the city having locked up their houses, that if they would not return within 10 days and re-occupy their houses, the property with their houses will be confiscated.”

The confiscation took effect as fully in Lucknow as elsewhere throughout Oudh. (*Nawab Malka Jehan v. Deputy Commissioner of Lucknow*, 6, I.A., 63.) But see *Prince Mirza Jehan Kadr v. Nawab Afsar Bahu Begum*, *Id.* p 76; where the confiscation was abandoned, the former owners were left to their rights, as though there had been no confiscation at all, *Id.* p. 82.

"5. In explanation of these points, and I trust that I may without disrespect say, in correction, of the misapprehensions which may probably arise from the expressions to which I have referred, I beg leave to cite the following extract from Mr. Montgomery's Report :

(After reviewing the land tenures in Oudh, the former position of the Talookdars, and the changes under this head introduced by our Government upon the annexation of the Province, Mr. Montgomery writes thus :—)

- (342) " But when the question of a re-settlement of the land revenues of the Province on the re-organization of civil administration was brought under the consideration of the Right Honourable the Governor-General, wisdom dictated some change in the revenue policy of the Government.
- (343) " The events of the rebellion had tended to show that the entire release from a condition of subordination to the Talookdars was not universally desired by village proprietors. In Oudh, where the release was most recent, and where it might be presumed that the vivid recollection of the thralldom to a landlord would render the holders of villages all the more averse to subject themselves again to the evils they had just escaped, the Talookdars were allowed to reassert their former rights and resume their ancient position without the slightest opposition. This voluntary return to the *status quo ante* showed clearly what the feeling of the people was, and on this ground, as well as because the Talookdars, if they choose, could materially assist in the re-establishment of authority and the restoration of tranquillity, it was determined by the Right Honourable the Governor-General that the settlement of the land revenue should be made with the Talookdars.
- (344) " This settlement was to be formed, so as to secure the village occupants from extortion, and the tenures were to be contingent on a certain specified service to be rendered, and the assessment was to be so moderate as to leave an ample margin for all expenses incidental to the performance of such service.
- (345) " The duties required of all Talookdars were the active co-operation in the preservation of peace and in the detection of crime, and rendering aid to the Government when called upon by the district officers.
- (346) " It would be, perhaps, indecorous in the Chief Commissioner to do more here than to express his hearty

- “ concurrence in this measure, which emanated from the
 “ wisdom of the head of the Government.
- (347) “ To carry it out, however, some authoritative declaration,
 “ either of the failure of the village system or of the impera-
 “ tive policy of a return to the former tenures, was required.
 “ Under no other circumstances, could the Chief Commis-
 “ sioner, of his own accord, undertake to arrange a re-settle-
 “ ment of the revenues on any other than the originally
 “ announced principle of the Supreme Government.
- (348) “ The authority thus sought was obtained in the issue of the
 “ proclamation of the Governor-General on the re-capture
 “ of Lucknow, declaring that the titles of all land-holders
 “ to estates in Oudh, with a few exceptions, were confis-
 “ cated to the State.
- (349) “ This sentence having been recorded against all estates in
 “ Oudh, there was no longer any difficulty in returning to
 “ the tenure which prevailed at the time of annexation ;
 “ and, as far as possible, the status of parties in February
 “ 1856, prior to annexation, was restored.
- (350) “ Exceptional cases have been made where the titles of
 “ Talookdars were but of recent origin, and their hostility
 “ had been marked and persistent. Such men were not
 “ completely reinstated in their former position.
- (351) “ A few have altogether forfeited all title to land and claim
 “ to consideration, but happily these are few.”

“ 6. This statement of the Chief Commissioner shows
 “ that the proclamation has not, in any sense, been cancelled ;
 “ that confiscation was not only adopted, but put in force ;
 “ that the present tenure of land in Oudh, and the conditions
 “ attached thereto, mainly rest upon it ; and that the issuing
 “ of the sentence of confiscation has not been merely a
 “ menace, where there has been persistence in hostility.

“ 7. I have preferred in this matter to use the testi-
 “ mony and words of Mr. Montgomery to any others, not
 “ only because the responsibility of carrying out the policy
 “ prescribed in Oudh, and the great credit of having done
 “ this with eminent success, belong to him alone, but because
 “ he has no share whatever in the responsibility for the
 “ proclamation.

“It was issued before his arrival in Oudh, and if, instead of a facility, he had found it to be a hindrance to his work, most assuredly no undue regard for superior authority would have deterred him from saying so.

“8. I have nothing further to add, but I have desire to say this much because, for reasons far higher than a consideration of the personal credit or consistency of the Governor-General, I hold it to be of the utmost importance that no misapprehension should prevail as to the meaning, practical effect, and validity of the proclamation” (a).

A general confiscation of the proprietary rights in the soil of the province having been thus effected under the proclamation, the course was clear for the introduction of the system of land tenures which commended itself to Lord Canning's judgment. Lord Canning's policy shall be stated in his own words. On 17th June 1858, he wrote:—

“24. When we assumed the Government of Oude in 1856, the greater part of the province was held by talookdars, who represented it. They have been called ‘the Barons of Oude,’ but this term applied to them as a class is misleading. Some had received titles from the Kings of Oude, for services rendered, or by court favour; some few are the representatives of ancient families; but the majority are men distinguished neither by birth, good service, or connexion with the soil, who having held office under the Native Government as Nazims (*i.e.*, Governors) or Chuckladars (*i.e.*, Collectors of Government rents), or having farmed the revenues of extensive tracts, had taken advantage of the weakness of the Native Government and its indifference to all

(a) E. I. (O. P.) 74, 1859, pp. 68-9.

“ considerations of justice, so long as it received revenue,
“ had abused the authority confided to them by that Govern-
“ ment, and by means of deeds of sale, sometimes extorted
“ by violence, sometimes obtained by fraud, had become
“ the nominal proprietors and the actual possessors of the
“ villages, or the majority of the villages, which formed
“ what they called their talookas or estates.”

“ 25. Owing to the ascendancy which the men of
“ this class acquired, the weakness of the Native Govern-
“ ment, the venality of the courts, and the absence of justice,
“ the condition of the actual occupants of the soil of the
“ province was one of unparalleled depression. Their rights
“ had ceased to exist or were reduced to a mere shadow ;
“ they could get no protection from the Government ; they
“ were completely in the power of the Talookdars, and were
“ subject to every kind of oppression, tyranny, and exaction,
“ In numberless instances they were compelled by the
“ talookdars to execute deeds of sale, alienating whatever
“ proprietary right they nominally possessed ; and they lost
“ but little by the act, for the practical fruition of proprie-
“ tary right they had scarcely known.

“ 26. Such being the condition of things in Oude,
“ the Government of India, perhaps with more of chival-
“ rous justice than political prudence, determined at once
“ to reinstate these proprietary occupants of the soil, if
“ what were believed to be their hereditary rights, and
“ to restore the ancient village communities ; and upon
“ the annexation of the country, the Chief Commissioner
“ was instructed to make the settlement of the land revenue
“ with the proprietary occupants of the soil, to the exclusion
“ of middlemen. This instruction was carried into execu-
“ tion in some districts with undue haste, harshly, and
“ upon insufficient evidence ; and when this took place

“ injustice was done to the Talookdars, some of whom were
 “ deprived of villages which had long been attached to their
 “ talookas, and their titles to which were not satisfactorily
 “ disproved.

• “ The injustice might, and probably would, have been
 “ corrected, in making the revised settlement; but this
 “ does not excuse or palliate the wrong

‡ 27. The mutinies broke out. It might have been
 “ expected that, when insurrection first arose in Oude and
 “ before it had grown to a formidable head, the village
 “ occupants, who had been so highly favoured by the
 “ British Government, and in justice to whom it had
 “ initiated a policy distasteful to the most powerful class in
 “ the province, would have come forward in support of the
 “ Government who had endeavoured to restore them to their
 “ hereditary rights, and with whose interests their interests
 “ were identical. Such, however, was not the case. So far
 “ as I am yet informed, not an individual dared to be loyal to
 “ the Government which had befriended him. The village
 “ occupants as a body relapsed into their former subjection
 “ to the Talookdar. owned and obeyed his authority, as if
 “ he had been their lawful suzerain, and joined the ranks of
 “ those who rose up in arms against the British Government.
 “ The endeavour to neutralise the usurped and largely-abused
 “ power of the talookdars, by recognising the supposed proprie-
 “ tary rights of the people, and thus arousing their feeling of
 “ self-interest and evoking their gratitude, had failed utterly.

“ 28. The time arrived when it became necessary to
 “ consider how the province should be dealt with upon the
 “ re-establishment of our power and authority in its capital.
 “ On the one hand was the patent fact, that those whom
 “ we had desired to benefit, and had, to our thinking,
 “ benefited, did not value the rights which we had restored to

“ them, and that, far from standing up in defence of those
“ rights, and in support of the Government which had been
“ the means of reviving them, they had acted in complete
“ subordination to the talookdars, and had been no less
“ forward than these latter in their efforts to subvert the
“ authority of that Government, and to expel its officers.
“ On the other hand was the no less certain fact that, with
“ but few honourable exceptions, all the Talookdars, many
“ who had not suffered in the smallest degree by our fiscal
“ measures, and some who had benefited by them, having
“ been allowed, at the Settlement to retain all, or nearly
“ all, the villages composing their talookas on reduced
“ assessments, had taken up arms against the British
“ Government; had either themselves participated or had
“ sent their retainers to aid in the relentless attacks on the
“ Lucknow Residency; had forcibly resumed the occupation
“ of their talookas, and had in many ways manifested their
“ malignant hostility to the British Government.

“ 29. In these circumstances to have recalled the
“ condition of things which existed immediately before the
“ rebellion, thereby renewing the experiment which had
“ been attempted in 1856, and restoring the occupants of
“ the soil to the position of proprietary land-holders, which
“ they had but just proved themselves wholly unfit and
“ unprepared to maintain, would have been to court failure.
“ And, on the other hand, to have reverted to the state of
“ affairs as we found them upon taking possession of the
“ countr, and thus to have acknowledged in the talookdars,
“ after they had as a body risen in arms against us, and
“ helped to subvert our authority, rights which had been
“ denied, and in most cases justly denied, when our power
“ was unquestioned and unresisted, would have been to
“ concede a victory to rebels, and to put a premium on

“ insurrection; a course which would have lowered the character of the Government, and destroyed its influence, not only in Oude, but throughout India.

“ 30. Regard being had to the history of tenures in Oude; to the failure of the efforts made by the Government in 1856, to set up those who were believed to be the hereditary proprietors of the soil; to their unworthy reception of the benefits bestowed upon them; to the rebellious spirit manifested by nearly all the talookdars of the province, and to the inconceivable difficulties which would have attended the adjudication of claims to proprietary right in the circumstances that have been briefly described, and which would have hampered the administration at every turn, the surest, the safest, the most politic, and a thoroughly just course seemed to be to declare the proprietary right in the soil (to whomsoever appertaining, for all classes as such had sinned equally), confiscated and to reserve to the Government the right of hereafter disposing of it as might seem fitting; at the same time notifying the intention of the Government to show indulgence to those who should tender immediate submission, and throw themselves upon its mercy” (1).

A more authoritative and, if possible, clearer statement of his policy is contained in Lord Canning's letter of the 6th of October 1858, to the Chief Commissioner, a State paper containing the Governor-General's instructions for the administration of the province. In this it will be seen that his Lordship had rapidly advanced from what I have endeavoured to show was a correct view of the history and position of the Taluqdari element in Oudh to one at variance both with the facts and his own previous utterances. The

(1) E. I. (O. P.) 62, 1859, pp. 6-8.

following paragraphs of the letter have a direct bearing on the subject:—

“ 34. Recent events have very much shaken the Governor-General's faith in the stability of the village system even in our older provinces, and his Lordship is therefore all the more disposed to abandon it in a province to which it was unknown before our rule was introduced in 1836 (*a*). The Governor-General is well aware that in some of the districts of the North-Western Provinces, the holders of villages belonging to talookas which had been broken up at the Settlement acknowledged the suzerainty of the talookdars as soon as our authority was subverted; they acted in fact as though they regarded the arrangement made at the Settlement as valid, and to be maintained just so long as British rule lasted, and no longer, and as though they wished the talookdar to re-assert his former rights, and re-assure (*b*) his ancient position over them at the first opportunity. Their conduct amounts almost to an admission that their own rights, whatever these may be, are subordinate to those of the talookdar; that they do not value the recognition of those rights by the ruling authority (*c*); and that the talookdaree system is the ancient, indigenous and cherished system of the country (*d*).

(*a*) Should, of course, be 1856.

(*b*) Qy. re-assume or resume.

(*c*) And yet the fact that the village proprietors were clinging to the hope that their rights would be recognized even after the second Summary Settlement was urged by the Chief Commissioner as a ground why the Governor-General should declare that Settlement final and perpetual. (Post.)

(*d*) In his speech addressed to the Talookdars in Darbar on 26th October 1850, Lord Canning appears to have put this not as a deduction from the conduct of the village proprietors but to have stated it as an actual fact. (O. P., 426, 1861, p. 131, § 129; p. 26, § 3.) He distinctly asserted it as a fact in his reply to the address of the Talookdars in the Darbar held for their reception in Calcutta, on 15th April 1861 (*Id.*, p. 83), and amongst his official utterances quoted in the text.

" If such be the case in our older provinces where our
 " system of Government has been established for more than
 " half a century, during 20 years of which we have done our
 " best to uphold the interest of the village occupant against
 " the interest and influence of the talookdar, much more
 " will the same feeling prevail in the province of Oudh
 " where village occupancy, independent and free from
 " subordination to the talookdars, has been unknown. Our
 " endeavour to better, as we thought, the village occupants
 " in Oudh, has not been appreciated by them. It may be
 " true as stated in the memorandum " (Sir James Outram's
 " of 29th January 1858) " that these men had not influence
 " and weight enough to aid us in restoring order, but
 " they had *numbers*; and it can hardly be doubted that
 " if they had valued their restored rights they would have
 " shown some signs of a willingness to support the Govern-
 " ment which had revived those rights; but they have
 " (done) nothing of the kind. The Governor-General is
 " therefore of opinion that these village occupants as such
 " deserve little consideration from us.

" 35. On these grounds as well as because the talook-
 " dars, if they will, can materially assist in the re-establish-
 " ment of our authority and the restoration of tranquillity,
 " the Governor-General has determined that a talookdaree
 " settlement shall be made. His Lordship desires that it
 " may be so framed as to secure the village occupants from
 " extortion; that the talookdar should on no account be
 " invested with any police authority; that the tenures should
 " be declared to be contingent on a certain specified service
 " to be rendered; and that the assessment should be so
 " moderate as to leave an ample margin for all expenses inci-
 " dental to the performance of such service. The talookdars
 " may then be legitimately expected to aid the authorities

“ of the Government by their personal influence and their
“ own active co-operation, and they may be required under
“ penalties to undertake all the duties and responsibilities
“ which by the Regulations of the Government properly
“ appertain to land-holders; these duties and responsi-
“ lities should be rigidly exacted and enforced. With the
“ declaration of these general principles, the Governor-
“ General leaves the elaboration of the details to your
“ judgment.” • • • •

“ 39. The demolition of the forts and the removal of
“ every gun from the possession of the native chiefs and
“ landowners the Governor-General observes will be a work
“ of much labour and difficulty, but it must be carried out
“ at all hazards. As one step towards that end, his Lordship
“ desires that those talookdars who may make their sub-
“ mission to the Government and may be readmitted to the
“ possession of their talookas, in whole or in part, should be
“ so readmitted only on the expressed condition that every
“ fort within such talooka be completely demolished, its
“ ditches filled in, and the surrounding bamboo jungle (where
“ it exists) cut down; and that every cannon and all muni-
“ tions of war in the possession of the talookdar, or within
“ his power to secure, be given up within a certain time
“ which the Governor-General leaves it to your discretion to
“ fix, and it should be further provided that if *at any time*
“ after the expiration of the period fixed by you, the talook-
“ dar should attempt to reconstruct any fortification or if it
“ should be discovered that he has in his possession any
“ cannon or munitions of war, his talooka will be liable to
“ confiscation” (a).

Latter in a despatch to the Secretary of State, dated
the 25th of November 1859, Lord Canning, restricting his

(a) O. P., Cal., 1865, pp. 32-34.

observations to Oudh, re-states his policy regarding Land Tenures, as follows:—"The maintenance of territorial aristocracy in India, wherever we have such an aristocracy still existing, is an object of so great importance that we may well afford to sacrifice to it something of a system which whilst it increased the independence, and protected the rights of the cultivators of the soil, and augmented the revenue of the State, has led more or less directly to the extinction or decay of the old nobility of the country.

"How to preserve this class for useful purposes, and to prevent its impoverishment by idleness, extravagance and dissipation, without recognising exclusive rights and unequal laws in its favour, has long been a difficulty.

"But in Oude at least we have a new and favourable opportunity of attempting the solution of the problem. The Government has been, from the date of the confiscation proclaimed in March of last year, free to take a new departure unencumbered by its previously declared adoption of a system similar to that of the North-Western Provinces. The system which has been chosen is the old talookdaree system of the country, but modified and much guarded from abuse by the terms in which the new grants of their talookas have been made to the talookdars and their heirs; and accompanied by invitation and encouragement to some of the most trustworthy to take part in the revenue administration, and in the magisterial duties of their districts (a).

"The measures have already been described in my despatches of 29th October and 18th November, Nos. 1 and 8; what success they will have remains to be

(a) O. P., 426, 1361, pp. 22-24, § 17.

“ proved. But I think it is certain that only by some
 “ such measures can we obtain a hold over the country
 “ which shall be beneficial to all classes of its people.
 “ We must work downwards, through the landed aristocracy,
 “ and the old hereditary chiefs, carrying the best
 “ of them with us, as regards their interests, and, if
 “ possible, as regards their feelings; but showing them
 “ that abuse of the authority which we entrust to them
 “ will be followed by discredit and loss to themselves. If
 “ we work upwards, elevating the village proprietors,
 “ whilst we thrust aside their heretofore arbitrary masters,
 “ not only contrary to the power of the latter, but narrowing
 “ the field of their interests and occupations, we shall succeed
 “ in nothing but in sowing dissensions between the two
 “ classes of lords and cultivators of the soil, making discontented
 “ subjects of the first, and getting little gratitude
 “ from the second” (a).

How far the conduct of the village proprietors can be treated as a recognition that “the Taluqdari system is the ancient, indigenous and cherished system of the country;” how far the Taluqdars as a body constitute the “territorial aristocracy” of Oudh and “the old nobility of the country” and “the old hereditary chiefs,” the reader is in a position to judge from what I have stated in trying to ascertain their history and position including the quotations from Lord Canning’s own utterances. That there are members of the territorial aristocracy, of the old nobility of the country and some old hereditary chiefs amongst them is undeniable, whilst Lord Canning’s original description of them was not far wrong. Lord Dalhousie had asserted that the system of

(a) O. P., 426, 1861, pp. 23-24, § 17.

Land Tenure by Village Communities was undoubtedly the normal condition of things in Oudh; Lord Canning that "the ancient, indigenous and cherished system of the country" was "the old Taluqdari system of the country." They were perhaps equally wrong, and the truth lay between these extremes at a point which I have endeavoured to indicate (a).

In Mr. (now Sir Robert) Montgomery, the Chief Commissioner under whose auspices the Taluqdari System of Tenures was introduced, Lord Canning found a public servant whose views of the propriety of its introduction were in complete conformity with his own, as appears from the studied statement of the former when about to leave Oudh. Early in 1859, Sir Robert Montgomery, in the course of his valuable report on the province, observed:—(369) "What—ever be the abstract idea of justice, whatever the principle

(a) Lord Canning's error is perpetuated in Sir Henry Maine's *Village Communities* (p. 105). He says, "The policy of conferring estates fee simple on the natural aristocracy of certain parts of India (and, I mean by a 'natural aristocracy' an aristocracy formed under purely native conditions of society by what amounts to the sternest process of natural selection has had many fervent advocates among Indian functionaries, and has very lately been carried out on a considerable scale in the newly conquered province of Oudh."

How far the Taluqdars are a natural aristocracy in this sense may be seen by the statistics scattered through the *Government Gazetteer of the Province*. So, in the Lucknow District, of twenty-five of the principal Taluqdars (comprising some belonging to other districts and entered as such in the Lists given in Appendix G) two only are true and good specimens of old hereditary chiefs (J.G. II, pp. 344-5; in the Unao District, of twenty-one, five only are hereditary chiefs (II, pp. 534-6); and in the Hardoi District, of seventeen, two only are hereditary chiefs, and one or two very old and real allodial proprietors (II, p. 38). In other cases the proportion is not stated with the same distinctness and I have not sufficient acquaintance with the family history of the Taluqdars to extract the proportion from the lists of Taluqdars; I think, however, that the proportion of old nobility amongst the Taluqdars of many other districts will not prove higher on enquiry.

“ we might have wished to see carried out regarding the
 “ tenure of the soil, the fact remains important and incon-
 “ trovertible, that the superiority and influence of these
 “ Talookdars form a necessary element in the social constitu-
 “ tion of the Province.

“(370) It is necessary because, at the time of annexa-
 “ tion, when we took the country by transfer with its obli-
 “ gations and institutions we found a Talookdaree system
 “ to prevail. It is necessary because we endeavoured as in
 “ our old Provinces to restore to every proprietor his rights
 “ unencumbered with any duties to a feudal superior; and
 “ yet by the voluntary act of the people those rights have
 “ been abdicated in favour of their feudal chief. If policy
 “ and the memory of State obligations failed to recommend
 “ their return to the condition of society prior to annexation,
 “ this last act of the people would fully justify the course
 “ which has now been pursued.

“(371) The necessity of their existence once admitted,
 “ it behoves us to direct the influence of Talookdars to the
 “ support of the Government, and not to render them
 “ discontented and hostile. Plain necessity points out this
 “ sequence of reasoning” (a).

• Here are a number of assertions, some of them happily unfounded, some of them by way of premise, some by way of conclusion: argument there is none. Was the annexation of the province a taking of the country by transfer with its obligations and institutions? Then who transferred it to us? Assuredly not poor Wajid Ali Shah, who did all that lay in his power, at the time, to retain it. Did the prevalence of a Taluqdari system show its necessity? Then female infanticide which was fearfully prevalent and an

(a) Montgomery, p. 42.

institution of the country at the same time was a necessity, and so was Sati; and Thuggee, and Dacoitee are equally necessities in Rajpootana at the present day. Was the country taken with its obligations and institutions? Then assuredly one of those obligations was redress of the wrong of the immediate proprietors of the soil and restoration to them of their proprietary right in the soil, without the interventions of middlemen, and it was as much as anything to get rid of such an obligation that Lord Canning's proclamation was issued. The next suggestion has been met at pp. 35-38.. To admit the necessity of the existence of the Taluqdars is to admit that there was no conquest of the province, and that the force of British arms unaided was insufficient to hold it, and is to take away all ground for gratitude on the part of the Taluqdars for the free gift to them, as an act of grace on the part of the British Government, of their estates. The only ground of justification for the departure and introduction of the Taluqdari system was policy, whose dictates the British Government after conquest was free to follow, and the case of the Taluqdars is only prejudiced by placing it on manifestly false and flimsy grounds on such an untenable basis.

The confiscating proclamation was soon followed by another issued by the Chief Commissioner, Sir James Outram, on the 25th March 1858, to the land-holders of Oudh, informing them that if they at once came in ready to obey his orders, and had taken no part in the atrocities committed on helpless Europeans, none of their lands would be confiscated, and claims to land held by them prior to annexation would be heard (a). This was followed on 23rd June 1858, by a circular letter addressed by the Chief Commissioner, Sir Robert Montgomery, to the Taluqdars calling upon them

(a) Appendix B.

to come in to Lucknow and to receive from him grants of the proprietary rights in their respective Taluqas as these existed in 1856 (*a*). The extreme liberality of the terms offered to them made many of the Taluqdars suspicious of the intentions of Government towards them, and they consequently hesitated to come in (*b*).

The great majority of them however did come in, and the Second Summary Settlement on the lines of the Taluqdari system was taken in hand with as much vigour as characterized the making of the First Summary Settlement which had proved abortive, and it was completed before the middle of 1859; the result being that nearly all the Taluqdars were reinstated in the estates they held in 1856; though some few were held to have altogether forfeited all title to their estates (*c*); a list of the most important of these is given in Appendix H.

(*a*) Appendix C.

(*b*) This incredulity on the part of Taluqdars increased the difficulty of making the Summary Settlement of 1858-59. This is remarked on by the Chief Commissioner in his report to Government dated 17th October 1853, as follows:—"One great difficulty in the re-settlement of the Province in 1858 lay in the great incredulity of the Taluqdars in our professed intention of restoring them to their possessions as they held them in February 1856. At the time of annexation an impression was received by them, that the right and position of all landed proprietors would be preserved as they had been found by our Government; and this impression was confirmed by the first settlement for the rubbee (winter) harvest being made with the Taluqdars. Afterwards finding themselves ousted from lands and proprietary titles they have acquired an idea that the same course will be again followed as soon as it suits our purpose to adopt it." (O. P. 426, 1861, p. 19, § 30.) Much later even those who came in to Lord Canning's durbar subsequently mentioned that they did so in fear that the Governor-General's presence would be the occasion of visiting in some way their offences upon them (*Id.*, p. 27, § 9; p. 131, § 130). Others from a similar cause altogether failed to attend the durbar though summoned to do so.

(*c*) Montgomery, p. 40, § 351; Irwin, pp. 196-7-9.

The period fixed for the Second Summary Settlement was three years certain, from 1st May 1858, or until a detailed settlement could be carried out; but in the Gonda and Bahraich Districts, in which cultivation was very backward, it was extended to 1st May 1867 (a).

The results of this Settlement have been stated in the text and notes at pp. 31-32.

This Settlement unlike the First Summary Settlement was made on the basis of proprietary right; for, although in making a Summary Settlement the general custom is to enter into engagements with the actual occupants leaving the question of right for future adjustment, it was felt that if the usual course were now adopted in Oudh "a door would be left open for the various views of officers," and that probably at the "future settlement the whole province would become an arena of litigation, in which the Taluqdars would be deprived of all but their name," and that as the Governor-General had authoritatively decided the principle of Settlement it was proper at once to set the question at rest (b).

A new system of land tenure is not, however, introduced into a country by the mere stroke of the pen, and matters soon arose which called for determination by the authorities. These related to:—

(i) The permanence of the Settlement, and the nature of the estates which had been conferred on the Taluqdars and the extent of their proprietary and testamentary powers over their estates, matters which after being debated for a period of ten years were set at rest by the passing of "The

(a) O. P. 62, 1865, p. 135; O. P., Cal., 1865, pp. 168-180; Government of India, to Oudh No. 793, of 6th March 1860.

(b) Montgomery, p. 40, § 352; Circular No. 31 of 1858-59, O. P. (426), 1861, pp. 23-29.

Oudh Estates Act, 1869" (I of 1869), since amended by "An Act to Amend the Oudh Estates Act, 1869" (X of 1885) and further amended by the United Provinces Act III of 1910.

(ii) The existence of rights in the soil in those who had been originally proprietors themselves, and whose estates had passed into the hands of Taluqdars before 1856, and so were incorporated in the estates granted to the Taluqdars and the manner in which such rights could be shown and made available to the ex-proprietors, and the nature, and extent of the relief to which they could be held entitled under the new Settlement by way of holding their estates not in proprietary right but in subordination to the Taluqdar in under-proprietary right whether, in Oudh language in Sub-settlement or otherwise; matters settled in part by one portion of what is known as "The Oudh Compromise," and by the passing of "The Oudh Sub-settlement Act, 1866" (XXVI of 1866).

(iii) The existence, nature, and extent of a Tenant Right of Occupancy in Oudh, as against the landlord (Taluqdar or other) as to which there was an extensive but inconclusive enquiry in 1864-5, and which was settled by another portion of the so-called Oudh Compromise, and by some of the enactments of "The Oudh Rent Act, 1868" (XIX of 1868). [This Act has been repealed and replaced by the Oudh Rent Act, 1886 (Act XXII of 1886), since amended by the United Provinces Act IV of 1901.]

(iv) The right of the landlord (Taluqdar or other) to resume grants of land to be held rent free or at a favourable rate of rent, which was declared under certain conditions and restrictions in "The Oudh Land Revenue Act, 1876" (XVII of 1876). [This Act has since been repealed and replaced by "The North-Western Provinces and Oudh Land

Revenue Act" (III of 1901) and its provisions relating to resumption of grants of land have been recast and incorporated in the Oudh Rent Act of 1886 as amended by the United Provinces Act IV of 1901 (The Oudh Rent Act Amendment Act).]

(v) The relief from incumbrances of the estates of Taluqdars in Oudh which was provided for by "The Oudh Taluqdars' Relief Act" (XXIV of 1870). [This Act is practically obsolete and relief is now afforded to an encumbered estate under the provisions of the North-Western Provinces and Oudh Court of Wards Act (The United Provinces Act III of 1899).]

It will be seen that most of these subjects overlap both as to their matter and the periods during which they were under determination, and that I have not placed them in even the approximate chronological order in which they arose and were disposed of; yet, though it will be necessary at different points to refer to that which is to come and to be explained afterwards, I think clearness of treatment will be aided by taking the subjects in the above order.

CHAPTER II.

ESTATES.

Sir Robert Montgomery's desire that the Taluqdars should be Taluqdars not in name only but also in estate has been seen. He was succeeded in May 1859, by Mr. (afterwards Sir Charles) Wingfield (a) and in him the Taluqdars found an untiring friend and supporter, and they appear to have been conscious of this from the first and at once to have confided to him their fears regarding the tenure of their estates; for on the 4th June 1859, he made a representation (b) on the subject to His Excellency the Governor-General which as it affected the declaration of finality and perpetuity of the Second Summary Settlement as regards proprietary right, and the grant of Taluqdari Sanads had better be given in Sir Charles Wingfield's own words. On the 4th of June 1859, he wrote:—"No class of the population believes in the long continuance of possession conferred by this settlement. [64

(a) Irwin, p. 200.

(b) The idea of the grant of Taluqdari Sanads appears to have originated not with Sir Charles Wingfield, but with General (then Major) L. Barrow, afterwards Chief Commissioner of the Province. In Major Barrow's Report No 2815, dated 24th June 1859, is the following § 12, "As a means of settling the minds of both parties, I had the honor to suggest that Sunnuds should be given to the largest Taluqdars on the part of the Chief Commissioner, and with my letter, No. 2672 of 7th May, the lists were forwarded for this purpose, for although Circular No. 31 has been freely circulated doubts still do exist, and the feeling of insecurity may do an infinity of mischief." (O. P., Cal. 1865, pp. 45-6.)

2. The Taluqdars, unable to realize such a departure from our former system, think we have restored their estates merely to purchase their submission, and the speedy restoration of order, and they fear we shall throw them over at the next settlement as we did at annexation, when they were admitted to engage for the revenue of a single harvest only. The village proprietors, on the other hand, with whom the Summary Settlement was made persuade themselves that we are only temporising with the Taluqdars, and that when we shall have rendered them powerless by the destruction of their forts and surrender of their last gun, we shall eject the Taluqdars in their favour certainly at the next settlement, if not sooner. A spirit of antagonism is therefore kept alive; the Taluqdars dread making any concession that may be construed hereafter into a recognition of the independent right of the village proprietors, and the latter will accept no benefit that may look like a renunciation of it.

3. The remedy for this unsettled state of public feeling is easy. It consists in the formal sanction of the Governor-General being given to the principle of the finality and perpetuity of this settlement in respect to the proprietary right in the soil as declared by the late Chief Commissioner in Special Commissioner's Circular No. 31, dated the 28th January 1859. The Chief Commissioner feels confident that if he could convey in every Sunnud given to a Taluqdar an explicit assurance from the Governor-General to the above effect, conviction would force itself on all minds and illusions would vanish.

4. Any less unqualified assurance that the Chief Commissioner could give would be ineffectual. To say the settlement was final, subject to the approval of his Lordship in Council, and further than that the Chief

“ Commissioner could not go, would rather tend to increase distrust. He has therefore abstained from giving Sunnuds till he can do so in the desired sense.

“ 5. This essential point gained, the Chief Commissioner feels no doubt of the complete success of the Takudari settlement. He has adopted measures to secure the village occupants from extortion, as directed in the Government letter of October 1858, but to establish the foundation of lasting contentment and prosperity, there must not be afforded the least ground for any expectation of “change” (a).

The Circular No. 31 of 1858-9 (b) referred to by Sir Charles Wingfield, after stating the ordinary custom of making Summary Settlements to have been to enter into engagement with the actual occupants leaving the question of disputed right for adjudication at some future settlement proceeded:— “Such a course may have been adopted by some of the officers now employed, but if so adopted it is entirely wrong. The rights and claims of all parties have been duly weighed, their conduct during the rebellion, and their positions as regards Taluqdars, fully considered, and the decision in each case which has received the confirmation of the Chief Commissioner’s approval is considered to be final and lasting.”

• • “Whether right or wrong certain principles have been laid down by the Supreme Government, and they are to be acted upon, and land-holders are to be

(a) O. P. (426), 1861, pp. 27-8.

(b) This Circular was “nothing more in law than an instruction to the revenue officers, as to the principles on which they were to proceed in making the settlement, and could have no operation to extinguish rights not otherwise barred.” See the opinion of Mr. T. H. Cowie, P. C., when Advocate-General of Bengal, and the grounds on which it proceeds. O. P. (62), 1865, pp. 143-4; *Id.*, 135-7.

“ encouraged to feel that what they receive now they will
 “ retain for ever. The Chief Commissioner desires that
 “ officers will be guided by these instructions, and will
 “ endeavour to impress their tenor on all land-holders within
 “ their jurisdiction. They are especially enjoined to refrain
 “ from referring disappointed claimants to any future settle-
 “ ment, thus exciting hopes which are sure to be frustrated.
 “ All petitions that may have been filed, on which any
 “ order has been passed referring to a future settlement,
 “ are to be collected, and an order inscribed on them in
 “ conformity with this circular.

“ When any special case of hardship may be brought
 “ to an officer's notice, he may report the same to his Com-
 “ missioner, for submission to the Chief Commissioner.
 “ But these are to be quite exceptional cases, and are not
 “ to be considered a matter of right; this will not, however,
 “ interfere with investigations it may be desirable to make
 “ in regard to under-shareholders” (a).

On the 15th July 1859, Sir Charles Wingfield followed up his letter of the 4th June by further suggestions. He pointed out that to declare the Summary Settlement with the Taluqdars final would affect two classes of persons—(1) village proprietors as claimants against the Taluqdar, and (2) village proprietors as claimants against other village proprietors, or as he expressed it Zemindar against Zemindar. As to the former, he observed:—“ Unless it is intended
 “ to depart from the present policy, and do the very thing
 “ that the Taluqdars dread, namely, to exclude them at next
 “ settlement, and engage with the village proprietors, he
 “ cannot perceive what objection there can be to giving
 “ such an assurance as he proposes; and this is the view the
 “ Taluqdars take of the matter.

(a) O. P., 426, 1861, pp. 28-9.

"4. But if, as he firmly believes, no such departure is intended, the Chief Commissioner cannot see the use of giving the village proprietors hopes of a rehearing at next settlement, if, after having then ascertained, what every one knows already, that they are the rightful proprietors of the soil, we are to tell them our policy will not permit us to recognize their claims." * * "We have never given a Taluqdar (except in reward) a village that was not in his taluqa at annexation. Therefore any change that may be made at next settlement can only be in favour of the village proprietors. The Chief Commissioner feels convinced that it is not intended to make any such change; but the Taluqdars are not, and he wants to assure them."

As to the second class, the Chief Commissioner stated that the claims generally turned on questions of inheritance and the like, and that it would be almost impossible to determine them properly; but provided the general limitation was followed in regard to such claims he would not oppose their investigation as it involved a great principle and would not "shake the security of the Settlement made with the Taluqdar as against the village proprietors." He concluded with a suggestion that he should be allowed to send up a list of Taluqdars for whom he wished Sanads conferring the proprietary right in perpetuity (a).

Considering the apparent facility with which Lord Canuing had inaugurated a new system of land tenure essentially different from that which Lord Dalhousie had planned a couple of years before and the liberal measure of indulgence meted out to them, at least as great delinquents as the village proprietors, with no sparing hand, the fears

(a) O. P., 426, 1861, pp. 29-30; O. P., Cal., 1865, pp. 95-96.

of the Taluqdars will not perhaps be thought unreasonable or surprising, and many of them were astute enough to desire a definitive settlement of their position whilst they were as a body in high favour, and the personnel of the Government undoubtedly most friendly to their interests. That Sir Charles Wingfield should have attempted to reassure the Taluqdars by making or endorsing the suggestion he did, supported by such statements as I have quoted, has quite recently been made the subject of unnecessarily acrimonious comment by one who had studied the subject well and who was moved and perhaps somewhat carried away by his generous tendencies towards the lower classes of those connected with the soil, and by his sincere love of the province and the people of Oudh, whose welfare he has shown himself to have at heart (*a*).

No reply was sent to the letters of Sir Charles Wingfield quoted above for some months; but on the 6th October 1859, the Chief Commissioner was informed by telegram that "the Governor-General agrees generally with you in regard to the absolute title conferred on the Talookdars by the Summary Settlement" (*b*).

On the 10th October 1859, Sir Charles Wingfield's two letters were both answered by the Governor-General in the well known letter of that date (*c*), which forms part of the first Schedule to Act I of 1869, and has the force of Statute law thereunder, if indeed it had not such force before (*d*).

(*a*) Irwin, Chap. VII, pp. 261 and on.

(*b*) O. P. (62), 1865, p. 136.

(*c*) O. P. (426), 1861, pp. 30-1; O. P., Cal., 1865, p. 98.

(*d*) Mr. T. H. Cowie, Q.C., consulted on the point when Advocate-General of Bengal, was of opinion (13th September 1864), that this letter had the force of a Legislative Act; though he did not consider the same could be said of that of 19th October 1859, to be subsequently mentioned. The distinction may still have a practical effect though it has

The letter is given in full in Schedule I to Act I of 1869, post. The points to be noted in the letter are the Governor-General's declaration "that every talookdar with whom a Summary Settlement has been made, since the re-occupation of the province, thereby acquired a permanent, hereditary and transferable right in the talooka, for which he has engaged, including the perpetual privilege of engaging with the Government for the revenue of the talooka. This right, however, is conceded, subject to any measures which the Government may think proper to take for the purpose of protecting the inferior zemindars and village occupants from extortion and of upholding their rights in the soil in subordination to the talookdar." (§3).

The Chief Commissioner was directed to prepare a list of talookdars upon whom a permanent proprietary right had then been conferred, and to prepare Sanads to be issued to the Talookdars during the then intended visit of the Governor-General to Lucknow. (§4).

The Governor-General further ordered "that as regards zemindars and others not being talookdars, with whom a

become of less importance as similar force is also given to that letter, if indeed it had not such force before." Mr. Cowie says, "I have come to the conclusion that the declaratory order of the Government of India, of date the 19th October 1859, and which appears to have been implicitly sanctioned by the Secretary of State (see paragraph 8 of the Despatch of 24th April 1860), is a rule or regulation coming within the 25th Section of the Council's Act, and having the force of a legislative Act. In substance and form it appears to me a declaratory enactment intending to establish, and establishing in sufficient clear terms, the 'permanent, hereditary, and transferable proprietary right'; and I think that the same legislative force must be given to the reservation subject to which the right is declared, *viz.*, 'of any measures that the Government may think proper to take for the purpose of protecting the inferior zemindars, and upholding their rights in the soil in subordination to the talookdars.' I do not think that the like effect can be given to any other documents mentioned in your letter"—one of these being the letter of 19th October 1859. O. P. (62), 1865, p. 143. §§ 6 and 7; *id.*, pp. 137-8.

“ Summary Settlement has been made, the orders conveyed in
“ the Circular No. 31 of the 28th January 1859 must not be
“ strictly observed. Opportunity must be allowed at the next
“ settlement to all disappointed claimants to bring forward
“ their claims, and all such claims must be heard and
“ disposed of in the usual manner.”

The Chief Commissioner had already drawn up a form of Sanad which he submitted with his letter of 15th October 1859. The letter is long, but the important letter of the 19th October 1859 is in reply to it, and it seems on other ground also desirable to quote it at some length. In the course of it the Chief Commissioner says:—“ I enclose
“ herewith a form of Sunnud, which I drew up on receiving
“ your telegraphic message, announcing that His Excellency
“ had confirmed the perpetual settlement with the talook-
“ dars but I submit it for approval, because the strong quali-
“ fication conveyed in the third paragraph of your official
“ letter received this morning makes me doubt whether I
“ may not have gone further in this Sunnud than the Gov-
“ ernment intends. At the same time I must express my
“ strong conviction that a less unqualified bestowal of the
“ proprietary right on the talookdars will not satisfy expect-
“ tations or remove doubts. I have made it a condition that
“ the talookdars are to maintain all holdings under them, in
“ all the rights they have heretofore enjoyed, and these rights
“ have been or are being recorded. The inferior zemindars
“ will thus be effectually protected from wrong, and that is
“ all that is wanted. To embody the substance of your third
“ paragraph in more definite terms in the Sunnud, would, I
“ am firmly persuaded, make matters worse than they were
“ before. It would unsettle the minds of the inferior
“ proprietors and encourage extravagant hopes of independ-
“ ence. It would alarm the talookdars, and make them

“ regard the gift of the proprietary right as a mockery and
 “ a delusion. Moreover it will place an engine in the
 “ hands of any future Chief Commissioner and Governor-
 “ General adverse on principle to talookdars which would
 “ enable them virtually to annul this Settlement and
 “ oust the talookdar nearly as effectually as was done in
 “ 1856 (a).

“ The only use of that paragraph as it stands can be to
 “ enable the Government to make a sub-settlement between
 “ the talookdars and the inferior proprietors. I have always
 “ maintained that such a sub-settlement (and reference to
 “ paras. 111-112 of Mr. Thomason's Directions to Settle-
 “ ment Officers will prove what I say) practically differs
 “ nothing from excluding the talookdar altogether, and
 “ engaging with the village proprietors as was done in 1856.
 “ A sub-settlement on Mr. Thomason's principles is fixed at
 “ 15 per cent. on the demand from the village proprietors,
 “ and the talookdar, if excluded altogether, gets a 10 per
 “ cent. malikana allowance. I maintain that he is far
 “ better off with the latter than with the 5 per cent. addi- [74].
 “ tional, with the risk and labour of collecting the revenue.
 “ In either case he has but a rent-charge on the land, for
 “ under a sub-settlement the control of the village lands
 “ is left to the under-proprietor.

“ It is a bad principle to create two classes of recog-
 “ nised proprietors in one Estate. The margin of profit
 “ left by the Government, after deducting the losses at
 “ 15 per cent., is not enough for the purpose. Better do
 “ away with talookdars than confine them to a profit of 8 or
 “ 10 per cent., which is all it would amount to (after

(a) Compare the Chief Commissioner's utterance two days later.
 “ Consequently the Settlement ” (1856) “ was nearly as much talook-
 darce as it is now.” (O. P., 426, 1861, p. 17, § 22.)

“deducting cost and risk of collection) on the Government revenue for their incomes.

“I do not say this state of things would ever come to pass while his Lordship is at the head of the Government, but with a change in the Viceroyalty and in this administration it may be brought about any day on the warrant of this paragraph.

“I am in this dilemma, that if I insert the substance of this paragraph I disgust the Talookdars and frustrate the object I have laboured for: and if I suppress it, and hereafter a sub-settlement is resolved on, I afford them good grounds for charging the Government with breach of faith.

“If the object of Government is not to make a sub-settlement at some future time, but merely to protect the village proprietors, and uphold their rights, I argue that this is adequately attained by the obligation my Sunnud imposes on the talookdars to maintain the inferior holders in all the rights they enjoyed previous to annexation. This letter may be considered “official” (a).

To this Governor-General's letter of 19th October 1859 (b) was the reply. It likewise forms part of and is given in full in the first Schedule to Act I of 1869, under which it has the force of Statute Law, if it had not such force before under the Indian Council's Act. It approved generally of the form of Sanad proposed by the Chief Commissioner in which some alterations were made, so

(a) O. P. (426), 1861, pp. 31-2; O. P. (62), 1865, p. 137; O. P., Cal., 1865, pp. 98-100.

(b) O. P. (426), 1861, pp. 32-3; O. P. 62, 1865, pp. 137-8; O. P., Cal., 1865, pp. 100-1.

that the peculiarities of these two forms will be best brought out by a comparison of their terms. For ease of comparison they are placed side by side in Appendix D, I and II; the portions of the proposed Sanad which were altered being italicised. The letter explained the meaning of the condition in the Sanads for the protection of subordinate rights to be "that when a regular settlement of the province is made wherever it is found that Zemindars or other persons have held an interest in the soil intermediate between the ryot and the talookdar, the amount or proportion payable by the intermediate holder to the talookdar, and the net jumma finally payable by the talookdar to the Government will be fixed and recorded, after careful and detailed survey and inquiry into each case, and will remain unchanged during the currency of the settlement, the talookdar being of course free to improve his income and the value of his property by reclamations and other measures."

On the 26th October 1859, Lord Canning held a Durbar at Lucknow for the reception of Taluqdars and others, who had rendered good service during the Mutiny at which most of those summoned attended, though some were kept away by fear (a). About 150 Taluqdars were present and each received a sanad (b).

A reference to the form of Sanad proposed and that approved (Appendix D, I and II) will make the main points of difference between the two apparent at a glance. They are these :—(i) Mr. Wingfield wished the grant to be a grant to the nominal grantee and his heirs, not as giving

(a) O. P., 426, 1861, pp. 26 7.

(b) Administration Report 1859-60, §§ 129--130; *Id.*, p. 131. Mr. Irwin (p. 203) puts the number at 177, but that seems to be a mistake as also the date given as that of the grant of the Sanads.

him the equivalent of an English estate in fee simple but a grant to him and his heirs under which they, the heirs, should have at least such rights as they would have under their own personal law, notwithstanding that at the same time at the conclusion of his form he spoke of the Taluqdar, the nominal grantee, as "full proprietor."• It will subsequently appear that he took account merely of Hindu and Mahomedan Taluqdars which did not exhaust the classes of Taluqdars.

(ii) He wished to leave under-proprietors and other holders of subordinate interests in taluqas at the mercy of the Taluqdars.

Lord Canning, on the other hand, having, by his letter of 10th October 1859, declared that every Taluqdar with whom a Summary Settlement had been made since the re-occupation of the province had thereby acquired a permanent hereditary and transferable proprietary right in his taluqa, gave each Taluqdar the equivalent therein of an English estate in fee simple. Having used language to convey such an estate he spoke at the conclusion of the Sanad of the maintenance "as proprietors of the grantee and his heirs."

(iii) His Lordship declined altogether, as he explained in his letter of 19th October 1859, to leave under-proprietors and other holders of subordinate interests in taluqas to the mercy of the Taluqdar.

Such then were the Sanads (a) as granted in conformity with Lord Canning's declaration regarding the finality and perpetuity of the second Summary Settlement to which Her Majesty's Government gave a by no means

(a) I am speaking only of the Taluqdari Sanads, those of loyal grantees were in a much shorter form conditioned only to the payment of the revenue and continued loyalty. (See Appendix D.)

heartily assent and sanction. This was conveyed in the Despatch No. 33 of 1860 of the Secretary of State, Sir Charles Wood (Lord Halifax), who pointed out the unsatisfactory features of the second Summary Settlement in these terms:--

“ 7. The point then of importance is, what was the
 “ nature of the investigation which was made into the
 “ conflicting claims of the talooqdars and the ancient village
 “ proprietors, the parties whom the present Chief Com-
 “ missioner, Mr. Wingfield, himself admits were the real
 “ owners of the lands (a). The Chief Commissioner’s
 “ report above quoted is silent on this subject. But in
 “ Major Barrow’s letter, 24th June 1859, it is stated that
 “ ‘ it was determined to make the status before annexation the
 “ basis of the forthcoming one,’ instead of recognising the
 “ rights of the long dispossessed village communities, the
 “ talooqdaree system was declared the ancient, indigenous
 “ and cherished system of the country. Under such views,
 “ it is clear that the claims of the village proprietors could
 “ not have had much chance of an impartial hearing. The
 “ period during which these settlements were in opera-
 “ tion could not have occupied many months; Major
 “ Barrow states that they were only begun in November
 “ and December 1858, and he was writing in June.
 “ Much of the country was scarcely, during the settlement,
 “ wholly free from the influence of the mutineers. Under
 “ such circumstances, no really satisfactory inquiry into such
 “ intricate matters as disputed landed tenures could have
 “ been effected. The result of the enquiry was that the old
 “ status in talooqdaree villages was maintained in the ratio

“(a) His words are: ‘ If after having then ascertained, what every one knows already, that they are the rightful proprietors of the soil.’ See para. 4 of Mr. Wingfield’s letter, 15th July 1859, to Mr. Beadon.”

“ of 89,28,138 to 14,50,893. From the enclosure appended
“ to Major Barrow’s report it appears that, while in 1856
“ only 13,640 villages out of 23,522 were maintained in the
“ possession of talooqdars, no fewer than 22,658 have now
“ been absolutely confirmed to them. They have, therefore,
“ only lost 906 villages many of which it is apparent from
“ para. 13 of the Report had been redeemed from mortgage.
“ Hence it is clear that the talooqdars have been almost
“ entirely successful in the assertion of their claims. This
“ being the case, it is questionable whether it would not
“ have been expedient to have paused and given time to the
“ village proprietors to make known their claims, before
“ rendering these decisions final and irrevocable. If the
“ claims of the talooqdars were just and right, if, as has been
“ so often urged, the feelings of the village proprietary bodies
“ were in favour of the talooqdars, their interests would not
“ have suffered, while the Government would have had the
“ satisfaction of knowing that substantial justice had been
“ done. On the other hand the delay would have given
“ opportunity for the redress of any real wrongs which may
“ have been inflicted. In what has now been set forth
“ it is by no means the object of Her Majesty’s Government
“ to advocate the revival of antiquated rights which had long
“ passed out of the hands of the original owners ; but that it
“ would have been politic to have fixed a period, within
“ which all claims to the recovery of rights in the soil might
“ have been heard. A period of 12 or even 20 years before
“ our rule, considering the state of misrule into which Oudh
“ was plunged for some considerable period previous to
“ annexation, would have been fair and reasonable. The old
“ influential families and the really ancient talooqdars, the
“ heads of clans and races, would have lost little, perhaps
“ nothing, by such a policy, while the native officials and
“ followers of the Court, who have often risen to power by the

“ lowest ways, would have had to disgorge some of their ill-gotten acquisitions.”

Sir Charles Wood then disposed of the suggestion of the voluntary surrender by the village proprietors of their rights (Aute p. 36-37) and continued (§8) “ Her Majesty’s Government will not withhold their confirmation of the arrangement which you have concluded, but they are of opinion that a measure might have been adopted, which would not have given to the talooqdars the benefit of acts of spoliation and usurpation, which appear in many cases to have taken place. They would suggest that if any failure should occur on the part of a talooqdar in fulfilling the conditions on which his grant rests, your Government should avail itself of the opportunity to redress any obvious grievance of this nature which may have resulted from the measure now remarked on.”

In reference to the difference of view between the Chief Commissioner and the Governor-General as to the protection to be afforded to the holders of subordinate interests in taluqas, the Secretary of State added these emphatic words: (§II) “ You were quite right in rejecting at once the proposition of the Chief Commissioner that all under-tenures should be abandoned to the mercy of the talooqdars : and I observe from your Lordship’s more recent proceedings that the engagements into which you have entered with the talooqdars provide for the protection of the under-proprietors, and that when a regular settlement is made, in all cases where there is an intermediate interest in the soil between the talooqdar and the ryot, the amount or proportions payable by the intermediate or subordinate holder to the talooqdar will be fixed and recorded after careful and detailed survey. I consider that on a careful adherence to

" this rule must now mainly depend the maintenance of the " rights of the village communities" (a).

In the result then the rights of the holders of subordinate interests in the soil were to some extent protected whilst at the same time the second Summary Settlement was declared final and perpetual so far as the proprietary right was concerned.

Here it may not be out of place to observe that the Sanads themselves conferred no new rights : they were determined in the Summary Settlement of 1858-9, the results of which the Government of India declined to reopen even at the instance of the Chief Commissioner as in the two cases known as the Shumspore and Dandakutch cases. In the former the Government of India declined to interfere on a case stated by the Chief Commissioner in favour of one Chutterpal Singh, Thakurain Bejnath Koer having had the estate in question conferred on her at the Summary Settlement, and that Settlement having been confirmed by the Supreme Government (b). In the latter a will, of which the Chief Commissioner disapproved, was on similar grounds directed to be carried into effect (c).

It would not be very unnatural to suppose that we had now got rid of all questions regarding the nature of the estate conferred on the Taluqdars and their powers over their taluqas, subject, of course, to all matters relating to the rights of the holders of subordinate interests in taluqas, which were, as we have seen, specially reserved. Not so, however; the very Chief Commissioner at whose instance the Summary Settlement of 1858 had been declared final

(a) O. P. 426, 1861, pp. 42-44; O. P., Cal., 1865, pp. 581-7.

(b) O. P., Cal., 1865, pp. 230-231.

(c) O. P. Cal., 1865, p. 231. (See also O. P. 62, 1865, p. 150, Act I of 1869, § 3.)

and perpetual as regards "the permanent hereditary and transferable proprietary rights" of Taluqdars, and at whose instance and in whose name Sanads had been granted to them conferring on them the equivalent of estates in fee simple was not long before he attempted to undo what he had got done for the Taluqdars.

The subject is important in reference to the rule of succession in Taluqas and the taluqdars' powers over their estates, and also as showing the material on which the lists formed under section 8 of Act I of 1869 were drawn up. Some of the papers relating to it are not easily procurable even by the Courts in Oudh, and I shall therefore give a somewhat full account of the matter. [8

On the 11th October 1859, the Chief Commissioner on his own responsibility issued a Circular No. ११३१ (a) calling upon the Commissioners of Divisions to furnish a list "of the talookas in which the law of primogeniture prevails in opposition to the Hindu Law of succession, such as are known as having a guddee and resemble the magnates of Continental Europe." The Chief Commissioner enlarged on the advantages of the custom, directed the summary rejection of the claims of younger sons and collaterals where it existed, and that even where it did not exist, but the then present settlement had been made with one person as representative, "separation of their shares should not be granted—not by imperfect partition even, except by mutual consent."

On the 22nd October 1859, Col. Abbott, the Commissioner of the Lucknow Division, suggested that the principle should be carried further and that Taluqdars should be induced to entail their estates, and that that was the most

fitting time to induce parties to dispose of their succession, or, he added, "We shall have in a few years the system of "talookdaree becoming a complicated zamindaree or puttee-daree tenure, with a multiplicity of superior and inferior "proprietors and their sub-tenants" (a).

On the 5th December 1859, the Chief Commissioner expressed his concurrence in the desirability of the course suggested by Col. Abbott but doubted "whether such an "entail of an estate, in which the law of primogeniture or a "guddee has not prevailed, would be binding in law against "the claims of younger sons to share according to Hindu Law. "If all the sons would agree to the entail no doubt it would "be good ;" but "he apprehended there would be difficulty in bringing them to the point " "If," he added, "the influence of our officers could effect this they would render a great service" (b).

Meanwhile the Chief Commissioner had, on the 1st December 1859, issued a further Circular (No. $\frac{165}{2715}$) calling on the District Officers "to submit without delay a list of persons in their respective districts who did not receive Sanads^s at the Governor-General's Durbar, but were yet entitled to them, that he might cause them to be prepared and issued, and he explained (§ 4) what was meant by "Talukdar" as follows:—"Whenever there are two interests "in an estate, a superior and an inferior, the possessor of the "former is the Talookdar and he is entitled to receive a Sanad. "And if there be but one interest in an estate, that of zemindar and his title is cleared and unquestioned, he will also "receive a Sanad" (c).

(a) O. P., Cal., 1865, p. 327.

(b) O. P., Cal., 1865, p. 327.

(c) Selection from Chief Commissioner's Circular Orders 1858-60, printed by W. Williams, at the Niwal Kishore Press, Lucknow, 1861, p. 59.

On the 18th January 1860, the Chief Commissioner issued a further Circular No. $\frac{7}{1217}$ (a) enforcing the two previously issued by him. He observed that where division in taluqas had then already taken place it was impossible to re-unite them, but he was anxious to preserve taluqas still intact from division, which was far more likely to happen under British rule than in the Nawabi. The Chief Commissioner advancing from his view of 5th December 1859 thought his object could be attained if the Taluqdar filed a written declaration of "his desire that his estate should not be sub-divided at his death, or in any future generation; the observance in all ages of this desire being inserted in the Sunnuds as one of the conditions of the grant." The condition, he stated, could be inserted as a supplementary clause in the Sanads of those who had received them in Durbar. Pending the result of these instructions no fresh Sanads were to be granted. The Chief Commissioner provided a form of declaration which is sometimes met with in cases relating to succession in taluqas.

On the same 18th January 1860, the Government of India called for a copy of the Circular 143, and the correspondence between the Commissioner of Lucknow and Chief Commissioner (b).

On the 13th February 1860, in forwarding these copies along with one of the Circular No. 7, just referred to, the Chief Commissioner opened a discussion with the Government of India on the rule of succession in taluqas (c). The Chief Commissioner's letter is fully recited in the reply of

(a) Appendix F.

(b) O. P., 426, 1861, p. 47; O. P., Cal., 1865, p. 324.

(c) O. P., 426, 1861, pp. 47-9; O. P., Cal., 1865, pp. 324-26.

the Government of India, dated 8th March 1860 (a), of which the following paragraphs are important:—

“2. You observe that in Oudh there are two classes of talookdars, those in whose families the law of primogeniture prevails, and those in whose families succession is regulated by the ordinary Hindoo Law. The former are about 30 in number and are known as having a ‘guddee.’ The law of primogeniture will be maintained in these families under the principle of the Civil Code which provides for the recognition of local custom by the Courts.”

“3. But in the greater number of talookas, the rule of primogeniture is not in force. To prevent the sub-division of these estates into a multitude of petty holdings by impoverished proprietors, you are of opinion that it might be made a condition of the gift of each estate, that the property shall not be subject to sub-division. You have, therefore, meanwhile abstained from giving Sunnuds to those talookdars who were not present at the Lucknow Durbar, and you have called on the District Officers to explain to all talookdars entitled to receive Sunnuds, the advantages of the law of primogeniture and to invite them to subscribe to the following agreement:—”

(See declaration in Appendix F, *at fin.*)

“4. You also propose to take a similar agreement from those talookdars who have received Sunnuds, and in whose family the law of primogeniture does not prevail and to make an alteration in their Sunnuds accordingly.

“5. Under these measures the support of the younger branches of the family would be a charge on the head of the house. * * *

(a) O. P., 423, 1861, pp. 49-50; O. P., Cal., 1865, pp. 328-9.

“ 6. You abstain at present from discussing the question
“ of entail, which is quite separate from that of primogeniture,
“ and involves many nice considerations especially as to its
“ possible effect on credit, which require much thought.

“ 7. As regards the question of entail, I am directed
“ by the Governor-General to call your attention to my
“ letter No. 6268, dated the 10th October last. In that
“ letter and the form of Sunnud sent to you for adoption,
“ His Excellency guaranteed to every talookdar, with whom
“ a Summary Settlement had been made since the re-occupa-
“ tion of the province, a permanent hereditary and transfer-
“ able proprietary right in the talooka for which he has
“ engaged.’ The question of entail is, therefore, no longer
“ an open one.

“ 8. As respects the law of primogeniture, I am
“ directed to observe, that the condition which you
“ propose to insert in the Sunnuuds which remain to be
“ conferred, is much too stringent. It would limit the
“ power of the talookdar over his estate to a degree
“ which is not consistent with the promise of the Governor-
“ General, that his right shall be hereditary and trans-
“ ferable. It would also have the evil effect of a law of
“ entail in leading to the retention of large estates by an
“ impoverished proprietor, in the not infrequent case of
“ long-continued extravagance and wastefulness.

“ 9. The Governor-General has no doubt that each
“ talookdar ought to be left free to dispose of his estates
“ in whole or in part as he pleases, and either by sale, gift
“ or bequest. But when a talookdar dies intestate, His
“ Excellency agrees with you in thinking it desirable that the
“ estate should devolve on the nearest male heir, according
“ to the rule of primogeniture applicable at present to estates
“ having a guddee.

“ 10. Again, where Sunnuds have been already given, the proposal now of a new condition would be objectionable unless in cases where the condition is entirely in accordance with the wishes of all concerned. In such cases and where the consent of all existing heirs shall have been obtained, His Excellency has no objection to apply the same rule to these estates also.

“ 11. The Governor-General recognises the advantage of encouraging the inheritance of landed estates by primogeniture, or, at least, the transmission of them undivided to one heir; but the most that can be done towards bringing this about will be to make it a condition with those to whom Sunnuds have not yet been granted, that if they die without having disposed of the succession to their estates, that succession shall follow the rule observed in the families which have a ‘guddee’ in Oude, and not the rule of partition. The first of these rules though not the one most prevalent in the province is certainly well understood there.”

The Chief Commissioner was not inclined to let a matter on which he felt so deeply drop easily even after such a formal decision by the Government of India; on the 15th May 1860 (*a*), he accordingly wrote in reference to the decision announced in the 9th paragraph that as “wills are unknown to Hindoo Law, and have hitherto been unknown in practice to Oude talooqdars (*b*), this rule would come generally into operation if the talooqdars could be kept in their present state of ignorance as to their power to make wills. But in common fairness we cannot keep them in the dark on this point and when they come to know that the Government consider them free to dispose of their estates

(*a*) O. P., 42; 1861, pp. 63-5; O. P., Cal., 1855 pp. 329-31.

(*b*) Ishri Singh *vs.* Baldeo Singh, 11, I. A., p. 142; 10, C. I., p. 802.

“as they please, by sale, gift or bequest, many will be tempted to make dispositions of their property opposed to Hindoo Law, public feeling and all sense of justice or morality, and in their consequences ruinous to a native aristocracy.” After referring to Zenana influence the Chief Commissioner further observed:—

“3. It is quite certain that such full unrestricted right to dispose of ancestral landed estate, as is conceded in para. 9 of your letter, has never been recognised by our Courts of Law. Regulation XI of 1793, Sec. 6, which first gave land-holders in Bengal power to dispose of their estates by will or gift, attaches the following condition, which in fact reduces the power to nothing: ‘Provided the bequest or transfer be not contrary to Hindoo or Mahomedan Law.’ It is, therefore, laying down a totally new doctrine to assert that a talooqdar is free to dispose of his landed estate in any way he pleases, and though it is part of the Chief Commissioner’s argument, as will afterwards appear, to admit that the Government is at liberty to make this or any other rule in Oude, this novelty has nothing to recommend it, being opposed to the feelings of the people and to the policy of the Government.

“4. The Chief Commissioner begs also to be permitted to observe that he doubts if the measure proposed by him has been correctly understood when in the 8th para. of your letter it is remarked that it ‘would have the evil effect of law of entail by leading to the retention of large estates by impoverished proprietors.’ It would not, the Chief Commissioner submits, tie up the estate at all, or secure it from the claims of creditors. If it has not that effect in estates to which the rule of the guddee or primogeniture applies, it cannot produce it by merely extending the guddee rule to others. The power a landholder

" has to alienate his estate in his lifetime is not clearly
 " defined; different rulings have, the Chief Commissioner
 " believes, been given on this point in the Courts of Bengal
 " and the North-Western Provinces. There is a leading
 " decision of the latter to the effect that a landholder cannot
 " give away his estate in his life time without the consent
 " of his heirs; while, on the other hand, the fullest right to
 " sell has, the Chief Commissioner believes, been allowed;
 " and it is quite certain that any landed estate can be brought
 " to sale at the instance of decree-holders for debts of the
 " proprietor, or even of his predecessor. Whatever may be
 " the law on these points, it is as applicable to an estate in
 " which there is a guddee as to one in which there is not.
 " The measure the Chief Commissioner proposes does not
 " touch this question, which is left for disposal as cases
 " arise. His aim is merely to regulate the succession by
 " substituting the rule of the guddee or transmission of the
 " estate entire for the ordinary Hindoo Law of sub-division,
 " to ensure the property remaining in the hands of one
 " instead of many possessors. The Chief Commissioner
 " trusts he has shown that his proposal is not open to the
 " objection urged against it.

" 5. The Chief Commissioner need not enlarge on the
 " advantage of extending the operation of the law of pri-
 " mogeniture as it is fully admitted by His Excellency;
 " he will merely observe that it is essential for the perma-
 " nent success of the experiment now being made in Oudh
 " of recognising the legitimate influence of the landed
 " aristocracy, and of enlisting it in the service of the estate.
 " If the ordinary Hindoo Law of sub-division is tolerated,
 " we shall in 50 years be without a landed aristocracy at
 " all. The Chief Commissioner has already observed that the
 " adoption of the guddee rules is entirely consonant to the
 " wishes of the present talooqdars, who dread the ultimate

“ results of sub-division. Nearly all have responded in the
“ sense desired to the expression of the wishes invited
“ from them, as explained in my former letter.

“ 6. The Chief Commissioner therefore urges that the
“ gудdee, or law of primogeniture, be declared by the
“ Governor-General to be the rule of succession to all
“ considerable landed estates in Oudh; and he is of
“ opinion that the bare declaration of the will of the
“ Government is amply sufficient to make the rule binding.
“ It is, he believes, an admitted principle of Mahomedan
“ Law, based on the authority of the Emperor of Delhi,
“ Shere Shah, that the ruler of the country has a right to
“ determine the law of inheritance to landed property,
“ because it becomes a question of policy affecting the due
“ administration of the Government of the country; and
“ it is in analogy with this principle that the Government
“ reserves to itself a voice in the succession to jagheers in
“ the Punjab.

“ 7. A similar opinion has been given by the Sudder
“ Court of Agra, whom the Chief Commissioner consulted
“ on the subject. Two of the Judges (and it is not stated
“ that the third dissents from the view) hold that ‘as the
“ talooqdars of Oudh now derive their title directly from the
“ grant of the Government of India, and all claims based
“ on prior right are barred, the talooqdar grantee may be
“ held in each case to be the founder of his talooqa (a); and
“ if the Chief Commissioner causes an authentic record to
“ be prepared, declaring what rule shall in each case govern
“ the property in every future contingency, the Court have
“ no doubt that such record would be admitted hereafter by
“ our Courts as the rule of practice, Hindoo Law or other
“ usage notwithstanding.’

(a) Cf. Ante as to the limitations within which alone this is correct in fact.

“ 8. The Chief Commissioner therefore urges that the rule of succession be authoritatively fixed by Government; and he is of opinion that the consent of existing heirs, direct or collateral, is not in the least necessary. The enormous importance the Chief Commissioner attaches to establishment of a rule that will preserve us a landed aristocracy in Outh will, he hopes, plead as his excuse for again bringing the subject before His Excellency, after it may be considered to have been disposed of in your letter “ No 881, dated 10th March.”

To this further representation the Governor-General on 17th July 1860 (a), replied as follows :—

“ 5. The object of the Chief Commissioner, in Mr. Currie's letter now under acknowledgment, is to show that the rule of primogeniture may be applied to those talookdars who have received their Sunnuds, without requiring the consent of living heirs; and, second, that it is inexpedient to give talookdars the power of bequeathing their estates by will.

“ 6. On the first point, I am directed to state that the Governor-General in Council, on full consideration, agrees with the Chief Commissioner. His Excellency is of opinion that a talookdar to whom the Government has given a permanent hereditary and transferable proprietary right in his estate, with full power to sell, mortgage, give or bequeath it as he pleases, may surrender the estate to the Government, to be restored to him on any further condition that may be agreed on, and that the consent of the heirs is not more necessary in the one case than in the other.

[90] “ 7. But the Governor-General will not consent to limit the absolute power over his estate, which has been

(a) O. P., 426, 1861, pp. 65-7; O. P., Cal., 1865, pp. 331-3.

... TO PAGE 98.

After the above had been printed off serious riots have taken place in various parts of India between the Hindus and the Mahomedans on the Cow and other questions, causing much loss of life, creating much bitter feeling between communities which have always lived peaceably and impeding the progress and prosperity of both. Such disgraceful outbursts of fanaticism on either side cannot be too strongly condemned; and I hope that nothing that has been said above on the question of the slaughter of cows being prohibited or regulated by law, will be interpreted to mean that I in any way approve of the way in which the law has been defied or peace disturbed or the tactics employed by either section of the community in setting it against the other. On the contrary, with all lovers of India I am most anxious that the two communities should, as they have been doing hitherto, live peaceably and amicably; and no one shall regret more than I the disturbance of those cordial relations which have hitherto subsisted among them. At the same time I feel it to be the first and foremost duty of every person of influence in either community to do his best to prevent the recurrence of such disgraceful disturbances. If he fails to do so he is not entitled to be called the leader of his community nor to the higher privileges he demands from the Government of the country.

“ guaranteed to every talookdar in Oudh, and is convinced
“ that the existence of such a power is just as essential to the
“ prosperity of the Province and to the maintenance of a land-
“ ed aristocracy on a sound footing as the extension of the rule
“ of primogeniture in cases of intestacy. As, on the one hand,
“ it will be in the power of every talookdar to refrain from
“ making a will and so to allow his estate to devolve undivided
“ on his nearest heir, or, if childless, to adopt a son who will
“ inherit the whole of his estate or to bequeath it by will
“ to any one person whom he may wish to designate as his
“ successor, so, on the other hand, it is right that he should
“ be at liberty to bequeath his estate to more than one person
“ in accordance with Hindu or Mahomedan Law or other-
“ wise as may suit his pleasure. Though the present holder
“ of a talook may be in favour of the rule of primogeniture
“ his successor may be of a different opinion; and His
“ Excellency in Council would not deprive talookdars in all
“ future generations of the power of bequeathing their estates
“ in accordance with their own views. To deny them this
“ power would be in effect to establish a strict entail, so far
“ as bequests are concerned, and would operate at least as
“ injuriously in one direction as the existing rule of partition
“ does in another. If opinion among the talookdars is in
“ favour of primogeniture and the maintenance of their
“ estates undivided in the hands of one member of the family
“ partition will be rare. Partition by bequest will be
“ especially rare, for wills are said to be at present unknown
“ in Oudh, and natives in general are supposed to be averse
“ to them; and to partition by sale, mortgage or gift, the
“ Chief Commissioner himself is not averse.

“ 8. I am therefore directed to request that the Officiat-
“ ing Chief Commissioner will call upon every talookdar in
“ Oudh in whose family the rule of primogeniture has

“ not heretofore prevailed, but to whom the Chief Commissioner desires to extend it, to declare in formal terms whether he is desirous that this rule should be applicable to his estate or not. To all who desire it the Chief Commissioner is authorised to issue new Sunnuds declaring in addition to the conditions already sanctioned by the Governor-General, that the estate, in case of intestacy, shall descend to the nearest male heir, and adding, by way of proviso, that the talookdar has full power to alienate his estate either in whole or in part by sale, mortgage, gift, bequest or adoption to whomsoever he pleases.

“ 9. In respect to the talookdars in whose families the rule of primogeniture now prevails, the Governor-General is of opinion that there is no necessity for calling upon them to make any such formal declaration, because their estates will pass in case of intestacy as heretofore; and the terms of their present Sunnuds are insufficiently (*sic*) wide to confer on them the absolute power over their estates that the Governor-General in Council desires they should have; but any talookdar of this class may be permitted to give up his Sunnud, and to receive in lieu thereof another in which the rule of primogeniture shall be expressly recognised as applicable to his estate and family, and in which it shall be declared that the title conferred on him by the Governor-General includes a full right to dispose of his estate as he pleases during his life time and by bequest or adoption at his death.”

The Chief Commissioner still with a pertinacity somewhat surprising, and which would have been more admirable if his reasoning had been better and sounder, declined to allow the matter to be at rest. On the 8th August 1860 (*a*), [92] he again addressed the Government of India in the following terms:—

(a) O. P., 426, 1861, pp. 67-9; O. P., Cal., 1865, pp. 333-4.

“ 2. The Chief Commissioner begs to point out that he did not propose absolutely to deny talookdars the power of bequeathing their estates by will or of alienating them in other ways; his proposition as he observed in para. 4 of his letter 1865, dated 15th May, did not touch this question which would be left open for decision as cases might arise. The Chief Commissioner meant to leave them the power so far as the laws of the Hindu and Mahomedan religion and of our civil courts allow its exercise; what he objected to was, to giving talookdars a power to dispose of their estates in direct violation of Hindu and Mahomedan Law and the ruling principles of our Courts.

“ 3. The words directed to be inserted in the Sunnuds ‘or to whomsoever he pleases’ give such power for they free the talookdars from all restrictions. In para. 4 of my letter of the 15th May, it was stated that it had been laid down by a leading decision of the Suddur Adawlut, North Western Provinces, that ancestral estates cannot be alienated without the consent of the heirs, and the principle has been repeatedly affirmed in the highest courts of the North-Western Provinces and of Bengal, and by the decision of the Privy Council (a) that in families where a guddee or the law of primogeniture prevails there can be no partition of the estate.

“ 4. There can surely be no reason for giving the Oudh talookdars a power over their estates, which is not possessed by landholders in any other part of India; which they have never yet enjoyed, and do not ask for now, and which is opposed to the tenets of their religion.

(a) Baboo Ganesb Dutt Singh vs. Maharaja Mahesur Singh, 20th June 1855. (6 Moo., I. A., 164.)

“ and the most authoritative decisions of our tribunals.
 “ If it is desirable, as seems fully admitted, to maintain the
 “ great landed families that now flourish in Oudh, why
 “ devise new rules calculated to hasten their decay ?

“ 5. If stress is laid on the use of the term ‘ trans-
 “ ferable ’ in the Sunnud, as much weight must be given
 “ to the other ‘ hereditary.’ If we have guaranteed an
 “ hereditary tenure of their estates, why afford a talookdar
 “ facilities for disinheriting his descendants ?

“ 6. Moreover, if the orders of Government, as conveyed
 “ in your letter under acknowledgment, are carried out to the
 “ letter, a glaring anomaly will be presented in Oudh itself.
 “ Should the estate of a talookdar, who had bequeathed it
 “ to the prejudice of his legitimate heirs, consist of personal
 “ as well as real property, it would follow two different rules
 “ of succession. The Chief Commissioner would be obliged to
 “ uphold the bequest as regards the latter species of property
 “ while the Judicial Commissioner, guided by the ruling
 “ principles of our courts and of the Hindoo and Mahomedan
 “ Laws, would infallibly reverse it in respect to the
 “ former (a).

“ 7. The Chief Commissioner therefore earnestly asks
 “ permission to modify the Government order so far as to
 “ leave out of the Sunnuds the words ‘ to whomsoever he
 “ pleases,’ and thereby prevent any flagrant abuse of the
 “ power of alienation. Indeed, these words coming imme-
 “ diately after the permission to adopt amount to contradic-

(a) Cf. Act XVI, 1865. In such a case it was provided that the entire suit should be decided by the ordinary civil courts and on appeal by the Judicial Commissioner, who would apply as the courts still do without much difficulty, the different rules of succession, etc., to the different species of property. Similarly under Act I of 1869.

“tion in terms. A Hindoo cannot adopt whomsoever he pleases; he must adopt one of his own class. The rules regulating the rights of adoption are clear and most stringent: there is no doubt on the point. Again, we have women talookdars (widows), and a woman cannot adopt at all, unless her deceased husband gave her permission.”

It is not necessary to examine the various inaccuracies in the portions of this letter which have been quoted, for, on the 18th September 1860 (a), the decision of the Government of India was conveyed to the Chief Commissioner, and was after reciting the Chief Commissioner's arguments as follows:—

“6. These arguments, I am directed to observe, have failed to convince the Governor-General in Council that it is either necessary or expedient to depart from the principles already laid down or to limit the powers of talookdars over their estates, even to the extent you now propose. The estates of these talookdars are not ancestral in the sense in which that word seems to be used by you. The majority of them are, no doubt, held by descendants or representatives of former possessors; but it is not this that constitutes the right and title by which the present possessors hold them. That right and that title consist in the estates having been bestowed upon the present possessors as a free gift from the State, and the estates are enjoyed under the conditions expressed in the Sunnuds, by which they are conferred. The Governor-General in Council considers it inexpedient to include among the conditions of gift the restrictions to which ancestral estates are subject, and by which the value of the gift would be materially diminished. The Governor-General in Council doubts whether Hindoos

(a) O. P., 426, 1861, pp. 69-71; O. P., Cal., 1865, pp. 335-7.

“ and Mahomedans in Oudh have not the power to dispose
 “ of their personal property by will; but even supposing
 “ that they do not possess this power, it is of no great con-
 “ sequence that their landed estates should follow one rule
 “ of inheritance and their personality another.

“ 7. Nor does His Excellency in Council perceive how
 “ this unrestricted power of transfer is in any way inconsis-
 “ ent with the guarantee of a hereditary interest in the
 “ estate. Did it not seem from the 5th para. of your Officiat-
 “ ing Secretary's letter that you have misunderstood the
 “ nature of the Governor-General's promise? His Excellency
 “ in Council would scarcely have considered it necessary to
 “ point out that in guaranteeing to the talookdars a here-
 “ ditary interest in their estates, the word 'hereditary' was
 “ not used to express the right of the heir to succeed as
 “ opposed to the power of the holder of the estate to disin-
 “ herit, but to express the right of the heir to succeed as
 “ opposed to the intention of the Government to resume.
 “ Had an hereditary interest been guaranteed in the sense in
 “ which you seem to have understood the Governor-General's
 “ promise, it would have been inconsistent with a transferable
 “ right of any kind and would have been equivalent to a strict
 “ entail. Indeed the word 'hereditary' appears to be used
 “ in your Secretary's letter in the sense exactly of the word
 “ 'entailed.'

“ 9. I am therefore desired to request, that the instruc-
 “ tions conveyed in the Secretary's letter of the 17th July
 “ last, may be acted upon.”

The Chief Commissioner thereupon issued his Circular
 No. 1543 of 26th September 1860, in which he set out
 at some length the orders of the Government of India,
 in the letter of 18th September, and directed:—“ Every
 “ Talookdar in Oudh, in whose family the rule of

“ primogeniture has not heretofore prevailed, must be called upon to declare in formal terms whether he is desirous that this rule shall henceforth be applicable to his estates or not. To all who answer in the affirmative, Sunnuds shall be issued containing this condition in addition to the conditions already sanctioned by the Governor-General.

“ 3. A revised form of Sunnud in English and vernacular, with this additional condition inserted, is forwarded for adoption.

“ 4. Some of the talookdars in whose families the rule of primogeniture has not heretofore prevailed and who now desire its adoption have already received Sunnuds, these they will give up (a) and they will receive Sunnuds in the new form in exchange.

“ 5. Some Commissioners have already sent in lists of the talookdars in their division who desire the adoption of this rule of primogeniture and Sunnuds will be prepared in this office for delivery to them.

“ 6. Blank forms of Sunnuds will be sent to other Commissioners to be filled up and delivered to those who desire the adoption of the above rule (b).

“ 7. To those talookdars who reply in the negative to the enquiry, Sunnuds in the original form will be presented from this office, if their names have been submitted to the Chief Commissioner and if not through the Commissioner (b).

(a) It appears doubtful whether this was always done. Where the Taluqdar holds two Sanads, one in each form, the latter is that with the additional clause.

(b) This is of some importance and seems to be *ultra vires*, for by § 4 of the letter of 10th October 1859, the Sanads were to be “given by the Chief Commissioner.”

“ 8. Cases in which doubts may arise whether the parties under engagements are to be considered talooqdars and as such entitled to a Sunnud should be referred to the Chief Commissioner. The designation of talooqdar is not confined to landholders between whom and the actual cultivator of the soil there are intermediate holders (a). The Raja of Kheereegurh on whose estate there is not a single under-proprietor is as much a talooqdar as Maharaja Man Singh.

“ 9. In respect to the talooqdars in whose families the rule of primogeniture now prevails and who have received Sunnuds, there is no necessity for calling upon them to make any such formal declaration, because in His Excellency's opinion the estates will in cases of intestacy necessarily descend by the rule of primogeniture and the terms of the present Sunnud are sufficiently wide to confer on them that absolute power over their estates which the Governor-General thinks they should have, but any one of them who expresses desire to that effect may be permitted to give up his present Sunnud and receive a new one.

“ 10. Those of the above class who have not yet received Sunnuds will now receive them in the new form” (b).

On 19th July 1861, the Chief Commissioner issued a further Circular on this subject, No. 3574, apparently without any proper authority and contrary, to some extent at least, to Lord Canning's intention that the Taluqdars

(a) But see Circular No. 3574 of 1st December 1859, and the definition of Taluqdar there.

(b) Selection from Chief Commissioner's Circular Orders 1858-60, printed by W. Williams at the Newul Kishore Press, Lucknow, 1861, p. 214.

should have a free and unrestricted power of devising their estates as and when they pleased. This Circular impressed on Taluqdars in whose families the rule of succession was not clearly defined the necessity of making a will, naming their successor and of registering the same and recording an attested copy thereof in the Deputy Commissioner's Office. The Taluqdars of each district were then addressed to the effect that with reference to this Circular, if the custom of *guddi nashini* or descent to a single heir was not in vogue in their family, it was essentially necessary that they should nominate their successor with the formalities prescribed above. Many, if not most, of the Taluqdars, either ignored, the order or endeavoured to evade it. To such as ignored it the order was repeated. Such replies as were received were recorded and were and are spoken of in Oudh as the Taluqdars' Wills (a).

The question of succession according to the rules of primogeniture was subsequently on 17th August 1861 considered by the Secretary of State, Sir Charles Wood, in his despatch of that date, but not before the Chief Commissioner, Mr. Wingfield, had had an opportunity of personally placing his views before him (b). The Secretary of State then expressed his views on the subject as follows:—

“ 10. Another very important matter affecting the
 “ status of the landed aristocracy of the country is the ques-
 “ tion of primogeniture. A difference of opinion appears to
 “ have arisen upon this point between the Chief Commissioner
 “ and your Excellency's Government. As to the soundness of
 “ the principle, so far as its tendency is to maintain the posi-
 “ tion of the landed proprietors by preserving the integrity
 “ of their estates, there was no diversity of sentiment. But

(a) See *Hur Purshad vs. Sheo Dyal*, 3, I. A., p. 276.

(b) O. P. 426, 1861, p. 147, § 9; O. P., Cal., 1865, p. 587.

“ whilst your Government were inclined to limit its applica-
 “ tion to intestate estates, and to give the proprietor full right
 “ to dispose of his lands, in whole or in part, to whomsoever
 “ he might wish by gift, mortgage or bequest, the Chief
 “ Commissioner desired to restrict that right, not by impos-
 “ ing any new limitation but by those already enforced by
 “ Hindoo and Mahomedan Law and by our civil courts.

“ 11. I do not perceive why, on grounds either of jus-
 “ tice or of policy, your Excellency’s Government desires to
 “ give the talookdars a more absolute control over their
 “ estates than would have been the case if they had inherited
 “ them from their ancestors. In such cases the estates
 “ would have been subject to the prescribed conditions of
 “ such property, and could not have been disposed of in the
 “ unrestricted manner in which the proprietors are now
 “ declared by you to be competent to give or bequeath them
 “ to whomsoever they please. And, when I consider the
 “ effects of Zenana influence, the frequency of family dis-
 “ sensions and the general tendency to intrigue amongst
 “ these people, it appears to me that this latitude of disposal
 “ against which the Chief Commissioner has respectfully
 “ protested, may prove an obstacle to the accomplishment
 “ of the object which you most desire to realise, the preser-
 “ vation of property in the hands of lineal representatives of
 “ the great families of Oude ” (a).

It will not in the first place have escaped the reader that the Chief Commissioner treated the question through-
 out with reference to the position of Hindus of the Mitak-
 shara or Benares School, though in his later letters he does
 make reference incidentally to Mahomedan Taluqdars, where-
 as Hindus of the Benares School formed only one section of
 the body of the Taluqdars of Oudh, which included not only

(a) O. P. 426, 1861, pp. 147-8 ; O. P., Cal., 1865, pp. 587-590.

persons of that class but also Hindus of the Bengal School, Mahomedans of both the Shia and Sunni persuasions, and Europeans and others, and no sufficient reason was shown, regard being had to the sameness of the title of all why the powers of the different sections should vary according to the personal law of the parties.

In the second place it is equally clear that the Chief Commissioner and the Secretary of State could not rightly appeal to the Hindu and Mahomedan Law, for they did not desire to see it applied in its entirety, for whilst the Governor-General broke in upon those laws by adding to the powers of the holders of the estates, the Chief Commissioner was equally anxious to break in upon them by introducing the rule of primogeniture to displace the rule of division or permissible division of the inheritance.

I have moreover no hesitation whatever in saying that the Chief Commissioner greatly over-stated the desire of the Taluqdars to adopt the rule of primogeniture, and that many of them considered the various enquiries addressed to them as inquisitorial, and endeavoured to evade giving a definite reply to them partly from the very natural desire to avoid creating dissensions in their families by marking out the descent of their estates entire in a given line, and from the usual fear entertained by natives that the designated successor might attempt by foul means to accelerate the succession to himself. Some, too, as the Taluqdar of Morawan (a) desired to hold their estates subject in all respects to the limitations and restrictions of their personal law from a distinct preference for that law. At the same time the majority of the Taluqdars, whatever may have been their own predilections on the subject, succumbed to the well-known and deeply felt wishes of the Chief Commissioner and to the

(a) L. E. 3, Ind. App., 259.

official influence brought to bear upon them in accordance with the directions contained in the Chief Commissioner's Circulars. These considerations should not be lost sight of in judging of the exact meaning and effect of the various declarations of the Taluqdars.

The result of the Chief Commissioner's efforts in this behalf was that in his Administration Report of 1860-1, he was enabled to report that the Governor-General's instructions had "been carried out, the wishes of the several talookdars ascertained, and fresh Sunnuds containing the new clause issued wherever necessary, one hundred and sixty talookdars having adopted the rule" (*a*).

The form of primogeniture Sanad is given in Appendix D., III.

Later, on 23rd June 1863, the Chief Commissioner informed the Governor-General that primogeniture Sanads had been taken by most Taluqdars (*b*). This however had reference to the number of Taluqdars who had previously received Sanads, for on 13th August following the Chief Commissioner wrote to the Government of India as follows:—

"9. 171 talookdars have taken Sunnuds in the new form, that is, in which succession to the nearest male heir, or, as it is therein termed, primogeniture is declared to be the condition of the grant; 36 hold Sunnuds in the old form, in which there is no mention of the above rule of succession; but looking at the list, the Chief Commissioner can say, of his own knowledge, that of these 12 represent well-known guddee families, and they have not cared to change their old Sunnuds. In short, the preference of the talookdars for the rule of undivided succession to the estate

(*a*) O. P. 62, 1865, p. 34; Partly. P., 1862, Vol. 39, Chap. 14, §§ 135-6.

(*b*) O. P., Cal., 1865, p. 232.

"in the nearest male line has, the Chief Commissioner thinks, been decidedly evinced" (a).

But it is obvious to remark that if of 30 well-known guddee families (b) of Oudh, the representatives of 12 declined to surrender their original Sanads in order to receive in lieu thereof primogeniture Sanads, the Chief Commissioner's views were not as generally adopted as he was wishful to believe.

The question of the succession in taluqas and the Taluqdars' powers over their estates was not destined to be disposed of even by the peremptory order of the Government of India of 18th September 1860, for Lord Canning amongst the last official acts of his Viceroyalty (c) on 12th March 1862 brought in a "Bill to provide for the succession to and the rights in respect of certain Talookas and granted estates in Oude, and for the jurisdiction of the Courts of that province in suits relating to land." In moving for leave to bring in this Bill his Lordship observed, "After the grants had been made and by a subsequent order of the Governor-General, the principle of succession by the rule of primogeniture, in respect both of the Talookas which had been restored and of estates newly granted, was introduced. The principle was affirmed, but was not accompanied by any details. But as being an act of the Government of India done previously to the passing of the Indian Council's Act of 1861, he believed that there could be no doubt of its having the full force of law. The present Bill, therefore, would only declare the principle more formally and provide in detail for the manner in which the rule of primogeniture should take effect. It would provide that

(a) O. P. 62, 1865, p. 97.

(b) *Ante*, p. 92.

(c) O. P. 62, 1865, p. 150.

“in^c case of intestacy, the estate or Talooka should go to the
 “natural born heir, that is, to the eldest son; that, failing
 “such heir, it should go to an heir by adoption, and failing
 “an adopted heir, to the nearest collateral male heir; in
 “default of all these it would provide that the estate should
 “go to the widow for her life, and, at her death, to such son
 “as she might adopt, according to the custom of her family;
 “and lastly, if all these should fail, that the estate should
 “pass to such persons as would inherit if this Act were not
 “made law. The object in view was to combine the prin-
 “ciple of primogeniture with other principles and usages
 “traditional in this country and dear to the people. In the
 “province of Oudh the operation of the Hindou and Maho-
 “medan Laws was peculiarly confused and conflicting, so
 “much so, that it might have been a question whether on
 “that account alone some legislative interposition and cor-
 “rection were not expedient and, probably, it would not be
 “contended that such being the case, the introduction of a
 “law of primogeniture with the generally warm approval of
 “the Talookdars (the parties most concerned) was an unwise
 “divergence from the laws which the English Government
 “had found established there”(a).

A copy of the draft Bill, the full text of which will be
 found in the Oudh Papers, Calcutta 1865, pp. 125—129; 337—
 —342 and in the Oudh Papers 62 (1865), pp. 88—91, and
 which forms part of Paper No. 7 in the Legislative Depart-
 ment Papers on the Bill out of which Act I of 1869 arose, was
 at the time sent to Oudh for the expression of opinion and
 the suggestion was made that the Taluqdars should be
 consulted regarding it. It was particularly stated that
 “The Governor-General in Council would be glad also

(a) O. P., 62, 1865, pp. 91-2; O. P., Cal., 1865, p. 342; Act I of
 1869, Papers, Paper No. 7.

“to have the opinion of the Chief Commissioner as to whether it is desirable to make by law any definite provision for widows and younger children in case of intestacy” (a). The chief suggestion of the British Indian Association of the Taluqdars had special reference to the questions of primogeniture and entail. Section 1 of the draft Bill provided for the power of the Taluqdar to transfer and bequeath “the whole or any portion of his estate or of any interest therein to any person he might think fit, subject to all conditions of service and saving all subordinate rights of occupancy or otherwise in such estate,” and Section 2 provided that the transferee or devisee should have the same powers and hold the estate, “subject to the same rules of succession as the original Talookdar or grantee, subject however to the express terms of such transfer or bequest.” This last clause the Taluqdars seem eventually to have regarded as giving them the power to create a perpetual entail and to have approved of it in that sense; for though the Committee of the Association, to which the Bill was referred for report, suggested “that due provision be made in this Bill to the effect that entail accompany primogeniture, the former being, in their humble opinion, of little worth without the latter” (b). Maharaja Man Singh, after remarking on the evils of division, explained the view of the body of the Taluqdars in the following observation:—“The projected law is the best remedy for this evil, and the few among us who object to it will certainly change their mind if they take it into calm consideration and they will find that it equally answers this purpose, for from the second section of this Bill it is obvious that any talookdar or grantee may in his will tie down for ever his heirs by any terms and conditions, and those among us who may wish to give the power of absolute disposal over

(a) O. P., Cal., 1865, p. 337.

(b) O. P., 62, 1865, p. 90; O. P., Cal., 1865, p. 348.

“their estates or grants to their heirs may likewise do so by “will.” Whereupon they resolved unanimously to communicate to Government their approval of the Bill (a).

This was apparently in November 1862, and on 22nd December 1862, the Chief Commissioner reported the resolution of the Taluqdars to Government. Lord Canning had left India. His successor Lord Elgin was in no way pledged to the views of Lord Canning regarding the powers of the Taluqdars or the rules which should regulate the succession to their estate; so that an opportunity was provided by circumstances for the Chief Commissioner Mr. Wingfield to endeavour afresh to obtain a recognition of his own views on these subjects of which he was not slow to avail himself. In his letter of 22nd December (b) the Chief Commissioner having expressed his opinion that the view of the Taluqdars regarding the effect of Section 2 of the draft Bill was wrong and that nothing could have been further from Lord Canning’s intention than to give the Taluqdars such powers observed:—“If the talookdars find “that they are mistaken in supposing that a power of entail-
“ing is given them by Section 2, they will make some
“proposition for the purpose of averting the ruin that they
“foresee will overtake their descendants if the unlimited
“power of disposing of their estates, conferred by the
“Sunnuds is not curtailed.” * * “It is probable that
“this party would ask for the adoption of the measure urged
“by the Chief Commissioner and described late in paragraph
“11 of this letter”—that being his old proposal to restrict the power of disposition within the limits allowed by Hindu or Mahomedan Law or family custom. For the rest his letter was a mere rechauffe of those already given at sufficient length.

(a) O. P., 62, 1865, p. 95; O. P., Cal., 1865, p. 346.

(b) O. P., 62, 1865, pp. 93-94; O. P., Cal., 1865, pp. 334-6.

No notice appears to have been taken of this letter of the Chief Commissioner, and he therefore after a sufficiently long interval followed it up by another, dated 13th August 1863 (a). In this the Chief Commissioner stated the true meaning of guddi tenure to be succession of a single heir in contra-distinction to what he styled the Hindu Law of subdivision. He considered that though, under native rule, the nearest male heir did not invariably succeed, this was because the circumstances of those times required a man of courage and ability to manage and protect the estate, and that this divergence from the strict line would be unnecessary under British rule, where the Court of Wards would manage the estate in case of insanity. He thought too that the Hindu widow's estate was hardly a breach of the rule of primogeniture and noted the approval of the Taluqdars of the provision of the draft Bill which put collaterals before widows. The Chief Commissioner further considered that there would be no innovation in coupling the rule of primogeniture with that of guddi, and having repeated his recommendation of the omission from the Sanads (which had already in many instances been once changed) of all mention of the power to alienate or bequeath or the limitation of such powers to dispositions "not opposed to family custom" suggested that before legislation a further expression of the views of the Taluqdars should be obtained. The Governor-General Lord Elgin, after holding his appointment but a short time, died on 20th November 1863, so that nothing was done by his Lordship in the matter. Lord Lawrence arrived at Calcutta as Governor-General in January 1864, and appears early to have taken up not only this last suggestion of the Chief Commissioner but the position of the Taluqdars generally, not only with reference to these

(a) O. P., 62, 1865, pp. 96-8; O. P., Cal., 1865, pp. 348-9.

questions but also in regard to the rights of inferior holders in taluqas—both the holders of under-proprietary rights and those of tenants with a right of occupancy. A full consideration of these required time, and the Chief Commissioner was, on 21st June 1864, informed, “the Governor-General in Council thinks it advisable to postpone all legislation on this subject for the present” (a).

Then followed the tedious discussions regarding the rights of under-proprietors in taluqas and the question of the existence and rights of a class of tenants with a right of occupancy, ending in the Oudh Compromise of 20th August 1865, and eventuating in Act XXVI of 1866, and the occupancy portion of Act XIX of 1868 [since repealed and replaced by Act XXII of 1886 as amended by Act IV of 1901]; and the question of the nature of the rights of the Taluqdars in their estates, irrespective of the above matters, their powers of dealing with their estates by act *inter vivos* or by will, the rules of succession applicable to their estates in case of intestacy and the like matters remained in abeyance till 17th July 1867, when Mr. Strachey obtained leave to bring in a Bill to define the Rights of Taluqdars and others in certain estates in Oudh and to regulate the succession thereto (b). In moving for leave to introduce the Bill Mr. Strachey said: “Legislation upon this last subject has become very urgent. The estates of the Taluqdars of Oudh are held under altogether peculiar conditions, and, as I have already noticed, their property is of a character unknown to Hindu or Mahomedan Law. We have given to the Taluqdars powers over their estates, similar to those possessed by English landlords, but there is no law which regulates the manner in which these

(a) O. P., 62, 1865, p. 93; O. P., Cal., 1865, p. 349.

(b) Pro. 1867, pp. 233-300.

“ powers are to be exercised. For example the Sanads give
“ to a Taluqdar an unlimited power of leaving his estate or any
“ portion of it, by will, to any one he pleases. But wills are
“ rarely made by Hindus anywhere, and I may say that in
“ Oudh they are not known at all. How then is this power of
“ willing away property to be exercised ?” He then referred
to a case, in which an informal and nuncupative will made by
one Mussammat Golab Koer, a female Taluqdar, bequeathing
her estate out of the ordinary line of succession was upheld,
in proof of the urgency of legislation. The Bill it was said
both at the same time and in the subsequent Statement of
Objects and Reasons differed in no essential particular from
that which had been introduced by Lord Canning in 1862 ;
but whereas Lord Canning in accordance with his repeatedly
expressed intention left the power of gift or bequest abso-
lutely unfettered and unclogged by any restrictions, Mr.
Strachey’s Bill introduced a very important restriction upon
the method and circumstances of the exercise of that right.
In the Statement of Objects and Reasons it is observed that
Lord Canning “ refused to restrict in any way the power
“ which he considered had been given to every taluqdar of
“ disposing of the whole, or of any portion of his estate as he
“ pleased, by sale or mortgage or gift during his life-time or
“ by will to take effect after his death. The result has been
“ that the property of the taluqdars in these estates alto-
“ gether differs in its nature from that which they would have
“ possessed, if these special conditions had not been laid
“ down, for under the Hindu or Muhammadau or local law
“ the power of disposing of ancestral property is restricted
“ within narrow limits.” After thus recognizing clearly
enough Lord Canning’s intention and orders the statement
proceeds: “ Many of the taluqdars considered, and Sir Charles
“ Wingfield, the late Chief Commissioner, held the same
“ opinion very strongly that this unlimited power of disposing

“ of landed property would infallibly lead to the breaking up
“ of those family-estates which it was the avowed object of
“ the Government to preserve, and they considered that
“ restrictions ought to be put upon this power, similar to
“ those which would have been applicable under the Hindu
“ or Muhammadan Law. With the view of meeting these
“ objections, without setting aside the conditions to which,
“ Lord Canning thought it necessary to adhere, the Bill pro-
“ poses in Section 12, that if a taluqdar desire to transfer by
“ gift or to bequeath the estate granted to him by the
“ British Government, or any portion of it, to any person not
“ being either the legal heir or the person who would have
“ been the legal heir if this Act had not been passed, he can
“ only do so by an instrument of gift or by a will executed
“ not less than twelve months (a) before his death and
“ publicly registered. Similar provisions are proposed in
“ cases in which a taluqdar desires to transfer his estate or
“ any portion of it to religious or charitable uses.”

So that a bequest which Lord Canning intended to be valid to all interests and purposes if unrevoked at the death of the testator, and which is valid in an inchoate way even now, becomes invalid from the mere fact of the death of the testator within a given period, that is, at one date rather than another. Similarly as to gifts. How can it be said that this is not an essential difference and a “setting aside the conditions to which Lord Canning thought it necessary to adhere?”

The Bill was much considered in Committee and by the Taluqdars amongst themselves and in conjunction with the Chief Commissioner and Financial Commissioner was greatly altered in particulars which will be mentioned in explanation of the provisions of the Act, and after discussions long

(a) The period was reduced in the Act.

drawn out became law, on 11th January 1869, as the Oudh Estates Act, Act I of 1869.

The Act has since been amended in order to bring the definition of "Registered" in Section 2 of the Act into agreement with the understanding of all parties in Oudh; the amendment being undertaken at the instance of the British Indian Association of Oudh, backed by the recommendation of the Lieutenant-Governor and Chief Commissioner, Sir Alfred Lyall, in consequence of the decision of the Judicial Committee of the Privy Council in the case of *Haji Abdul Razzak vs. Munshi Amir Haidar* (a), where it was held that the deposit with the registrar of a Taluqdar's will in a sealed cover was not a compliance with the requirement of registration in Sections 13 and 20 of the Act. The circumstances under which the amendment was undertaken are explained by the Hon'ble Mr. Quinton in moving on the 23rd October 1884, for leave to introduce the Bill, as follows:—

"This legislation is undertaken at the instance of the Government of the North-Western Provinces and Oudh and of the associated body of the Oudh Taluqdars known as the British Indian Association.

"Act I of 1869 defines the rights of taluqdars and others in certain estates in Oudh, and regulates the succession thereto. Sections 13 and 20 empower taluqdars to make bequests of their estates under certain circumstances by wills executed not less than three months before the death of the testator and registered within one month from the date of their execution. In the Preliminary Chapter, 'Registered' is defined to mean registered according to the provisions of the rules relating to the registration of assurances for the time being in force in Oudh."

(a) L. R. 11, I. A., 121; I. L. R., 10 Cal., 976.

“The practice which has since obtained among Oudh aluqdars making a will under the Estates Act is to deposit the will in a sealed cover with the registrar; and until lately it was believed that this was all that the law required.

“In 1882, however, a case came in appeal before the Court of the Judicial Commissioner, who held that a will so deposited was invalid, so far as it affected the landed estate because it had not been registered.

“The judgment was appealed to the Privy Council. Their lordships ruled that the Judicial Commissioner was right; that under the rules of Act VIII of 1871—the Registration Act applicable—deposit was one thing and registration another; and that a will deposited under the provisions of that Act relating to the deposit of wills was not thereby registered within the meaning of the Oudh Estates Act.

“The Government of the North-Western Provinces and Oudh now urge that the consequences of this ruling are most important, since the procedure that it pronounces to be inadequate has constantly been acted on; and the President of the British Indian Association, in a memorial to the Lieutenant-Governor and Chief Commissioner asserts that the taluqdars were never led by the civil officers or the legal advisers whom they consulted in such matters to suspect that the validity of wills formally deposited in the registration offices under sealed covers could be called in question.

“It is obvious that taluqdars cannot be expected in future to register their wills open. If this be insisted on, Sections 13 and 20 would probably remain a dead letter.

“Under these circumstances it is considered advisable to amend Act I of 1869, so as to legalize the existing practice.

“ This is done by the present Bill, and, as the omission to
“ fulfil the requirements of the law which has taken place in
“ the past would seem to have been unintentional and due to
“ a prevalent and hitherto undisputed misapprehension of its
“ meaning, retrospective effect has been given to the amend-
“ ment, which covers all wills hitherto or at present only
“ deposited and not registered, except wills already declared
“ invalid by Judicial decision or being questioned in a suit
“ commenced before the date of the introduction of the
“ Bill”, (a).

The latter provision regarding wills being questioned in a suit commenced before the introduction of the Bill was, at the instance of the Taluqdars, altered to one regarding suits commenced before the passing of the Act, and the Bill as introduced passed with this and other slight amendments, on 10th June 1885(b), receiving the assent of the Governor-General on 12th June 1885.

[Act I of 1869 has since been further amended by Act III of 1910 and the reasons for the amendments introduced by this Act are fully stated in the notes to Act I of 1869 and Act III of 1910.]

(a) Pro. 23rd October 1884, pp. 287-9, and see Statement of Objects and Reasons of the same date.

(b) Pro. 10th June 1885, pp. 464-5.

CHAPTER III.

SUBORDINATE RIGHTS AND INTERESTS IN TALUQAS.

SECTION I—GENERAL.

It is now necessary to go back somewhat. We have seen that under Lord Canning's letter of instruction of 6th October 1858, provision was made for securing village occupants in taluqas from extortion^(a). The Governor-General's letters of 10th and 19th October 1859, disposing of the suggestions in the Chief Commissioner's letters of the 4th June, 15th July and 15th October 1859, had distinctly provided for the recognition and maintenance of the rights of the holders of subordinate interests in taluqas as they existed in 1855, though the manner in which this end was to be attained was left for the future determination of the Government of India. This was done in such a manner as should naturally have made the position clear to the Chief Commissioner. His own views had been emphatically declared erroneous. Yet this notwithstanding the Chief Commissioner, on the 24th November 1859, issued a Circular No. $\frac{162}{2679}$ declaring that the Proclamation confiscated all rights in every species of property, and those rights were conferred upon the persons upon whom the estates were conferred^(b).

Reference has been made^(c) to the Chief Commissioner's Circular No. 165 of 1st December 1859, defining a Taluqdar to

(a) *Ante*, p. 57; O. P., Cal., 1865, *in loco*.

(b) O. P. 62, 1865, p. 23; O. P., Cal., 1865, pp. 89-90.

(c) *Ante*, p. 90.

be when there are two interests in an estate, a superior and an inferior, the holder of the superior(*a*). The inconsistency between these two circulars seems very soon to have created difficulty and on the 24th April 1860, the Chief Commissioner wrote in reference to that felt by one officer that the confiscation, where it has been carried out, annuls proprietary rights of every kind in the soil inferior as well as superior, but that it was an error to assume that unless there were the two interests in an estate there could be no Taluqdar or person to receive a Sanad; that every opulent landholder was to be considered a Taluqdar(*b*). On 2nd May 1860, Col. Abbott, Commissioner of Lucknow, in a letter addressed to the Chief Commissioner, brought out distinctly the discrepancy between the two circulars briefly as follows:—"All estates in Oudh were confiscated: if all rights were conferred, on those on whom the estates were conferred, then what of inferior or subordinate rights? Yet these were all along recognised as existing, even in the second of the circulars under discussion." "Whatever the right may be," continued Col. Abbott, "and it has been repeatedly and authoritatively declared that there is an inferior right, it should, in my opinion, be distinctly declared whether it be the right of an hereditary cultivator to cultivate so long as revenue is regularly paid, or of sub-proprietors to sell and mortgage their sub-shares as under the native rule; the question should be clearly laid down so as to admit of no misunderstanding. Cultivators at will they cannot be, for this indicates no right of occupancy. We have at present for guidance only the two letters above quoted, the one declaring that no superior interests exist, the other of a later date, declaring the existence of a superior and inferior interest,

(*a*). O. P. 62, 1865, p. 24, P; 2; O. ., Cal., 1865, pp. 89-90.

(*b*). O. P. 62, 1865, p. 23, § 3; O. P., Cal., 1865, p. 89.

“but without defining what the inferior interest is. The circular might be supposed to cancel the former. “did your letter under reply not refer me to it for guidance (a).

To this the Officiating Chief Commissioner, Col Barrow, replied on 14th May 1860, stating “that the talook daree tenure, as at present existing in Oude, is of three kinds, viz., ancestral, acquired, and conferred. In the two former of these classes, viz., the ancestral and acquired talookdarees, the order confiscating all rights in the land has not been practically carried out, though the talookdar holds by a new title, and these rights consequently remain unaffected by the order. Amongst the ancestral talookdaree tenures, there may or may not be rights of a superior and inferior kind.” * * “It is at present premature to attempt to define the relations between the talookdar and the sub-proprietors. It is sufficient that the Government have declared that the sub-proprietors are to be maintained in possession of all reasonable rights they may have exercised prior to annexation.” * * “With regard however to those estates which—the award of confiscation having been carried into effect—have been conferred as rewards for loyalty and good conduct on the several talookdars, and which are designated conferred talookdaree tenures, in these all rights, whether of ownership or occupancy, have been confiscated, and the estate have been conferred on their respective recipients free from all liens, engagements or drawback whatever. The sub-proprietors, if there formerly were any, do not possess any definite interest whatever beyond what they may have derived from the grantee” (b).

(a) O. P. 62, 1865, p. 24, § 7; O. P., Cal., 1865, pp. 89-90.

(b) O. P. 62, 1865, pp. 24-5; O. P., Cal., 1865, pp. 90-1.

The Government of India having, on the 14th June 1860, called for this correspondence (a), the Chief Commissioner, on 1st September 1860, explained to the Government of India that the reasons on which he arrived at the view expressed in his letter of 14th May 1860, were "that by the Proclamation of March 1858, confiscation was decreed against all proprietary rights in the soil, not against the right of the talookdar alone. When a talooka was restored to a talookdar the *status quo* at annexation was restored too, for as the punishment had extended to all on the estate, so did the pardon. But if the talookdar was not replaced in possession the *status quo* was not restored, and the decree of confiscation remained absolute against all rights. This principle has been maintained in the distinction drawn between confiscation under the proclamation of March 1858, and confiscation for concealment of arms. The latter is held out (not) to effect inferior rights in a talooka, because the penalty was incurred by the talookdar only" (b).

On 12th September 1860, the Government of India passed the following order on the subject :—“The Governor-General in Council desires me to observe that in declaring that in confiscated estates which have been conferred on talookdaree tenure on a new grantee, the strict terms of the Proclamation of March 1858 are to be enforced against all holders of subordinate rights in such estates, and that the whole agricultural community whatever their previous status are to be reduced to the condition of tenants at will under the new talookdaree grantee, the Officiating Chief Commissioner has gone considerably beyond the intentions of His Excellency, and has not acted in accordance with the spirit of Her Majesty's Proclamation.

(a) O. P. 62, 1865, p. 23; O. P., Cal., 1865, p. 89.

(b) O. P. 62, 1865, p. 29, § 3½; O. P., Cal., 1865, p. 102.

“ 9. In the Governor-General's orders of the 19th October last, defining the extent of talookdaree rights as against inferior holders, no distinction was made between ancestral and acquired talookas on the one hand and conferred talookas on the other, and no such distinction has ever been recognised by the Government.

“ 10. The policy of the Government has been to leave the confiscation of 1858 in force only in the cases of persons who persisted in rebellion, and generally so far as to restore, in its integrity the ancient talookdaree tenure wherever it had existed at the time of the first occupation of Oude in 1856, but had been set aside by our revenue officers. But the Governor-General in Council never intended that in talookdaree estates confiscated under the general order and conferred in consequence of the persisted rebellion of the talookdar on a new grantee, all the holders of subordinate rights, though themselves not persisting in rebellion and though pardoned by the Queen should be merged in the consequences of the talookdar's guilt and become partakers of his punishment.

“ 11. It was the intention of Government that all such subordinate holders, unless specially deserving of punishment for persisted rebellion, should be restored to the rights they possessed before the rebellion whether the parent estates were ancestral, acquired or conferred, and that every such holder should be maintained in his rights under the new grantee precisely as if the talooka had not been confiscated or as, if having been confiscated, it had been settled with the hereditary talookdar.

“ 12. Generally as regards the position of those who hold under the talookdars, the intention of the Proclamation of 1858, and of every Act of Government that has

“ followed it, was a return to the condition of things which
“ existed before the annexation of Oudh, and which had
“ been altered (for the better as was then believed) by the
“ action of our officers in 1856, under the instructions issued
“ on annexation. This is stated broadly and generally in
“ paras. 29, 30 and 31 of the Governor-General's published
“ despatch of June 17th, 1858 (a), to the Secret Committee ;
“ and is further explained in the Instructions of October
“ 19th, 1859 (b).

“ 13. As regards the talookdars the intention of the
“ Proclamation of 1858, and of the declarations made and
“ measures taken in October 1859 and subsequently was,
“ first, that in replacing them in possession of their old
“ estates or in conferring upon them new estates (as the case
“ might be), they should step into such possession, carrying
“ with them the rights and authority which the talookdars
“ of those estates respectively held before annexation, and
“ which the action of our officers in 1856 had impaired ;
“ and also carrying with them a new title derived from the
“ Government, from whom alone as their possession had
“ been confiscated any title could be derived ; secondly, that
“ the talookdars should, by certain obligations imposed upon
“ them, be restrained from the abuse of those rights and
“ that authority.

“ 14. As already observed you are quite right in saying
“ that ‘ Confiscation under the Proclamation of March
“ 1858 where it has been carried out annuls proprietary
“ rights of every kind in the soil inferior, as well as
“ superior’ and in this sense confiscation was carried out
“ throughout the province, except as regards the six estates
“ specified in the Proclamation.

(a) *Ante*, pp. 59-60.

(b) Act 1 of 1869, Schedule 1, post.

“ 15. It makes no difference whether subsequently any particular estate was granted to its former talookdar, or was granted for the first time to a stranger. The proclamation of confiscation had its effect in both cases, enabling the Government in both to revert to the order of things which existed before annexation, and to superadd certain precautions against the abuses then practised.

“ 16. It is a mistake to suppose that because an estate is now in the hands of the talookdar, who held under the British Government from the time of annexation to the time of the mutinies, the decree of confiscation has not taken effect on it. The effect of the proclamation on such an estate has been that it is now held under a direct title from the British Government, and that the relations which subsist between its talookdar and the holders under him are those which subsisted between them before annexation, modified or regulated by such regulations as the Government has imposed, not those which were established between them by our officers acting under the instructions issued at annexation.

“ 17. You are therefore requested to cancel the orders of the Officiating Chief Commissioner conveyed in your Secretary's letter to the Commissioner of Lucknow, dated the 14th May last, and issue instructions in conformity with the terms of this despatch. You will take care that these instructions are made known not only to the officers charged with carrying them out, but to all who are interested in them, and that in making the Settlement the principles laid down in the orders of the 19th October may be strictly acted upon in all estates. The Governor-General in Council fails, indeed, to understand how, immediately after the issue of those instructions, you could address a circular to your subordinate officers telling them

“ all rights in every species of property confiscated by the proclamation were conferred on the persons on whom the estates were conferred, that is, upon the talookdars.”

The Governor-General in Council concurred in designating as Taluqdar, “ every opulent zemindar paying revenue direct to the Government whether there be subordinate holders intermediate between him and the actual cultivator of the soil or not ” (a).

On 31st October 1860, the Governor-General directed that the same rule should be carried out in respect to the lands bestowed on European grantees (b).

About this time was issued the Record of Rights Circular, the provisions of which were generally approved of by the Governor-General, on 8th January 1861 (c). That Circular contained the following directions regarding the rights of the holders of subordinate interests in taluqas.

“ § 2 The rule on which we must take our stand for determining the amount payable to the talookdar by the under-proprietors or persons holding an intermediate interest between him and the ryot is to maintain the rights they were found possessed of in 1855, or just before the annexation of the province and no others; or we shall be, in part, repeating the errors of 1857, and reviving extinct rights as much to the disgust of the intermediate holders in possession as of the talookdars. Rights conceded by the talookdars subsequent to the above date will, however, it is almost necessary” (?) “ to observe be maintained. It would be better indeed to take the *status quo* in the Fuslee years 1262-63, corresponding

(a) O. P., 62, 1865, pp. 26-29; O. P., Cal., 1865, pp. 91-94.

(b) O. P., 62, 1865, p. 31; O. P., Cal., 1865, p. 104.

(c) O. P., 62, 1865, p. 39; O. P., Cal., 1865, pp. 112-13.

“ with the English years 1854-55, as the basis for the
 “ determination of these rights; because a general settlement
 “ of the land revenue of Oudh was made during those years,
 “ and at the same time arrangements were entered into
 “ between the talookdars and the intermediate holders,
 “ which are known to have been favourable to the latter, as
 “ regards the recognition of their rights, it having been the
 “ object of the talookdars, who were then nearly all in a state
 “ of chronic rebellion against the Government, to conciliate
 “ them and command their services in the field. The terms
 “ then concluded gave satisfaction to the under-proprietors,
 “ who, in disputed cases, appeal to them now; and they
 “ formed the basis on which pottahs have been given for the
 “ past two years (a). Both parties will cheerfully abide by
 “ them now, and they should be adhered to with such devia-
 “ tions only as circumstances in any case may render neces-
 “ sary. These will be adverted to hereafter.” * *

“ § 11. It has been explained that only the subordinate
 “ rights existing in 1855, or subsequently conceded, are now
 “ to be recognised and recorded. If then those persons who
 “ once held an intermediate interest in the land between the
 “ talookdar and the ryot are found to have been reduced prior
 “ to annexation to the position of mere cultivators they will
 “ not be raised from it now.” * *

“ § 27. The above observations refer to villages set-
 “ tled with talookdars. With regard to zemindars and all
 “ other persons not being talookdars, with whom the Sum-
 “ mary Settlement has been made, the orders of Government
 “ No. 6268 of 18th ” (10th) “ October, are ‘ that the late
 “ Chief Commissioner’s Circular No. 31 of 28th January
 “ 1859’ (which declared the settlement with these parties

(a) See this statement repeated in the Chief Commissioner’s Report for the year 1860-61, § 85; O. P., 62, 1855, p. 33.

“ also final and irrevocable), ‘ must not be strictly enforced ;
 “ and that opportunity must be allowed at the regular settle-
 “ ment to all disappointed claimants to bring forward their
 “ claims ; and all such claims must be heard and disposed of
 “ in the usual manner.’ These instructions are too clear to
 “ need comment. All who are not talookdars will be known
 “ by their not having received Sunnuds. To all lands held
 “ by such persons, claims may be heard, whether they were
 “ brought forward at the late settlement or not, for many
 “ had not the opportunity of appearing then. Regarding
 “ claims resting on mortgages, detailed instructions have
 “ already been given. All other claims will come under
 “ the provisions of clause 12, Section 1, of Act XIV of 1859,
 “ prescribing 12 years as the period of limitation to suits
 “ for rights in land, to be computed back from the date of
 “ the settlement of the village in 1858-59, if the claim was
 “ made then ; and, if not, from any subsequent date on which
 “ it was preferred, up to the time the cause of action
 “ arose, which will be the date of dispossession. Possession
 “ given at the Settlement, 1264 Fusli, will not bar adverse
 “ claims, for that was but a Summary Settlement ; nor
 “ will it be allowed to extend the period of limitation.
 “ This rule will apply to all claims to land, whether to
 “ whole villages, or fractional interests or specific portions
 “ (puttees)” (a).

This circular, it will be seen, gave a hard-and-fast rule not only as to the amount payable to the talookdar by the holder of a subordinate interest but also as to limitation. The circumstance alleged as the ground for adopting the date 1262-63 F.=1854-55 A. D., does not appear to have

(a) O P., 62 1865, pp. 35-38 ; O. P., Cal., 1865, pp. 105-111, where however the Circular is given in its original form from which it was varied to meet the Governor-General's corrections of it.

any foundation in fact. The statement that any such general settlement of the land revenue satisfactory to almost all parties then took place is one which will not readily be credited by any one acquainted with the state of Oudh during the last few years of the Nawabi. Mr. Charles Currie, the Settlement Commissioner, having in the 74th paragraph of his report for the year 1862-63, remarked: "The instructions issued for the guidance of Settlement Officers in disposing of these cases" (claims to under-proprietary rights) "are to the effect that the rights held in subordination to the talookdars must be proved to have been granted in consideration of the holders or their ancestors having been proprietors of the village before its incorporation in the talooka; and it must also be proved that the rights were held in 1262-63 Fusli, which corresponds with 1854-55 A. D.," and in the 79th paragraph, "The second essential feature in an under-proprietary tenure required by our rules is that it should have existed in 1855. The object of this is to maintain, as far as possible, the status found at annexation, by perpetuating rights then existent, but not attempting to revive any that had been lost" (a) went on to state as the ground for the year 1262-63 Fusli being chosen that alleged in the Record of Rights Circular § 2 already quoted, and proceeded to call attention to the circumstance on which I am now adverting in the following terms:—"I must admit that since I have held my present appointment and had under review a large number of claims to under-proprietary rights, I have not as yet found any trace of the arrangements supposed to have been entered into between the talookdars and the intermediate holders in 1262-63 Fusli. Such arrangements have certainly not been appealed to by claimants to under-proprietary rights in any cases that have

(a) O. P., 62, 1865, p. 100 (note).

" come under my notice " (a). In reference to this portion of the Report all that the Chief Commissioner had to say in support of the allegation of fact in the Record of Rights and his own Report for the year 1860-61 was " Whether or not " the settlement of the land revenue was general throughout " Oude in 1854-55, the rule that claimants of proprietary " rights must have been in possession then is a sound one ; " it gives nearly two years before the annexation of the province within which proof of the possession of subordinate " rights ensures their continuance " (b).

So that it appears that this rule limiting claims to under-proprietary rights to such as were enjoyed in 1855 (for by a confusion in the language used it had been cut down to that) rests upon nothing better than an unsupported notion of the Chief Commissioner having no demonstrable foundation in fact, and which if proved could have given no sound ground for the limitation considering the general misrule and disorder of the time. There being nothing whatever in fact to account for this year being chosen, the Government of India, on 17th February 1864, required a further explanation of the matter. In the letter of the Government of India of that date it was stated that a careful consideration of the subject had not satisfied the Governor-General, Sir John Lawrence, " that " the scope of the instructions of the Secretary of State for " India has been clearly comprehended or suitable measures " adopted for carrying fully into effect the orders of the " Government of India." Reference was specially made to the despatch of the Secretary of State, Sir Charles Wood, dated 24th April 1860 (already quoted), in which he suggested that " a period of 12 or even 20 years, before our rule,

(a) O. P., Cal., 1865, pp. 365-366 ; O. P., 62, 1865, p. 100 (note).

(b) O. P., Cal., 1865, p. 392 ; O. P., 62, 1865, p. 100 (note).

“considering the state of misrule into which Oude was
 “plunged for some considerable period previous to annexation,
 “would have been fair and reasonable” (a) as the limitation
 for hearing such suits and to his subsequent despatch of
 17th August 1861, in which the Secretary of State had
 repeated his conviction “that the definition of the right of
 “the subordinate holders is based too exclusively upon
 “the status of 1855, which was a period of misrule and
 “disorder” (b). The letter then proceeded :

“3. By the foregoing instructions it was decided that
 “while the arrangements made in favour of the talookdars
 “by the British Government should be respected, the sub-
 “ordinate rights of other classes of the people in the soil
 “should be ascertained and defined. It is the opinion of the
 “Governor-General in Council that these instructions
 “embraced all rights whatever under those of the talookdar,
 “whether they are those of former proprietors, or hereditary
 “tenants holding their lands on fixed rents or on rents more
 “advantageous in their character than those of mere tenants
 “at will, or whether they are tenants with the simple right
 “of occupancy.

“4. Judging from the passages in your report and in
 “that of the Commissioner of Settlements marginally
 “quoted” (that is those given above) “it would appear, first,
 “that no such proprietary rights not enjoyed as late as the
 “year 1855 are to be admitted; and secondly, that no here-
 “ditary tenant rights whatever are to be recognized. These
 “instructions seem at variance with those of the Secretary
 “of State and contrary to sound policy.” * *

“6. The Governor-General in Council has no desire
 “whatever to trench on the just rights of the talookdars

(a) O. P., 426, 1861, p. 43; O. P., Cal., 1865, p. 581.

(b) O. P., 426, 1861, p. 147; O. P., Cal., 1865, pp. 587-590.

“founded on the Sunnuds they received from the British Government) but on the other hand he is opposed to any rules whereby the rights of the subordinate proprietors or tenants of the soil shall be destroyed or even damaged. With reference therefore to the sub-proprietary rights and the limitations of enquiry to those enjoyed in 1855, His Excellency in Council wishes to know upon what lease (Qy. basis) “and under what authority the limitation in question has been prescribed to the Settlement Officers”(a)

The Settlement Commissioner's report had swept away the cobweb ground set up in the Record of Rights Circular, and the Chief Commissioner had to cast about for other justification for the choice of the period 1262-63 Fusli, and his reply, dated 2nd March 1864, to the enquiry of the Government of India was “that the authority for the orders restricting the recognition of subordinate proprietary rights to such as were enjoyed in 1854-55 is to be found in paragraph 5 of Government letter No. 23, dated 19th October 1859, which explains the intention of Government to be to re-establish and maintain in subordination to the talookdars the former rights as they existed in 1855.

“3. The rule was again promulgated under the authority of the Government of India in paragraphs 2 and 11 of the Chief Commissioner's Circular No. 2315, dated 29th January 1861, which was not issued until it had received the sanction of the Government of India in letter No. 74, dated 8th January 1861, with the remark that the instructions were declared to be ‘generally very just and proper and to be framed in accordance with the views which

(a) O. P., 62, 1865, p. 100; O. P., Cal., 1865, pp. 129-132.

“ the Government have already expressed, ’ exception being
 “ only taken to some points of detail in connection with
 “ assessment ; the Circular has acquired the force of law
 “ under the Indian Council Act.

“ 4. This is the Circular the Chief Commissioner placed
 “ in the hands of the Secretary of State in 1861, and, until
 “ the receipt of your letter under acknowledgment, no inti-
 “ mation of the Secretary of State’s objection to the limita-
 “ tion of the inquiry into subordinate rights to the status
 “ of 1855 had been communicated to this office or had
 “ reached the Chief Commissioner in any shape.

“ 5. The basis on which the rule rests is that on re-
 “ occupation of the province we adopted as the principle of
 “ our Summary Settlement the *status quo* at annexation ;
 “ the rule has now been in operation for three years, and
 “ the Chief Commissioner does not see how it can be abro-
 “ gated, without exposing Government to the imputation of
 “ receding from its ill-considered declaration ” (a).

The last observation quoted is perhaps the last that might have been expected from a Chief Commissioner who had urged repeated alterations in the formal well-considered declarations of the Government contained in the original Sanads. The distortion of the expression the “ rights as these existed in 1855,” used by Lord Canning in his letter of 19th October 1859, into “ rights which were being actually enjoyed in possession in 1855,” has been well remarked on and fully brought out by Sir William Muir in his Memorandum on Proprietary Tenures in Oudh (b), and by Mr. Irwin, who follows him pretty closely on this point (c). Sir

(a) O. P., 62, 1865, p. 101 ; O. P., Cal., 1865, p. 132.

(b) O. P., Cal., 1867, p. 811.

(c) Irwin, pp. 209, 222 and 223.

H. S. Maine had put the point clearly when he said, "The Sunnuds contain no promise to limit the under-proprietary rights to rights commencing in any particular years" and that "the policy of the Government was never finally settled, inasmuch as it was subject to the approval of the Secretary of State, which approval has been distinctly withheld" (a).

The genesis of the erroneous view of the Oudh Authorities is not hard to trace. Lord Canning's expression "rights as they existed in 1855" was paraphrased "rights possessed in 1855" and this was turned into "rights in possession in 1855;" in other words the confusion was between the right of possession and the fact of possession; and the confusion is cleared up by the simple statement of it.

In April 1864, the Chief Commissioner, Mr. Wingfield, met Sir John Lawrence, and the Law Member of Council, Mr. Maine, at Cawnpore, and they went together over all the points connected with the question "of allowing the subordinate proprietors of land twelve years from the annexation of Oude within which to prove their rights" (b). The Chief Commissioner desired time to consult the Taluqdars, and on 14th May 1864 reported the result of his consultation with the leading Taluqdars as follows:—"I gather from what they said, that though they would consider themselves justified in demanding that the present rule be maintained as resting on a declaration having the force of law, they would offer no objection to its relaxation, so as to extend the term of limitation for the hearing of claims to subordinate rights to 12 years computed back from the Summary Settlement in 1858-59, as is the rule in regard to claims of equal interest and subject always to

(a) O. P. 62, 1865, p. 173, §§ 15-16; O. P., Cal., 1865, pp. 210-215.

(b) O. P. 62, 1865, p. 162; O. P., Cal., 1865, pp. 197-204.

“ the condition that full proprietary rights are not thereby
 “ revised. That is to say, that where villages have been
 “ annexed to the talooka within 12 years, the persons who
 “ were in full proprietary possession will not be entitled to
 “ recover the equivalent of their former rights, viz., a sub-
 “ settlement at five per cent. upon the Government demand,
 “ but only to the most favourable terms they enjoyed in any
 “ one year since the incorporation of their lands with the
 “ talooka.

“ 7. This condition appears to me to be just and rea-
 “ sonable, for the Sunnuds and Government letter No. 23,
 “ dated 19th October 1859, only require the maintenance of
 “ rights in subordination to the talookdar. These may
 “ sometimes amount to a sub-settlement of the entire village,
 “ and whatever they are, they will be maintained, but
 “ independent rights should not be revived under another
 “ guise.

“ 8. They were also particularly urged that such sub-
 “ ordinate interests only should be recorded as were held of
 “ right, privileges granted for service, or from favour being
 “ included ” (excluded ?) “ and that temporary leases be not
 “ confounded with under-tenancies carrying a complete right
 “ of property. But the settlement rules take full cognizance
 “ of these distinctions under the present term of limitation,
 “ and they are duly considered by the Courts.

“ 9. Generally they said that they had no wish to put
 “ a man in a worse position than he was in before under
 “ them, therefore, though the Government order has given
 “ them an advantage, they do not wish to use it further than
 “ was necessary to maintain their just right.

“ 10. Few taluqdars will probably be much hurt by
 “ the modification of the rule in the above sense, for generally

“ it may be said that those under-proprietors who were in
 “ possession of subordinate rights at annexation, had enjoyed
 “ them for some time previous.

“ 11. I have no doubt, therefore, that all talookdars
 “ will consent to this extension of the term of limitation, [128
 “ and shall be happy to use my influence with them to this
 “ end, as I have already done to persuade them not to insist
 “ too closely on the status of possession in 1855, but to
 “ recognise just claims that may nevertheless not come up to
 “ that test, and with good results, as the reports of the
 “ Settlement Officers for 1863-64, will, I have no doubt,
 “ show”(a).

On 28th May 1864, the Governor-General informed the
 Chief Commissioner that he considered “ that the period of
 “ limitation should count from annexation, and not from
 “ 1858-59, the date of Summary Settlement. It has been
 “ from the former date that the question has been under
 “ dispute. I quite agree that full proprietary rights cannot
 “ thereby be revived. I also subscribe to your condition as
 “ contained in the concluding sentence of paragraph 6 of
 “ your memorandum”(b).

On 6th June 1864, the Chief Commissioner wrote :
 “ There will I think be no objection on the part of the talook-
 “ dars to reckoning the period of limitation from 1856 or the
 “ date of annexation. The change should, however, be made
 “ equally applicable to claims of equal interests in non-
 “ talookdaree villages, and this will necessitate a review of
 “ all decisions in such cases that have turned on the period
 “ of limitation.” * * “ Almost all the Settlement Officers
 “ of whom I made private enquiries on this point after my

(a) O. P. 62, 1865, p. 166 ; O. P., Cal., 1865, p. 204.

(b) O. P. 62, 1865, p. 167 ; O. P., Cal., 1865, p. 206.

' return from Cawnpore, take the same view, and the further
' extension of the term of limitation, by computing it from
' 1856 instead of from 1858, cannot make very much differ-
' ence"(a).

On the 20th June 1864, the Governor-General Sir John Lawrence recorded a minute in which are the following observations on this subject:—

" 16. By the Chief Commissioner's rules it has been
" laid down that only those subordinate rights which existed
" in 1855, or were subsequently conceded, were to be recog-
" nised; and that no intermediate interests in the soil which
" were lost prior to 1855 were to be admitted. But while
" talookdaree estates were thus indulgently treated, as
" regards the interests of the talookdars the limit in
" zemindaree villages was extended to 12 years.

" 17. Now there is no valid reason whatever for such
" a distinction. It is not based on any order of the Govern-
" ment of India or of the Secretary of State. The former
" decided that all intermediate rights should be guarded
" and respected, and the latter authority distinctly objected
" to the status of 1855, as the rule of limitation" * *

" The instructions of the Chief Commissioner have no
" doubt deterred many people from asserting their claims,
" and have led the Settlement Officers to refuse a hearing to
" those which have been preferred." "(§22) * *

" 27. The Chief Commissioner has since informed me
" that the talookdars have consented to extend the period of
" limitation for the hearing of the claims of sub-proprietors
" to 12 years before annexation." * *

(a) O. P. 62, 1865, p. 168; O. P., Cal., 1865, p. 207.

“ This was the term I proposed with a view of conciliating the taluqdars. The Secretary of State proposed from “ 12 to 20 years.”

The Governor-General further proposed to abolish the “ the Office of Settlement Commissioner,” and “ That a “ Financial Commissioner shall be re-appointed and that the “ settlement of the revenue and landed tenures in Oudh “ shall be conducted under his directions, subject to the “ general instructions of the Supreme Government.” (§§ 39-40)(a).

On the 13th September 1864, the Governor-General's position in this matter was further strengthened by the opinion of the Advocate-General of Bengal, Mr. Cowie, who stated his view on this question of Limitation as follows:—

“ Practically it appears to me that the reservation introduced “ in the Governor-General's order, declaring the proprietary “ right of the taluqdars, is so wide that it leaves the rights “ of the under-proprietors where they were and those rights “ remain as they were prior to annexation, and will so remain “ (subject, of course, to the effect of the Limitation Act) “ except in so far as they may be affected by express legis- “ lation”(b).

Thus fortified and in consequence of what had taken place between the Chief Commissioner and the Taluqdars the Governor-General in Council on 30th September 1864, directed that all claims to under-proprietary right “ shall be “ admissible to trial on their merits, provided that dispossession from the rights and interests existing in 1844, or 12 “ years prior to annexation cannot be proved. It is to be “ understood that by such suits nothing can be acquired

(a) O. P. 62, 1865, pp. 161, 162 and 165; O. P., Cal., 1865, pp. 197-204.

(b) O. P. 62, 1865, p. 144, § 9; O. P., Cal., 1865, p. 179.

“beyond the most favourable terms enjoyed by the suitors in any one year since the incorporation of their lands with the talooka, and not the equivalent of their former rights, viz., a sub-settlement at 5 per cent. on the Government demand. The mere holding of a temporary lease would of course not prove any intermediate proprietorship”(a). In other words the onus of the issue as to Limitation was to be on the Taluqdar after the claimant had shown proprietary right.

The Office of Financial Commissioner having been revived Mr. (now Sir) Henry Davies soon after his appointment to that office issued a Circular on 15th October 1864(b), directing that “all suits to rights in the soil shall be heard and decided on their merits, provided that the dispossession of the claimant cannot be proved to have endured for 12 years from the date of annexation, or from the 13th February 1844,” and then followed a repetition of the directions of the Governor-General in Council as to what could be decreed in such suits and as to temporary leases.

On 10th February 1865, the Secretary of State, Sir C. Wood, approved of the extension of “the time at which the existence of subordinate rights was to be ascertained”(c); indeed such extension was, as we have seen(d), in accordance with his own suggestion in the despatch of 24th April 1860. Meantime whilst this question of Limitation in respect to claims to subordinate rights was in course of settlement a further difficulty had arisen in this way. By an order of the Governor-General in Council, dated 6th August 1861,

(a) O. P. 62, 1865, p. 185, §§ 4-6; O. P., Cal., 1865, p. 226.

(b) F. C., B. C. 3; O. P., 62, 1865, p. 244; O. P., Cal., 1865, p. 557.

(c) O. P. 62, 1865, p. 249, § 17.

(d) *Ante*, p. 133.

the Civil Procedure Code (Act VIII of 1859) had been with certain modifications extended to Oudh from 1st January 1862. Some conflict ensued between the Civil and Revenue Courts of the Province in respect of suits regarding title to land and rights and interests in land affected by the settlement of the land revenue. It was found desirable to remove all doubts as to the jurisdiction of the Courts by express legislation, and advantage was taken of the occasion to give statutory effect to the enlargement of the period of limitation within which certain classes of suits relating to land might be entertained. Accordingly on 7th April 1865, Act XVI of 1865 was passed for these purposes. The Act after reciting some of the circumstances above adverted to provided (Secs. 2, 3, 7 and 8) that suits and appeals relating solely to land affected by the revenue settlement should during the progress of such settlement be cognizable by the Revenue Courts, that is, officers engaged in making or revising the settlement and by the Financial Commissioner as the highest Court of Appeal, and that the decisions of such Courts after the extension of the Code should not be invalidated by anything therein; but that those Courts should not have jurisdiction where the claim related not only to such land but also to "other property not permanently attached to the land comprised in the claim;" and that after the completion of the settlement in the district suits relating to such land should be heard and determined in the ordinary Civil Courts according to the Civil Procedure Code as extended to the province, and that "no suit relating to any "under-tenure which shall be cognizable in any Revenue "Court shall be debarred from a hearing under the rules "relating to the limitation of suits in force in the Province of "Oude, if the cause of action shall have arisen on or after the "thirteenth day of February 1844 : Provided that this section

"shall not apply to any suit by a person claiming only a right
 "to cultivate as a tenant at will, or as a tenant with the right
 "of occupancy, or as a tenant at fixed or favourable rates
 "(Sec. 5). Any suit or appeal relating to any under-tenure
 "(not being a suit within the proviso contained in the last
 "preceding section) cognizable under this Act by any Revenue
 "Court which may have been rejected or dismissed on the
 "ground that the suit was barred by lapse of time under the
 "law of limitation in force in the Province of Oude, may be
 "revived and heard on the merits if the cause of action should
 "have arisen on or after the date mentioned in the last preced-
 "ing section: Provided that a petition for the revival of the
 "appeal or suit be presented in the Court of the Financial
 "Commissioner if the rejection or dismissal took place in
 "appeal, or in the Court of first instance if the rejection or
 "dismissal took place in that Court, within six calendar
 "months from the date of the passing of this Act. The peti-
 "tion may be written on paper bearing the stamp required
 "for petitions presented to the Financial Commissioner or
 "subordinate Revenue Court as the case may be." (Sec. 6.)

So much of the principle of the Act as related to Limi-
 tation was further extended by Act XIII of 1866^(a), passed
 on the 23rd March 1866, and which was to be read as part
 of Act XVI of 1865, by which it was enacted that no suit
 relating to any tenure solely cognizable by the Revenue
 Courts under Act XVI of 1865, should be barred by the
 rules of Limitation in force in such courts and suits and
 appeals rejected on the ground of such bar might be revived,
 and heard on the merits "if the cause of suit shall have
 arisen on or after the 13th February 1844;" that redemp-
 tion by a mortgagor or person claiming through him.

^(a) Both this Act and Act XVI of 1865 were repealed by Act
 XXXII of 1871, but period of Limitation remained unaltered.

against a mortgage in possession should be barred where the mortgage in question was executed before 13th February 1844; that this bar should not apply where a term was fixed by the mortgage for redemption and such term had not expired on the 13th February 1856, but that if it had expired before that date the suit should be barred whatever the date of the mortgage-deed, and that except as stated redemption suits dismissed as barred by the limitation in force or supposed to be in force in the province might be revived if the mortgage in question was executed on or after the 13th February 1844.

It being thus definitively determined that under-proprietary rights were to be protected provided they were enjoyed within the period of Limitation there would ordinarily have been three methods in which this might have been effected, *viz.*:—1st, By a direct Settlement by Government with the under-proprietor himself; 2nd, By a Sub-settlement; or 3rd, By decreeing the rights of the under-proprietor according to their ascertained existence.

To explain: The right to engage for the payment of the Land Revenue was not under the native rule always an advantage, not always necessarily making any proprietary right in the party from whom the engagement was taken, but the introduction of British rule altered this and turned it into a right in the sense of being a privilege and beneficial to the party permitted to enter into the engagement. The Government of India early decided that where there were two interests in the soil, a superior and an inferior, it was open to Government to accept the engagement for the Land Revenue from the one or the other. So the Bengal Regulation VII of 1822 enacted (Section 10, Clauses 1 and 2), that "Of several parties possessing separate heritable and transferable properties in any parcel of land, or in the produce or

"rent thereof, such properties consisting of interests of different kinds, it shall be competent to the Governor-General in Council to determine and direct which of such parties shall be admitted to engage for the payment of the Government revenue, due provision being made for securing the rights of the remaining parties " * * " It shall be competent to the Collector or other officer who may be employed in adjusting the jumma, to be assessed on such mehal with the sanction of the Board previously obtained and subject to the orders and directions of that authority to make a mofussil settlement with each of the proprietors or occupants aforesaid for the land possessed by him, and to grant such proprietors or occupants pottahs defining the condition on which they are to hold their land, whether subordinate to the sudder malguzar or to the farmer or officer of Government employed in the khas management; and in all such cases, if the engagements for the Government revenue of the mehal be taken from the intermediate hereditary malguzar, the particulars of the mofussil settlement, when approved by the Board, shall be] endorsed on the pottah to be granted to the sudder malguzar, or shall be so incorporated with the engagement taken from him as to form part of the same."

Coming nearer home for our present purpose the Lieutenant-Governor, Mr. Thomason, applied these principles to the North-Western Provinces in the following directions to Settlement Officers (a):—

" 110. It being decided that there are in one village or in any number of villages two separate properties of different kinds, it is open to the Government to form the Settlement either with the superior or the inferior party. If the former the inferior proprietor must be protected by

(a) Directions for Revenue Officers, etc., 1850.

“ a Sub-settlement; if the latter the rights of the superior
“ must be compensated by a money allowance in lieu of his
“ share of the profits.

“ 111. If the Settlement is made with the superior pro-
“ prietor he must be allowed a sum equal to his share of the
“ profits of the estate, and such as will cover the cost and
“ risk of collection, and the Sub-settlement will be formed
“ with the inferior proprietor at an amount so much in-
“ excess of the Government demand. This sum should
“ never be less than 10 per cent. upon the Government
“ demand for profits and 5 for expenses of collection, but
“ where the estate is small it may be more.

“ 112. The inferior owners are thenceforward bound to
“ pay their revenue to their superior according to fixed
“ instalments which should be regulated, so as to be a month
“ in advance of the Government instalment. So long as
“ they pay regularly they cannot be ousted. If they do not
“ pay on demand of the Talookdar, he may either distrain
“ their personal property or sue them summarily, and on
“ obtaining a decree it will be in his option either to bring
“ the property to sale or hold it kham under authority
“ from the Collector till the balance be liquidated with
“ interest at the rate of 12 per cent. per mensem (*sic* for
“ annum). In either case the defaulters forfeit their pro-
“ prietary rights permanently or for a time and become
“ mere cultivators of their seer land on fixed rates under the
“ purchaser or Talookdar (*a*).

“ 113. If the settlement is made with the inferior pro-
“ prietors they become in all respects malguzars, and are
“ treated the same as any other proprietors. The Talook-

(*a*) [But now see as to these matters in Oudh, The United Provinces
and Oudh Land Revenue Act of 1901.]

“daree allowance is paid direct from the Government Treasury to the Talookdar either in cash or in the shape of a deduction from the jumma of any other villages he may hold. The sum thus allowed in the P.-W. Provinces has been usually 18 per cent. on the assumed rental or 22½ on the Government jumma, but this has been under peculiar circumstances and has been restricted to the life of the first incumbent. Ten per cent. has been determined as the amount at which it will ultimately be fixed, and this should be the amount generally assumed unless particular circumstances seem to demand a higher rate of allowance.”

Similarly Sub-settlement in Oudh may in general terms be stated to be an arrangement whereunder there being now two distinct interests in land, a superior and an inferior, the holder of the superior is admitted to engage and is responsible for the land revenue thereof, during the currency of the existing settlement, and is entitled to receive from the inferior a sum representing such revenue and a further fixed sum in respect of his profits and the cost and risk of collection or of the latter only, calculated either on the profits or on the Government demand on such land, and the inferior has a permanent heritable and transferable right in such land conditional on his regular payment of such sum.

I say “there being *now* two distinct interests,” for Oudh Settlement Officers were instructed that the main feature of under-proprietary right was that it was held by virtue of a former proprietary right, which was considered not to cover the case of those who, at the period of the second Summary Settlement of 1858-59, still had the full proprietary right, but who for some reason declined to engage for

the revenue of their villages which were consequently settled with others, so that the proprietary right of the owners passed away from them for ever, those then summarily settled with having "thereby acquired a permanent, hereditary and transferable proprietary right" in the lands for which they engaged "including the perpetual privilege of engaging with the Government for the revenue." The term under-proprietor was however stretched to meet such cases, that is to say, though two distinct interests in the villages had not previously existed and they had not before been incorporated in the taluqa of a superior holder, they were treated in the settlement as though they had, in order that they who had maintained full proprietary rights should not be in a worse position than those who had not, but had come into a position of subordination of the Taluqdar, or other superior holder.

What has been said explains why after the Government declaration of 10th October 1859, it was not open to Government to protect the holders of subordinate interests in land in Oudh by the first method mentioned, *viz.*, a Direct Settlement.

As to the other two methods we must bear in mind the stipulation of the Taluqdars when consenting to the extension of the period of limitation for such claims, *viz.*, that the claimants should not be decreed the equivalent of their former rights, *viz.*, sub-settlement at 5 per cent., on the Government demand, but only the most favourable terms which they had enjoyed in any one year since the incorporation of their lands in the taluqa. This stipulation was confusedly and possibly contradictorily stated, for the nearest approach to the most favourable terms so enjoyed might be the very sub-settlement at 5 per cent., which by the first part of the stipulation was not to be but by the second was

to 'be decreed.' The result was that sub-settlement if and where it had existed was to be decreed at the most favourable percentage enjoyed; but where the arrangements between the parties did not proceed to put it shortly for the basis of calculation on the principle of sub-settlement, there the claimant was to be decreed rights represented by the most favourable terms he had enjoyed in any one year since the incorporation of his lands in the taluqa.

The term under-proprietor having been extended to meet the case of those who had never lost the proprietary right anterior to the declaration of the finality of the second Summary Settlement of 1858-59—there being no rights of the Taluqdar or superior holder to be protected other than those which arose from the fact of the settlement and declaration itself—such claimants were held to be entitled to a sub-settlement and usually at 10 per cent. on the Government demand; so also were those whose estates had been included in a Taluqdar's or powerful land-holder's engagement for the revenue during the Nawabi for fiscal purposes and for the sake of protection against the Revenue Officers or contractors or against neighbouring Taluqdars or land-holders.

Soon after the Governor-General's letter of 30th September 1864, the question arose whether if the under-proprietor had held the lease of the whole village from the Taluqdar at any time within the period of limitation he was entitled to be decreed a sub-settlement. The Morarkhara case (Daljit Singh and others *versus* Mahesh Bakhsh Singh) raised this question. The Court of first instance there found that the claimants were the hereditary zemindars of the village, had held leases from the Taluqdar within the period of limitation and had engaged direct with the Chakladar when the village had been held *kham*, but dismissed their claim on the ground that they had not held at a fixed rent.

The Settlement Commissioner, Mr. Charles Currie, upheld this decision on the ground that "there was not even a "terminable lease allowed to run on without renewal, for a "regular lease was not given until one crop had been cut "and the prospects of the next ascertained." The Financial Commissioner, Mr. Davies, on the 26th November 1864, reversed these decisions holding that "the main point, "namely, that the appellants are the hereditary zamindars, "being fully established, it follows that if they have held a "lease of any sort within the term of limitation, they are "entitled to a sub-settlement under the British Administration;" that it was such a tenure that the Government letter, 19th October 1859, § 5, contemplated and that "Wherever "the zamindari right is clearly established, and the fact of the "zamindars having held a lease under the taluqdar within the "period of limitation, the Financial Commissioner considers "that he is bound, not merely by the common law and usage "of the country, but also by the terms of the letter above "quoted, to admit the claim to a sub-settlement"(a).

It was objected by the Taluqdars that this decision infringed the further stipulation which they had made that "temporary leases be not confounded with under-tenancies carrying a complete right of property," and Mr. Davies though holding that "a *pakka* lease held by under-proprietors does constitute a tenancy carrying a complete right of property," and that the holder of such a lease during the Nawabi for a single year would be entitled, political restrictions apart, to a sub-settlement, yet thought it highly probable that such stipulation was intended by the Taluqdars to protect them against this construction, and that they were therefore entitled under it to resist its application, except as regards such leases as were in force in 1855. He

(a), O. P., Cal., 1867, p. 739.

further stated "that he had hitherto construed the word 'temporary' as the converse of *pakka*." But Mr. Davies adopted the explanation of the terms *kachcha* and *pakka*, under the King's rule given by Captain MacAndrew which was as follows:—"We find a man who does not collect the rents sometimes holding *pukka*, and we find the old zemindar collecting the rents while the village is *kutchu*. In this latter case he is acting as collector for the Chuckladar, who, if he is the old zemindar, would probably give him a Nankar allowance; and, if he is not, he would either get land at a low rent or some allowance under the name of *chakree*; but the real difference is the right to the profit or liability for the loss as the collections exceed or fall short of the *kuboolyat* filed at the commencement of the year. If that pertains to the zemindar he is said to hold '*pukka*' even though he may be quite out of rent collecting possession and the talookdar or Chuckladar's own servants collecting in the village, if it does not pertain to him he is said to hold '*kutchu*'(a). This meaning of the terms *kutchu* and *pukka* was that approved by the general consensus of opinion after full enquiry was made into the subject at the instance of Mr. Davies (b).

On this Mr. Irwin remarks: "There is only one possible converse to *pakka* as above defined and that is *kachcha*, and it is of course clear that a *pakka* lease may be, and in ninety-nine cases out of a hundred actually was 'temporary.' Every lease, indeed so long as it lasts is *pakka*, and only ceases to be so on being cancelled, such a thing as a *kachcha* lease is a contradiction in terms"(c). But the principle by which

(a) O. P., Cal., 1865, p. 531, § 48; Irwin, pp. 279-280; Rai Bareilly Settlement Report Glossary, p. x.

(b) O. P., Cal., 1867, pp. 723-727.

(c) Irwin, p. 280.

Mr. Davies had been guided was, in his own words, that "though the mere holding of a temporary lease was not sufficient proof of intermediate proprietorship, yet that if this main point of zamindari tenure were clearly proved, the holding of a temporary lease under the Taluqdar within the twelve years *would* qualify an under-proprietor for a decree of sub-settlement but would not so qualify a mere *thekadar*, or farmer, without any under-proprietary right." He still held that, as a matter of law, Settlement Officers were bound to decree sub-settlements, wherever persons proved to be under-proprietors could show that they had held a village *pakka* from the Taluqdar during the period of limitation. But as the question was complicated by the conditions under which the Taluqdars had agreed to the extension of the period of limitation, he requested in his letter to the Chief Commissioner, dated 10th June 1865, that his "views should be authoritatively affirmed or corrected." The Chief Commissioner, Mr. Wingfield, considered that there was a well marked distinction between the right to sub-settlement founded on usage and prescription, and claims based on mere temporary casual leases, and that "some continuance of possession not by any means necessarily uninterrupted, a *bonâ fide* lease, giving the management of the village *in* laud, is necessary to establish the *pukhtadari* right (*i.e.*, the right to hold *pakka*) and a title to sub-settlement." He stated that the Taluqdars did intend the stipulation above adverted to, to protect them against claims to sub-settlement of the kind which Mr. Davies thought himself bound in law to decree. Mr. Davies then thought that he had attached undue weight to the stipulation, and that it was not infringed by a sub-settlement if the under-proprietor had contracted for the revenue for any one year during the period of limitation.

Then had zamindars whose villages had been incorporated in a taluqa a right to engage for the revenue of them under native rule? Mr. Davies maintained that they had; Mr. Wingfield that they had or had not according to the circumstances attending the incorporation of the village in the taluqa; Colonel MacAndrew that they had not, their *sir* and *nankar* lands being the measure of their rights; Mr. Carnegy, that sometimes they had not but that in other cases they had and "could even withdraw their village altogether from a taluqa, and themselves engage for it direct with Government or include it in the rent-roll on similar terms of some other estate", (a).

The position was clearly put by Mr. Davies when he said, "The truth is there was neither settlement nor sub-settlement in the Nawabi. As proprietor, a zamindar had a right to contract for the revenue of his village, but he might decline without loss of proprietorship. In the Nawabi the contract was not sought after, now it is. We cannot deprive proprietors of the right of contracting for the revenue without breach of the conditions of the Sunnuds. This privilege is inherent in the proprietorship of land in India. The Taluqdar has now obtained the right to pay to Government the revenue of all villages in his taluqa; but as the rights of the under-proprietors are reserved that which they formerly enjoyed of contracting for the revenue of their own villages remains to them" (b).

[143] The question of under-proprietary rights generally and of sub-settlement in particular was thus in 1865, one upon which the views of the highest authorities in Oudh were, notwithstanding the agreement of the Taluqdars regarding

(a) Irwin, pp. 281-2.

(b) Quoted Irwin, p. 284.

the extension of the period of limitation for claims regarding them, in conflict on material points. The Chief Commissioner, Mr. Wingfield, had in May 1864 declined to carry out the views of the Governor-General Lord Lawrence in regard to Rights of Occupancy in Oudh taluqas (a); though he did subsequently endeavour to induce the Taluqdars to agree to limited proposals regarding this class of rights. His efforts in this behalf failed on 14th March 1866, and a day or two later Mr. Wingfield left the Province and Sir John (then Mr.) Strachey succeeded to the Chief Commissionership (b). Mr. Strachey at once took up both these difficult questions, and on the 9th June 1866 wrote to the Hon'ble Mr. Grey, stating his belief that the important question of Rights of Occupancy might be more easily disposed of if the question of sub-settlements which the Taluqdars considered to be closely connected with that of Rights of Occupancy were brought to a conclusion at the same time, and that by taking them up together an arrangement might be arrived at satisfactory both to the Government and the Taluqdars. Having received the requisite authority Mr. Strachey drew up plans for the settlement of both questions in concert with the Financial Commissioner Mr. Davies, Colonel Barrow, Maun Singh and other principal Taluqdars, and with the permission of His Excellency the Governor-General went to Simla, accompanied by Maun Singh and two other Taluqdars, Chowdri Nawab Ali Khan Bahadur and Tajummul Hossain Khan, with the view of removing by personal explanation any difficulties that might remain. Having discussed the questions fully with His Excellency, Mr. Strachey submitted the terms arrived at, and generally known as "The Oudh Compromise," for the

[144]

(a) O. P. (62), 1865, pp. 164-166.

(b) Irwin, pp. 289-290.

orders of Government in his letter, dated Simla, 20th August 1866 (*a*). The terms consisted of two sets of rules, those relating to sub-settlements and a second set relating to Right of Occupancy. The consent of the Taluqdars to the latter was made dependent on sanction being accorded to the former (*b*).

On the 24th August 1866, the Governor-General in Council accorded his sanction to the arrangement, considering that the terms were as liberal as could be expected under the circumstances (*c*), and the rules together with the correspondence regarding them were published in the Gazette of India, 1st September 1866.

In his letter of 20th August, Mr. Strachey had stated that the Financial Commissioner, Mr. Davies, considered that legislation was necessary to provide for the legal validity of some of the measures relating to sub-settlements (*d*), and the Chief Commissioner, Mr. Strachey, subsequently expressed his concurrence in this view (*e*), and doubts were felt whether the Financial Commissioner's view was not right. To put the matter beyond doubt the Hon'ble Mr. Muir prepared a Bill to give the portion of the Rules relating to underproprietary rights the force of law, and obtained leave to introduce it on 10th October 1866 (*f*).

In the Statement of Objects and Reasons, dated 26th September 1866, Mr. Muir referred to the correspondence published in the supplement to the Gazette of India of 1st September as fully explaining the circumstances which had

(*a*) Supt. Gaz. of India, 1st Sept. 1866, p. 395.

(*b*) *Id.*, p. 386, and Appendix B to the letter of 20th August 1866.

(*c*) *Id.*, p. 394.

(*d*) *Id.*, p. 389.

(*e*) Pro., 1866, p. 212 (Governor-General).

(*f*) *Id.*, p. 208.

led to the introduction of the Bill. He again twice referred to that correspondence in the proceedings regarding the Bill as explaining its intention (*a*). In moving for leave to introduce the Bill, Mr. Muir remarked in reference to its form "as the Chief Commissioner's rules embodied stipulations which formed a sort of compromise with the taluqdars on certain debated points, it had been deemed advisable to retain them as a schedule to the Bill in the very words and in the exact form in which they were concluded. But it was really in respect of only a limited portion of these stipulations that necessity for legislation existed. In many points the rules simply enunciated the law as it was acknowledged by the Courts in Oudh." * * "There were, in fact, perhaps, only two of the rules, the 3rd and 8th, which required legislation to make them binding on the Courts" (*b*).

Having obtained leave to introduce his Bill, Mr. Muir moved to suspend the Rules for the conduct of business that the Bill might pass at once. To this course the Hon'ble Mr. Riddell strongly objected, though he subsequently withdrew his objection, and after certain verbal amendments moved by the Hon'ble Mr. Maine the Bill passed as Act XXVI of 1866 (*c*).

It was not long before Mr. Riddell's objection to the hasty passing of the Bill was justified, for on his return to Oudh, the Chief Commissioner Mr. Strachey considering that "it had not been foreseen either by himself or by the taluqdars that the very rules drawn up by him would subsequently without any alteration be passed into law in their original form, and that if it had been some defects and obscurities of

(*a*) Pro. 1866, pp. 205-208.

(*b*) *Id.*, pp. 205-206.

(*c*) *Id.*, pp. 208-214.

“expression which were not noticed at the time might have been removed, felt it essential that they should be explained.”

He therefore called a conference of officers of experience in settlement matters to ascertain what parts of the rules were likely to present difficulties in practice, and after receiving valuable notes from them indited a minute embodying the views of the members of the conference to show the meaning and intent with which the rules were originally drawn up by himself (*a*). The Financial Commissioner then issued his Sub-settlement Circular No 12 of 1867, directing officers subordinate to him to keep constantly in view Mr. Strachey's letter of 20th August, and the Government of India letter of 24th August 1863, and this minute of Mr. Strachey of 7th January 1867, in dealing with cases under the new Act (*b*). An altogether extraordinary piece of legislation this; as great a curiosity as any to be found in the India Statute Book, and assuredly as curious a method for its interpretation!

The act however is so difficult to construe into a certain, rational and altogether consistent meaning, that in commenting upon the various provisions it contains, I shall find it necessary to refer to these sources to show how they were understood at the time it passed, and how it was agreed amongst those who had to apply it that they would interpret its terms. In doing so it will also be necessary to call attention to certain errors in Mr. Strachey's minute.

The Financial Commissioner followed up his Sub-settlement Circular to which reference has just been made by one known as the Hard Case Circular (*c*), by which he directed

(*a*) Financial Commissioner's unrepealed Circular, pp. 3-4.

(*b*) *Id.*, p. 1.

(*c*) Financial Commissioner's Book Circular No. IV of 1867.

the observance by the Revenue Courts of Oudh of the orders and instructions contained in a letter of the Chief Commissioner Mr. Strachey to the Government of India, dated 8th February 1867, and the reply thereto by the Government of India, dated 23rd March 1867. In Mr. Strachey's letter it was stated that though Act XXVI of 1866 provided for the great majority of cases affecting the relative positions of the Taluqdars and under-proprietors, some questions connected with under-proprietary rights remained which the rules of that Act did not touch. Reference was made to the third paragraph of the Government letter of 10th October, and the third paragraph of that of 19th October 1859, and to the clause in the Sanads that all holding under the Taluqdar "shall be secured in the possession of all the subordinate rights they formerly enjoyed," to the provision in the Record of Rights Circular regarding these rights and to the Taluqdars' agreement to the extension of the period of limitation confirmed by Act XVI of 1865, providing "that no suit relating to any under-tenure shall be debarred from a hearing, if the cause of action shall have arisen on or after the 13th February 1844." Mr. Strachey then added, "Thus the words in the Sanad 'subordinate rights formerly enjoyed' came to mean, and this is their meaning at the present time 'subordinate rights enjoyed at any time between the 13th February 1844 and the 13th February 1856.'" Whether this was a correct reading of the proviso of the letters of 10th and 19th October, and of the Sanads may be doubted, and to this I shall again refer. Mr. Strachey further after referring to the stipulation of the Taluqdars that claimants to subordinate rights should get "only the most favourable terms they enjoyed in any one year since the incorporation of their lands with the taluka," stated that "as the law now stands 'former rights in the land which do not fulfil these conditions' (that is of being subordinate rights enjoyed between

the two dates) "cannot be recovered. There is only one "exception to this rule," *viz.*, that of mortgages redeemable under Act XIII of 1866. Mr. Strachey thought that in consequence great though unintentional injustice followed. He instanced the case of a person who held an estate as zamindar in independent right till 1854, when for some casual reason it was included in a taluqa, the original proprietor enjoying nothing, not even *sir* or *nankar*, and who could now get nothing because he could only get "the most favourable terms he had enjoyed in any year since the inclusion of his estate in the taluqa" and since then he had enjoyed nothing. Had the estate been included in the taluka before 1844, and the original proprietor been in possession of under-proprietary rights between 1844 and 1854, they would have been maintained, but in the case put as the rights up to 1854 were full proprietary rights he could get nothing; the result being as Mr. Muir put it "the later the incorporation (of the estate in the taluka) and the stronger the right the more restricted is the period of limitation. In short the privilege of limitation varies inversely with the strength and freshness of the title." A further case put by Mr. Strachey was where the estate had been included in a taluqa but at no time within the period of twelve years, preceding annexation in the possession of the Taluqdar but of the original proprietors. Here again he could get nothing for he held nothing under the Taluqdar within the period of limitation, and he was in a worse position for having recovered and maintained independent possession throughout that period.

Mr. Strachey, with the view of providing a remedy for such cases as these, invited the Taluqdars to take up the whole question in communication with Colonel Barrow,

Officiating Chief Commissioner, and after full consideration they made the following proposals:—

“ I.—There are four classes in which in consequence of the Sanads or other engagements entered into by the Government with the Talukdar, the former proprietors cannot now obtain either proprietary or subordinate rights to which they might otherwise have been entitled:—

“ 1st.—Cases in which villages which had never been included in the Taluka before annexation were by some means entered in the kabuliat of the Talukdar for the Summary Settlement of 1858-59, in accordance with which the Sanad of the Talukdar has been granted. Those cases are excluded from this class in which such villages were conferred upon the Talukdar by the British Government in consideration of services rendered.

“ 2nd.—Cases in which villages were entered in the kabuliat of the talukdar at the Summary Settlement of 1858-59, which, although included in the Taluka before the 13th February 1844, were never in possession of the Talukdar within the 12 years preceding the annexation of the Province, but in which the former proprietors held possession within that period.

“ 3rd.—Cases in which villages came into a taluka for the first time in 1850, or subsequently to that year, and in which the former proprietor not having held under the Talukdar before annexation, or, not having held for the period required by any existing rules, cannot now obtain proprietary or subordinate rights; provided that the proprietary title of the Talukdar was not obtained by purchase, mortgage, or royal grant.

“ 4th.—All other cases of hardship not included in the above three clauses.

“ II.—In all cases coming into any of the above classes the Settlement Officer will make a minute enquiry into the original proprietary title of the claimant, and into the circumstances under which the village was included in the Taluka. He will enquire into the amount of loss and hardship actually suffered, and, if he considers that some compensation ought to be made to the former proprietor, he will make a full report, through the usual channel, to the Financial Commissioner, stating the nature of the measures which he recommends.

“ III.—In the first class of cases described above, it will be competent to the Financial Commissioner to award to the former proprietor such share of the gross rental of the village, not exceeding twenty-five per cent. and not less than ten per cent. as he may consider the circumstances of the case to require.

“ IV.—In the second and third classes of cases described above the same procedure will be followed which has been prescribed in the last preceding clause of these propositions except that the share of the gross rental which may be awarded to the former proprietor will not in any case exceed ten per cent.

“ V.—In the fourth class of cases described above, the Financial Commissioner will endeavour, in communication with the Taluqdar, to apply a suitable remedy in the manner contemplated in para. 11 of the orders of the Government of India, No. 307, dated 24th August 1866. If the Financial Commissioner should be unable to make any arrangement which he considers satisfactory, he will report the circumstances to the Chief Commissioner.

“ VI.—In all cases in which compensation may be awarded under these rules, it will be given in the form of *scer*

“ land. If such land be awarded under Clause III of these
“ propositions, it will rest with the Financial Commissioner
“ to determine, whether it shall be given rent-free, or whether
“ an increased amount of land liable to the payment of the
“ Government Revenue shall be given. If such land be
“ awarded under Clause IV, it will be optional with the
“ Talukdar to determine whether the land shall be rent-free,
“ or liable to the payment of the Government Revenue. In
“ all such cases it will, however, be remembered that it is
“ the wish of the Government that, whenever it can be so
“ arranged, rent-free land be commuted for an increased
“ amount of land liable to the payment of the Government
“ Revenue.

“ VII.—The Financial Commissioner will determine in
“ all cases in which compensation is awarded under these
“ rules what portion of the village expenses shall be borne by
“ the Talukdar and by the under-proprietor respectively.

“ VIII.—Nothing in these propositions is intended to
“ apply to any cases in which members of the families of
“ Talukdars have been debarred by the Sanads or other
“ engagements entered into by the British Government,
“ from the recovery of shares or other interests in Talukas to
“ which they might otherwise have been entitled.”

Mr. Strachey thought that these terms afforded a sufficient remedy in most cases, and that the Chief Commissioner should be authorized to bring to the notice of the Government any cases in which it might appear to him that further compensation should be made in order that the Government might also help in affording relief to those whom it has injured.

The Governor-General in Council by the Secretary's letter No. 104 of 23rd March 1867, to the Chief Commis-

sioner, approved (§ 8) of the rules suggested by the Taluqdars, and further directed:—“ Whenever cases are found in which the just claims of the former proprietors are not redressed or are redressed but in a manifestly inadequate degree, by the rules now approved, it will be your duty and that of the Financial Commissioner and of the Settlement Officers generally, to suggest a just measure of recompense. For example, claims under the 1st class may be imagined of such strength, as to be fairly met by nothing short of a subordinate settlement of the whole village. And in discharging any equitable claims of this nature, the Government will hold itself liable, if necessary, to provide the means for all possible reparation of the loss of rights arising out of its own oversights or the mistakes of its officers”(a).

But sub-settlement though the fair redress in the cases referred to could not be granted in cases not coming within the provisions of Act XXVI of 1866. It will be observed that the rules thus sanctioned do not make special mention of the case of an under-proprietary right carved by a Taluqdar out of his estate. This, however, was to be maintained, if of a certain date under the provision of the second paragraph of the Record of Rights Circular(b).

In practice too, as we have seen, the Courts had, anterior to the agreement of the Taluqdars extending the period of limitation, treated many of the cases specified in the rules as covered by the provisions for the recognition of under-proprietary rights by extending the term under-proprietor so as to include those who were not strictly so.

It may at least be doubted whether if the terms of Lord Canning's letters of 10th and 19th October 1859, and of the

(a) Financial Commissioner's Unrepealed Circulars, pp. 14-33.

(b) *Ante*, p. 129.

proviso in the Sanads for the protection of rights in taluqas had been properly considered, it would have been thought necessary to make any such special arrangement for the disposal of Hard Cases, and whether the rights of all parties could not have been secured them under the provision made by Lord Canning without any consent on the part of the Taluqdars or any resort whatever to them, and without any abandonment of a previous policy or breach of faith with the Taluqdars. For consider, by the letter of 10th October every Taluqdar, with whom the Summary Settlement of 1858-59 had been made, was declared thereby to have acquired a permanent hereditary and transferable proprietary right in the taluqa for which he had engaged, together with the perpetual privilege of engaging for the Government Revenue thereof; but by paragraph 3 that right was "conceded subject to any measure which the Government may think proper to take for the purpose of protecting the inferior zemindars and village occupants from extortion and of upholding their rights in the soil in subordination to the Taluqdars." This provision seems clearly wide enough to cover the cases in the Hard Cases Circular. The expression "inferior" (which may be paraphrased "less important" as properly as "subordinate") and "upholding their rights in the soil in subordination to the Taluqdars," do not necessarily or by a natural reading mean that the rights to be upheld must previously have been held in subordination to the Taluqdar, but they have reference to the earlier part of the letter by which the proprietary right had been conferred on the Taluqdar, so that any rights maintained must be held in subordination to him whatever their previous character had been. After this declaration of the 10th October of the finality of the Summary Settlement, persons other than the Taluqdar having any rights in a taluqa were necessarily "persons holding an interest in the land *under* the Taluqdars" whether they

had previously held independently of the Taluqdar and in proprietary right or in subordination to him. And when it was said in the letter of 19th October that such persons would "be secured in the possession of the subordinate rights which they have heretofore enjoyed," such language might without doing violence to it be taken to cover rights not held under the Taluqdar previously to the Summary Settlement of 1858-59, for rights previously independent had, in consequence of the declaration of 10th October, become subordinate, and Government was no longer in a position to say that such holders were to be "secured in the possession of the rights which they have heretofore enjoyed" for that would have been inconsistent with the proprietary right being secured to the Taluqdar. And though it may fairly be said that the 4th paragraph of the letter of 19th October cuts down the meaning of the expression so as to make it refer only to intermediate interest previously held as such under the Taluqdar, it may with equal fairness be said that this has reference to the nature of the holding at the time of the enquiry at the Regular Settlement, when all such persons would have held an interest in the soil intermediate between the ryot and the Taluqdar from the 10th October 1859; again, that the language of the 5th paragraph of the letter is further not only wide enough to cover such cases, but that the expression "the former rights as those existed in 1855, of other persons whose connexion with the soil is in many cases more intimate than their own" (*i.e.*, the Taluqdars) is more clearly applicable to the case of those who had held altogether independently of the Taluqdar than to that of those who during a period of years had held in subordination to the Taluqdars; that such was the effect given by the Oudh Settlement Courts to the provision prior to the consent of the Taluqdars to the extension of the period of limitation, and lastly, as I will immediately

show, the very stipulation of the Taluqdars, to which Mr. Strachey referred, recognized this reading of the provision.

Again in reference to the clause in the Sanads, those who had not previously held under the Taluqdar did so when these were granted, whatever may have been the character of the previous holding, for the rights formerly enjoyed where these were proprietary rights could not be secured them, these having been previously secured to the Taluqdar, so that their right could only be recognized in subordination to him.

No great violence then would have been done to the language of these provisions by holding that they amounted to a reservation by Government of its right to take any measures it chose for the protection of those whose cases came within the classes dealt with by the Hard Case Circular.

This brings me to the stipulation of the Taluqdars that the extension of "the term of limitation for the hearing of subordinate rights to 12 years computed back from the date of the Summary Settlement in 1858-59," should be "subject always to the condition that full proprietary rights are not thereby revised. That is to say that where the villages have been annexed to the talooka within 12 years, the persons who were in full proprietary possession will not be entitled to recover the equivalent of their former rights, *viz.*, a sub-settlement at five per cent. upon the Government demand, but only to the most favourable terms they enjoyed in any one year since the incorporation of their lands with the talooka"^(a). Full proprietary rights could not be decreed in the face of the declaration of the 10th October. The date of the Summary Settlement of 1858-59 must, one would think, have meant either 10th October 1859, when its finality was

(a) O. P. 62, 1865, p. 166.

declared or the middle of the same year when that settlement was concluded, else there would be varying periods of limitation dependent upon such fortuitous circumstances as the rate at which settlement operations were carried on in different districts of the Province. Then, if that be so, the inclusion in the taluqa would be "within the 12 years" referred to in the stipulation if carried out at the last moment those Summary Settlement operations were in progress, and the act of inclusion might be the taking in that settlement of the Taluqdar's engagement for the land in question, and the persons, who were until the inclusion in full proprietary possession, were recognized in the stipulation as entitled to some rights which the mere inclusion in the taluqa was to be held not to have destroyed, but the measure of which was not to be sub-settlement at 5 per cent., but the most favourable terms enjoyed in any one year since the incorporation of the lands with the taluqa. I have already pointed out the inconsistent if not contradictory character of the stipulation and this surely entitles us to a certain latitude in reading it, and we may take it that in the worst class of cases such as those above referred to "the most favourable terms enjoyed" "in any one year since the incorporation of the lands with the "taluqa" would be those prescribing the rights of ex-proprietors out of possession to regain possession not of a full proprietary but of an under-proprietary right. It is idle to suppose that the clause was thus worded by the Taluqdars to exclude such rights by a side wind or that if that had been their understood intention Sir Charles Wingfield would have advanced and supported their proposition.

The Government not having taken such action, as it apparently might have done, for the protection of those whose rights brought them within the classes of cases specified in the Hard Case Circular, without the consent of

or resort to the Taluqdars, and the Governor-General in Council having sanctioned the proposals of the Taluqdars in regard to them the rules of the circular represent the measure of the rights secured to such ex-proprietors.

Under-proprietary rights in Oudh are then :—

I.—Such as entitle to sub-settlement according to the rules of Act XXVI of 1866.

II.—Such as entitle the under-proprietor to the recognition of a proprietary right in the *sir* or *nanikar* lands of which he has held possession during limitation, under the first clause of the second rule of that Act and under the Circular Orders in force in Oudh under the Indian Council's Act, 1861.

III.—Such as entitle the under-proprietor or ex-proprietor to *sir* or *nanikar* lands to the extent provided by the rules of the Hard Case Circular.

And here it must be remarked that any under-proprietary right being shown, and the further conditions of the rules of Act XXVI of 1866 being fulfilled, the holder of such right is entitled to a sub-settlement, notwithstanding Mr. Strachey's statement (a) that "nothing in the rules was intended to apply to Births or Shankalaps of any description, nor to claims to groves, habitations, tanks, waste land, manorial dues, etc."

I now proceed to specify some of the most important under-proprietary tenures ascertained during the settlement operations to have existed in the Province, or in the case of sub-settlement right, introduced at the settlement.

(a) Financial Commissioner's Unrepealed Circulars, p. 6, § 6.

SECTION II.—SUB-SETTLEMENT.

Of this not much more need be said. It has been pointed out that this tenure is a creature of British rule (*a*) adapted from the revenue system of the North Western Provinces. It is an under-proprietary right in a village, hamlet or chak, subject to a rent proportional to the Government Revenue or to the profits, being variable and to be determined under the rules of the Sub-settlement Act XXVI of 1866. The right was established to combine certainty of tenure under English rule with the status of a former proprietor or under-proprietor holding a pakka lease of a village, hamlet, or chak under a Taluqdar, that is, a lease by which the under-proprietor was entitled to the profits and liable to the loss according as the gross income exceeded or fell short of the amount agreed upon in the lease. Colonel MacAndrew says (*b*) that Sub-settlement is always founded upon former full proprietary right. But this is an error arising probably from too readily accepting Mr. Currie's definition of under-proprietary right (if definition of under-proprietary right that can be called which merely states one distinctive feature of one class of under-proprietary rights as Mr. Currie himself, after attempting the definition, forthwith proceeded to show) (*c*), *viz.*, that "the fundamental basis of an under-proprietary tenure is that it "is held by virtue of a former proprietary right" (*d*).

The latter portion of the second rule of the Sub-settlement Act has not been considered to restrict the right to Sub-settlement in the manner Colonel MacAndrew asserts that it is restricted. So Birts (as to which see post) which

(*a*) Mac. 26; Rai Bareli Settlement Report, § 167, p. 64.

(*b*) Mac. pp. 25-26; Rai Bareli Settlement Report, Glossary, p. xi.

(*c*) Settlement Report, 1862-3; O. P., Cal., 1865, p. 365, § 75.

(*d*) *Id.*

are under-proprietary estates carved out of larger estates have been recognized by the Judicial Committee as entitling to a Sub-settlement under the rules (a) notwithstanding Mr. Strachey's assertion that the rules were not intended to apply to them (b), and the decision under the rules are in accordance with what was the previous practice in Oudh (c).

The holding of the under-proprietor entitled under the rules to a Sub-settlement, being called in the Nawabi a *pukka* lease gave rise to this description of tenure being called under British rule *pukhtaduri*, a name unknown in the Nawabi and an invention of the Settlement Courts (d).

SECTION III.—DIDARI OR DIHDARI.

The tenure Didari or Dihdari (*Dih* a village, *Dar* one who has) is thus described by Colonel MacAndrew :—“ Didari is a “ certain amount of land rent-free and has always, I believe, “ its origin in former proprietorship. When pressed by the “ Nazims under the later native rule, the proprietors often “ found they could not get on, and voluntarily sought the “ protection of some neighbouring talukdar, who then took “ the management of the estate and whatever profit he “ could get out of it, and the smaller and former proprietor “ took a piece of land varying according to the property he “ made over. This was rent-free for ever, as the rest of the “ estate was chargeable with the revenue upon this portion

[159]

(a) See Sir Drig Bijai Singh v. Umanpal Singh, et al. L. R. V, I. A., 225 (XXIV); Sir Drig Bijai Singh v. Gopal Datt Panday, L. R. VII, I. A., 17; I. L. R. V, Cal., 281 (XXX); Rajah Kishen Datt Ram v. Rajah Mumtaz Ali Khan, L. R. VI, I. A., 145; I. L. R. V, Cal., 198 (XXXI)

(b) F. C. Cir. 12 of 1867; Unrepealed Cir., p. 6, § 6.

(c) O. P., Cal., 1865, p. 365, § 75, Faizabad Settlement Report; O. G. I., 439.

(d) Faizabad Settlement Report, in loco; O. G. I., 439.

“and in Eastern Oudh the tenure is called Didari. It is more commonly known by that name in Faizabad, Sultanpur and Gonda” (a).

But this must be taken with some qualification, as the tenure existed where the transfer was not voluntary and a low rent came in course of time to be assessed upon some at least of such holdings. The best description of the tenure that I have met with is that given in the Faizabad Settlement Report. It is there stated (b):—“When property was transferred voluntarily, or involuntarily, it was by no means uncommon, though not an invariable practice for the purchaser to assign a portion of the property in perpetuity to the seller, for his subsistence,” under the designation of Didari. “This might be done (1) by the assigning a share equal to $\frac{1}{4}$, $\frac{1}{8}$, $\frac{1}{7}$, $\frac{1}{9}$, or $\frac{1}{10}$ of the property transferred, and land to that extent was then made over, which might be one or more entire mauzas, or a smaller quantity of land; or (2) by giving a certain amount of land at pleasure, without any reference to specific share. These Didari tenures were generally conferred in writing (c), seldom verbally. When a whole village is held under this tenure, the sub-proprietor invariably also enjoys all village privileges and dues and with these the proprietor has no concern whatever. The same is also the case where the sub-proprietor

(a) Mac., p. 29.

(b) Pages 79-80; O. G. I., 439-440.

(c) In this the Report differs from Colonel MacAndrew's account; he says (p. 25): “I have observed, in the course of my own experience, that where the under-tenure was based on former proprietary right, there was generally no sanad or patta for it, and, if there was a patta, it was given to mark a new arrangement, and not as an acknowledgment of former proprietary right. Such a document in the Nawabi would have been scorned. But in the case of a tenure given by the proprietor a written title was added though it might not always be forthcoming.”

" holds an entire and separate fractional portion of a village
 " included in a single estate ; but where there are two frac-
 " tional portions of any village included in an estate, one of
 " which is held as Didari and the other is not, it will
 " generally be found that in that case the sub-tenure carries
 " with it no village privileges or dues whatever. In the
 " course of the judicial proceedings where this tenure was
 " found to extend to the entire village or entire fractional
 " portion, the sub-settlement was of course decreed ; where
 " smaller holdings were being contested, the decree has
 " been based on extracts of the field register filed with the
 " proceedings. It may be mentioned that at the outset,
 " Didari grants were always rent-free and the majority of
 " these are still so. In some cases, however, a low quit-rent
 " was subsequently assessed known by the name of '*barbasti*.'
 " This item is always found to be still considerably below
 " the Government demand. In this class of sub-tenures,
 " which were given in lieu of other superior rights, long
 " since absorbed, whether they be held rent-free or at low
 " rates, the superior holder has of course to make good
 " the Government demand from his other property. Where
 " the rent-free tenure extends to certain fields only, the
 " other village lands can be held responsible for the revenue
 " that should properly fall on the rent-free portion, whether
 " the mahal in which the mauza is situated be at some future
 " period broken up or not. But where the rent-free tenure
 " extends to a whole village or fractional portion of a village,
 " this will not be the case ; and it was therefore ruled by the
 " Financial Commissioner" (Mr. Davies) " under date 25th
 " April 1865, No. 895, on a special reference from this
 " office, that a condition should be entered in the adminis-
 " tration paper, that if the '*Sadr malguzar*' should hereafter
 " fail in his revenue engagements, these must be accepted

“on the usual terms by a Didari holder.” The principle so laid down was carried out by the Revenue authorities.

SECTION IV.—SIR OR SEER.

“Wilson (Gloss. *ad verb.*) says, Sir, or Seer which is “derived from a Sanskrit word meaning a plough, is the “name applied to the lands in a village which are cultivated “by the hereditary proprietors or village zemindars themselves as their own special share, either by their own “labourers and at their own cost, or by tenants at will, not “being let in lease or farm: these lands were sometimes “allowed to be held at a favourable assessment, or were “unassessed so as to provide *nankar* or subsistence for the “proprietor” (a).

Of sir as found and decreed in Oudh in under-proprietary right there are two sorts:—

(1) The ex-proprietor's sir having its origin in former proprietary right; and

(2) Sir created by the act of a proprietor who, *ipso facto*, becomes the superior proprietor (b).

If the land is cultivated by the hands of the sir holder (whether ex-proprietor or from the first merely an under-proprietor), or by his hired servants using his bullocks and ploughs it is called *khudkasht* (*khud* own, *kasht* cultivation) or *nijjot* (c) (Vulg. *nijote*, *neejjot*, *nijot*) (*nij*, own, *jot*, cultivation); if let to a tenant he is called *Shikmi* or under-tenant as distinguished from a tenant-in-chief (d).

(a) And see Rai Bareilly Settlement Report, Glossary, p. xi.

(b) Mac., 30; Faizabad Settlement Report 81; O. G. I., 440.

(c) Mac., 30; Harington's Analysis II., 65. By some *nijjot* is derived from *neeek* under and *jot*; but this seems wrong (Obs. on the Law and Constitution of India, London, 1825, p. 78.)

(d) Mac., 30.

Colonel MacAndrew gives it as his experience that *sir* always pays rent, though a low one, and that whenever *sir* was rent-free part of the released rent was a nankar deduction (a). So that probably the Oudh Settlement Commissioner's Circular No. 34 of 22nd June 1864, directing that nankar allowance should be deducted from the rent payable for *sir* land when both were given together was (b) but the formal adoption of the Nawabi method of accounts in such a case.

[16:

The unassessed *sir* spoken of in Wilson's description is probably nothing else than an admixture of *sir* proper and *nankar*, and as a matter of fact revenue remitted on *sir* land was called in Bengal *sir nankar* or *nankar* (c).

This tenure is so important owing to the provisions of the Sub-settlement Act and the Hard Case Circular that it is necessary to examine it further. The *sir* which had primarily most attention in Oudh was that of the first description, the ex-proprietor's *sir*; and this may account for the extraordinary fifth paragraph of Mr. Strachey's minute on the Sub-settlement Act. He there says, "The words '*soer*' and '*nankar*' in Rules II and X do not require any separate definition. They refer to the beneficial interest, distinct from the favour shown in consideration of caste, which arises solely from an ex-proprietary title, and which does not give a right to sub-settlement under the conditions contained in Rule III. The words in Rule X 'when he was in proprietary possession' are redundant and refer to under-proprietary right. Whenever a former proprietor is in possession of land for which he pays rent at a rate lower than that paid

(a) Mac., 30.

(b) O. G. I., 441.

(c) Land Tenure by a Civilian, 60-69; Har. Analysis II, 65-Phillip's Land Tenures of Lower Bengal, 114.

by ordinary cultivators of same class with himself such land is his *seer* under the definition now given" (a).

But it seems quite clear that there are two classes of sir spoken of in the rules, that enjoyed by any under-proprietor and that enjoyed by any under-proprietor who is at the same time an ex-proprietor. That Mr. Strachey should have ignored the former class is the more remarkable when it is considered that he was expressly referring to the 10th rule by which special provision is made for the case of the latter. In other respects Mr. Strachey's minute does not exhibit much care in reference to this subject of sir. Thus the second rule of the Sub-settlement Act refers to the Circular Orders in force in Oudh, regarding the recognition of a proprietary right in sir and nankar lands. Partly owing to the error I have already pointed out of ignoring the sir not having its origin in proprietary right and partly from a want of regard to their terms Mr. Strachey thought those Circular Orders were "the following, and these alone:—

"(1) Paras. 11 and 13 of the Record of Rights Cir. No. 2 of 1861.

"(2) Settlement ruling No. 1, issued by the Chief Commissioner as Cir. No. 7, dated 1st March 1861.

"(3) Financial Commissioner's Cir. No. 1291 of 1865" (b).

To avoid mistakes he appointed them to his minute.

It is amazing that Mr. Strachey should have considered the first mentioned document to be in force as it stood and as he gave it in his Appendix for the Sub-settlement Act

(a) Unrepealed Cir. F. C., p. 5, § 5.

(b) *Id.*, § 4, p. 5.

which as the framer of its Rules he was affecting to commentate was the outcome of a long discussion arising from the objection of the Government of India to the Limitation which that document provided, and finally destroyed any effect that portion of the Record of Rights Cir. might ever have had.

The documents referred to by Mr. Strachey relate in every case to an ex-proprietor's *sir* and though they are so valuable as indicating its nature, that I give them in a note(*a*) below where the first must be read subject to the

(a) "Extract paras. 11 and 13 of Circular No. 1 of 1861, dated 29th January 1861, on Record of Rights.

"11. It has been explained that only the subordinate rights existing in 1855, or subsequently conceded, are now to be recognized and recorded. If then those persons who once held an intermediate interest in the land between the talukdar and the ryot are found to have been reduced, prior to annexation to the position of mere cultivators, they will not be raised from it now. The Chief Commissioner thinks it will usually be found that, in a village settled with a talukdar, but occupied by a *ci-devant* proprietary community, the headmen of each *thoke* or *puttee* sub-divisions of a village) have enjoyed certain rights and advantages in consideration of their being representatives of the former independent body and of managing the village for the talukdar. These rights they most likely enjoy, in the form of a low rate, on their *sir* land, or some beegahs held at low rent, and other members of the brotherhood in occupation of the village lands may have been admitted to a share in them. For instance, one of the intermediate holders instead of paying the talukdar Rs. 150, for the land he holds as *sir*, which is the amount that would be due at ordinary village rates, pays 50 only. That sum will, to speak in a broad sense, be recorded at settlement as the amount payable by him and his co-sharers for their *sir* lands to the talukdar. They will thus enjoy Rs. 100 of the rental as their intermediate interest. For the other lands which they hold on the same terms as non-proprietary cultivators they will pay at the same rate as the latter do. The total amount payable by each man will then be recorded in a specific sum for his entire holding. There may be few or many of these intermediate holders, according as the former proprietary communities are found in different degrees of vitality; but other village occupants, though members of the same brotherhood, if they ceased before annexation to enjoy any similar rights and advantages, will not be admitted to any now.

correction of the extended period of limitation, they do not exhaust the descriptions of *sir* recognized in Oudh. Under the Government of India letters of 10th and 19th October 1859 which had the force of law under the Indian

" 13. It will be understood that the broad rule in para. 11 is open to many exceptions and that the amount payable by the intermediate holder will often have to be determined with reference to other considerations. If his *sir* holding has been much augmented since 1262-63 Fāsli, he will be justly liable to enhanced payment. The value of the land may have much altered since that time. If it has been increased by the enterprize of the talukdar the payment of the intermediate holder should be proportionately raised; if by his own enterprize, then he will enjoy the full benefit of it; or the value of the land may have depreciated, in which case re-adjustment of the amount payable by the intermediate holder will be necessary. Very often the pay of soldiers was given in the form of a reduction on the rent of the village that furnished them. In that case the rent will be liable to enhancement."

SETTLEMENT RULING No. 1.

1. Certain individuals sued a Talukdar for Rs. 320, as their village nankar, that is, the proprietary profits on their *sir* lands. The Talukdar objected to the payment of the sum claimed on the ground that previous

Sir at favourable rates in lieu of service rendered. Chief Commissioner's Cir. No. 7, dated 1st March 1861.

payments had been made to the claimants not in consideration of their village nankar, but in payment of services rendered. The services having now ceased, the Talukdar urged that the payment should cease likewise.

2. The Chief Commissioner, having called for and carefully perused the entire proceedings, considered it clearly proved that the money deduction allowed to the claimants by the Talukdar was avowedly remuneration for military service and not credit for a low rate on their *sir* cultivation as proprietors. He went on to observe that he believed it was a very common practice to shut the mouths of the under-proprietors in a village recently brought in into a Taluka by giving them salaried service. Indeed it was plainly to the advantage of the Talukdar, who must keep up soldiers, to employ as soldiers those men to whom he would otherwise be obliged to make some allowance as representatives of a former proprietary body. Did he not do so, they would give him trouble. This course satisfied the proprietors, who, as long as they obtained pecuniary advantages, cared not under what designation they enjoyed them, for the military service of a Talukdar did not involve leaving their homes or the discipline of the camp, as

Council's Act, 1861, and therefore before the date of Mr. Strachey's minute, and the Record of Rights Circular as amended to bring it into accordance with those letters all subordinate rights enjoyed within limitation were to be recognized and recorded, and amongst them the

with us. It is easy to understand that in a short time the distinction between these sources of remuneration would cease to be very apparent, and that it may now be a nice point to determine whether the pecuniary advantages now claimed were derived from the recognition of former proprietary right, or from condition of military service, or what proportion was derived from either source.

3. The Chief Commissioner therefore considering that the deductions allowed the claimants on their rent were ostensibly the wages of military service, but that they were undoubtedly the former proprietors of the village, though if they had not served the Talukdar the deductions allowed them would not have been so liberal decided that the claimants were entitled to hold their *Sir* at favourable rates, but not to the extent claimed. The rates in such cases must be decided by the Settlement Officer on the best data procurable.

Minute by R. H. Davies, Esqr., Financial Commissioner of Oudh.

These are cases referred for orders by the Commissioner of Baiswafa. The general upshot being that Assistant Settlement Officer of Pratabgarh decreed claims for *sir* on the report of the Sadr Munsarim that so much was in the occupation of the claimant, and without further enquiry as to the origin and composition of the component parts of the holding.

Baboo Bhyron Bux	... Appellant,
	<i>versus</i>
Gunga Deen and others	... Respondents.
Mauza Hajwaroe, Pergana and Zila Pratabgarh.	
Dulleep Singh and Runjeet Singh	... Appellants,
	<i>versus</i>
Baboo Dan Bahadur Singh,	Respondent.
Mauza Kamnaggar, Pergana and Zila Pratabgarh.	

For instance in one case, whilst the claim was 67½ beegahs, 828 beegahs were decreed under the heads of cultivation however permitted bahs, habitation, waste, tanks.

It is requisite to point out that *sir* is not necessarily co-extensive with all the land its claimants may hold in a village in any manner whatever. It is, indeed, frequently an object with the claimant to prove that all his holding is *sir* but nothing requires to be more carefully sifted, and the objections of the opponent should be heard and well weighed. In old days, it was a common practice when large villages were sold at auction, for the ex-proprietors to make out that so large a proportion was *sir* held at low rates as to induce the auction purchasers to abandon the village as unprofitable.

under-proprietary right in *sir* enjoyed by a person who had never held as proprietor but whose right was recognized and recorded in practice (a); whilst a distinction was pointedly made in the sub-settlement rules in regard to the recognition of such right to *sir* as had its origin in former proprietary right.

From the Circular Orders above mentioned and other sources of information it appears that true *sir* of an ex-proprietor is that land which was left him when he either conveyed the proprietary right to another or was ousted from the *malguzari* together with other land of which he has held

Speaking generally the true *sir* of an ex-proprietor is that land which was left to him at the time that he either conveyed his proprietary right to another party or was ousted from the *malgoozaree*. Of this land which probably was at the time and has ever since remained under the cultivation of himself and is *shikmee* *assamees*, he is entitled to be recorded as the sub-proprietor. If he has held other lands at lower rates than cultivators of his own class in the same neighbourhood or village for more than 12 years before annexation, he may also make out a claim to this.

But he has no title adverse to the proprietor in fields added to the original *sir* in his capacity of cultivator for which he has paid the rent demandable from cultivators of a similar class.

As regards his claim to *baghs*, they should be taken up and decided under the Rules.

So with regard to habitation tanks, waste and manorial rights of all sorts, he must prove his claim to a share or the whole of these by specific evidence. The bare fact of his having some usufructuary privileges, perhaps in common with other cultivators, is insufficient to prove them accessories of his *sir*, though if he has never parted with his proprietary rights by voluntary conveyance, he may have retained them except when they are involved in the *malgoozaree*.

In ascertaining the extent of the *sir*, the amount of rent paid for the component fields should also be investigated, as this is generally the key to the tenure on which each is held.

It will not probably be necessary to make a separate record when the claims are to various rights; all that is required is, that each shall be distinctly examined by the Court and supported by the Plaintiff. (Circulated to all Commissioners for information by Financial Circular No. 1291 of 1865.)

(a) Mac. 30; Faizabad Settlement Report *in loco*; O. G. I., 440.

possession for more than 12 years before annexation at lower rates than cultivators, otherwise of his own class in the same neighbourhood.

The lowness of the rental is the primary indication of the right to *sir* (a) and a second important index to its existence is that possession of the particular fields has seldom, if ever, changed, or if there has been such change that the original area is maintained (b).

The *sir* of an under-proprietor who is not at the same time an ex-proprietor is in other respects similar to that of one who is, so that *sir* may be shortly described in general terms applicable to either class, as what the proprietor or under-proprietor was allowed to hold for his own subsistence when he did not hold a managing lease of the village or estate (c).

Amongst the various classes of *sir* of under-proprietors who never had the full and exclusive proprietary right of the whole village is the land frequently assigned to the junior branches of a family for their support instead of breaking up the estate and giving them the ancestral shares to which they were entitled. Such appanages are known in Oudh by the name of *sir* (d). They also form one and the chief class of *Jewan Birt* which is a name also sometimes applied to this class of *sir* (e). Whole villages assigned in this way were also called *Blayáí* villages. After the succession of a few generations and when the tie of relationship had become weakened they were sometimes resumed, and on the other hand

(a) Faizabad Settlement Report *in loco*; O. G. I., 440.

(b) Faizabad Settlement Report *in loco*; O. G. I., 440.

(c) Mac. 30; Bahraich Settlement Report, 101.

(d) O. G. I., 440; Faizabad Settlement Report *in loco*.

(e) Elliot Gloss. ad verb. Birt; Wilson ad id.

where the holders of these cadet villages grew strong enough they got their villages separated from and held them independently of the parent estate. They were probably never originally held rent-free, but the arrangement being one to prevent the breaking up of the estate, the assignee generally, if not always, took a putta from the assignor and paid him a low rent (α); even if they were ever held rent-free a low rent was soon assessed on them (b).

The arrangement, being one to prevent division of the estate by partition and the usual if not invariable holding being such as to mark the *sir*, *Jewan Birt* or *Bhayáí* lands as part of the original ancestral estate, did not of itself, where the family was Hindu, indicate the cessation of the status of joint and undivided Hindu family relationship. Any inference from such a circumstance would naturally be the other way.

SECTION V.—NANKAR (c).

Nánkár (lit. bread for work, *nán* bread, *kár* work) was originally a deduction from the revenue of a village or estate allowed by the Government for managing it (d). I have mentioned (e) that under the Emperor Akbar a certain portion of the estimated produce of land was fixed as the demand of the state; "but when the Moghul Empire went to pieces "the Mahomedan princes who succeeded were not satisfied "with this, they claimed the whole *kacha nikusi* and "allowed a deduction which was called *nánkár*. The *kacha*

(a) *Id.*, O. G. I, 180-1; Bahraich Settlement Report *in loco*.

(b) The same observations apply with the necessary changes to the case of *Seva birt*, an assignment to servants.

(c) Rai Bareli Settlement Report; Glossary VII and VIII.

(d) Montg., § 97; Bahr. Sett. Rep., 99-100; O. G. I., p. 185; Mac. 31; Phillip's Land Tenures of Lower Bengal, p. 187.

(e) *Ante*, p. 3.

" *nikasi* was not the gross rental of the village, but the
 " rental as entered in the *jamabandi*. Thus the Sir lands
 " were not entered at their real value, but at the peppercorn
 " rent at which they were held when the proprietors did not
 " engage for the village, and all other lands held at favored
 " (*vaiyatti*) rents in the same way. The people thus had a
 " large share of the profits when the villages were held
 " direct, and they would have required it for the *nānkār* was
 " very small. There is extant a genuine copy of Nawab
 " Saadat Ali Khan's assessment of the parganah of Bareli,
 " and the jama is Rs. 1,92,430, while the *nānkār* is only
 " Rs. 4,522. It is plainly impossible that those holding
 " proprietary rights of all kinds in this parganah could have
 " existed on so small a share of the profits. In talukas
 " *nānkār* generally took the shape of some revenue-free
 " villages, but in single villages it was usually a cash deduc-
 " tion from the revenue. As *nānkār* was small, it was not
 " unfrequently retained by the former proprietor on the
 " incorporation of his village with the taluka, and becoming
 " then a deduction from the rent of his sir lands, those
 " lands or a portion of them sometimes appear rent-free, and
 " the fact of the under-proprietors enjoying *nānkār* at all is
 " often lost sight of (a). The name of *nānkār* is also some-
 " times applied to a right in land created by a talukdar in
 " favour of men who founded hamlets and settled cultivators
 " on lands either waste or hitherto cultivated without irriga-
 " tion or manure by non-resident cultivators. In such case
 " it is a right conceded in return for the increased rental
 " which the talukdar received in consequence of the settle-
 " ment " (b).

(a) See in confirmation of this portion of the description Bahr. Sett. Rep. *in loco*; O. G. I., 185.

(b) Mac., 31-2.

Nánkár of the descriptions mentioned above was distinguished by the name "nánkár dehee," *i.e.*, village nánkár and may be shortly defined in general terms as the proportion of the profits allotted to the proprietary of the village. It has always been acknowledged and taken into consideration not only in Oudh but elsewhere in the Settlements made by British Officers (*a*).

It may be mentioned that there were other kinds of *nánkár* as *Ismi* and *Tankhai*, the former being "an irregular abstraction of the profits in favour of some individual proprietor made by the Government Collector wholly without the sanction of the King's Ministers," and the latter "simply the dues of the Canoongoes or other village officials, levied from the net profits of the village" (*b*). There were certainly not under-proprietary rights (*c*).

SECTION VI.—PURWA BASSANA (*d*).

This is an under-proprietary right created by a superior holder for value received. Purwas are known by other names such as *khera*, *mazra* or *dakhili*, and are hamlets founded on certain lands belonging to a larger village or mauza for convenience of agricultural operations and not having a separate number and *hadbast* character of their own. "The land on which they are founded is either waste or cultivated in an inferior manner, and they are usually settled by persons with some influence among the cultivators they bring, and with sufficient capital to make

(*a*) Montg., § 324; in the Bahr Sett. Rep. the term "Nánkár dehi" is restricted to allowance in money from the Talukdars to the under-proprietor.

(*b*) Montg., § 323-5; Bahr. Sett. Rep.; O. G. I., 185; Bara. Sett. R., p. 36.

(*c*) Mac., 33.

(*d*) The account of this tenure is taken from Col. MacAndrew's Revenue Matters in Oudh, pp. 33-35.

“them the necessary advances. It was common under the native system, for the superior in such cases to lease the lands forming the purwa to the founder, and in case he would not take it on the terms offered in any year, he was secured his under-proprietary right of sir or nánkár or both as is shown in the following copy” (translation) “of a Sanad for a purwa in Rai Bareli.

“Sanad granted by Thakur Raundin to Jawahir to the following effect. Do you found a katra after the name of Bhagwán Bakhs in mauza Deopur, and populate it, build your own house therein, and be assured that I have written of the zamindari of the same to you. Whoever comes and settles in it, do you remit his forced labour (begár). So long as you wish you may hold *pakka* (lease of the village) and when it is made *kucha* (direct collection from the cultivators) you may enjoy, 10 bigahs nánkár and 15 bigahs sir, assessed at one rupee eight annas and in addition take 10 bigahs *charri* (grazing land). Dated Kuar Badi Panchmi Sambat 1901 (1252 F.) •

“Signed by Debidin, Mutasadi, who says the Sanad is correct.

“Further 3 bighas are given you for a grove that you may rest quiet in your mind.”

Name of field.	DETAIL OF SIR.		Area.	
			Bigahs.	Biswas.
Mati	3	0
Mati 2nd	2	10
Gurhas	2	10
Beyas	2	10
Maine	3	10
Massi	1	0
		Total	15	0

DETAIL OF NANKAR.

			Bigahs. Biswas.	
Aintha	...	...	... 4	0
Naitha	....	...	- / 3	0
Mati	...	...	... 1	10
Mati 2nd	.	...	... 1	10
Total			... 10	0

“ This,” continues Col. MacAndrew, “ shows very clearly the nature of the under-proprietary tenures the object of which was land improvement. The talukdar in return for his concession obtained a great increase to the rental of his estate and the sanad clearly provides for the interest of the purwa founder in case they cannot come to terms about the rent. A consideration of the terms of this sanad which really describes the ordinary nature of under-proprietary right under whatever name it may be known, will show what an interference with the constitution of that village it would be to decree the purwa founder a sub-settlement. If a man cannot see that he is incapable of taking an impartial view of anything. This tenure, besides being an under-proprietary right by the Government letters in the first Schedule to Act I of 1869, is specially protected by para. 11 of the Schedule to Act XXVI of 1866.”

I have quoted this comment to enter a caution against hasty generalization from this single instance. I altogether deny that the sanad of Jawahir “ really describes the ordinary nature of under-proprietary right under whatever name it may be known.” Col. MacAndrew’s own description of the various under-proprietary tenures dispose of this hasty assertion. If the terms of Jawahir’s sanad

were even the ordinary and invariable terms on which *purwa bassana* tenures were held it could hardly have been necessary so specifically to state them, except as to the extent of sir and nánkár lands. In reference to this and other comments of Colonel MacAndrew regarding sub-settlements his well-known and strongly expressed antipathy to all sub-settlements must not be forgotten (a). The 11th rule of Sub-settlement Act recognizes by fair implication the case of a purwa founder able to establish a right to sub-settlement. Other portions of the rules also recognize it and the question in every case must be, are the conditions of the rules entitling to a sub-settlement made out or not. If they are, "interference with the constitution of a village" or no interference, the right to sub-settlement exists and will be decreed.

SECTION VII.—BIRT.

Birt is another under-proprietary right created by the Taluqdar or proprietor and prevails chiefly in the districts of Gonda, Bahraich, and Faizabad (b).

In the Chief Commissioner's Record of Rights Circular No. 2 of 1861, it is stated that the meaning of "*Birt*" is a "cession" (c); whilst Wilson states that it is from a Sanskrit word *Vritti* meaning maintenance, support, means of livelihood. There are several descriptions of *Birt* known in Oudh, but of the chief one, which we may call the true *Birt*, it may be said that it is certainly not a grant, the motive for which was to provide maintenance for the grantee but to relieve the grantor from pecuniary embarrassment by the help of the grantee's money. The name was perhaps adopted to save

(a) *Ante*, p. 140-142; Mac. 26-29.

(b) Mac., 35.

(c) § 25.

the reputation of the grantor and as a salve to his feelings which would suffer from his having to make such a grant. Any way, the true Birt is that known as the *Bai Birt* (a) created by the Taluqdar or proprietor for money paid. Rent was paid for the land but it was a low rent, and was understood to be fixed though it was no doubt sometimes raised under pressure of the Taluqdar's superior power. Still it is always found at a rent favourable as compared with non-proprietary holdings (b).

The subject of Birt tenures was thus dealt with by the Chief Commissioner, Mr. Wingfield, in his Record of Rights Circular No. 2 of 1861, which must of course be read subject to the subsequent extension of the period of limitation, and the Chief Commissioner's dates altered accordingly : —

“ 18. Birts were given for whole mauzas, or patches of land in mauzas; the latter will be first adverted to.

“ 19. These tenures, when granted by the talookdar for money received, will be maintained as representing the proprietary rights of the birteeas who by purchase have acquired the position of intermediate holders, and as constituting the portion of the profits left them by the talookdar. But, if given by teecadars, to whom the talookdar may have leased the village, the tenures will not be entitled to be maintained, because the teecadars had no authority to grant such rights. Birts given by the original zemindars, before the village was incorporated in the talooka, will be upheld, unless the talookdar resumed them prior to 1262-63
“ F. S.

“ 20. Those birts conferred by favour, or ‘ryayttee birts’ as they are styled in contra-distinction to the former

(a) Spoken of in the Gouda Sett. Rep. as Birt Zemindari, § 86.

(b) Mac., 35; Record of Rights Cir. O. P., 62 (1855), p. 33.

“or bai birts, are not birts in their essential characteristics, but are identical with the rent-free grants made by the talookdars, and, therefore, liable to resumption by them at regular settlement, when the Government will take its full share of the rental; as has already been explained in para. 14 of the Maafee Rules.

“21. Birts of entire mauzas are very common in Gondah and Gorruckpore. They originated in purchases from needy talookdars, and sometimes in clearing leases of jungle land. In the Ootrowla and Bubnee pergunnahs of the Gondah district, the birteas had been, in many instances, admitted to direct engagements with the native government for years previous to annexation, and of course were settled with them” (*sic* then?) “and should have been at the late Summary Settlement, on the principle that we are not bound to restore to the talookdars what they had lost before our rule commenced.

“22. In others, the birteas held under the talookdar on the terms of their birt pottahs. These generally were that 10 per cent. or dyhuk, as it was called, on the amount of the pottahs should be returned to them: that while they held on their pottahs, the entire control of the village rested with them; and that if they threw them up rather than accept enhanced terms, they were entitled to 10 per cent. on the collection. Sometimes the birteea's proprietary profits were shown in holding a portion of the area ‘naukar.’

“23. In other instances, the birteas had been stripped of every vestige of proprietary right; for embarrassed talookdars would sell the birt village several times over; and nothing was more common than to see several claimants to the birt of a village, each with his pottah in correct form.

• “ 24. Where the birteea has lost possession, there is no more to be said. We are not to restore him. But the Chief Commissioner is clearly of opinion that the birteeas who were found in direct engagement with the state at annexation, or who have uninterruptedly held whole villages on the terms of their pottahs under the talookdars must be maintained in the full enjoyment of their rights in subordination to the talookdars. It is no argument that the talookdar may not realize more than 10 per cent. above the government demand; such birt tenures must be considered an intermediate interest between the talookdar and the ryot, and, as such, entitled to be maintained.

“ 25. The meaning of the term ‘birt’ is a ‘cession.’ It was the purchase of the proprietary rights subordinate to the talookdar on certain conditions as to the payment of rent, which were held to be binding, though undoubtedly often violated by a superior power. In Gorruckpore the birteeas were generally admitted to direct engagements, though charged with a Malikana of 20 per cent. to the talookdar. Here we must deal with the superior party.”

The mere statement of these instructions is sufficient to show how materially they were affected by the subsequent extension of the period of limitation. That fact however is often forgotten in referring to them and in practice, and I enter this reminder in consequence.

Relying on paragraph 24 of the Circular quoted above their Lordships of the P. C. have held that persons holding Bai-birts tenures have upon the annexation of Oudh by the British Government acquired under-proprietary rights as against the Talooqdar (a) and that the policy of the Government was to confer heritable and transferable tenures upon such persons.

(a) *Raja Muhammad Mumtaz Ali Khan v. Murad Baksh and others*, 11 Cal. W. N., 913; 4 A. L. J., 737; 10 O. C., 318.

The Bahraich Settlement Report contains so instructive an account of Birt tenures that though lengthy, I extract it almost in full. It is there said:—

“ This very singular tenure, which so far as whole
 Birts. Their origin. “ villages are concerned may be
 “ said to be peculiar to the nor-
 “ thern tracts of the province, is confined in this district
 “ to two parganas, Ikauna and Bahraich. Originating
 “ doubtless in *first* the desire of the great landlords to bring
 “ under tillage the vast wastes which in early times in these
 “ districts formed the greater part of their fiefs; and
 “ *secondly*, their desire to make the reclamation immediately
 “ remunerative, so far as their own revenues were concerned,
 “ a birt consisted in the sale of the right to settle
 “ on a certain plot of waste, and to enjoy all such
 “ valuable perquisites as would necessarily result from that
 “ occupation.

“ Thus all tanks dug and groves planted by the birtia,
 Rights acquired by the birtia. “ all dues leviable from the
 “ cultivators would be secured
 “ for ever to him.

“ In addition to these rights, the dahyak or the-tithe of
 “ the gross produce of village was often stipulated for and
 “ obtained by the birt purchaser. In this district, however,
 “ out of the numerous claims that have been based on birt
 “ grants, in only one has any mention been made of this
 “ right.

“ These privileges were often purchased for sums which
 Large sums paid for these birtia. “ in old days seem to have been
 “ altogether out of proportion to
 “ the annual profits which, under ordinary circumstances in

“ later times, could be extracted from the management of a
 “ malguzari village (a).

“ This would induce a belief that the security of tenures
 Security of Tenures. “ in such cases was more than
 “ usually good and that a birtia
 “ making such a purchase would probably calculate on being
 “ maintained in possession for at least a generation. It is
 “ remarkable too that the birtias were almost invariably
 “ Brahmins, and even though the birt did not in any cases of
 “ sale partake of the nature of a gift made for devout reasons
 “ still the high caste of the purchaser doubtless rendered his
 “ tenure more secure than it would otherwise have been.
 “ Again it would not be the interest of the lord to disturb
 “ the birtia in his village as long as he was improving its value,
 “ and thus it may be taken for certain that for very many
 “ years after the purchase the birtia retained the manage-
 “ ment of the village, while, under ordinary circumstances, it
 “ would be most natural that he would remain the headman
 “ responsible to the lord for generations to come.

“ There is, however, no trace in any birt deed that has
 No right of lease or man- “ been produced (b) that any right
 agement conferred by birt. “ of management was conferred
 “ by such sales. On the contrary, the terminology of the
 “ usual conditions implies that no such privilege was con-
 “ templated in these transactions. An express provision was
 “ almost universally made, that the beneficial interests above
 “ noted, which were strictly limited in their extents should
 “ belong and be secured to the birtia, whether he held the
 “ lease of the village or the lord collected his rents direct

(a) Mr. Bennett on the other hand speaks of the smallness of the
 gratuity given for birts, which indicated that they were generally
 granted by talukdars out of possession—(Gonda Sett. Rep., § 86).

(b) That is, in Bahraich District.

“ from the cultivators. It was manifestly more convenient that
 “ the birtia, connected intimately as he was with the village
 “ and its concerns from the very date of its settlement, should
 “ be the one to engage for the due collection and payments
 “ of the rents to the lord ; but there is nothing to indicate
 “ that the lord’s power of giving the lease where he willed
 “ was controlled in any way save by his own sense of what
 “ was fair or conducive to his own interest. In but few
 “ birt pattas is any mention whatever made of the amount
 “ of rent payable or to be paid, and in none (which there
 “ is any reason to believe are genuine) is any fixed rent
 “ mentioned. In fact, the measure of the birtia’s right is the
 “ limited beneficial interest above detailed, extended by the
 “ favour or self-interest of the lord. • • •

Specimen Birt Deed.

Birt patta, dated Sawan Sudi 8, 1238 F. Patta executed by Sri Krishn Parshad Singh. I have given Tulsi Ram Misr a birt. He is to get continuously village Ganeshpur, tanks, groves, “dih” parja (house dues), “anjuri, biswa, bondha.” He is to get continuously the zemindari dues, whether the village is held direct or farmed. He is to take possession in confidence; Rs. 701 have been taken. Witnesses Bankan Singh, Sangam Misr, written by Bhawani Bakhsh, scribe. Note on the top of this is the Raja’s sign manual.

“ A specimen patta is
 “ given in the margin, the
 “ genuineness of which is
 “ admitted and on the
 “ strength of which the
 “ birtia, with the taluqdar’s
 “ consent, obtained a decree
 “ for sub-settlement—pos-
 “ session to be hereditary
 “ but not transferable.

“ Bishunpriti birts were cessions similar in almost every
 Charitable birts. “ respect to the hai or purchased

“ birts, save that these were given
 “ to Brahmins for the honour and glory of God (if not for
 “ that of the giver) and no consideration was taken.

“ It was seldom that such grants were resumed within the
 “ life-time of the giver, and the stricter course was undoubt-
 “ edly not to resume them at all; but in few cases did any such

“scruples act, and it may be assumed that few of the more valuable privileges attaching to the grant survived the donor”(a).

The Bishunpriet birts last mentioned are the true Shankalps and are more fully treated of under that head.

The species of birt having its origin in a lease for clearing jungle land, *birt jungal tarashi* (b), mentioned both in the Record of Rights Circular and the Bahraich Settlement Report is *Daswant* under another name (c) q. v.

The nature of *Marwat Birt* is explained under the heading *Marwat*, q. v.

Jewan Birt, *Sewa Birt*, have already been explained under the heading *sir*, q. v.

SECTION VIII.—SHANKALP.

The primary meaning of Shankalp (correctly Shankalpa, corruptly also Sunkullopp, Sungkulup, Shuunkullup) is a deliberate declaration of intention to do a pious act or make a charitable gift, in other words, a vow; but the word is used with considerable laxity to designate lands held under a grant or bequest (d).

One species of Shankalp is much the same as the true or bai birt and is an under-proprietary right bought with money(e).

In the Record of Rights Circular No. 2 of 1861, the Chief Commissioner, Mr. Wingfield, observed (§ 26):—“Some

belong Bahraich Settlement Report, pp. 94-7; O. G. I., 181-84, where the Birt patta is given wrongly as 1283 F., three years after the lease of that work and the purchase money as Rs. 70.

Settlement Report, § 86.
 (a) Mr. Bent, i.
 gratuity given
 granted by taluk, ad verb Sankalpa.

(b) That is, i. loco.

“Shunkullup is of much the same nature as birt; and, therefore, will be governed by the same rules. But it differs so far from ‘bai birt,’ that is, a condition of the former tenure that the talookdar can redeem it at any time by repaying the purchase money. The option of availing himself of this condition should be afforded him at Settlement. Other ‘Shunkullup,’ that which is styled kooshust and usually given to Brahmins and Pundits, is a pure mafee tenure given by the talookdar; and will be treated like other rent-free grants by talookdars”(a).

The right of redemption in the case of the former description of Shankalp, the purchased or *dambús* as it is sometimes styled (b), was very soon questioned by Mr. Moss King, Settlement Officer of Partabgarh, and the Chief Commissioner apparently finding himself unable to support his assertion of the redeemable character of these grants “ruled that each Settlement Officer must be guided by the customs prevalent in his district, as in some the right of redemption may exist, in others it may not.” Mr. Charles Currie, the Settlement Commissioner, thought that “where the right of redemption does exist the exercise of such right should be subjected to a term of limitation” and he recommended the application of the mortgage rules to cases of this nature (c).

The redeemable character of this class of Shankalps is likewise strongly questioned by Colonel MacAndrew in reference to the original assertion of the Chief Commissioner, and seemingly in forgetfulness that it had been toned down until it had become meaningless. He observes: “I exceedingly doubt this. It is manifestly unjust, for these holdings, as a

(a) O. P. 62, 1865, p. 33; O. P., Cal., 1865, pp. 105-111.

(b) Faizabad Settlement Report, p. 89, § 260.

(c) Sett. Commr. Rep., 1862-63; O. P., Cal., 1865, § 77, p. 365; Faizabad Settlement Report, pp. 89, 509, 510.

“ rule, were greatly improved, the original grant being gener-
 “ ally poorly cultivated land, and this would be still more
 “ conspicuous when tenure came under English rule, I think
 “ the fact that any arrangement is unjust raises a strong
 “ presumption against its being a genuine Hindu custom
 “ regarding landed property, and the tendency of Hindu
 “ polity is to stereotype arrangements of this kind when once
 “ made. These bought Shankalps are only found where birt
 “ prevails, and I think they were birts made to Brahmins who
 “ called them Shankalps, because of the greater sanctity
 “ attached to that name” (and the enormity of resuming a
 Shankalp is adverted to below) “ and the tenures were less
 “ likely to be interfered with violence. Their being found
 “ in the Faizabad district in the hands of Chamars may be
 “ accounted for by their sale, as there would be no sanctity
 “ in the eyes of their original Brahmin holders which should
 “ prevent it” (a).

I have myself been as unable as the Chief Commissioner himself proved to find any justification or authority for his assertion of the existence of the right of redemption in the case of these bought shankalps. The inability of an experienced officer like Mr. Wingfield to point any such authority may be taken as a strong indication that none exists.

In other cases the tenure partook of the character both *bai birt* and true shankalp as explained below, the consideration for the grant being compounded of a very considerable money payment, and of the blessings and prayers of the Brahmins or their performance of the services of family *guru* or priest (b).

(a) Mac. p. 36.

(b) Gajadhar Sookhul vs. Seetla Bux and Shunker Singh; Balgobind and others vs. Byreesal Singh; Kundhye Doobay vs. Byreesal Singh and others, C. C. and F. C., Sel. Ca., pp. 65-70.

The true Shankalip is that known as *Bishuprit* (Vishnu, and *priya* grateful to or beloved by) *kushast*, *kooshust* or (less commonly) *kushtan* (a) (from *kusa* corruptly *kusha*, a grass) esteemed holy by Hindus, from its use in religious ceremonies being strewed upon the altar or held by the Brahmins whilst repeating the formulæ, a tuft of which was presented to the donee of a Bishuprit shankalp in affirmance of the gift, whence this class of shankalp is also known as *kusavritti* or *kusabrita*, whilst at the same time a formula was repeated from which the grant took its name of shankalp (b)

(a) Faizabad Settlement Report, p. 89, § 260.

(b) Wilson; Rœ Bareh Sett. Rep., 118; O. G. III, 213 : Capt. W. E. Forbes's Sett. Rep. of Partabgarh gives the following information regarding this *kûs* :—"The 'kûs' possesses no practical utility that I am aware of. A blade of 'kûs' grass is made the accompaniment by Hindus of any gift offered to a Brahmin. In the month of October when the Hindu head of the family pours water on the graves of his ancestors, he always makes a point of wearing on the 3rd finger of each hand a ring made out of 'kûs' grass; and it is this 'kûs' grass which has given the name to the tenure known as *kushast Shankalp*, the literal meaning of *kushast* being, through the medium of *kûs-kûs* grass, *kast* hands; the grass passes from one hand to another as does the tenure hence the name" (§ 40, p. 15). The handling of the tuft or blade of grass is not, as at the first blush it might seem, a sort of constructive livery of seisin. It may be well to add the account given of this *kûs* by the Abbé Dubois writing about the beginning of the present century. He says: "The herb *Darba* or *Darbee* which is also called *kûs* is a sacred plant employed in most of the ceremonies of the Brahmans."—"Mention is made of this plant so regularly, in almost every rite of the Brahmans, that a short account may not here be misplaced of the origin of that veneration which the Hindus entertain for it. It is found everywhere but chiefly in wet and marshy places, where it grows spontaneously. In some parts it is so plentiful that the natives thatch their house with it." (Cf. Partabgarh Sett. Rep. ut supra.) "It reaches to about three feet in length. The blade resembles that of the common grass. In the Hindu books there is no end to the praises bestowed on this herb and the good it occasions. It is this great estimation in which it is held that recommends it to the Brahmans to be used in all their ceremonies. The cause of its virtue is that when the gods and the giants joined together to churn the sea of Milk by means

and it was a highly respected under-proprietary right. The gift of land to be held as shankalp was made on occasions of sorrow and rejoicing such as bereavement, marriage, birth of a son or a religious and other service performed by Brahmins, to whom alone they were made, and the like. It was heritable and freely mortgaged. It was never resumed and it was even considered unlucky for one to lapse for want of heirs (a). In the Rai Bareli Settlement Report, it is said:—"To resume a grant of shankalp is by the Hindu religion the deadliest of sins; and is visited by transformation in a future state into a worm in the nethermost Hindu hell, the nearest approach to which state of existence is in this world the life of a maggot in an unclean place, whatever that may be like. The natives have a story of a raja who in knocking down some mud buildings to clear a site on which to build a palace was on the point of destroying the nest of a bird which was endeavouring to rear some young ones, and who in the agony of her despair threatened to drop one grain from out of some grant of shankalp made by the raja into his food, to the end that by eating it he might commit the unpardonable sin. It is to be hoped that the raja spared the nest and escaped the punishment" (b).

of the *Mandara Parvata* or Moadara (probably the Caucasus, which served them for a churn, and when from this operation emerged the vase which contained the *Amatari* it was first set down upon this herb, which acquired from the sacred contact, the most excellent qualities." (Dubois's Manners, etc., Translation, E. I. Co.'s 4th Ed., 1817, pp. 93 and 295. We can understand then why the use of *kusa* recommended itself to the Brahmins to give a character of inviolability of grants of land to themselves. And see Jones's Menu, III., 308, 210, 223, 255, 256, V, 115. From the roots of this grass are made walking-sticks which are much esteemed, and it is largely used in the manufacture of paper.

(a) Mac. 36-7; Bah. Sett. Rep. *in loco*; O. G. I., 183.

(b) P. 188, § 182; Gonda Sett. Rep., p. 49.

This is perhaps the only under proprietary right not originating in previous proprietary right created without any other consideration than the prayers, blessings, and services of the Brabmins (a).

Notwithstanding the direction of the Chief Commissioner above quoted that this class of shankalps was to be treated as resumable under the maafi rules, the right was repeatedly decreed as an under-proprietary right at Settlement (b). On the 5th June 1868, the Financial Commissioner Colonel Barrow, dealt with several cases of claims to sub-proprietary right in virtue of shankalp. In the case of Poorunmashee and others, vs. Baboo Hurdutt Singh (c), which was a case of shankalp kusbast he held first, and contrary to all true principles in reference to prescription, that the issue should be tried between the parties "as to whether, what was given to him" (the shankalpdar) "perhaps as a favor, in the first instance, has not by custom and prescription become a right?" and secondly correctly both on principle, and with reference to the orders of the Government of India of 30th September 1864, but inconsistently with the former issue "whether the tenure was created with the intention that it should be maintained only during the pleasure of the grantor, or during the performance of some specific service (religious or secular), or as a permanent right, whether of property or occupancy" and he directed "judgment must be given accordingly. In the absence of any express written stipulation, or sufficient parole evidence, the nature of the implied contract should be determined in accordance with the custom prevailing in the part of the country in which the case occurs. No right in the

(a) Mac. 36-7.

(b) *Id.*

(c) C. C. & F. C. Sett. Ca., p. 63.

“tenure differing in kind from that which is proved to have hitherto existed will be decreed, *e.g.*, if the tenure, although heritable, has not been transferable by sale this condition will remain.” The Financial Commissioner maintained this ruling in the case of Bbagwan Datt and Ram Suroop, *vs* Juggat Narain (*a*), and in the case of Balgobind and others *vs*. Byreesal Singh (*b*), and Kundhye Doobay *vs*. Byreesal Singh (*c*).

In the last mentioned case the Financial Commissioner recorded this finding :—

“There is little doubt but that this is a religious grant and as the talookdars themselves admit that they never resume such, and the prevailing custom of the country is apparently adverse to such resumptions, the present zemindar, the loyal grantee” (whose position he it observed was at the time considered in Oudh stronger than that of an ordinary taluqdar) “must prove that this is a ‘resumable grant’ before he can touch it.”

The Financial Commissioner had previously held it shown that in the Pratabgarh District a Shankalp for a consideration was not redeemable (*d*).

The talukdar’s right of resumption will now have to be dealt with under the Resumption Chapter of the [Oudh Rent Act, 1886, as amended by the United Provinces Act No. IV of 1901.]

SECTION IX.—DAR.

Dār is an under-proprietary tenure believed to be confined to the pargana of patti Dalippur in the Pratabgarh

(*a*) C. C. & F. C. Sett. Ca., p. 64.

(*b*) *Id.* 69.

(*c*) *Id.*, 70.

(*d*) Gajadbur Sookhul *vs*. Seetla Bax and Shunker Bax, C. C. & F. C., Sett. Ca., p. 65.

District. It is similar to the true, that is, the bai or purchased birt, and represents a purchased interest in a patch of land or chak and is obtainable by all classes. It is never found to extend to entire villages. The real and primary meaning of Dár is obscure but it is said to be a corruption of zemindari (a). In the Sultanpur Settlement Report it is said: "The word Dár or Dári is derived from the root of the Persian verb *dáshtan*, have, hold, possess and signifies "literally any sort of holding or possession; and in this sense "it is identical with the termination of the words talukdari, "zemindari, &c. When used alone, however, it is applied "more especially to lands received under a grant conveying a "permanent sub-proprietary interest." But in Sultanpur it is not the name of a distinct tenure, but a brief generic one applicable to all tenures fulfilling the above conditions (b).

SECTION X.—MARWAT.

Marwat is an under-proprietary right granted to the family of a man slain in battle for the taluqdar. It generally pays a low rent and is never resumed (c). In the Rae Bareli Settlement Report, Marwat is spoken of as "as well recognized an under-proprietary right in the Nawabi, as any "tenure that could be mentioned. It was never resumed "on any pretext" (d).

One can well understand that in the Nawabi, a generation or two after the grant the taluqdar, himself pressed by the Nazim, might "by the strong arm" raise the Marwatti's rent but that is a very different thing from this being a

(a) Mac. 37; Pratabg. Sett Rep. *in loco*; O. G. III., p. 129.

(b) Sult. Sett Rep., § 174, p. 83.

(c) Mac., p. 37.

(d) Glossary to Report, p. xiii.

tenure resumable at will; and even after the rent had been so raised it would still be a low one easy to distinguish from the assamiwār holdings (a). This of itself indicates its non-resumable character.

The earliest suggestion that I have met with of Marwat grants being resumable at pleasure was made by Mr. Charles Currie in his Memorandum on Subordinate rights in land in Oudh, prepared about 1864. He there states (b):—"Again, as" (in ?) "the royal houses of Oudeypur, Jeypur, Jodhpore and the other Rajpootana states, we learn from Colonel Todd's" (sic) "Annals, that the crown lands were alienated for daring acts of gallantry in war, and that grants of territory were made to powerful adherents, but that such grants in no way superseded the supremacy of Rajas, and that the } "power of cancelling them was not lost; so also in the several "Rajpoot houses of Oude, we find that similar grants were "made by the successive talookdars to their retainers, and "that the families of retainers slain in the service of their "lord were pensioned by grants of land to be held either free "of rent or at favourable rates. These grants are known as "'Marwat' grants. Such grants were, however, always held "to be resumable at the pleasure of the grantor or his "successor, though in practice they were seldom resumed."

Now the reference to Tod's Annals is inapt. Oudh Taluqdar were not princes of independent states, nor can you rightly argue from one to the other; of course, the supremacy of the Raja making the grant was not affected thereby, —the grant was of land to be held under him; in virtue of his sovereign power I suppose he could cancel his grant and resume the land; but to say that the power of cancelment was not lost neither describes the nature of the grant nor

(a) Mac. 37-8.

(b) O. P. 61, 1865, p. 218, § 9; O. P., Cal., 1855, p. 427.

the custom of the Rajputana states ; nor lastly does Colonel Tod in his Annals, so far as I have been able to discover, say anything which could be regarded as an authority for Mr. Currie's assertion. On the contrary he shows that resumability was so little characteristic of such grants that they were chiefly sought after and prized as enabling the grantee to build his own town house on the land, the inference from which is obvious. But if the authority were to the effect asserted what was wanted was not an authority as to the customs of the Rajputana states but an authority, which Mr. Currie could not find as to the Oudh custom. All that can be said in excuse of the assertion is that it was made before the investigations in the different districts elucidating the nature of this tenure ; but this is also its condemnation. I do not hesitate to say that it is an assertion which cannot be supported of the same character as Mr. Wingfield's regarding the redeemable character of purchased Shankalps. But it has, all the same, had its influence on the decisions of the Oudh Settlement Courts as will appear from what I have further to state regarding this tenure.

In the Sultanpur Settlement Report it is said (a) :—

“ The talukdar when he was also a military chief, not only paid his soldiers while they served but acknowledged also his liability to maintain the families of those who were killed in battle. This was done by a grant of land called marwat or maroti, *i.e.*, death grant. It usually ran in the name of the deceased ‘and his children,’ and, in practice, included his widow also.” And yet in defiance of the orders of the Government of India of 30th September 1864, as the report states, “ under present rules it is held to be ‘ talukdar's m'afi ' and resumable at will ; but

(a) § 176, pp. 83-4.

“ formerly it was a tenure much respected, at all events
 “ during the lives of the actual grantees ; and afterwards it
 “ was often allowed to run on like other tenures to their
 “ heirs although the latter possessed no actual right.”
 (How so, if the grant was generally, as described and in
 terms proper to convey a perpetual estate ?) “ It was one
 “ of the baits used by land-holders to obtain recruits for the
 “ ranks of their military retainers ; and self-interest, if
 “ no higher motive taught them to be careful how they kept
 “ faith with those to whom they gave it.”

It will strike the reader as something monstrous that
 where under such circumstances a man has made a grant not
 only to another but to him “ and his children ” thereby
 marking that in its inception the grant was not resumable at
 will, and where in the *Nawabi* it was not resumed, it should
 have been treated in the Settlement as talukdar’s maafi
 resumable at will and that in defiance of the orders of the
 30th September 1864, Colonel MacAndrew to whose lot it fell
 to review this report was not slow to point this out. He said,
 “ Marwat is an under-proprietary right beyond all question”
 (a), and again (b) “ I cannot pass over Mr. Millet’s remark in
 “ para. 181, that the law would not concede a right to marwat.
 “ It is true that certain old circulars laid down some stringent
 “ rules about what was called ‘ talukdari m’afi ’ and directed
 “ that talukdars might revoke their own gift of rent-free or
 “ ‘ raiyati ’ land at pleasure ; but Lord Lawrence in the
 “ Foreign Department, No. 302, dated 6th October 1864, set
 “ these orders aside, and directed that every claim was to be
 “ tried on its merits irrespective of any authoritative provin-
 “ cial declarations of the non-existence of any particular

(a) Review at end of Report, § 7, p. 4.

(b) *Id.*, § 10, p. 5.

"right, while Sections 2 and 7 of Act XVI of 1865 declare "that all suits shall be tried under the provisions of the "Code of Civil Procedure, and the same principle has since "been re-enacted in Act XXXII of 1871. I am therefore "of opinion that it was quite competent to the Settlement "Court in Sultanpur, to decree marwats if the right to them "had been proved before them, and I regret to hear that "they have not done so."

Nor was this censure undeserved when it is considered how this *marwat* tenure was regarded in the Nawabi. The fact that a taluqdar's retainer could fight on his behalf and rest assured that if killed it would be a point of honour with the taluqdar to give his family a permanent maintenance—this fact it was which enabled the taluqdar successfully to resist the nazims and king's troops and maintain his position, and placed the taluqdar on so different a footing from that of the commandant of the king's sipahis, the relatives of whom, were one killed in battle, were nominally entitled to a gratuity of two months' pay which, little as it was, they did not get, whilst a disabled sipahi was at once dismissed without pension (a).

(a) Irwin, p. 150. The following from Sleeman's *Tour Vol. I*, 253-4, shows how this matter was thought of in the Nawabi: "Raja Hunmunt Singh and Bener Madho were riding with me, and when we passed through a large crowd of seemingly happy peasantry in one village, I asked Bener Madho (whose tenants they were), whether they would all have to follow his fortune if he happened to take up arms against the Government.

"Assuredly," said he, "they would all be bound in honour to follow me, or to desert their lands at least."

"And if they did not, I suppose you would deem it a *point of honour* to plunder them?"

"That he assuredly would," said Raja Hunmunt Singh; "and make them the first victims."

"And if any of them fell fighting on his side, would he think it a *point of honour* to provide for their family?"

• Then are such grants resumable under the Resumption Chapter of the Oudh Land Revenue Act XVII of 1876? In his Select Case LXI, decided on 19th March 1883, Mr. Sparks, Judicial Commissioner, held that they were so. "A *marwat* grant cannot" (so he held) "be said to have been made for a valuable consideration; gratitude may be a good consideration, but it is not a valuable consideration." This was in accordance with his previous judgment, dated 19th March 1883, in the case of Thakur Surat Singh, Plaintiff-Appellant, *vs.* Thakur Rohan Singh, Defendant-Respondent, where he decided that such grants were held not for a valuable consideration but in the words of the Sub-settlement Act "merely through privilege granted on account of service or by favour of the taluqdar." In this case consideration was set up by plea that the *marwat* grant there alleged was in lieu of a money compensation for the death of a relative killed in fighting for the taluqdar. The case went up on appeal before their Lordships of the Privy

"That we all do," said he; "they are always provided for, and taken the greatest possible care of."

• "And if any one is killed in fighting for the King?"

They did not reply to this question, but the Adjutant, Bhopaul Singh, said—"his family would be left to shift for themselves—no one asks a question about them."

"This," observed Raja Bakhtawar Singh, "is one of the great sources of evil that exists in Oude. How can men be expected to expose their lives when they know that no care will be taken of their families if they are killed or disabled?"

"It is the rule to give a disabled man one month's pay and dismiss him; and to give the family of any one killed in the service two months' pay. But though the King is charged for this, it is seldom that the wounded man, or the family of the killed, get any portion of it. On the contrary the arrears of pay due—which are at all times great—are never paid to the disabled sipahee or the family of the sipahee killed. If issued from the Treasury, they are appropriated by the commandants and their friends at Court; and the arms and accoutrements which the deceased has purchased with his own money are commonly sold for the benefit of the state or its officers."

Council and was twice argued before the Judicial Committee (a). Their Lordships held that the evidence failed to establish the grant as alleged by the would-be *marwati* and dismissed his appeal on that ground. [Practically the same question arose in Select Case No. 244, where the land of which resumption was claimed had been granted "rent free in lieu of the grantee's '*khair khwahi aur jan bazi*'." In discussing the meaning of the words "valuable consideration," Mr. Spankie, the Additional Judicial Commissioner, said:— "In my opinion the expression valuable consideration in section 55 means 'money or money's worth.' This is the ordinary meaning of the expression—(Stroud's Judicial Dictionary). It was contended for the appellant with much persistence that a grant of land rent free for '*jan bazi*,' is a grant for valuable consideration. Having regard to what I take to be the true meaning of the expression 'valuable consideration,' '*jan bazi*' is not in my opinion valuable consideration, being neither money nor money's worth. Had the appellant made out the case set up by him in the court below, namely, that the grantor had offered the grantee a money reward for his '*khair khwahi wa jan bazi*,' and the latter had asked for the land in lieu of the money, it may be that the appellant could have successfully resisted the resumption of the grant, but this case he entirely failed to support by evidence." The above remarks it is submitted equally apply to the resumption of "Marwat" grants under the present law of resumption of rent free grants, namely, Chapter VII A of the Oudh Rent Act XXII of 1886, as amended by Act XX of 1890 and by the United Provinces Act IV of 1901.]

Sometimes whole villages were held on Marwat tenure but as a rule the holdings were small (b).

(a) L. B., XII, I. A., 62; I. L. B., XI, Cal., 318.

(b) Mac., p. 38.

SECTION XI.—CHAHÁRUM AND DASWANT.

Chahárum and Daswant (also known in the neighbouring district of Benares as *Bunkuttee*) is an under-proprietary right obtained by clearing jungle land under a lease granted for the purpose (*bunkuttee*) and bringing it under cultivation (*a*), and in other cases granted to old proprietors and influential residents of the village to keep them contented and loyal (*b*). The terms Chahárum and Daswant are in use chiefly in the districts of Gonda and Bahraich (*c*), and mean respectively one-fourth and one-tenth, thus giving a clue to the original extent of these subordinate tenures; the Daswant being very similar in its nature and extent to the "dyhak" of the *birtias* (*d*). The use of the terms Chahárum and Daswant arose in this way. The terms of the lease were usually as follows:—For five years the land was rent-free; in the sixth year the tenant paid one-sixth of the produce; in the seventh, one-fifth; in the eighth, one-fourth; in the ninth, one-third; and in the tenth, one-half the full rent. Henceforward the clearer was entitled to hold at that rent so long as the land was held *pakka*; but if the landlord held *kacha*, the clearer was entitled to have one-fourth or one-tenth of the produce, which in practice came to mean one-fourth or one-tenth of the land rent-free in under-proprietary right. This tenure like the others was liable to encroachment in the shape of an assessment of rent but that would be low in any case. The tenure is known in other districts by such names as *birt*, *birt jungul tarashi*, *sir* and *nánkár*. If a claimant to under-proprietary right based on a clearing of jungle land could show that he or his ancestors had really cleared it and held it at a favourable rate of rent, the presumption was that

(a) Elliot, Gloss. ad verb, *Bunkuttee*; Mac. 38.

(b) Bahraich Sett. Rep., p. 100; O. G. I., 185.

(c) Mac. 38.

(d) Bahraich Sett. Rep., p. 100.

he had an under-proprietary right; but if his rent was at the ordinary rate of the neighbourhood, the presumption was against his having such right and his rights were such as he could make good under Section 22 of the Oudh Rent Act, XIX of 1868 (a).

In the Bahraich District Chahárum or Daswant and Nánkár were never held together, a fact suggesting the inference that the one was only a convenient form of calculating the other and would only be obtained by a fairly influential party (b).

This tenure seems to be known in the Faizabad District by the name of bai-kitát (c).

SECTION XII.—BISWI.

Biswi is another under-proprietary tenure which is found principally in the district of Faizabad and Sultanpur and arose out of a special class of mortgage by the proprietor to a cultivator of the latter's holding for a sum of money paid down. Generally a low rent called *parmsánu* was reserved which represented the difference between the interest due on the money and the full rent, and which was frequently less than the Government *jama* for which the mortgagor was liable: but sometimes the *Biswi* was rent-free, as it would naturally be where the calculated interest on the money came up to the full rent (d).

Where an entire village or an entire fractional holding was thus mortgaged, it was usual not only for the mortgagee to get or retain possession of the land, but also to enter into the engagement with Government for the revenue thereof.

(a) Mac. 38.

(b) Bahraich Sett. Rep., p. 101.

(c) Faizabad Sett. Rep., pp. 91-2; O. G. 1., 441.

(d) Mac. 39; Faizabad Sett. Rep., pp. 91-2.

Sometimes however he merely held possession, the mortgagor being under engagement for the revenue, in which case the mortgagee paid the *parmsána*, if any. Where less than a fractional portion of a village was thus mortgaged, the Government revenue upon it was included in that of the parent village and *parmsána* almost invariably paid: the instances in which the amount of interest on the mortgage money came up to the amount of the full rent being rare.

In the Nawabi re-entry could be had in any *kháli fisl*, *i.e.*, when the crops were off the ground. Under British rule if redemption was barred by the Limitation under the ruling in the Settlement Circular No. 45 of 1864 of 12 years from the time when either party set the conditions of the original arrangement aside or by that under Act XVI of 1865 or Act XIII of 1866, a subordinate title was decreed. Under the Circular it was decreed at the Government demand plus 5 per cent (*a*). Subsequently to 24th August 1866, it would be decreed subject to such of the rules of the Sub-settlement Act as may be applicable to the case.

SECTION XIII.—DIH.

Dih is an under-proprietary tenure chiefly met with in the northern, and more particularly in the trans-Gogra parts of the province than elsewhere. The word in its primary sense means the deserted site of a village (*b*) (the Persian 'Deh' being more frequently used for an inhabited one), but as used by claimants in the Oudh Courts it universally means that portion of a village which was once covered with houses, but which now, either from decay or desertion of the buildings, has become again open waste, or has been taken up for cultivation. Thus the Dih land of a village which has been

(*a*) Faizabad Sett. Rep., pp. 91-2; O. G. I., 442.

(*b*) Elliot, Gloss. ad verb., 'deeh.'

founded for some years will be found lying in or about the inhabited quarter, usually cultivated and always well known and recognized by the community. Existing houses with their small plots of cultivation adjoining (*Bhara* or *Ghar-ke-pichhiwara*) are not *dih*, which is strictly confined to the sites of former buildings, hence *dih* land is not found in newly founded villages. The land so rendered vacant was always considered the special property of the owner of the village, and the right to hold possession of it free of all demand whatever, was one which he generally managed to retain intact long after he was stripped of all other signs of proprietorship. So closely did an ex-proprietor cling to his *dih* land that the mere fact of a man other than an ordinary farmer of the village holding possession of it rent-free raises a presumption in favour of his being an old proprietor, which it is generally safe to trust as a guide in an inquiry into his antecedents (*a*).

SECTION XIV.—RAKHAUNA.

Rakhauna (from *Rákhát* a Hindí word signifying lands set apart for grazing) (*b*) is another under-proprietary right and is the exclusive right of pasturage over a specific portion of the waste land of a village. The right is never claimed as a general one over all the waste land in the village but is restricted to a particular area of it. The meaning of the word "set apart for grazing" indicates that separate specific portions of the waste were made over to or retained by the ex-zamindar when his property merged in that of a more important landholder. Those who had the *rakhauna* had the exclusive right of grazing over the *rákhát*, of cutting thatching grass, etc., but it seems were not allowed to break.

(*a*) Bahraich Sett. Rep., 97-8; O. G. I., 184.

(*b*) Wils.

up the land for tillage, or that so breaking it up they would be liable to pay full rent on it (a).

SECTION XV.—BAGHAT.

There are different descriptions of grove tenures but we are only concerned with one class, *viz.*, those cases in which the grove was planted by the under-proprietor while he was in proprietary possession of the village and of which he has retained possession, or in the case of an under-proprietor who is not also an ex-proprietor of which he is found in possession. In these cases the grove together with the land on which it is planted constitutes an integral part of the under-proprietary holding of the ex-zamindar. He had full power to cut down the trees, to replant and to make what use he liked of the ground. The taluqdar did not interfere with his full right to sell and mortgage the grove and never dreamed of exacting rent from him. If the trees fell and the ground thus became available for cultivation it would still remain the property of the under-proprietor, and would probably be considered an adjunct of and subject to the same rules as to rent, etc., as his other lands in the village. If the under-proprietor held rent-free lands in the village the vacated spot would be held rent-free also; if they were subject to a low rent, a similar rent would probably be demanded from this plot also (b).

(a) Bahraich Sett. R., 102; O. G. I., 186.

(b) Bahraich Sett. R., 103-5; O. G. I., 187-8; Rae Bareilly Sett. R., 121, § 215; Lucknow Sett. R., p. 94. The rights however vary greatly according to the terms of the Wajib-ul-arz of the villages in different districts.

CHAPTER IV.

OCCUPANCY RIGHTS IN TALUQAS.

A tenant right of occupancy, that is, a right to remain [1] in occupation on the due payment of a certain rent is, as Sir Henry Maine pointed out, in the language of General Jurisprudence, a right of property and not of contract (a).

We may go further and say that when the right has had its origin in contract as soon as it is created it becomes a right of property in respect of the ordinary legal distinction between property or that which is held as a right and privilege or that which is enjoyed by the courtesy of

(a) " Now in the language of General Jurisprudence there are only two classes of rights—rights of property and rights of contract. Every right which does not belong to one class necessarily belongs to the other. Of course, then, a right to a rent by competition is a right of contract, and the duty of paying such a rent is a duty arising out of contract. If however we take away any of the ingredients of contract, as for example, the open market or the power of going into the open market, the rights and obligations involved cease to be rights and obligations of contract, and by necessary consequence become rights and obligations of property. It follows from this that when a right of occupancy intervenes between landlord and tenant, their mutual rights and obligations cease to come under the head of contract, on the ground that by the hypothesis, there is no power of going into an open market. The question between a landlord and tenant having a right of occupancy is, properly speaking, not what rent shall be paid, but how the produce of the property shall be divided between them. If we speak of rent at all in such a case, we must mean a rent belonging to the class of rents by custom.

" An hereditary tenant possessing a right of occupancy is, therefore, correctly spoken of as a part or under proprietor. This proposition is obviously true of a tenant with a beneficial right, because he pays less than the rate which would be determined by contract; but it is also,

another (a). Being held in subordination to a superior holder, such rights are strictly under-proprietary rights and might therefore have been correctly treated of under that heading. But that would not have been a convenient method of dealing with the subject, for as known in Oudh, Occupancy Rights are a distinct class of rights whilst the term under-proprietary right has also a well defined meaning in the Province, and the considerations applicable to the two classes of rights are as distinct as the treatment they have received at the hands of the authorities and the legislature.

I shall not attempt in what follows to take the reader through the whole of the details of the Oudh controversy regarding the existence of this tenant right of occupancy but shall content myself by giving a brief sketch of the steps by which rights of occupancy recognized in Oudh have been settled and established. Any one desirous of following the subject more closely may do so in the Oudh Blue Book of 1865, and the Tenant Right Blue Book of 1866, and Calcutta Blue Books on this subject of 1865 and 1867. Suffice it for my present purpose to say that notwithstanding the declarations of the Government of India of the 10th and 19th October 1859, and especially that of the former date regarding the protection of "village occupants from extortion" the Chief Commissioner Mr. Wingfield in the Record of Rights Circular No. 2 of 1861 instructed Settlement Officers "to

though not so obviously, true of a cultivator, who has non-beneficial right of occupancy, *i.e.*, who pays a rent equal to a rent settled in open market. For inasmuch as the rent has not in fact been settled between landlord and tenant in open market, there has been no contract, and the rights involved are rights of property." "As a mere matter of nomenclature an hereditary tenant with a non-beneficial right of occupancy ought to be designated an under-proprietor." (Minute, §§ 21, 22, and 24; O. P. 62, 1865, pp. 174-5; O. P., Cal., 1865, pp. 710-15.)

(a) Kerr's Bla.

“ make no distinction in the records between cultivators at fixed rates and cultivators at wills ” (a).

On the 8th January 1861, the Governor-General Lord Canning approved generally of this instruction (b). Almost directly afterwards on the 3rd May 1861, Sir George (then Mr.) Campbell, the Judicial Commissioner, in his annual report of 1860, felt it necessary to advert to this subject, in connexion with the Judicial powers of Taluqdars, the propriety of conferring which was then being canvassed, and he gave it as his own impression “ that under all tenures and all systems in all parts of India, at the bottom of all a strong tenant right exists, which has survived everything in some districts of Lower Bengal, and in most other provinces, and that very much indeed depends on the maintenance of these indigenous rights of the masses ” (c). On 28th August 1861, the Officiating Chief Commissioner Mr. G. U. Yule stated his opinion that the belief of some officers of the commission in the existence in Oudh of a tenant right at fixed rates arose “ more from a feeling that what now exists elsewhere in provinces to which they have been accustomed, must or should exist here, than from any precise knowledge of its actual existence. They make no allowance for the possibility that, under the strong bias in favour of proprietary communities and ryots’ rights, which has always shown itself in our part, we may have extended a right of occupancy at a fixed rent for ever. A modified right of occupancy is allowed here by all, that is, the right of a cultivator who has long occupied the same land, to retain it in preference to any one else provided he gives a fair rent; not, be it noted, what may have been a fair rent

(a) O. P. 62, 1865, p. 38, § 29; O. P., Cal., 1865, pp. 105-111, § 31.

(b) O. P. 62, 1865, 40, § 8; O. P., Cal., 1865, pp. 112-35, § 8.

(c) O. P. 62, 1865, p. 55.

“in the ages of the past, but which may be reckoned a fair
 “one at the time the demand for increase is made. Such
 “the Officiating Chief Commissioner believes is the real
 “custom of this province, and it was so perhaps of Hindoos-
 “tan, until we translated a non-increase on sufferance in
 “consequence of stagnation into a right to non-increase
 “under any circumstances, however great the change; the
 “principle might have been applied quite as justly to the
 “produce of the land as to the land itself” (a).

Mr. Campbell had said nothing about fixed rates, and reverting to the subject on 28th April 1862, in forwarding his report for 1861, he observed: “I am pretty sure that no
 “officers are likely to find that any rents of cultivators were
 “fixed in the sense of being absolutely and permanently fixed
 “at a definite sum of money for ever. Nothing was so fixed
 “either in Oudh, or I believe any other part of India”—
 “doubtless the assessment of the immediate holders of the
 “soil was very much regulated by the power to exact. But
 “at the same time this, I think, is undoubted, that as said by
 “Mr. Yule, there was a strong right of occupancy on the part
 “of the ancient cultivators of the soil, and their assessments
 “were so far more fixed than those of the superior zemindars,
 “that according to the ancient law and practice of Hindoostan
 “the right of the zemindar or Government, or whoever dealt
 “with the permanent cultivator, consisted in the claim to a
 “certain proportion of the produce. This proportion was, for
 “a series of years and within certain limits, pretty well fixed
 “and determined, and so it happened that by the use of cer-
 “tain standard rates of division and recognized modes of com-
 “muting them for money, and certain fixed money rates for
 “the cultivation of certain crops, the assessment of cultivators
 “became pretty determinate, and was only varied occasionally

(a) O. P. 62, 1865, pp. 55-6.

"under pressure of strong circumstances. It appears then, "to be generally understood, that though there were in Oude "no cultivators at actual fixed rates, there certainly were "cultivators possessing a right of occupancy and liable to "regulated rates, by which rights they were distinguished "from tenants at will." Mr. Wingfield's Circular was, Sir George Campbell thought, directed against the record of such rights, and it was he asserted understood to direct "that there is to be no record of what are called, in other "provinces, 'Mouroosee' or ancient cultivators." So that while some "cultivators, possessed of some privileges of occupancy, "distinguishing them from tenants at will, do, as Mr. Yule "says, very generally exist, they are not to be recorded." From the point of view from which he was then writing, *i.e.*, in connexion with the Judicial powers of Taluqdars, he thought this was likely to lead to difficulty^(a).

This expression of opinion by the Judicial Commissioner led the Chief Commissioner Mr. Wingfield to make the following comments, indicative of considerable feeling and which it is important to note owing to his subsequent change of view. In a letter to the Government of India, dated 15th December 1862, Mr. Wingfield says: "The Chief Commissioner would not think it necessary to notice Mr. Campbell's opinion on a subject not coming within his department, but as his remarks may have attracted His Excellency's attention, and since the inferences are unwarranted and calculated to mislead, the Chief Commissioner begs to offer the following observations. He never professed to ignore the existence of cultivators with right of occupancy as distinct from mere tenants at will, but as he was convinced that there were no cultivators with rights of occupancy at fixed, *i.e.*, unvarying rates in Oude, he drew a

(a) O. P. 62, 1865, 56-7, §§ 112-116; O. P., Cal., 1865, 117-119.

“broad line of separation and did not think it necessary to particularize between cultivators with or without rights of occupancy. Indeed he does not think that the determination of this latter question and of what will hereafter constitute a fair rate of rent subjects for general investigation at settlement. The record of the rates paid at the time is quite sufficient. To enter upon such an inquiry would be to rouse a spirit of antagonism between landlord and tenant, who, if left to themselves, would rarely dispute at all. The Chief Commissioner would leave each case to be decided as it may arise in summary suit for rent or ouster.” He explained that he considered “the right of occupancy only entitles the tenant to hold at market rates and protect him from eviction”(a).

On 18th May 1863, Lord Elgin, by his Secretary’s letter of that date, pointed out that Mr. Campbell’s observations were not inappropriate to the matter he was dealing with, and which came within his department and the letter concluded in these terms :—“His Excellency is of opinion that the attempt to define accurately in the settlement records the extent and limits of the rights of occupancy is no doubt attended with much difficulty. But it is admitted that such rights exist, and that the tenants who enjoy them differ from tenants at will. You are therefore requested to state whether the omission of all reference to their rights in the settlement records, coupled with the judicial powers conferred on talookdars will not have a tendency to obliterate them altogether, and thus to prejudice unjustly the status of the holders, and whether it would not be possible so to record them as to keep them alive, leaving it to the Courts to determine the precise

(a) O. P. 62, 1865, p. 53; O. P., Cal., 1865, pp. 119-120.

“nature of these rights, if disputes should arise on this ‘head’ (a).

To this call the Chief Commissioner never replied (b). The subject had attracted the attention of the Secretary of State Sir Charles Wood, who by his despatch No 12 of 9th June 1863, called for an early report upon it (c).

On the 20th November 1863, Lord Elgin died and was succeeded by Sir John Lawrence, who assumed the office of Viceroy in January 1864. We have already seen what was the attitude at once taken up by Sir John Lawrence in reference to the rights of under-proprietors. If he was determined that under-proprietors should not be wholly sacrificed to the Taluqdars he was certainly not less so that those possessed of a right of occupancy should be protected. From the first he declared his policy in this matter without any shadow of uncertainty. In the Government of India letter of 17th February 1864, it is stated, “It is the opinion of the Governor-General in Council that these instructions,” (of the Secretary of State of 24th April 1860, and 17th August 1861) “embraced all rights whatever under those of the talookdar, whether they are those of former proprietors, or hereditary tenants holding their lands on fixed rents, or on rents more advantageous in their character than those of mere tenants at will or whether they are tenants with a simple right of occupancy.” * * * * “The Governor-General in Council has therefore directed me to ask whether, apart from the question whether rights of occupancy imply a right to a fixed rate of rent, any measures have been taken for the recording of such rights, and whether in fact they are protected otherwise than by the jurisdiction of the

(a) O. P. 62, 1865, p. 60; O. P., Cal., 1865, p. 121.

(b) O. P. 62, 1865, p. 147; O. P., Cal., 1865, pp. 178-9.

(c) O. P. 62, 1865, p. 60; O. P., Cal., 1865, p. 591. *

“ courts or whether the Settlement Officers have been directed “ not to make inquiries with a view to the record of this “ class of rights.” At the same time the direction of the Settlement Commissioner Mr. Charles Currie “ that no hereditary tenant rights whatever were to be recognised ” following as it did that of the Record of Rights, was, notwithstanding Lord Canning’s general approval of the latter, declared to be at variance with the instructions of the Secretary of State and contrary to sound policy (a).

The Chief Commissioner Mr. Wingfield on 2nd March 1864 asked to be allowed time to prepare a statement of his views (b) regarding rights of occupancy (which however he had not been asked for; the enquiry addressed to him being as to specific facts); and this he furnished on 26th March together with a “ Minute on Tenant Right of Occupancy ” by Mr. Currie in whose opinion he concurred. He now went beyond his original view that a modified right of occupancy existed in Oudh and declared “ that no right of occupancy or custom which has acquired the force of a right can be proved on the part of non-proprietary cultivators ”— that “ there are no rights of occupancy ” at all (c). The opinions of different officers engaged in the settlement of the province as to the existence of the right varied greatly, some denying it *in toto*, some admitting it in a modified way, and one affirming it generally. It is quite unnecessary for my present purpose to state or discuss these views, they will be found with Mr. Wingfield’s summary of some of them in the Oudh Blue Book of 1865—(pp. 116—134; Cal., 149—168) (d).

(a) O. P. 62, 1865, p. 100; O. P., Cal., 1865, pp. 129-132.

(b) O. P. 62, 1865, pp. 101-2; O. P., Cal., 1865, pp. 132-134.

(c) O. P. 62, 1865, pp. 106-116; O. P., Cal., 1865, pp. 133-148.

(d) See also pp. 153-156; pp. 190-196 of these papers.

In April 1864 followed the meeting between Sir John Lawrence, Mr. Maine and Mr. Wingfield at Cawnpore when this question was discussed. On 16th May 1864, Mr. Wingfield, who had taken time to consult the taluqdars on the subject, reported that they "most decidedly objected to the record of any non-proprietary cultivators as possessed of a right of occupancy and to the limitation of the rent to be demanded from them during the term of the settlement, because such rights had never been known in Oudh and their creation would strip them of the character of landlords and leave them a mere rent charge on their estates;" he re-asserted his conviction of the non-existence of any such rights and suggested that consequently it was impossible for him, unfitted as he was by holding such an opinion, to define the principles on which they should be recognized(*a*).

On the 28th May 1864, Sir John Lawrence in reply said, "I do not myself consider that the admission of the ancient tenants of land, the old hereditary cultivators, and the broken down ill-treated descendants of former proprietors to the right of occupancy, and to fair and equitable rates, will infringe in the least degree the pledge of Lord Canning. I feel sure myself that while he was desirous to maintain the 'just rights' of the talookdar, he had no intention to transfer to them the rights of others, with the single reservation that the talookdar, however he may have acquired the land, should continue the head proprietor."—"I do not desire to create rights in the land in Oude; all I require is that the rights which flow from long possession, by general consent among the people, shall be recognized and recorded. Such rights, any just native rule would admit; such rights our laws in India have distinctly laid down. I do not desire to see Regulation" (Act) "X of

(a) O. P. 62, 1865, pp. 163-7; O. P., Cal., 1865, pp. 204-6.

“ 1859 extended to Oude for the present. I should prefer
 “ to see some of its provisions modified. But if the talook-
 “ dars will not consent to a fair compromise, there will be
 “ nothing for it but to do this. The Government is limiting
 “ its demand to half the rent; practically as you well know
 “ it will never reach that proportion; where the talookdar
 “ is gaining so much, he can surely afford to give a little to
 “ others, or rather I should say, to forego somewhat of his
 “ claims”(a).

This reply was without effect on Mr. Wingfield's views, and on 6th June 1864 he wrote proposing either to resign his appointment or that a Financial Commissioner might be appointed to deal with the matter (b).

Sir John Lawrence then wrote his minute of 20th June 1864, (already mentioned in reference to under-proprietary rights) proposing for the consideration of his colleagues to re-appoint a Financial Commissioner, abolish the Settlement Commissionership, and though his “ first views were also to
 “ lay down specific rules for the adjudication of claims to land
 “ in Oude,” “ to introduce the revenue regulation generally,
 “ and in particular, Regulations 7 of 1822 and 9 of 1833, as
 “ well as Acts X of 1859 and XIV of 1863” (c).

The Law Member Mr. Maine agreed generally with the Governor-General, but not as to the precise course to be adopted, for the Bengal Revenue Regulations and Act X of 1859 assumed the right of occupancy, whilst Mr. Maine recommended the course of simply taking issue with the Taluqdars on the question they had raised of the existence of the right. This proposal had the general concurrence of Mr. Taylor, and Sir Charles Trevelyan and Sir John Lawrence

(a) O. P. 62, 1865, 167-8; O. P., Cal., 1865, 207.

(b) O. P. 62, 1865, 170; O. P., Cal., 1865, 209.

(c) O. P. 62, 1865, 158-165; O. P.; Cal., 1865, 197-204.

subsequently came into it (*a*); whilst Mr. Grey dissented and altogether adopted the views of Mr. Wingfield and Mr. Charles Currie (*b*).

Sir John Lawrence, on 27th September 1864, wrote a further minute by way of rejoinder to Mr. Grey (*c*), and on 30th September 1864, the Chief Commissioner was informed that "It appearing, therefore, to the Governor-General in Council, that whilst, on the one hand, there is no bar either in good faith or in law, to the recognition and registration of whatever rights of cultivators can be proved to exist, and, on the other, that no sufficient inquiry has been made concerning the fact of their existence, it is simply a duty incumbent on the Government, and in perfect harmony with the intentions which have heretofore been expressed to make provision for the impartial hearing of all such claims and that Mr. R. H. Davies was appointed Financial Commissioner, and was to be requested to lose no time

(*a*) O. P. 62, 1865, 181; O. P., Cal., 1865, 222.

(*b*) O. P. 62, 1865, pp. 170-181; O. P., Cal., 1865, 210-222.

(*c*) O. P. 62, 1865, 182-184; O. P., Cal., 1865, 222-225. Meantime³ in the review by the Governor-General in Council of the reports of the Settlement operations up to the end of April 1864, after the action of some of the taluqdars in admitting some under-proprietary rights had been commended, it was added, "Still it seems clear to His Excellency in Council that something more than this is required in order to give fair play to the subordinate classes, who have claims connected with the tenures of land in Oude. It cannot be much(?) that the talookdars will yield, but patient and careful inquiry would do still more; and this might be accomplished without infringing on the rights which the talookdars have acquired under Lord Canning's 'Sunnuds.' The Governor-General in Council has entered a good deal into this subject as it is His Excellency in Council's conviction that it is the humbler classes in Oude who now require our protection. This is not a matter of territorial chiefs, on the one hand, or peasant proprietors, on the other, but a question of whether large bodies of the agricultural classes shall or shall not be left completely at the mercy of the great landlords on whom the late policy in Oude has conferred such solid advantages."

"in revising the Revenue Circulars, so as to bring them into accordance with the foregoing orders" (a).

This was followed by Foreign Department, No. 302 of 6th October 1864, by which the Chief Commissioner was informed that the Governor-General in Council considered that Settlement Circular No. 46 of 10th June 1863 (b), required modification, since "in paragraph 3, it is stated that in Oude cultivators have no right of occupancy at fixed rents; this may be true in fact, but any claim to hold at fixed rents should be investigated and decided on its merits. Further, it is stated that rights are not complete and permanent, unless they constitute an under-proprietary tenure, and that no person is safe against enhancement of demand unless his name is inserted in the proprietary column. Now it remains to be proved that there are no rights of beneficial occupancy: all claims to hold at low rates should be investigated and decided upon their merits. No declaration of the non-existence of cultivating rights is of any validity. All such claims should be investigated in the same manner as is laid down in this Circular for the investigation of under-proprietary rights" (c).

These orders having been communicated to the Financial Commissioner Mr. Davies, he, on 24th October 1864, issued a Circular (having previously modified it in consequence of suggestions from the Chief Commissioner Mr.

(a) O. P. 62, 1865, 188; O. P., Cal., 1865, 230.

(b) This Circular will be found in O. P. 62, 1865, pp. 86-88; O. P., Cal., 1865, pp. 124-5.

(c) O. P. 62, 1865, 239; O. P., Cal., 1865, 451-452. It should be stated to complete the account of the views of the members of the Governor-General's Council on this matter that on 17th October 1864, i.e., some time after practical effect had been given to the opinion of the majority, Sir Hugh Rose produced a minute from which it appeared that though he had no definite opinion on the subject, he inclined to that of Mr. Grey.

Wingfield(a) in which he repeated the orders of the Governor-General in Council, "that the rights of cultivators other than tenants at will must be carefully investigated, and, if judicially proved to exist, recorded in the Settlement record," and after explaining fully that the simple point for determination was "are such rights recognized or not" the Circular continued:—"It will be necessary to make an investigation in every village to determine what cultivators, if any, have a right of occupancy, either at fixed or beneficial or market rates. It is advisable that this should be commenced simultaneously in each district under settlement in an equal number of villages (say 25 of each) whether held by talookdars or proprietary communities."—"The following points are amongst those which should be clearly brought out in the investigations. The specification according to the khusrah of the land in which the right is claimed, whether the occupancy of the same field has been continuous, whether, if it has changed, such change can or cannot, according to the usage of the village or the vicinity, be made without injury to the right in question? What has been the duration of the occupancy and the number of successions in the family of the claimant? How the occupancy arose, whether by breakage of waste, by grant, or agreement or otherwise? Whether the proprietor has ever exercised the right of eviction or can do so? How has the rent and revenue been paid, whether its amount has raised, and what terms concerning it are claimed? The Putwaree and Canoongoes might also be asked whether any distinction has been recognized among non-proprietary cultivators and what form it took. Other points will probably suggest themselves in the course of the enquiry"(b).

(a) O. P., 1866, p. 3; O. P., Cal., 1867, p. 1

(b) O. P. 62, 1865, 244-5; O. P., Cal., 1865, 557-8.

An investigation on these lines was at once commenced, and whilst it was in progress the subject was dealt with by the Secretary of State, Sir Charles Wood, by a despatch, dated the 10th February 1865. He there says, § 14. "It appears to me that the grants in the sunnuds are necessarily co-extensive in their operation with that of the confiscation on which they are based. If only proprietary rights were forfeited, it was only necessary to re-grant proprietary rights and then the occupancy rights remained on their former footing, whatever that was. If occupancy rights were forfeited, then they were restored and preserved under the sunnuds."

Having adverted to the difference of view between Mr. Wingfield and Mr. Campbell, who was supported to some extent at least by the Officiating Chief Commissioner Mr. Yule, the despatch proceeded: "It seems to me, therefore, that under any circumstances, the only point to be determined is the single question of fact, whether any occupancy rights on the part of the cultivating ryots did or did not exist at the time of annexation. If such rights existed and were unaffected by the order of the Government of India, they exist now as they did then. If they existed and were affected by the orders of the Government they were restored and secured by the sunnuds. In either case the only foundation on which they can rest is their previous existence at the time of annexation. An inquiry into this point is the indispensable preliminary to any future proceeding for determining and recording the rights of individuals." The Secretary of State thought that Mr. Davies's measure for investigating these rights too much assumed their existence, and that the general preliminary investigation above described should have preceded that of judicially deciding on each claim and he directed that, "If

“ these inquiries have not been already carried on to a great extent, and the question as to the disputed fact of the existence of the alleged rights of the ryots generally has not been already satisfactorily solved, I think it would be better to suspend the proceedings for recording rights, in order that they may be preceded by an inquiry of the general character to which I have above referred”(a).

This despatch was approved of by the India Council by a majority of nine to three, the dissentients being Sir J. W. Hogg, Sir Erskine Perry, and Mr. Macnaghten; whilst Sir Frederick Currie and Captain Eastwick recorded opinions and arguments in support of its terms. These different opinions contain little fresh material for the formation of a correct view on the question to which the discussion was now narrowed, and I cannot further advert to them in this sketch. They will be found in the Blue Book 62 of 1865, pp. 249—265. Nor must I attempt to give any detailed account of the results of the investigation which followed on Mr. Davies's Circular of 24th October 1864, though it teems with information on different points connected with the history of tenures in Oudh during the latter days of the Nawabi. This will be readily understood when I mention that Sir William Muir's précis of it (which the reader desirous of fuller information may consult) extends over 48 closely printed folio pages in the Tenant, Right Blue Book of 1867, (pp. 579—627); whilst the reports and evidence, correspondingly voluminous, are in the same and in the Parliamentary Papers 290 of 1866. Mr. Irwin's Book, pp. 252 and on, contains a very readable account of this inquiry and its results.

The Financial Commissioner Mr. Davies, on 19th June 1865, submitted his report of the inquiry to the Chief

(a) O. P. 62, 1865, pp. 245-249.

Commissioner, stating that he considered the evidence and reports of the Settlement Officers conclusive against the existence of a right of occupancy adverse to the landholder as regards cultivators not ex-proprietors, but that nevertheless "according to custom a cultivator generally kept his fields as long as he was able to pay the rent demanded," and that he was "decidedly of opinion that, apart from political engagements, Act X of 1859 is as much adapted to the circumstances now existing in Oudh as it is to the North-Western Provinces. Its introduction would merely transmute Customs into Rights" (a).

On 14th July 1865, the Chief Commissioner in his report to the Government of India expressed, as was to be anticipated, his entire concurrence in the first of these conclusions and his dissent from the others (b).

On 16th February 1866, the Chief Commissioner was informed that the Governor-General in Council agreed "generally with the result of the enquiry as summed up by Mr. Davies;" that he questioned "the justice or expediency of a suggestion of the Chief Commissioner; that in respect of non-proprietary cultivators the Revenue Courts should be confined to complaints of illegal distraint, breach of contract, or of ouster in the middle of the agricultural year," and thought "that the more just and expedient course will be to maintain the present system as it stands;" but that he was prepared to receive the opinions of the Chief Commissioner and Financial Commissioner on the course proposed. Meantime it was distinctly ordered that "the Court of the Settlement Officer will continue to be held open to claims which cultivators may bring forward to any form of right whether of mere occupancy or any further beneficial interest, and

(a) O. P. 290, 1866, pp. 27-38 ; O. P., Cal., 1867, pp. 26-36.

(b) O. P. 290, 1866, pp. 11 and on ; O. P., Cal., 1867, pp. 10 and on.

“ claims of this nature will be regularly disposed of under the
 “ judicial powers vested in the Settlement Officers for the
 “ purpose ”(a).

On 1st March 1866, the Chief Commissioner expressed himself against the course proposed and adhered to his original suggestion of the limits within which the Revenue Courts should entertain claims of non-proprietary cultivators; but this, he remarked “ would not bar the Settlement Courts
 “ from taking up a claim to rights of occupancy at market
 “ or beneficial rates if such should be preferred, as every man
 “ bringing a claim to an interest of any kind in land has a
 “ right to be heard in the Courts”(b).

On 28th March 1866, the Financial Commissioner expressed himself in favour of continuing the local rules, and observed, “ It was certainly intended by Lord Canning that
 “ the village occupants, under which designation must be
 “ included the cultivators, should be protected from extortion.
 “ But if Mr. Wingfield’s construction of the effect of sunnud
 “ be correct, this intention cannot be carried out even for
 “ the term of a single year.”—“ Under the ambiguity of
 “ the word ‘ proprietor ’ all the incidents of landed property
 “ are transferred to the similar property in India. This is
 “ in my opinion an error. The Indian proprietors under a
 “ Native Government, had never more than an hereditary
 “ and transferable interest in the produce of the land. This
 “ does not necessarily involve the right to eject a culti-
 “ vator ” (c).

(a) O. P., Cal., 1867, pp. 671-3. On 19th February 1866, Sir John Lawrence wrote a very long minute reviewing the question afresh from the beginning and justifying the policy he had adopted in reference to Occupancy Rights in Oudh.

(b) *Id.*, p. 685, §§ 28, 39 and 40.

(c) O. P., Cal., 1867, pp. 703-5.

Meantime on 14th February 1866 (*i.e.*, two days before the view of the Governor-General in Council of the result of enquiry was communicated to the Chief Commissioner), Mr. Grey, with the approval of the Governor-General, suggested to the Chief Commissioner that it might be possible for him, notwithstanding the result of the enquiry, to induce the Taluqdars to consent to the recognition of former proprietors who had sunk to the condition of mere occupancy cultivators, as possessed of a right of occupancy (*a*).

Mr. Wingfield would only undertake this task on condition of certain stipulations being clearly and precisely made for the protection of the Taluqdars. Various alterations were made in the terms of Mr. Wingfield's proposed stipulations and as finally agreed to by the Governor-General on 6th March 1866, they stood shortly thus :—

The Taluqdars were to allow a right of occupancy at a rate of two annas in the rupee, or one-eighth less than that paid by cultivators without any rights other than those of tenants at will in the same village, to ex- (*i.e.*, former) proprietors or their descendants who have retained possession as cultivators of the fields they formerly occupied as proprietors in their ancestral villages or estates, if their property consisted of more than one village.

On the other hand :—

No further measures were to be taken for enquiry into or record of any rights other than proprietary rights by the Settlement Officers, who were however to hear and determine judicially any claims of cultivators whether of mere occupancy at the rent demanded by the landlord or at beneficial rates.

All circulars which had theretofore guided the Revenue Courts in respect of cultivator's occupancy and rates of rent

(a) O. P., Cal., 1867, p. 879.

were to be withdrawn, but those courts were to be open for the hearing of all claims of cultivators on the ground of usage or custom whether of mere occupancy at any rate demanded or at fair or favourable rates or for rights derived from former proprietorship or from clearing waste lands or locating hamlets or improving the land; each case to be decided on its merits in conformity with custom, and claims demanding enquiry to be adjusted, if possible, by arbitration or punchayet (a).

On 19th March 1866, Mr. Wingfield who had left the province, writing from Cawnpore, reported that the Taluqdars as a body absolutely declined to consent to the proposal and even to proposals more favourable to them and that he "never saw them so decided on any matter before" (b).

On 17th May 1866, Mr. J. Strachey who had assumed charge of the office of Chief Commissioner on 17th March, with the concurrence of the Financial Commissioner Mr. Davies, proposed, to state it briefly, that Government should clearly state its acceptance of the enquiry as showing the non-existence in Oudh of rights of occupancy save as to proprietary cultivators and that as to these he should after such declaration be left to make terms with the Taluqdars (c).

On 25th June 1866, Sir John Lawrence wrote a minute declining to accede to this proposal and desired to refer the matter to the Secretary of State for orders (d).

Meantime Mr. Strachey had hit on an expedient, neither ingenious nor just, for the settlement of the question and

(a) O. P., Cal., 1867, pp. 879-893.

(b) *Id.*, 888.

(c) *Id.*, 895-902.

(d) *Id.*, 933-971.

which was this:—Something of the rights of the class of under-proprietors was to be sacrificed to the Taluqdars to induce them to come to terms with the Government regarding another class. So on 9th June 1866, Mr. Strachey informed Mr. Grey that the matter could more easily be disposed of if the question of Sub-settlements were brought to a conclusion at the same time. He received authority to deal with the two subjects together. Terms were come to between Mr. Strachey and the Taluqdars as to each class; the under-proprietors, who were being sacrificed, being no parties to the arrangement (*u*). The conditions of this com-

(a) Suppt. Gaz. Ind., 1st Sept. 1866, p. 386; O. P., Cal., 1867, 973. The attempt was subsequently repeatedly made to convince the under-proprietors that their rights had not been sacrificed but that they had been benefited by the rules drawn up regarding Sub-settlements. Considering that the Taluqdars only came into that part of the arrangement which concerned occupancy tenants when drawn into it by the bait of being enabled to discuss the conditions upon which Sub-settlement and under-proprietary rights should be decreed,—considering their insistence on this as a condition precedent to their agreeing to any terms for the recognition of a right of occupancy,—considering moreover the changes introduced by those rules, *e.g.*, that in respect of the burden of proof of former proprietary right, it is not perhaps astonishing that the under-proprietary class did not see the matter in the light in which it was desired they should do, and could not be made to understand how their rights had been advanced by the arrangement. The change specially adverted to above was such that the Financial Commissioner, Mr. Davies, regarded it as an incentive to forgery and perjury for proof of former proprietary right. Another officer closely connected with the Settlement subsequently wrote that the Sub-settlement Act had been the fruitful mother of a foul offspring of forgery and perjury." In the Financial Commissioner's Report for the year 1867-68, the result of the law is described as follows:—

"In the year under report Act XXVI of 1866 virtually came into operation. The figures already given show that the Zemindars have lost large portions of the Sub-settlement decreed to them under somewhat indefinite rules previously in force. They are now required to prove (1) possession on contract in certain years, (2) their receipt of profits exceeding 12 per cent. of the gross rental, (3) that their contract to pay the village rents to the Taluqdars was made in virtue of their under-proprietary rights. There is a very general opinion

promise which recognized certain rights of ex-proprietary cultivators and by which certain further privileges were secured to cultivators who might or might not be also ex-proprietors were drawn up by Mr. Strachey in the form of rules, and it was made a condition precedent to the acceptance by the Taluqdars of the terms as to rights of occupancy, that the rules as to Sub-settlement should be also, at the same time, accepted by the Government. On 20th August 1866, Mr. Strachey submitted to Government his rules for the determination of both questions, and the Governor-General in Council approved of them on 24th August. Legislative effect was, as we have seen (a), speedily given to the rules relating to Sub-settlements, but was delayed in respect to those relating to occupancy rights, though equally requisite with respect to them. When it did take place some modifications were made after reference to the Taluqdars but save and except in those particulars where the arrangement was so modified, there is nothing, so far as I know, whereby the arrangement has been expressly altered or rescinded. So far then as it covers matter not covered by the Oudh Rent Act, 1868, and its provisions have not been altered thereby, it still regulates, so it appears to me, the rights of the respective parties on those matters. Certainly there is no suggestion in the Statement of Objects and Reasons, reports of the Select Committee or in the Proceedings of the Legislative Council, that the legislation to give statutory effect to this portion of the arrangement was intended to abrogate any part of it other than those modified in the Act. That being so, it is desirable to state the arrangement

amongst the settlement officers that the last point is almost impossible of legal proof, and that it would be a simpler but not more effectual way of barring Sub-settlement to enact that none shall be made except with the Talukdar's consent."

(a) *Ante*, pp. 154-157.

as contained in Mr. Strachey's Rules remembering always that they must be read subject to the modifications introduced by the Rent Act. They are as follows :—

“ MEMORANDUM ON RIGHTS OF OCCUPANCY IN OUDH.

1. The following Memorandum shows the nature of the conditions under which the Talookdars are willing to grant certain privileges to certain classes of cultivators in Oudh.

It is to be understood that these concessions will only be agreed to on the understanding that the questions of Sub-settlement and of Rights of Occupancy have first been disposed of in a manner satisfactory to the Talookdars.

2. Every person who, within 30 years preceding the annexation of the Province, has been either by himself, or by himself and some other person or persons from whom he has inherited, in possession of proprietary rights in a village or estate, will be deemed to possess an hereditary right of occupancy on the land which he now cultivates or holds in such village or estate, whether it be held under pottah or not, so long as he pays the rent payable on account of the same; provided that the possession either by himself, or by himself and some other person or persons as aforesaid, shall have lasted since the time at which he or such person or persons ceased to possess such proprietary rights or continuously for not less than 20 years.

Where such ex-proprietors having right of occupancy shall, with the consent of the proprietor, have exchanged any land, in respect to which such right exists, for any other land belonging to the same proprietor in the same village or estate, such varied occupancy shall be held to be a continuous occupancy.

3. One succession shall be accepted as evidence of possession for the period mentioned in the last preceding rule, unless the contrary be shown.

4. Nothing contained in the foregoing rules shall be held to affect the terms of any written contract for the cultivation of land, entered into between a proprietor and tenant, when such contract contains any express stipulation contrary to such rules.

5. No ex-proprietor having an hereditary right of occupancy shall be liable to an enhancement of rent previously paid by him, except on some one of the following grounds, *viz.*—

Case 1st.—That the rate of rent paid by such ex-proprietor is below the prevailing rate payable by the class of ex-proprietors for land of a similar description, and with similar advantages in the places adjacent.

Rule.—In this case the Court will enhance the rent of such ex-proprietor to the full rates so prevailing.

Case 2nd.—That the rent of such ex-proprietor has remained without enhancement from a period since which the money value of agricultural produce in the vicinity has risen, or has been enhanced in a proportion less than the rise of such money value, or otherwise than in consequence of such rise.

Explanation.—This case shall apply only where it may appear to the Court that the rents of similar lands belonging to the class of ex-proprietors in the neighbourhood have not adjusted themselves to the increased money value of the produce.

Rule.—Where this case applies the Court will enhance the rent according to the method of proportion, that is, the

increased rent will bear to the previous rent the same proportion as the existing money value of agricultural produce bears to the money value of such produce at some previous period, since which the rent has not been enhanced. In determining present or former standards of price, the Court shall, if possible, take the average of the prices for periods of not less than five years. It shall be competent to the Local Government to frame instructions for the ascertainment of the money value of agricultural produce for the purposes of this rule, and to publish standards of local prices, former and present, for the assistance of the Courts in carrying out this rule.

Case 3rd.—That the rent paid by such ex-proprietor is more than $12\frac{1}{2}$ per cent. lower than the rent of land of a similar description and with similar advantages in the places adjacent, paid by cultivators not having the right of occupancy.

Explanation.—Where no prevailing rate may be ascertainable under Case 1, or where no personal title is proved to hold at a special rate, and the present rent is not shown to be fair and equitable, the rate of rent paid for similar land by cultivators not having a right of occupancy minus $12\frac{1}{2}$ per cent. shall be held to be a fair and equitable rate, provided such rate is not below the rent actually paid.

Rule.—In this case the Court shall decree an enhancement such as will raise the rent to the level of the rent assessable at the rate payable by cultivators not having the right of occupancy for land of a similar description and with a (*sic*) similar advantages in the places adjacent, minus $12\frac{1}{2}$ per cent.

Case 4th.—That the produce or productive power of the land has been increased, otherwise than by the agency or at the expense of the ex-proprietor.

Rule.—In this case, claims for enhancement may be adjusted in either of the following ways:—

(A).—By the Rules under Case I, or under Case III, (as the case may be), wherever it may appear that the rent of land in the vicinity of a similar description, and possessing similar advantages, has generally adjusted itself with a due reference to such advantages.

(B).—Where no such general adjustment is found to have taken place, or where it may not be possible to declare rates under Cases I and III, the Court shall enhance the rent by the whole value of the increased produce, or of the fairly-estimated result of the increased productive power after deducting such amount being not less than 20 per cent. in consideration of the increased responsibilities, expense, or labour of the ex-proprietor, as may appear to the Court equitable.

Case 5th.—That the quantity of land held by the ex-proprietor has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

Rule.—In this case the Court shall decree rent for the surplus land calculated at the same rates as those paid for the rest of the holding, or if so claimed by the plaintiff at rates to be fixed by the Rules under Case I or Case III, foregoing.

General Provision.—The rent of no ex-proprietor having the Right of Occupancy shall be liable to enhancement by reason only of improvements caused by or at the expense of such ex-proprietor; and where enhancement may be claimable on other grounds, a rateable allowance shall be made in favour of the ex-proprietor for any improvements effected by him or at his expense.

The words "places adjacent" in this rule may be taken to signify such extent of country in the vicinity as, in the judgment of the Court, may reasonably be included in the investigation for the purpose of ascertaining the prevailing standard of rent.

6. After a decision passed in accordance with these rules fixing an enhanced rent, or a fair and equitable rent, no suit shall lie for enhancement of the same, until the expiration of five years from date of such decision excepting under Cases IV and V.

7. No claim for abatement of rent, on the ground that the rate hitherto paid is higher than that paid by other cultivators shall be heard in any court.

8. If a landlord determines to oust from his holding any tenant not having a right of occupancy, such tenant may claim from the landlord compensation for the value of any unexhausted improvements such as wells, bunds, tanks, clearing jungles and the like, which have been made at the expense of such tenant and by which the annual letting value of the land has been increased. Such compensation will be payable in cash; but it shall be at the option of the landlord, instead of making such payment to offer to such tenant a lease (pottah, on terms sufficiently favourable to reimburse him for his outlay.

In determining the amount of such compensation, account shall be taken of any assistance that may have been given by the landlord to the tenant, when the improvement was made. In case of any dispute regarding the amount of compensation to be paid, or regarding the terms of the lease given in lieu thereof, the matter in dispute will be settled by the Revenue Court: Provided that nothing in this Rule shall affect the terms of any special agreement in writing:

which may be made between a landlord and tenant regarding the making of improvements.

J. STRACHEY,

Chief Commissioner of Oudh.

SIMLA :

The 20th August 1866" (a).

It was not for nearly a year after the approval of these Rules by the Governor-General in Council that Mr. Strachey, on 19th June 1867, obtained leave to bring in a Bill to give statutory effect to some of them. It was explained that the delay arose from its being thought well to take the opportunity of putting the Rent Law of Oudh on a more satisfactory footing; but in the end the measure proposed did not pretend to be a complete code in respect of Rent Law (b). Such of the rules as were thus enacted formed part of the Act (XIX of 1868) consolidating and amending the law relating to rent in Oudh and are sections 5, 6, 22 to 26 inclusive, 31, 33 and 34 [which correspond to sections 5, 7, 7A, 22 to 29 inclusive, 33, 34, 35, 35A, 35B of the present Oudh Rent Law (Act XXII of 1886 as amended by the United Provinces Act IV of 1901).]

It will be seen that they are not in all respects identical with the Rules above quoted, but all the alterations had the approval of the Taluqdars, which it was thought necessary to obtain; some of the changes were indeed suggested by the Taluqdars themselves (c). But strangely enough the position of those to whom rights had been secured by the Rules was altered without any sort of reference to them, notwithstanding that to some of the changes they might well have

(a) Suppt. Gaz. Ind., 1st Sept. 1866, pp. 393-4; O. P., Cal. 1867, pp. 983-985.

(b) Pro. 1867, pp. 271, 2, 300, 302.

(c) Statement of Objects and Reasons, 15th June 1867. Report Sel. Com., 15th Sept. 1867, p. 1; Pro. 1867, 312; Pro. 1868, 341.

objected. This consideration would assuredly make it right to apply a strict construction to the provisions where they have been so altered as to operate against the tenants' interests.

In the course of the final proceeding on the Bill Mr. Strachey observed : " So far as the Government was concerned, " the only class of tenants with rights of occupancy was the " class described in section 5 of the Bill. If any other rights " of occupancy were claimed, they could only be established " by the decree of a competent court of law, and such claims " would not be affected by this Bill. If any tenant claimed " to possess a right of occupancy different in kind to the rights " of occupancy therein described, it was of course open to " him to sue for that right in a court of law and to prove his " claim if he could. If such rights should in any case be " established, they must be protected by the courts, in accord- " ance with those orders of Lord Canning which formed the " legal basis of all existing rights in land in Oudh, and which " declared that all persons ' would be secured in ' the pos- " session of the subordinate rights which they had heretofore " enjoyed." He had thought it desirable to mention this, although he did not suppose that the matter was one regarding which there was likely to be any doubt. He might add that what he had now said was in strict accordance with the views of Sir Charles Wingfield. He had repeatedly stated in the official correspondence which had been published, that although he considered that non-proprietary tenants must be assumed to be tenants at will until the contrary was proved, he had never desired to shut against any one the judicial tribunals by which claims to rights in land were heard and determined (a).

(a) Pro. 1868, 342.

I note this passage as conclusively showing that the orders of Government, such as that contained in Foreign Department letter No. 302 of 6th October 1864, were not affected by the arrangement with the Taluqdars and were not considered by them to be so. It likewise shows that the declarations of the Judicial Committee in the case of Rohan Singh *vs.* Surat Singh (*a*) are in accordance with the practice in Oudh (*b*).

(*a*) L. R. 12, I. A., 52; I. L. R., 11, Cal., 318.

(*b*) A further description of occupancy rights may be mentioned here, though it is applicable not only to Taluqdars but to persons generally to whom grants are made by Government. By the Chief Commissioner's Revenue Circular No. 16 of 3rd July 1874 where villages are given by Government to persons without any legal claim to them as an act of grace, a right of occupancy at rents fixed for the term of the Settlement has been created in favour of residents in the village who have cultivated therein since the reoccupation of the Province in 1858, and at rates fixed for five years in favour of tenants resident in the village, who are not of such long standing. On the promulgation of this circular a question arose whether such a right could be recorded in favour of persons paying corn rents. It was contended that, as the rent in such cases was entirely dependent on the cultivation, if the landlord's power of ejection was taken away there was no security whatever for the cultivation of the land, or if to avoid this, the incident of cultivation was made an incident of the tenure, for the adequate cultivation of the land. After some correspondence it became evident that a money rent was a necessary condition of a right of occupancy, and it was ordered that when the tenant was holding at a corn rent and refused to commute it into a cash rent, the rent was to be fixed in cash and put into the patta, and the tenant can commute at any time by giving three months' notice before the end of the Fasil year. Should the tenant not cultivate with due diligence the landlord may apply to the Collector, who, if satisfied that the husbandry has been bad, will be authorized to compel the tenant to commute or to vacate the land. (Mac. pp. 43-44.)

CHAPTER V.

RESUMPTION OF GRANTS RENT-FREE OR AT A FAVOURABLE RATE OF RENT.

The statutory provisions as to the resumption of lands held rent-free or at a favourable rate of rent were introduced on 22nd July 1876, by the Select Committee, into a Bill to consolidate and define the law relating to the settlement and collection of land revenue in Oudh, which Mr. Strachey had introduced, on 9th October 1872; and they were inserted to apply the resumption clauses of Regulation XIX of 1793 and other Regulations of the Bengal Code with certain modifications to Oudh(a).

There was very great difference of opinion amongst the local authorities and the district officers, as to the propriety of these provisions, some approving of them, some doubting whether they went far enough, some considering that it would be sufficient if power were given to assess on such holdings a rent equal to the Government demand, and others disapproving of them entirely, and, certainly, except for the principle on which the Land Revenue demand of the country rests, viz., that the State is entitled by the ancient law of country to a certain proportion of the produce of the soil, and that its right to this is inalienable by the mere act of the possessor of the soil, it seems difficult to understand why a grant perfected by possession or the receipt of a token in exchange and valid and irrevocable according to the general law of the parties should be considered revocable and the subject resumable at the will of the grantor and the

(a) Rep. Sel. Com., 22nd July 1876, § 13.

more so as such resumptions were against the custom of the country in the Nawabi(*a*). But so far as the liability of such grants to the Government Revenue demand is concerned, it is sufficient in reference to a Mahomedan State, such as Oudh in the Nawabi, to quote from the valuable Fifth Report on the affairs of the East India Company, where it is said :—“ With regard to the jaghires granted by “ the Mahomedans, either as marks of favour, or as rewards “ for public services they generally, if not always, reverted “ to the state on the decease of the grantee, unless continued “ to his heir, under a new Sunnud; for the alienation in “ perpetuity of the rights of Government in the soil, was “ inconsistent with the established policy of the Mahome- “ dans, from which they deviated only in the case of endow- “ ments to the religious establishments and offices of public “ duty, and in some rare instances, of grants to holy men “ and celebrated scholars ” (*b*).

The principle that all land in Oudh is liable for the Government Revenue demand unless exempted by competent authority is clearly stated in Section 41 of the Oudh Land Revenue Act XVII of 1876. [This Act has now been repealed and superseded by Act III of 1901 (North-Western Provinces and Oudh Land Revenue Act) and the provisions of section 41 of the Repealed Act (XVII of 1876) have been incorporated in sections 107A to 107K of the Oudh Rent Act (XXII of 1886) as amended by the United Provinces Act IV of 1901.]

(*a*) See *ante*, Chapter III.

(*b*) P. 86.

CHAPTER VI.

TALUQDAR'S RELIEF.

• Not much need be said in explanation of the legislation for the relief of the estates of taluqdars from incumbrances. The large levies that all taluqdars under native rule had to keep up, the necessity many of them were under of resorting to their bankers, the mahajans, for loans to enable them to pay the revenue demand, which were in some cases considered to exist as debts of honour under our rule, and other causes not difficult to understand and unnecessary to state, left a number of the taluqdars after the final Settlement of the province deeply involved in debt. This was brought to the notice of Lord Lawrence, and on 11th January 1869, in the course of the proceedings at which the Oudh Estates' Act (I of 1869), passed his Lordship, amongst his last utterances as Viceroy in Council, observed:—" I understand from the " Chief Commissioner of Oudh and from the Hon'ble Mr. " Strachey that a certain number of the Taluqdars of Oudh " are in circumstances of difficulty partly owing to the " events which occurred during the mutiny; and it is hard " for any man placed in the position of a taluqdar to be " just and generous where he has difficulties in his own " home. Within the last few years a very excellent Bill was " introduced in the Council of the Governor of the Bombay " Presidency, which eventually became law enabling the " Government to make advances to certain proprietors of " land situated in a very similar position to that of the taluq- " dars of Oudh. These native gentlemen were many of them " in great distress, many had been sued in the Civil Courts

“ and decrees had issued against them; I believe also
“ that in some cases their estates had been attached and
“ were under the management of the Civil Courts. The
“ measure introduced by the late Governor of Bombay had
“ for its object to relieve these native gentlemen from their
“ difficulties and to place them in a satisfactory position.
“ Under the provisions of that Act the Government of
“ Bombay made advances to these Chiefs at moderate rates
“ of interest (I think about five per cent.) with the view of
“ enabling them to pay their debts. On the other hand, the
“ landed proprietors bound themselves to repay the money
“ in suitable instalments and also to adopt a proper mode of
“ managing their estates, so that they should gradually
“ retrieve their former position. By a late report from the
“ Government of Bombay, I perceive that this Act has
“ worked satisfactorily and even in the short period which
“ has elapsed since it was passed, a number of the proprie-
“ tors have retrieved their position and most of the others
“ are in a fair way of doing so at no distant period. I
“ propose that the Government of India should act in a like
“ manner towards the taluqdars of Oudh. I propose that a
“ letter should be addressed to the Chief Commissioner of
“ Oudh bringing to his notice what has been done in Bom-
“ bay, and that he should take the matter into his consider-
“ ation and submit a list of those taluqdars who, he thinks,
“ ought to receive subventions from the Government. I
“ think that under good management all those taluqdars,
“ who are really desirous of retrieving their position, can do
“ so if they pursue the course it behoves them to follow,
“ and thus prevent their descendants from arbitrarily selling
“ their estates to meet their necessities. If they fail they
“ will have no one to blame but themselves and their des-
“ cendants will be deprived of all means of retaining their
“ former position. The measure I propose appears to me to

“be justified by sound policy, and I trust that it will also
“have the effect of showing the taluqdars of Oudh that the
“British Government really desires that they should be
“maintained in prosperity in their present position” (a).

Accordingly on 28th January 1870, Mr. Strachey obtained leave to bring in a Bill to relieve the estates of taluqdars from encumbrances (b) and the Bill was brought forward on the recommendation of the Chief Commissioner Mr. Davies and at the request of the taluqdars themselves (c); the estimated amount of advances required being £146,000 (d). On the 7th September 1870, the Bill passed as Act XXIV of 1870, and estates assessed to an aggregate revenue of £200,000 were in 1871, brought under management of six managers of encumbered estates. The special agency was abolished in 1876 (e), [the Act itself is now practically obsolete and relief is afforded to encumbered estates under the provisions of the North-Western Provinces and Oudh Court of Wards Act (United Provinces Act III of 1899).]

(a) Pro. 11th Jan. 1869, 32-3.

(b) Pro. 1870, p. 41.

(c) Statement of Objects and Reasons, 3rd Feb. 1870.

(d) Pro. 1870, p. 41.

(e) Irwin, 35

CONTENTS.

	PAGE
Preamble... ..	249
<i>I.—Preliminary.</i>	
SECTION	
1. Short title	251
Extent of Act	251
2. Interpretation-clause	251
<i>II.—Rights and Liabilities of Taluqdars and Grantees.</i>	
3. Taluqdars to have heritable and transferable rights in their estates	262
Subject to certain conditions	263
4. Rights and liabilities of persons named in second schedule	284
5. Grantees' rights and liabilities	285
6. Saving of certain redemption-suits	286
7. Heirlooms	287
<i>III.—Lists of Taluqdars and Grantees.</i>	
8. Preparation of lists of Taluqdars and Grantees	288
9. Publication of lists	290
Supplementary list	291
10. None but persons named in lists to be deemed Taluqdars or Grantees	291
<i>IV.—Powers of Taluqdars and Grantees to transfer and bequeath.</i>	
11. Taluqdars and Grantees may transfer and bequeath	292
12. Rule against perpetuity	297
13. Procedure relating to transfers by gift	300
13A. Procedure relating to bequests... ..	301
<i>V.—Transfers and Bequests.</i>	
14. Result of transfer or bequest of estate to Taluqdars or heirs	309
15. Result of transfer or bequest to persons out of line of succession	311
16. Procedure relating to transfer otherwise than by gift	313
17. Further requisites to validity of gifts <i>inter vivos</i>	313
18. Procedure relating to gifts to religious or charitable uses	314

SECTION	PAGE
<i>VI.—Testamentary Succession.</i>	
19. Sections of Succession Act applied to wills of Taluqdars	314
20. Bequests to religious and charitable uses ...	316
<i>VII.—Intestate Succession.</i>	
21. 'Son,' 'descendants,' 'brother,' 'male agnates,' 'widow,' defined... ..	317
22. Special rules of succession to intestate Taluqdars and Grantees	318
23. General rule of succession to intestate Taluqdars and Grantees	328
<i>VIII.—Maintenance.</i>	
24. Maintenance of surviving relatives of Taluqdars and Grantees	328
25. Grand-parents, parents and senior widows... Junior widows	329 330
26. Brothers and minor sons. Nephews	330 330
27. Unmarried daughters, widows of sons and brothers and inferior widows ...	330
28. Continuance of annuities	330
<i>IX.—Miscellaneous.</i>	
29. Muhammadan Taluqdars and Grantees empowered to adopt	331
29A. Attestation and registration of adoptions ...	333
30. Alteration of rules of intestate succession in cases of Taluqdars and Grantees named in list 3 or list 5	333
31. Reverter to ordinary law of succession ...	334
31A. Alteration of rules of intestate succession in cases of Taluqdars named in list 4 and grantees named in lists 1 and 6 ...	335
32. Saving of rights of creditors	336
32A. Power to declare property subject to the Act	337
33. Awards as to compensation and maintenance	337
<i>Schedules.</i>	
First Schedule (Orders of the 10th and 19th October 1859)	340
Second Schedule (Names of persons referred to in section 4)... ..	344

THE
OUDH ESTATES ACT.

ACT NO. I OF 1869.

(AS AMENDED BY ACT X OF 1885, AND THE UNITED
PROVINCES ACT III OF 1910.)

Passed by The Governor-General of India
in Council.

*Received the assent of the Governor-General on the
12th January 1869.*

An Act to define the rights of Taluqdars and others in certain
estates in Oudh, and to regulate the succession thereto.

WHEREAS, after the re-occupation of Oudh by
the British Government in the
Preamble. year 1858, the proprietary right
in divers estates in that province was, under certain
conditions, conferred by the British Government
upon certain taluqdárs and others; and whereas
doubts may arise as to the nature of the rights of
the said taluqdárs and others in such estates, and
as to the course of succession thereto; and whereas it

is expedient to prevent such doubts, and to regulate such course, and to provide for such other matters connected therewith as are hereinafter mentioned ; It is hereby enacted as follows :—

1. Preamble, Marginal Notes and Proceedings of the the Legislature as an aid to interpretation.—The preamble of a Statute has been said to be a key to the understanding of it ; and as it usually states or purposes to state the general object and intention of the Legislature in passing the enactment, it may legitimately be consulted for the purpose of solving any ambiguity, or of fixing the meaning of words which may have more than one, or of keeping the effect of the Act within its real scope, whenever the enacting part is in any of these respects open to doubt (1). But the preamble cannot either restrict or extend the enacting part when the language and the object and scope of the Act are not open to doubt. The preamble is often no more than a recital of some of the inconveniences and does not exclude any others for which a remedy is given by the Statute. The evil recited is but the motive for legislation, the remedy may both consistently and wisely be extended beyond the cufe of that evil, and if on a review of the whole Act a wider intention than that expressed in the preamble appears to be the real one, effect is to be given to it notwithstanding the less extensive import of the preamble(2). When the preamble is found more extensive than the enacting part, it is equally inefficacious to control the effect of the latter, when otherwise free from doubt(3). The function of the preamble is to explain what is ambiguous

(1) Max. 63.

(2) Max. 63, 64; Q. E. v. Indarjit, 11 All., 262.

(3) Max. 69.

in the enactment(1). But while the preamble is a necessary part of an Act, it is well settled that the marginal notes to the sections of an Act cannot be referred to for the purpose of construing the sections of an Act (2). So also the proceedings of the Legislature(3).

2. **What doubts were to arise.**—It was doubted whether the Government Orders of the 10th October and 19th October 1859 and the *Sanad* mentioned in section 3 of the Act had the force of law. * Statutory recognition was, therefore, given to the rights and liabilities of Taluqdars by the passing of the present Act(4).

I.—Preliminary.

1. This Act may be cited as “The Oudh Estates
Short title. Act, 1869,” and shall extend
Extent of Act. only to the estates hereinafter
referred to.

2. In this Act, unless there be something
Interpretation- repugnant in the subject or con-
clause. text—

“Transfer” *with its grammatical variations
and cognate expressions, means to
Transfer make an alienation ‘inter vivos,’
whether before or after the commencement of this Act.*

(1) Max. 71.

(2) *Balraj Kunwar v. Jagat Pal Singh*, 26 All., 393; 7 O. C. 248.

(3) *The Administrator General of Bengal v. Prem Lal Mulick*, 22 Cal., 728; *Q. E. v. Sri Churn Chungo*, 22 Cal., 1017, Per Pigot, J.; *Q. E. v. Bal Ganga Dhar*, 22 Bom., 112. *Ram Bali Singh v. K. E.*, 130, Cal., 55.

(4) For full history of doubts which had arisen and of others which were anticipated, see Introduction, p. 71.

1. Change in law.—The amended definition operates retrospectively. *See* section 21 of the Amending Act of 1910.

2. Commencement of the Act.—An Act takes effect from the first moment of the day on which it is passed, unless another day be expressly named (1). An Act made by the Imperial and Local Legislative Councils is deemed to be passed as soon as it receives the assent of the Governor-General (2).

3. Meaning of transfer.—The definition includes transfers by way of mortgages (3).

See also notes under "Will" *infra*.

"Will" means the legal declaration of the intentions of the testator with respect to his property affected by this Act, which he desires to be carried into effect after his death.

1. Wills under the Act.—What is not a will in the ordinary sense of the word may amount to a will under the Oudh Estates Act. On the 19th July 1861, the Chief Commissioner of Oudh issued a Circular No. 257, impressing on Taluqdars in whose families the rule of succession was not clearly defined, the necessity of making a will, naming their successor and of registering the same and recording an attested copy thereof in the Deputy Commissioner's office. The Taluqdars of each district were then addressed to the effect that with reference to this Circular, if the custom of

(1) Max. 594; *Tupsee Singh v. Ram Saran*, 15 Cal., 376, 382.

(2) Sections 20, 40 and 49 of 24 and 25 Viet., C. 67.

(3) *Azmat-un-nissa Begam v. Shah Ara Begam*, I. O. C. Supp., 36, 46.

Gaddinashini or descent to a single heir was not in vogue in their family, it was essentially necessary that they should nominate their successors. Such replies as were received were recorded and are spoken of in Oudh and have been judicially held to operate as the Taluqdars' wills (1). In Harparshad's case (2) they were held to operate not only as wills but considered with other evidence in the case as transfers *inter vivos* whereby the property was transferred to the family to be held by them as joint family property, while in another case (3) they were held to create a trust. The official enquiries, as to who were to be their successors, were not, however, intended to derogate from the rights of the Taluqdars in their heritable and transferable estate, and the answers to such enquiries do not operate to confer any estate upon the person named therein as the Taluqdar's successor (4). In construing whether a document operates as a will or as an alienation *inter vivos* regard must be had to the substance rather than to the form of the document. An instrument registered as a will but using the word "Tamlik" and stamped as a deed whereby the eldest brother gave the Taluqa to the third brother, reserving an interest in the whole for his own life, and in half for any son that might be born to him, with maintenance to his wife on her becoming a widow, was held with reference to the *indicia* of a testamentary character—there being provisions for contingencies which might not be ascertained till the death of

(1) Harparshad v. Sheo Dial. 3 I. A., 259; 26 W. R., 55; Bal. 25; R. & J., 121; Haider Ali v. Tassadduk Rasul Khan, 17 I. A., 82; 18 Cal., 1; R. & J., 351; Lachman Singh v. Umrao Singh, 11, O. C. 102.

(2) *Ibid.*

(3) Thakurain Ramanand Kunwar v. Thakurain Raghonath Kunwar, and Anand Bahadur Singh v. Thakurain Raghonath Kunwar, 9 I. A. 41; 8 Cal., 769; 11 C. L. R., 149; R. & J., 224, 227.

(4) Balbhadder Singh v. Sheo Narain Singh, 26 I. A., 194; 27 Cal., 344.

the maker of the instrument as compared with the technical matters attending it—not a transfer *inter vivos* but a will as defined in the Act (1).

2. An instrument only partly testamentary is a will.—A portion of a document may operate as a will, although another portion may have nothing to do with the will (2). There is no objection to one part of an instrument operating in *presenti* as a deed and another in *future* as a will (3).

“Codicil” means an instrument made in relation to a will, and explaining, altering, or adding to its dispositions : it is considered as forming an additional part of the will.

“Sign,” with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include ‘mark’ with grammatical variations and cognate expressions.

1. Change in law.—The old definition was as follows:—“Signed applies to the affixing of a mark.” The amended definition, which is more comprehensive, operates retrospectively. See section 21 of the Amending Act of 1910.

2. Signature of the executant.—On the principle of the Common Law rule ‘*Qui facit per alium facit per se*’

(1) *Thakur Ishuri Singh v. Thakur Baldeo Singh*, 11 I. A., 135 : 10 Cal., 792 ; R. & J. 254.

(2) *Lachman Singh v. Umrao Singh*, 11 O. C., 102.

(3) *Chand Mal v. Lachhmi Narain*, 22 All., 162.

(He who acts through another acts through himself) a document is validly signed if the executant's signature is affixed for him with his authority (1). The affixing of an executant's name by a *facsimile stamp* is the signature of the executant (2).

“ Attest ” with its grammatical variations, when used with reference to any instrument other than a will, means to sign such instrument as a witness in the presence of the executant after having seen the executant sign the same or after having received from the executant a personal acknowledgment of his signature to the same.

Provided that, when attestation by more than one witness is required, it shall not be necessary that more than one of such witnesses should be present at the same time.

Provided also that no particular form of attestation shall be required.

Change in law.—This definition is new. Various interpretations of the term have been given by the different High Courts in India (3) and it was considered desirable that no room should be left for doubt in the matter. The definition has been adopted from section 50, Act X of 1865 (The Indian Succession Act), the provisions

(1) *Deo Narain Rai and another v. Kukur Bind and others*, 24 All., 319; *Mirza Haider Ali Beg v. Raja Jang Bahadur Khan*, 6 O. C., 279.

(2) *Nirmal Chunder v. Sarat Moni Debya*, 25 Cal., 911.

(3) As to conflict of opinion on this point see *Ramji Haribhai v. Bai Parwati*, 27 Bom., 91; *Grindra Nath Mukerji v. Bejay Gopal Mukerji*, 26 Cal., 246; *Shamu Patter v. Abdul Qadir*, 31 Mad., 215; *Ganga Dei v. Shiam Sunder*, 26 All., 69; *Abdul Karim v. Salimun*, 27 Cal., 130.

of which* already relate to wills made by Taluqdars (cf. section 19 of the Act) (1).

“Registered” means—

“(a) In the case of a will registered according to the law for the time being in force relating to the Registration of Assurances, or deposited with a Registrar according to the law for the time being in force relating to the deposit of wills, and

“(b) In the case of any other instrument registered according to the law for the time being in force relating to the Registration of Assurances.”

1. Change in law.—The word “registered” was originally thus defined in the Act:

“Registered means registered according to the provisions of the rules relating to the registration of assurances for the time being in force in Oudh.”

The present definition was substituted in place of the old one by Act X of 1885 in consequence of a ruling of their Lordships of the Privy Council to the effect that a deposit of a will with a Registrar under sealed cover according to the then Registration Act (Act VIII of 1871) did not amount to registration as defined in section 2 of the Act (2). The amending Act X of 1885 was given retrospective effect but it did not affect wills (a) which had been declared invalid before the passing of the Act or (b) the validity of which was being questioned in a suit commenced before the 23rd day of October 1884, which is the date of the introduction of the Bill in the Legislative Council (3).

(1) U. P. Gaz., 1909, Part VII, p. 130.

(2) Haji Abdul Razzak v. Maunshi Amir Haider, 11 I. A., 121; 10 Cal., 976; R. & J., 260.

(3) Act X, 1885, section 2.

2. **Registration in Oudh.**—The Judicial Commissioner's Circular No. 41 of 1862, dated 25th February 1862, gave the rules for registration in force in Oudh in 1871. The first rule provided that there should be one Registrar in each pargana, who should register contracts regarding immovable property. The second rule, after providing that all deeds, relating to "real property," must be registered at the office of the Registrar of the pargana in which the property was situate, contained the following:—

"All the deeds of a value exceeding Rs. 500 will be registered by Tehsildar in outlying tehsils, or by the Sadar Registrar, if the property is within the jurisdiction of the Sadar Tehsil, but they are invariably to send a copy for record in the Pargana office." A registration effected at the house of the executant, a *parda-nashin* lady, instead of at the Registration office, has been held to be a complete and effective registration under the above circular, having been substantially a registration at the Pargana office (1).

"Minor" means any person who shall not have completed the age of eighteen years, and

Minor. Minority.

"Minority" means the status of such person ;

"Taluqdar" means any person whose name is entered in the first of the lists mentioned in section 8 ;

Taluqdar.

The heirs and legatees of Taluqdars do not come within this definition.

(1) Majid Hussain v. Fazl-uu-nissa, 16 I. A., 19; 16 Cal., 468; R. & J., 336.

“Grantee” means any person whose name is entered in the fifth or sixth of the lists mentioned in section 8.

1. Change in law:—The words “upon whom the proprietary right in an estate has been conferred by a special grant of British Government and,” which occurred between the words “person” and “whose” in the old definition of the term “Grantee” have been omitted from the present definition.

Under the new definition of grantee no special grant need be proved as was contended in *Azmat-un-nissa v. Shah Ara Begam* (1). The definition operates retrospectively—see section 21 of the Amending Act of 1910.

“Estate” means—

(a) The taluqa or immoveable property acquired or held by a taluqdar or grantee in the manner mentioned in section 3, section 4, or section 5, and

(b) *The other immoveable property situated in the United Provinces, in which a taluqdar or grantee, or his heir or legatee or a transferee referred to in section 14 has a separate permanent heritable and transferable right, and in respect of which he has made a declaration in accordance with the provisions of section 32A of this Act.*

1. Change in law.—Clause (a) of the definition is the same as the old one except that the concluding words “or the immoveable property conferred by a special grant of the

(1) I. O. C. Supp., 36, 44

British Government upon a grantee" of the old definition which were obviously redundant have been omitted. Clause (b) of the definition has been enacted owing to the addition of the new section 32A to the Act. So far as the Taluqdars entered in list II prepared under section 8 of the Act are concerned, the entry of their names in list II raises a presumption that the whole property of the family descends by the custom of the family to a single heir (1). But it is obvious that section 22 of the Act does not embody the custom for the determination of the single heir as prevailing in the different families of the Taluqdars whose names are entered in list II, for as proved in Ishri Singh's case (2) Tanistry rather than Primogeniture may be the governing rule of the family.

The Legislature has, therefore, now made a clear provision in clause (b) to the effect that if a declaration is made in respect of property other than the one acquired under sections 3, 4 and 5 of the Act, such property shall, irrespective of any family custom, be considered his estate and the succession thereto shall be regulated by the provisions of section 22 of the Act. Clause (a) of the definition operates retrospectively but clause (b) does not. See section 21 of the Amending Act of 1910.

2. Properties held not to be Taluqdari estates.—The engagement at the Summary Settlement taken from a person as Mustajir or farmer, and not as proprietor, of certain villages, does not amount to a Summary Settlement within the meaning of section 3. In the absence of such Summary Settlement and of a *Sauad* he does not acquire title under the said section to the property granted to him

(1) *Thakur Ishri Singh v. Baldeo Singh*, 11 I. A., 135; 10 Cal., 792; R. & J., 254.

(2) *Ibid.* See also *Umtnul Fatima v. Asghar Ali Khan*, 8 O. C., 45, 51

in farm or to the property subsequently decreed to him at the regular settlement and such property is not his Taluq-dari estate as that term is defined in section 2, clause(a)(1).

“Heir” means a person who has inherited or inherits, otherwise than as a widow or a mother, an estate or portion of an estate whether before or after the commencement of this Act.

“Legatee” means a person to whom there has been or is bequeathed an estate or portion of an estate whether before or after the commencement of this Act.

EXPLANATION.—The words “heir” and “legatee” used with reference to a taluqdar or grantee or a person whose name has been inserted in the list referred to in section 31A, sub-section (3), are not restricted to the immediate heirs and legatees of such taluqdar, grantee or person.

1. Change in law.—The old definitions of the words “heir” and “legatee” were as follows :—

“Heir means a person who inherits property otherwise than as a widow under the special provisions of the Act,” and “legatee means a person to whom property is bequeathed under the same provisions.” The words “or a mother” in the definition of “heir” have been added in consequence of the new provision in section 22, clause (9) of the Act, by which the mother is given a place in the line of succession with a life estate only. Her position will thus be analogous

to that of the widow and it was, therefore, necessary to provide that, like the widow, she is not to be deemed an heir for the purposes of the Act. The words "under the special provisions of the Act" in the aforesaid definition of heir and the words "under the same provisions" in the definition of "legatee" have been replaced by the words "whether before or after the commencement of this Act" in consequence of the interpretation of their Lordships of the Privy Council placed upon the word "legatee" as defined in the old law to the effect that a legatee in whose favour the bequest came into operation before the Act was passed cannot be considered a person to whom property is bequeathed under the special provisions of the Act (1). Similarly a person succeeding to an estate before Act I of 1869 was not an heir as defined in the Act (2). The amended definitions of heir with the exception of the words "mother" used therein and of "legatee" operate retrospectively. See section 21 of the Amending Act of 1910. The explanation attached to the definition of "heir" and "legatee" is intended to make it clear that the heir or legatee of a Taluqdar however remote, for example, the heir of the heir or of the legatee of a Taluqdar, or the legatee of the legatee or of the heir of a Taluqdar, is included within the terms "heir" and "legatee" as defined in the Act.

1. Nature of estate inherited by a Hindu daughter.—The estate which a Hindu daughter takes as an heir under the Act is the same as she takes under the Hindu Law, notwithstanding the terms of section 11 of the Act. Apart from any grounds of necessity she cannot alienate the

(1) Balraj Koer v. Jagatpal Singh, 31 I. A., 133; 7 O. C., 248; 26 All., 333; Raj Indar Bahadur Singh v. Rani Raghubans Koer, 9 C. W. N., 1909; 8 O. C., 317; 27 All., 634.

(2) *Ibid.* See also Mohamed Abdussamad v. Kurban Hosain, 26 All., 119; 8 C. W. N., 201; 7 O. C., 254.

property beyond her own life-time and a mortgage of it made by her is inoperative on her death against the property in the hands of the heir to whom it has reverted (1). It is apprehended that on the same principle a Mahomedan daughter will take an absolute estate in the property she inherits under the provisions of the Act.

Words expressing relationship denote only legitimate relatives, but apply to children in the womb who are afterwards born alive.

II.—*Rights and Liabilities of Taluqdars and Grantees.*

3. Every Taluqdar with whom a summary settlement of the Government revenue was made between the first day of April 1858 and the tenth day of October 1859, or to whom, before the passing of this Act and subsequently to the first day of April 1858, a Taluqdari sanad has been granted,

Taluqdars to have heritable and transferable rights in their estates.

shall be deemed to have thereby acquired a permanent, heritable and transferable right in the estate comprising the villages and lands named in the list attached to the agreement or kabuliyat executed by such Taluqdar when such settlement was made,

or which may have been or may be decreed to him by the Court of an officer engaged in making

(1) Sheopartab Bahadur Singh v. The Allahabad Bank, 30 J. A., 209; 25 All., 476.

the first regular settlement of the Province of Oudh, such decree not having been appealed from within the time limited for appealing against it, or if appealed from, having been affirmed,

subject to all the conditions affecting the Taluqdar contained in the orders ^{Subject to certain conditions.} passed by the Governor-General of India on the tenth and nineteenth days of October 1859 and re-published in the first schedule hereto annexed, and subject also to all the conditions *other than those relating to succession* contained in the sanad under which the estate is held.

EXPLANATION.—Notwithstanding anything contained in the Crown Grants Act XV of 1895, the conditions of the sanad relating to succession, in so far as they are inconsistent with the provisions of this Act, shall not apply to the estate.

1. **Change in law.**—The words “other than those relating to succession” and the explanation have been added to this section to make it clear that the succession to the estates affected by the Act is to be regulated exclusively by the provisions of the Act and not by the terms of the sanad read alone or in connection with the provisions of the Crown Grants Act, 1895 (1). The amendment operates retrospectively—*see* section 21 of the Amending Act of 1910. So far as the conditions of the *sanad* alone are concerned, the question was set at rest, long ago, by the decision of their Lordships of the Privy Council in *Brij Indra Bahadur Singh v. Rani Janki Koer* in which the conditions referred

(a) U. P. Gaz., 1909, Part VII, pp. 130, 131.

to in clause 4 of the section were interpreted to refer to the conditions of loyalty and good service mentioned, in the letter of the 19th October 1859, republished in the first Schedule of the Act, and to the conditions of a similar nature, such as those of surrendering arms, destroying forts, etc., contained in the *Sanad*, and not to conditions relating to succession (1). The question whether section 3 of the Crown Grants Act has the effect of reviving the *Sanad* notwithstanding the passing of Act I of 1869 was raised before a bench of the Court of the Judicial Commissioner of Oudh in *Musammât Parbati Koer's* case and decided in the negative with the brief observation "that it is quite clear from sections 2 and 3 of the Crown Grants Act read together that the Act has no such force" (2). It is submitted that this view of section 3 of the Crown Grants Act is hardly supported by the preamble of the Act and the interpretation placed upon it by their Lordships of the Privy Council in the *Mahewa* case. In this case Act I of 1869 not being applicable to the estate in dispute, the succession thereto was held to be governed not by the ordinary rules of Hindu Law but by the terms of the *Sanad*. With reference to the argument that no executive act of Government could have created an estate of inheritance other than that laid down by the law, their Lordships of the Privy Council observed as follows :—

"Whatever force such a contention might otherwise have had appears to their Lordships to be removed by the Act to which their attention was called, Act XV of 1895. That Act recites, amongst other things, that doubts have arisen as to the power of the Crown to impose limitations and restric-

(1) 5 I. A., 1; 1 C. L. R., 318; R. & J., 161.

(2) *Musammât Parbati Koer v. Rani Chandrapal Koer*, 8 O.C., 91.

tions upon grants and other transfers made by it or under its authority, and it is expedient to remove such doubts, and section 3 enacts that "all provisions, restrictions, conditions, and limitations ever contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law, statute, or enactment of the legislature to the contrary notwithstanding" (1). It may, therefore, well be doubted whether any legislative enactment can prevent the operation of the *Sanad* in spite of section 3 of the Crown Grants Act, which provides that "all provisions, restrictions, conditions and limitations ever contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law, statute or enactment of the legislature to the contrary notwithstanding."

2. Who is a Taluqdar.—A Taluqdar is a person whose name is entered in list I, prepared in accordance with section 8 of the Act. A Hindu widow whose name is entered in lists I and II is a Taluqdar subject to the rules of succession laid down in section 22 of the Act and the estate on her death will descend to *her* heirs and not to her husband's heirs (2).

3. What is a Summary Settlement—There were two Summary Settlements in Oudh. The first was begun soon after the annexation of Oudh by the British Government which took place on the 13th February 1856. The following paragraph from the letter of Lord Dalhousie, the Governor-General of India, to General Outram, the Resident of Lucknow, dated the 4th February 1856, and written in

(1) *Thakur Sheo Singh v. Rani Raghubans Kunwar*, 32 I.A., 203; 27 All., 634; 8 O. C., 325; 9 C. W. N., 1009.

(2) *Brij Indar Bahadur Singh v. Rani Janki Koer*, 5 I. A., 1; 1 C. L. R., 318; K. & J., 161.

anticipation of the annexation of the province, lays down the principle on which the first Summary Settlement was carried out:—

“15. But it must be borne in mind, as a leading principle, that the desire and intention of the Government is to deal with actual occupants of the soil, that is, with village zemindars, or with the proprietary coparcenaries, which are believed to exist in Oudh, and not to suffer the interposition of middlemen, as taluqdars, farmers of the revenue, and such like. The claims of these, if they have any tenable claims, may be more conveniently considered at a future period, or brought judicially before the courts competent to investigate and decide upon them.”

But before the Settlement could be completed, there broke out the mutiny at Lucknow on 30th May 1857, which the Taluqdars of Oudh joined in large numbers and the labours of officers engaged in the work perished in the revolt. It was generally believed or assumed that the policy underlying the first Summary Settlement had excited the disaffection of the Taluqdars towards the British Government and that for this reason the Taluqdars had joined the rebellion. It was, therefore, that the second Summary Settlement on the lines of the Taluqdari system was taken in hand on the re-occupation of the Province by the British Government (1). The engagement at the Summary Settlement taken from a person as *mustajir* or farmer and not as proprietor of certain villages does not amount to a Summary Settlement within the meaning of section 3, and there being no settlement or *sanaad* he does not acquire title under the said section to the property granted to him in farm or to the property subsequently decreed to him at the regular

(1) Introduction, pp. 28 and on.

settlement and such property is not his Taluqdari estate (1) Mere summary settlement made with one who died before the issue of the letter of Government of India dated 10th October 1859, conferring permanent, hereditary, transferable, proprietary right and whose estate was resumed by the Government in July 1859, on grounds of public policy, does not vest in his heirs-at-law an heritable proprietary right which the deceased himself never possessed (2).

4. Between the 1st day of April 1858, and the 10th day of October 1859.—The first is the date of commencement and second is the date of the letter of the Government of India declaring the finality of the second Summary Settlement.

5. What is a Taluqdari *Sanad*.—On the 26th October 1859, Lord Canning held a Darbar at Lucknow for the reception of Taluqdars and others, and in this Darbar each of the Taluqdars present received a *Sanad* which conferred full proprietary right, title and possession of the estate on its recipient. In 1860, a further development took place. It was considered desirable to encourage the settlement of Taluqas so that they should descend to male heirs only under the rule of primogeniture. And a new form of *Sanad* was approved by Government, embodying this rule of descent. Such *Sanads* were issued by Mr. (afterwards Sir George) Yule, then officiating as Chief Commissioner, and are generally known by the name of the Primogeniture *Sanad*. It was further thought desirable to communicate the new form of *Sanad* to Taluqdars already holding *Sanad* in the older form, to point out its advantages and to offer to such persons the option of taking the new type

(1) *Azmat-un-nissa Begam v. Shah Ara Begam*, 1 O. C. Supp. 36.

(2) *Rani of Chilari v. The Government of India*, 4 I. A., 208; R. & J. 77.

of *Sanad* in place of the old. This appears to have been carried out through the usual channel of communication, the local officer of Government, and it appears that a large number of such exchanges were carried out. The question whether the Government, having granted the estate to a Taluqdar and his heirs in 1859, could issue a new *Sanad* for the same estate at a later date to the Taluqdar's heir was considered by their Lordships of the Privy Council in the Mahewa case (1), and decided in the affirmative. In the course of their judgment, their Lordships said:—“ But it was held by both Courts in India that such a *Sanad* could not in point of law operate to substitute the line of descent prescribed by it for the line prescribed by the earlier *Sanad*. The Subordinate Judge said: ‘*Sanad* was granted to Gajraj Singh, and he could have consented to have it changed, and if he had done so, it would have been binding on his heirs and successors, but if Girwar Singh got it converted into a primogeniture *Sanad* he could not, by doing so himself derive any benefit or confer any benefit on his heirs and successors.’ In the appeal court the view was thus expressed: ‘The fact which renders the *Sanad* on which the defendant relies absolutely useless is the fact that the estate had already been conferred by the Government on Gajraj Singh and his heirs for ever, when it professed to give to Girwar Singh and his heirs for ever. Their Lordships are unable to concur in these views. They involve two points, the power of Girwar to surrender the estate conveyed by the old *Sanad* and the power of the Government to grant that conveyed by the new. The Subordinate Judge dwells on the first point, the learned Judges in appeal on the second. As to the power of Girwar, it appears to

(1) *Thakur Sheo Singh and on his death, Raj Indar Bahadur Singh v. Rani Raghubans Kunwar*, 32 I. A., 203; 27 All., 634; 8 O. C., 317; 9 C. W. N., 1009.

their Lordships that when he succeeded as the heir of Gajraj, he became the absolute owner of the taluqa with full power of alienation, and their Lordships see nothing to prevent his entering into an arrangement with the Government by which he surrendered the estate he held under the first *Sanad* and received it back again under the terms of the second, assuming that the Government on its side had the necessary power."

"With regard to the power of the Government to do what it purported to do, the objection taken in the appeal court in India was that the Government, having granted the estate in 1859 to Gajraj and his heirs, had nothing left to grant to Girwar at a later date. But that objection does not seem to apply to a transaction by which Girwar, the person absolutely entitled by inheritance to everything that passed under the earlier grant, surrendered it in consideration of a re-grant of the same estate on new terms."

The provisions in the *Sanad* relating to succession will however only apply to properties mentioned in the *Sanad* and not to other properties (1).

6. Trusts not affected by this section.—The proposition that nothing in this section or sections 10 and 11 of the Act affects the trust where a Taluqdar has made himself a trustee of a portion of the beneficial interest in lands comprised in the taluqa for another has been laid down by their Lordships of the Privy Council in a number of cases, and in view of the importance of the subject a synopsis of such cases showing how and under what circumstances such a trust can be created or presumed is given below :—

The first of such cases is known as *Sukhraj Koer's* case, decided in 1871 (2). The facts as found by courts were (a)

(1) *Rajindra Bahadur Singh v. Rani Raghubans Koer*, 11 O. C., 256.

(2) *Musammât Thakurain Sukhraj Koer v. The Government of India*, 14 M. I. A., 112; R. & J., 32; 3 Suth., 1.

that the plaintiff's husband was the representative of the cadet branch and the Raja of Bbinga, the representative of the elder branch of a family, (b) that the cadet branch had their separate ancestral estate wholly distinct from and independent of the Taluqá of the elder branch, (c) that in the then state of things in Oudh it was thought desirable that both estates should be, as to their relations with Oudh Government, united in one great Taluqdari, the elder branch representing the whole; the younger branch continuing, however, in undisturbed and absolute possession as the proprietor of its own villages and paying only its proper portion of the *jama* assessed on the whole, and (d) that when the British authorities were in course of making settlement, the husband of appellant was minded to apply for distinct settlement with himself, but the Raja, however, wrote to dissuade him from this step in a letter in which, while desiring to retain the nominal Taluqdari of the whole, he acknowledged in clearest terms the right of his relation and pledged himself that the possession of the latter shall be respected and safe. Before anything was done, the great outbreak in Oudh took place. After it was subdued, the arrangements for a settlement were resumed. In the meantime plaintiff's husband died, and the Raja hearing that the widow, the plaintiff, was of the same mind as her husband, wrote a letter similar to the one he had formerly addressed to her husband. The Summary Settlement was made with the Raja, but before the Raja had obtained a regular settlement and the *Sanad*, he incurred the grave displeasure of the authorities and his half of the estate was confiscated. The Raja concealed from the Government officials the real ownership of the plaintiff's villages and contrived that they should be taken to satisfy the decree of confiscation. The plaintiff's villages were included in a grant to an Oudh loyalist in reward for his loyal services to

the State. It was thought that it would be very embarrassing if the grantee were to be obliged to give up the subject of his grant to the rightful owner and accordingly the Financial Commissioner reversed the decree of the lower courts and dismissed the widow's suit. On appeal to their Lordships of the Privy Council *held* that the lady being clearly, as she was, the equitable owner, the decree of confiscation against her trustee could, on no principle of law, equity, or good conscience, be made to affect her, and certainly not to justify a sentence which in effect made her sufferer for his offence.

The second case is that of the *Widow of Shanker Sahai* decided in 1873 (1). In this case the plaintiff claimed the right to have proprietary possession of the entire *Sessende Taluqa*, but she more specially restricted her rights to four villages in their entirety and one-third share in seven others in the *Taluqa* which consisted of 26 villages. The court of first instance seem to have admitted as to the seven villages that though the plaintiff has not been in independent possession of one-third of the collections of those villages; though the collections were made in common and therefore presumably by defendant Taluqdar; yet the latter might have so bound himself by writing as to have incurred the obligation of accounting to her for one-third of the profits. Her suit was ultimately dismissed because her agent had failed to produce a deed in writing so binding the Taluqdar. The Financial Commissioner, however, appeared to have held that the admission of the Raja at the time of the Summary Settlement, and on other occasions (the former being in the nature of an admission on record), were equivalent to such a deed; and that accordingly the relation

(1) *Widow of Shankar Sahai v. Raja Kashi Pershad*, 4 I. A., 198; R. & J., 70; 3 Suth., 104.

of Trustee and *cestui que* trust having, so to speak, been established between them, she was entitled to a one-third share of the profits of these villages when the annual accounts were made up. In this part of the Financial Commissioner's order their Lordships entirely concurred.

The third is known as *Harparshad's* case (1) decided in 1876. The facts of this case briefly stated are as follows:— By the 8th paragraph of Lord Canning's Proclamation of March 1858, it was declared that C. L. (at that time deceased) zemindar of *Mourawan*, and others, were thenceforward, the sole hereditary proprietors of the lands which they held when *Oudh* came under the British rule, and which formed part of the subject of the suit. Summary settlements of the said lands were subsequently made with G. S. (one of the sons of C. L.) by the Government, between the 1st of April 1858 and the 10th of October 1859; a Talookdari *Sunad* was granted to him before the passing of Act I of 1869, and he entered into a *Kabooliyat* for the same. His name was not entered in the second schedule annexed to the Act, but C. L.'s was. By a document dated the 7th of February 1860, relating to property in the district of *Onao*, and by other documents similar in effect relating to properties in other districts, the said G. S. directed as follows:— “I have been requested by Government to submit an application on the subject of primogeniture, with a view that the taluka may not be split into pieces, as I would wish. Now the custom that has been followed in my family for generations past is this, that the eldest member of the family continues to be the head, while the others remain obedient to him; but every one possesses a share in the *taluka*. Under the custom of the family the other brothers are at

(1) *Harparshad v. Sheo Dayal*, 3 I. A., 259; R. & J., 121; Bal., 25; 26 W. R., 55.

liberty to have their share separated, should they wish it. The head has no power under the old custom to alienate the estate without consulting every sharer. I, therefore, wish that the old custom of maintaining the share of each shareholder be preserved in opposition to the one in accordance with which one member of the family is allowed to succeed." In suits for partition amongst the descendants of C. L. and of his brother, who together constituted a Hindu joint family, governed by the *Mitakshara* law, all the property, the subject of the suits, having been found to be the joint property of the said family, it was contended on behalf of the appellants in the first appeal that all the estates included in the *Sauval* to their father, G. S., and summary settlements, whether previously joint property of the family or not, became the separate self-acquired property of G. S., that he was the sole *malguzar* thereof, and that he and his sons were the sole beneficial owners of it, that he had no power to transfer it by will or by alienation *inter vivos*:—*Held*, that the *Sauval* and summary settlement were a mere grant by the Government to one member of the family, of property which belonged to the family jointly, and were not intended to ensure to the sole benefit of the grantee, and did not affect the rights of the family. As regards such property, granted to G. S. (if any), which was not previously part of the family estates, it was granted for services presumably rendered with the use of joint family funds, and could not, therefore, be separate self-acquired property of G. S. within the meaning of Hindu Law:—*Held*, also, that assuming any portion of such property to have been self-acquired by G. S., he must, in consequence of Act I of 1869, be deemed to have acquired therein a permanent heritable and transferable right, and had power by will or alienation *inter vivos* to transfer the same. *Held*, also the document of the 7th of February 1860, and other similar documents so far as they related to

the property in *Oudh*, amounted to a will within the definition of section 2 of Act I of 1869. Taken in conjunction with other documents, and having regard to the acts of different members of the family under it, the same amounted to evidence of an alienation *inter vivos* which, in G. S.'s life-time, transferred the property to the family to be held as joint family property.

The fourth case is that of *Thakur Hardeo Baksh* decided in 1877 (1). The main question in this case was: Is the plaintiff entitled to any, and what, share of beneficial interest in the estate, or is his claim barred by Act No. I of 1869? In the opinion of their Lordships the case of the widow of Shankar Sahai *versus* Rajah Kashi Pershad closely resembled the present in many particulars. That case was an authority for the proposition that a person who has been registered as a Taluqdar under Act I of 1869, and has thereby acquired a Taluqdari right in the whole property, may, nevertheless, have made himself a trustee of a portion of the beneficial interest in lauds, comprised within the Taluq for another, and be liable to account accordingly. In that case the *cestui que* trust was a stranger. In this the plaintiffs claimed as persons constituting with the defendant a joint Hindu family. It appears that the respondent, in his application for a Summary Settlement, stated that there was no partner of his other than Hardeo Bux, and more than a year after the date of the Summary Settlement stated in his deposition on oath, made in another case on the 8th July 1859, that the custom prevailing in his family was that if his cousins (meaning the plaintiff and Parbhat Singh), who were his partners, should claim, they could get their shares divided. The lower courts appear to have decided the case

(1) *Hardeo Baksh v. Jawahir Singh*, 4 I. A., 178; 3 Cal., 522; R. & J., 146.

merely upon the ground that the defendant was protected by the *Sanad*, without advertiing to section 15, Act I of 1869, or enquiring whether, notwithstanding the Summary Settlement, the *Sanad*, and the Statute, the plaintiff or the appellatant had, either before or after the passing of Act I of 1869, acquired or become entitled to a beneficial interest in any part of the property. Their Lordships, therefore, advised that the Commissioner should be directed to try or to refer to the Settlement Officer for trial the following issue, "Whether the respondent had, in any and what manner, agreed or become bound to hold the villages comprised in the Summary Settlement and *Sanad*, or any and what part thereof, or the rents and profits thereof, in trust for the appellatant and Parbhat Singh, or either and which of them." On return of the finding of the Commissioner, the case came up again before the Privy Council in 1879 and is the sixth case of its kind in order of time (1). *Held*, that the facts found coupled with the statement of the defendant in his application for a Summary Settlement, to the effect that Hardeo Bux was his partner, and with his deposition of 8th July 1859, in which he stated that the custom prevailing in his family was that if his cousins, meaning the plaintiff and Parbhat Singh who were his partners, should claim, they could get their shares divided, afford sufficient grounds to satisfy their Lordships in presuming that up to the time of the quarrel in 1865, it was the intention of the defendant that the villages included in the Summary Settlement and *Sanad* should be held by him in trust, for the joint family and as a joint family estate subject to the law of the *Mitakshara*. As to the question how far Act I of 1869 operated to change the relation of parties, their Lordships observed as follows:—"The suit was commenced long before the passing of Act I of 1869, *viz.*, on the 28th

(1) Hardeo Bux v. Jawahir Singh, 6 L.A., 161; K. & J., 190; Cal., 218.

August 1865, and it follows from what has just been said that, if judgment had been given before the passing of the Act, it ought to have been held that the defendant was bound by the trust to be presumed as above mentioned. But the case was not decided by the Court of first instance until after the passing of the Act and it, therefore, became necessary to determine whether Act I of 1869 operates so as to change the relative conditions of the parties and to put an end to the trust upon which the defendant had previously held the estate. Their Lordships are of opinion that it did not. If, therefore, the defendant had, before the passing of Act I of 1869, and at any time after the date of the Summary Settlement and *Sanad*, and after he had thereby acquired the right which, according to the provisions of section 3, he must be deemed to have acquired thereby, expressly declared that he held and would hold the estate in trust for the joint family as joint family estate governed by the rules of the *Mitakshara*, there can be no doubt that the estate would have been subject to the trust so declared, and that it would not have been converted by Act I of 1869 into an estate held by the defendant for his own sole use and benefit discharged from the trust. There can be no difference in this respect between an express trust and a trust implied or presumed from a fair and reasonable interpretation of the acts and declarations of the defendant." Their Lordships further held that, under the circumstances of the case, there were no grounds for making any distinction as regards the rights of the parties between the 78 villages included in the Summary Settlement and the 20 villages, now consolidated into 12, which were granted by the *Sanad* for services during the mutiny or those which were acquired from the profits of the estate. This case came up again for the third time before the Privy Council in 1886, on the sons of Hardeo Bux claiming a

partition of share decreed by the Privy Council to their father, since deceased (1). It is the *seventh* case in order of time dealing with the doctrine of Trust. The suit was resisted on the ground that the estate was impartible, and held by the defendant according to the rule of primogeniture, the right of other members of the family being only to the profits. Held that Act I of 1869 was no bar to the suit, the plaintiff's father's right as a member of joint Hindu family subject to the *Mitakshara* law having been already declared by Her Majesty in Council.

In *Sher Bahadur Singh's* case (2) which comes fifth in order of time having been decided in 1877, the allegations made in the plaint were in substance as follows:—That Basant Singh, the husband of the defendant, Thakurain Daryao Kuar, died without issue on the 12th November 1857; that, shortly before his death, he directed the defendant to adopt the plaintiff as his son, and that in pursuance of such direction, the plaintiff was so adopted by the defendant on the 25th April 1858; that the defendant, on her husband's death, took possession of his estate, and that after the confiscation by the British Government of proprietary rights in Oudh, a Summary Settlement of the estate was made with her; that the plaintiff, who was then a minor, becoming cognizant of these circumstances, was about to take proceedings for the protection of his interests, but was induced to refrain from doing so by the representations made to him by the defendant in the following letter:—
“ You should not be misled by others; now the estate and everything is yours. Now I have no more concern than to take my food and clothing. But you are yet a boy; you should therefore allow the *Kabliat* of the *illaka* to remain

1) *Pirthipal Singh v. Jawahir Singh*, 14 I. A., 37; 14 Cal., 493.

(2) *Thakur Sher Bahadur Singh v. Thakurain Daryao Kuar*, 3 Cal. 645; R & J., 160.

in my name. When you become of age, I will cause the *Kabuliat* to be executed in your name: you may depend upon it, I will not in the least deviate from what I say. But in the event of my not adhering to my promise, you will be at liberty to lay the case before the Court and get the *Kabuliat* of the *illaku* executed in your name, and then if I make any objection at all, it would be inadmissible. Now you may do as you deem proper. I can do no more than write to you." That subsequently while the plaintiff was still under age, a *Sanaul* was granted to the defendant. That shortly after obtaining the said *Sanaul*, the defendant entered into negotiations for the marriage of the plaintiff to the daughter of one Umrez Singh, who, discovering that the *Sanaul* of Somerpha stood in the name of the defendant, withheld his consent. That, thereupon, in the month of July 1861, the defendant wrote the following letter to Umrez Singh:—"My good wishes to you. May God make you happy. You hesitate in going through the work. But you should have no hesitation, as I have already adopted Sher Bahadur, who will succeed me. With regard to the entry of his name in the Government register, I will have it done as soon as Sher Bahadur arrives at the age of majority; what I have written is, I think, quite enough." The suit was dismissed by the Indian Courts on the ground that the defendant held the estate under an unassailable title conferred on her by the British Government. On appeal to the Privy Council their Lordships held that the letters referred to may, coupled with surrounding circumstances, constitute sufficient evidence on which the Court would be justified in holding that the defendant had declared herself or had agreed to be a trustee on behalf of the plaintiff and they remanded the suit to the Commissioner of Rai Bareilly to determine the same.

The eighth is the case of *Seth Jai Dial* (1), the facts of which are as follows:—M and S were undivided brothers of a joint Hindu family. M had two sons, R and J; S adopted J. In consequence of certain disputes between M and S, certain family arrangements had been come to, under which, among others, two *talooks* had been entered in the name of S in the *Talookdar's* list prepared under Act I of 1869. J brought a suit against S for a declaration of his rights as adopted son and for recovery of a certain share in the estate consisting, among other things, of the two *talooks* above mentioned. The evidence showed that under different transactions in the family, the property in dispute had been given to S for such interest and with such right of succession to J as, by virtue of the law of the *Mitakshara*, attaches to ancestral immovable property as between father and son. The Judicial Committee gave J a declaration to the above effect and held that section 10 of Act I of 1869 was no bar to J's suit for such declaration.

The ninth and the tenth cases relate to the *Sihipur* estate and were decided in 1882 (2). Both these cases arose out of the same facts, which are as follows:—A taluqdar, deceased before annexation, had provided by will for the succession of his five widows, one at a time, to his estate, with remainder to a son of his nephew. Settlement was made with the senior widow after the mutiny, a *Sanad* granted to her as taluqdar with full power of alienation, and her name was afterwards entered in the lists prepared under section 8 of the Oudh Estates Act, 1869. But certain of her acts were not explicable except on the understanding that she

(1) *Seth Jai Dial v. Seth Sita Ram*, 8 I. A., 215; R. & J., 216; Bal., 400.

(2) *Thakurain Ramnand Kuer v. Thakurain Raghunath Kuer and Anant Bahadur Singh v. Raghunath Kuer*, 9 I. A., 41; 8 Cal., 769; 11 C. L. R., 149; R. & J., 224, 228.

was abiding by the will. *Held*, in the suit by the widow next in order, that the senior widow had undertaken the trust of carrying out the provisions of the will; and that a deed of gift made by her transferred only her interest, which was an estate for life. *Held* also, in the suit by the remainderman for a declaration of the invalidity of the transfer by the widow as against him, that, although declaratory relief might have been, at the Court's discretion, refused to him, on the ground of his remoteness in remainder and the identity of the object of his suit with that of the other, yet he was entitled in this appeal to the decree which he sought, because his suit had been wrongly decided against him on the merits.

The eleventh and the latest of such cases is that of *Hasan Jafar* decided in 1899 (1). The facts of this case were as follows:—In September 1858, when the three years' Summary Settlement was in progress, Karam Ali applied to have the settlement of the estate made with him. He stated that the estate was ancestral property in which he was a co-sharer. The first Summary Settlement on the annexation of the Province had been made, he said, with his co-sharers Ali Mehdi and Sadik Husain, but they had absconded, fearing that they would be called upon to pay what they had collected in excess during the mutiny. Search had been made, but no clue or trace of them had been found as yet. He offered to pay what was due to Government in respect of the whole estate. At the same time he declared that if his co-sharers reappeared and paid up what he might have paid to Government, they should get their shares. In these circumstances the Settlement Officer entered the name of Karam Ali alone as

(1) *Hasan Jafar v. Mohamad Uskari*, 26 I. A., 229; 26 Cal., 879; 4 C. W. N. 25

Malguzar and sent the papers up to the head office in Lucknow for confirmation. They came in the first instance, before Major Barrow, the Special Commissioner of Revenue. His note so far as material was in these words:—"Correct, but I would leave a door open to admit the other sharers if they explain their conduct by and bye." The papers then went to the office of the Chief Commissioner, Sir Robert Montgomery. His observation on Major Barrow's note written against it in the margin was this:—"The man agrees to this; R. Montgomery, Chief Commissioner, Oudh." The papers were then returned to the Settlement Officer, who accordingly retained the name of Karam Ali as sole *Malguzar* recording in the column of the Summary Settlement, headed "Abstract of the case," an abstract in English of Karam Ali's statement which so far as is material was as follows:—"I am entitled to half and these, that is, Ali Mehdi and Sadik Husain, to the remaining half. I want the settlement of the whole Taluka. When the sharers come back, if they pay up what they owe me, I will willingly give up their shares." In the suit brought by the representatives of Sadik Husain against the representatives of Karam Ali, their Lordships of the Privy Council *held*, that the settlement with Karam Ali was made in reliance on his assurances and representations, that Karam Ali became a trustee for Sadik Husain on his return and that the fact that the *Sanad* was granted to Karam Ali alone would not deprive Sadik Husain of his rights.

The latest case decided by the Judicial Commissioner of Oudh relating to the doctrine of trust is that of *Gajraj Singh* (1) of which the facts are as follows:—D, the father of the plaintiffs, and M, the father of the defendant, were the sons of R, a talukdar whose name was entered in lists I;

(1) *Gajraj Singh v. Nownihal Singh*, 1 O. C. Supp., 24.

III and V; prepared under section 8 of Act I of 1869. The facts proved by evidence were that G, B, and R were members of a joint-Hindu family at the time of Summary Settlement and of the *Sanad*; that these villages were summarily settled with these three persons jointly; that as regards the other two villages which were summarily settled with R alone, R represented that G and B were his co-sharers; that the *Sanad* was acquired by R solely by virtue of an agreement with his co-sharers that application should be made for the appointment of one of them as *Talukdar*; that in connection with this application R represented that G and B were his co-sharers in the seven villages (including the villages for which he had obtained decrees) then owned by the joint family and that there had been no division between them, and that subsequently in the life-time of both R and M, the defendant's father, the *Talukdari* estate was treated as joint property. The villages comprising the estate were not specified in the *Sanad*, and no *Kabuliat* was executed by R as a *Talukdar*, and consequently the two villages, which had been summarily settled with him alone, were not included in any list attached to such *Kabuliat*. Held, that whether all or only some of the seven villages came within the meaning of "estate," as defined in Act I of 1869, there was a declaration of trust by R in respect of these villages in favour of the joint family consisting of G, B, and himself, and that they were held by him in trust for the family as joint family estate governed by the *Mitakshara* law.

See also *Shankar Bux versus Hardeo Bux* (1) in which a question analogous to that of trust was raised and decided in favour of plaintiffs. The doctrine of Trust was also applied to the case of *Sheopertab Bahadur Singh versus The*

(1) 16 I.A., 71; 16 Cal., 397.

Allahabad Bank (1). But unless it is shown that a Talukdar has by any agreement or by any arrangement or other means become clothed with any trust as regards the lands included in the *Sauad*, the plaintiff cannot succeed (2). The mere fact of plaintiff's possession of certain villages included in the Taluka and the payment of that share of revenue to the Talukdar which would be payable for the village is consistent with the intention to give maintenance as well as proprietorship and does not establish any case against the Talukdar obliging him to make the plaintiffs proprietors of the portion of his Taluk (3). In *Gandharp Singh's* case no acts or declarations on the part of the Talukdar whose name was entered in list II or of his father were proved from which it could be fairly and reasonably inferred that either of them held the Taluka in trust for the family. All that was proved in the case was that the family lived in one enclosure, that the food was supplied to the members of the family by the Talukdar, that the Talukdar paid the funeral and marriage expenses of members of the family, that the Talukdar and his father granted lands by way of maintenance to members of the family and that the defendants held *sir* lands in the village in suit. *Held* that in all these things there was nothing inconsistent with the estate being held by the Talukdar or his father not as a joint family estate governed by the rules of *Mitakshara* but as one ordinarily devolving upon a single heir which was the character ascribed to the estate in Act I of 1869 (4). See also *Mohamed Imam Ali*

(1) 25 All, 476, 491; 7 C. N. N., 840.

(2) *Haider Ali Khan v. Nawab Ali Khan*, 16 I. A., 183; 17 Cal., 311; R. & J., 345.

(3) *Ram Singh v. The Deputy Commissioner of Barabanki*, 17 I. A., 54; 17 Cal. 444.

(4) *Gandharp Singh v. Thakur Nirman Singh*, 4 O. C., 214.

Khan v. Hosain Khan, where questions analogous to those of trust and *Benami* were raised and decided (1).

7. Custom of Dhardhura.—The words “ shall be deemed to have thereby acquired a permanent, heritable and transferable right in the estate ” do not mean that the land held by a Taluqdar is not subject to the custom of Dhardhura (2).

4. Every person whose lands the proclamation issued in Oudh in the month of March 1858 by order of the Governor-General of India specially exempted from confiscation, and whose names are contained in the second schedule hereto annexed, shall be deemed to possess, in the lands for which such person executed a kabuliat between the first day of April 1858 and the first day of April 1860, the same right and title which he would have possessed thereto if he had acquired the same in the manner mentioned in section 3; and he shall be deemed to hold the same subject to all the conditions affecting taluqdars which are referred to in the said section, and to be a taluqdar for all the purposes of this Act.

1. Estates exempted from confiscation by Proclamation of March 1858.—Of the six persons mentioned in the proclamation, the estate of Koolwant Singh having been

(1) 25 I. A., 61; 26 Cal., 81.

(2) *Syed Abu Jafar v. Maharaja Sri Partab Narain Singh*, 9 O. C., 129.

subsequently absolutely confiscated (1), the schedule mentions five names only.

2. Distinction between Taluqdars mentioned in sections 3 and 4.—Before the Summary Settlement all persons whose names are entered in the second schedule annexed to the Act had been declared sole hereditary proprietors of the lands which they held when Oudh came under the British rule (they seem to have been then Taluqdars), subject only to such moderate assessment as might be imposed on them; and the proprietary right of all other persons in the soil stood confiscated to the British Government, which reserved to itself the right of disposing of it. They had, therefore, at the date of the settlement, the declared right to engage for the revenue. Their doing so could not supersede or detract from the rights which they had already acquired, or become the foundation of their title. On the other hand, the general body of Taluqdars re-acquired no interest in their forfeited lands until they had been admitted to make the settlement. Accordingly, the Oudh Estates Act, though it enacts that the estate of both classes of Taluqdars shall be of the same nature, and be held subject to the same conditions, recognizes the distinction between them in the matter of title; and directs that the five loyal Talukdars shall have their names entered in a separate schedule (2).

5. Every grantee shall possess the same rights, and be subject to the same conditions in respect of the estate comprised in his grant as a talukdar possesses

Grantees' rights and liabilities.

(1) Irwin, pp. 195, 196.

(2) *Widow of Shankar Sahai v. Raja Kushi Pershad*, 4. I. A., 193; R. & J., 70; 3 Suth., 4.

and is subject to, under section 3, in respect of his estate.

6. Nothing in sections 3, 4, and 5, or in the **Saving of certain redemption suits.** said orders or in any sanad, shall be deemed to bar a suit for redemption—

(a) where the instrument of mortgage was executed on or after the thirteenth day of February 1844, and fixed no term within which the property comprised therein might be redeemed, or

(b) where the instrument of mortgage fixed a term within which the property comprised therein might be redeemed, and such term did not expire before the thirteenth day of February 1856.

1. Corresponding Law.—This section corresponds to sections 2 and 3 of Act XIII of 1866 and section 37 of Act XIII of 1879 (The Oudh Civil Courts Act).

2. Object of the Section.—The object of this section is to permit redemption of mortgages executed after the 13th February 1844, the terms of which had not expired at the date of the annexation of the Province, the equitable rights of mortgagors having been unintentionally confiscated and transferred to the Taluqdars under the orders of October 1859.

3. Fixing of term in a mortgage-deed.—A clause in the mortgage-deed to the effect that “we agree to redeem the mortgage on payment of the said amount

in Bhadon 1259 Fasli. We will not go near the said property till we have paid the mortgage money. The mortgagee is to enjoy as profits the zemindari rights etc., till the time of the redemption of the mortgage," does not fix a time within which a mortgage must be redeemed, that is to say, if not redeemed within the period mentioned, it shall become incapable of redemption. Clause (b) of the section applies only to such mortgages as were common before the annexation of Oudh in which a date was agreed upon between the parties as the last possible date on which redemption could take place (1.)

7. If a Taluqdar or grantee, or any heir or legatee of a Taluqdar or grantee, desire that any elephants, jewels, arms, or other articles of movable property belonging to him, shall devolve along with his estate, he shall take an inventory of such articles. Such inventory shall be signed by him and deposited in the office of the Deputy Commissioner of the district wherein such estate or the greater part thereof is situate; and thereupon such of the said articles as shall not have been transferred shall (so far as may be possible) be used and enjoyed by the person who, under or by virtue of this Act, is for the time being in actual possession or in receipt of the rents and profits of the said estate or the greater part thereof, otherwise than as mortgagee or lessee.

Inventory not a public document.—An inventory deposited in the office of the Deputy Commissioner by a

(1) Thakur Kalka Singh v. Thakur Debi Singh, 8 O. C., 233, 238.

Taluqdar or grantee under the provisions of section 7 of Act I of 1869, does not by being so deposited become a public document under clause 2 of section 34 of Indian Evidence Act, which refers to public records kept in British India of private documents*(1).

III.--Lists of Taluqdars and Grantees.

8. Within six months after the passing of this Act, the Chief Commissioner of Oudh, subject to such instructions as he may receive from the Governor-General of India in Council, shall cause to be prepared six lists, namely :—

Preparation of lists of taluqdars and grantees.

First.—A list of all persons who are to be considered taluqdars within the meaning of this Act;

Second.—A list of the taluqdars whose estates, according to the custom of the family, on and before the thirteenth day of February 1856, ordinarily devolved upon a single heir;

Third.—A list of the taluqdars, not included in the second of such lists, to whom sanads or grants have been or may be given or made by the British Government up to the date fixed for the closing of such lists, declaring that the succession to the estates comprised in such sanads or grants shall thereafter be regulated by the rule of primogeniture;

(1) *Azmat-uu-nissa Begam v. Shah Ara Begam*, 1 O. C., Supp., 37.

Fourth.—A list of the taluqdars to whom the provisions of section 23 are applicable ; ,

Fifth.—A list of the grantees to whom sanads or grants have been or may be given or made by the British Government, up to the date fixed for the closing of such list, declaring that the succession to the estates comprised in such sanads or grants shall thereafter be regulated by the rule of primogeniture ;

Sixth.—A list of the grantees to whom the provisions of section 23 are applicable.

1. Lists of Taluqdars and Grantees.—For lists see Appendix G. These lists contain names of some persons who were dead at the time of their preparation. Even such entries are by sections 8 and 10 conclusive evidence (*a*) that such persons are to be considered as having been a Taluqdar within the meaning of the Act (*see* section 2 and section 8, list I), and (*b*) that they were Taluqdars to whom sanad had been made declaring that the succession to the estate comprised in it should be regulated by the rule of primogeniture (*see* section 2 and section 8, list III) (1). It is not, however, in accordance with sound principles of interpreting statutes to give them a retrospective effect. The court cannot construe sections 8 and 10 so as to deprive the successors of the estate of a person who had died before those sections came into operation of rights which they acquired on his death. Entries of the names of deceased persons in the lists mentioned in section 8 do not appear to

(1) Achul Ram v. Udaipartab, 11 I. A., 51; 10 Cal., 511; R. & J., 250; Abduseamad v. Qurban Husain, 26 All., 119; 8 C. W. N., 301; 7 O. C., 254; Bhai Narindar Bahadur Singh v. Achal Ram, 20 Cal., 649.

have been contemplated by the Act, but such entries have no doubt been made, and they are practically harmless, if the names were already in former lists made under the orders in Council or if the entries do not alter the previously acquired rights of any one. The entry of the name of a person who died before the Act came into force cannot divest rights previously acquired on his death (1). But under the present amended definition of "heir" and "legatee" the succession to the estate of an heir or legatee succeeding to an estate before Act I of 1869 came into force shall be regulated by the provisions of the Act.

2. Distinction between Taluqdars entered in lists II and III.—In case of Taluqdars entered in list II, the estate descends to a single heir *according to the custom of the family*, while in case of Taluqdars entered in list III the estate descends to a single heir not because of any family custom but because they have agreed or declared that succession to their estates shall be regulated by the rule of primogeniture. In the absence of evidence to the contrary, the other family property of a Taluqdar entered in list II will therefore follow the same rule of succession as the estate, that is to say, there will arise a presumption that following the custom of the family it descends to a single heir (2), but there being no such family custom among the Taluqdars entered in list III no such presumption can arise in their case.

9. When the lists mentioned in section 8 shall have been approved by the Chief Commissioner of Oudh, they shall be published in the Gazette of India. After

(1) *Abulsumat v. Qurban Husain*, 7 O. C. 254, 257; 26 All. 119; 8 C. W. N., 201.

(2) *Thakur Ishri Singh v. Thakur Baldeo Singh*, 11 I. A., 135; 10 Cal. 792; R. & J., 254.

such publication, the first and second of the said lists shall not, except in the manner provided by section 30 or section 31, as the case may be, be liable to any alteration in respect of any names entered therein.

If, at any time after the publication of the said lists, it appears to the Governor-General in Council that the name of any person has been wrongly omitted from or wrongly entered in any of the said lists, the said Governor-General in Council may order the name to be inserted in the proper list, and such name shall be published in the Gazette of India in a supplementary list, and such person shall be treated in all respects as if his name had been from the first inserted in the proper list.

10. No persons shall be considered taluqdars or grantees within the meaning of this Act, other than the persons named in such original or supplementary lists as aforesaid. The Courts shall take judicial notice of the said lists, and regard them as conclusive evidence that the persons named therein are such taluqdars or grantees.

1 **Conclusive evidence.** - See note 6 to section 3 and note 1 to section 8 *supra*.

2. **Whether this section has retrospective effect.**— This section cannot be so constructed as to deprive the

successors of the estate of a person, who had died before the section came into operation, of right which they acquired on his death (1). But in a case in which a Taluqdar whose name was entered in lists I and II and who had received a *sanad*, devised his estate to a person who on the death of the Taluqdar succeeded to the estate before the passing of Act I of 1869, it was *held* that the estate was not taken out of the operation of Act I of 1869 and the judgment of the Privy Council in the above case was distinguished by the Judicial Commissioner of Oudh on the ground that the Taluqdar in the case before their Lordships of the Privy Council had not received a *sanad* at all and succession to his property had already been effected by the Mahomedan Law (2). However this may be, the decision of the Judicial Commissioner in the latter case would unquestionably hold good under the present law, which defines "heir" and "legatee" as meaning persons succeeding to an estate whether before or after the commencement of the Act.

IV.—Powers of Taluqdars and Grantees to transfer and bequeath.

11. Subject to the provisions of this Act, and to all the conditions *other than those relating to succession* under which the estate was conferred by the British Government, every taluqdar and grantee, and every heir and legatee of a taluqdar and grantee, of sound mind and not a minor, shall be competent to transfer the whole or any portion of his estate, or of his right

(1) Abdussamad v. Qurban Husain, 26 All., 119; 7 O. C., 254, 257; 8 C. W. N., 201.

2) Umatal Fatima v. Asghar Ali, 8 O. C., 45, 48.

and interest therein, during his life-time, by sale, exchange, mortgage, lease, or gift, and to bequeath by his will to any person the whole or any portion of such estate, right, and interest.

A married woman may make a bequest under this Act of any property which she could alienate by her own act during her life.

Persons who are deaf or dumb or blind are not thereby incapacitated from making a transfer or bequest under this Act if they are able to know what they do by it.

One who is ordinarily insane may make a transfer or bequest under this Act during an interval in which he is of sound mind.

No person can make a transfer or bequest under this Act while he is in such a state of mind, whether from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

A transfer and a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the transferrer or testator, is void.

1. **Change in law.**—See note 1 to section 3 *supra*.

2. **Corresponding law.**—The first paragraph of this section corresponds to section 11 of the Contract Act of 1872, section 7 of the Transfer of Property Act of 1882, and to the first paragraph of section 46 of the Indian Succession Act of 1865. Paragraphs 2, 3, 4 and 5 of the section

correspond to explanations 1 to 4 to section 46 of the Indian Succession Act of 1865 and paragraph 6 corresponds to section 48 of the same Act.

3. Sound mind.—“A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests”—section 12 of the Contract Act.

4. Minor.—“A minor is a person who has not completed the age of 18 years”—section 2 of the Act, definition of minor. A contract with a minor is not voidable but absolutely void (1) and cannot therefore, when he ceases to be minor, be made valid by mere confirmation or ratification. There can be no ratification of a transaction which never had any legal existence (2).

5. Sanity and Insanity.—There is a presumption, in the first instance in favour of sanity; but general insanity being established, the *onus* lies on the party alleging a lucid interval to prove not merely a cessation of violent symptoms but a restoration of mind sufficient to enable the party to judge correctly of his act (3).

6. Fraud, Coercion and Importunity.—“Fraud means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract :—

(1) The suggestion, as to a fact, of that which is not true by one who does not believe it to be true;

(1) *Mohari v. Dharmo Das*, 30 I. A., 114; 30 Cal., 539; 7 C. W. N., 441.

(2) *Pollock's Contracts*, 17th edition, 55; *Mata Din Sah v. Ahmad Ali*, 11 O. C., 1.

(3) *Cunningham and Shephard's Indian Contract Act*, 10th edition, 54.

(2) The active concealment of a fact by one having knowledge or belief of the fact ;

(3) A promise made without any intention of performing it ;

(4) Any other act fitted to deceive ;

(5) Any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to effect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself equivalent to speech"—Indian Contract Act, section 17.

“Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Explanation.—It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed”—Indian Contract Act, section 15.

Importunity.—“This in its correct legal acceptance must be in such a degree as to take away from the testator the free agency ; it must be such importunity as he is too weak to resist ; such as will render that act no longer the act of the deceased ; not the free act of a capable testator”—Williams on Executors, Vol. I, 10th Edn., p. 31.

The following illustrations which are appended to section 48 of the Indian Succession Act will make the meaning of the above words clear.

Illustrations.

(a) A falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act, and thereby induces the testator to make a will in his (A's) favour; such will has been obtained by fraud, and is invalid.

(b) A by fraud and deception prevails upon the testator to bequeath a legacy to him. The bequest is void.

(c) A, being a prisoner by lawful authority, makes his will. The will is not invalid by reason of the imprisonment.

(d) A threatens to shoot B, or to burn his house, or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B in consequence makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(e) A, being of sufficient intellect, if undisturbed by the influence of others to make a will, yet being so much under the control of B that he is not a free agent, makes a will dictated by B. It appears that he would not have executed the will but for fear of B. The will is invalid.

(f) A, being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a will of a certain purport, and does so merely to purchase peace, and in submission to B. The will is invalid.

(g) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition, makes his will in the manner recommended by B. The will is not rendered invalid by the intercession and persuasion of B.

(h) A, with a view to obtaining a legacy from B, pays him attention and flatters him, and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

7. Whether a Hindu daughter can transfer or bequeath.—Notwithstanding the terms of section 2 which defines an "heir" as "a person who inherits property otherwise than as a widow or mother under the Act," and the provisions of section 11, a Hindu daughter succeeding to the

property as an heir of her mother, who was a Taluqdar, under the Act, has no power of alienation greater than, and irrespective of, her interest under the Hindu Law (1).

8. Power of transfer under this section not controlled by the Mahomedan Law—A gift by a Mahomedan Taluqdar to his wife and “after his death to his sons” is valid, being governed by the provisions of section 11 read with section 12 of the Act and not by the Mahomedan Law (2).

9. Power of bequest under the section not controlled by proviso to section 19.—Section 19 of the Act is for the purpose of applying to wills made under Act I of 1869 a number of sections contained in the Indian Succession Act and the proviso only applies to the sections or provisions contained in section 19 and not to those contained in the whole of Act I of 1869 (3).

12. No transfer or bequest under this Act shall be valid whereby the vesting of the thing transferred or bequeathed may be delayed beyond the life-time of one or more persons living at the decease of the transferee or testator and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing transferred or bequeathed is to belong.

1. Corresponding law.—This section corresponds to section 101 of the Indian Succession Act (Act X of 1865)

(1) Sheo Partab Bahadur Singh v. The Allahabad Bank, 25 All., 466; 7 C. W. N., 840.

(2) Ram Lal v. Jani Begam, 2 O. C., 244.

(3) Ishri Singh v. Baldeo Singh, 10 Cal., 792.

and section 14 of the Transfer of Property Act (Act IV of 1882). To make the meaning of the section clear the illustrations appended to section 101 of the Indian Succession Act are quoted below :—

Illustrations.

(a) A fund is bequeathed to A for his life; and after his death to B for his life; and after B's death to such of the sons of B as shall first attain the age of 25. A and B survive the testator. Here the son of B, who shall first attain the age of 25, may be a son born after the death of the testator; such son may not attain 25 until more than 25 years have elapsed from the death of the longer liver of A and B; and the vesting of the fund may thus be delayed beyond the life-time of A and B, and the minority of the sons of B. The bequest after B's death is void.

(b) A fund is bequeathed to A for his life, and after his death to B for his life, and after B's death to such of B's sons as shall first attain the age of 25. B dies in the life-time of the testator, having one or more sons. In this case the sons of B are persons living at the time of the testator's decease, and the time when either of them will attain 25 necessarily falls within his own life-time. The bequest is valid.

(c) A fund is bequeathed to A for his life, and after his death to B for his life, with a direction that after B's death it shall be divided amongst such of B's children as shall attain the age of 18; but that if no child of B shall attain the age, the fund shall go to C. Here the time for the division of the fund must arrive at the latest at the expiration of 18 years from the death of B, a person living at the testator's decease. All the bequests are valid.

(d) A fund is bequeathed to trustees for the benefit of the testator's daughters with a direction that if any of them marry under age, her share of the fund shall be settled so as to devolve after her death upon such of her children as shall attain the age of 18. Any daughter of the testator to whom the direction applies must be in existence at his decease, and any portion of the fund which may be eventually settled as directed must vest not later than 18 years from the death of the daughter whose share it was. All these provisions are valid.

It will be noticed that while section 17 of the Transfer of Property Act exempts gifts to charitable uses from the restriction of the rule against perpetuity, no mention of any such exemption is made either in section 12 of the Act or

in section 18 of the Act which deals with gifts to religious or charitable uses.

2. Object of the rule.—The necessity of imposing some restraint on the power of postponing the acquisition of the absolute interest in, or dominion over property, will be obvious, if we consider, for a moment, what would be the estate of a community in which a considerable proportion of the land and capital was locked up. That free and active circulation of property, which is one of the springs as well as the consequences of commerce, would be obstructed; the improvement of land checked; its acquisition rendered difficult; the capital of the country gradually withdrawn from trade; and the incentives to exertion in every branch of industry diminished. Indeed, such a state of things would be utterly inconsistent with national prosperity; and those restrictions, which were intended by the donors to guard the objects of their bounty against the effects of their own improvidence, or originated in more exceptional motives would be baneful to all (1). The power of parting with property once acquired so as to confer the same property upon another must take effect either by inheritance or transfer, each according to law. Inheritance does not depend upon the will of the individual owner: Transfer does. Inheritance is a rule laid down (or, in the case of custom, recognised) by the state, not merely for the benefit of individuals, but for reasons of public policy—Domat, 2413. It follows directly from this that a private individual, who attempts by gift or will to make property inheritable otherwise than the law directs, is assuming to legislate, and that the gift must fail, and the inheritance take place as the law directs. This was well expressed by Lord Justice Turner in *Soorjeemoney Dossee*

(1) *Jarman*, Vol. I, p. 213.

v. Denotundoo Mullick.—“ A man cannot create a new form of estate, or alter the line of succession allowed by law, for the purpose of carrying out his own wishes or views of policy” (1).

13. (1) *No taluqdar or grantee, and no heir or legatee of a taluqdar or grantee, and no transferee referred to in section 14, and no heir or legatee of such transferee, shall have power to give his estate, or any portion thereof, or any interest therein—*

Procedure relating to transfers by gift.

(a) *to any person who would have succeeded to such estate, portion or interest under the provisions of this Act applicable to such estate, had the donor died intestate as to his estate at the time when the gift took effect, except by a registered instrument, signed by the donor and attested by two or more witnesses ;*

(b) *to any person other than a person mentioned in clause (a) except by an instrument signed by the donor and attested by two or more witnesses not less than three months before his death and presented for registration within one month from the date of its execution and registered.*

(2) *No gift made under sub-section (1) shall be valid unless followed, within six months from*

(1) Jatindra Mohan Tagore and another v. Gonendra Mohan Tagore, and Gonendra Mohan Tagore v. Jatiindra Mohan Tagore, 9 B. L. R., 377, 395.

the date of execution of the instrument of gift, by delivery by the donor, or his representative in interest, of possession of the property comprised therein.

See notes to section 13A infra.

13A. No taluqdar or grantee, and no heir or legatee of a taluqdar or grantee, and no transferee referred to in section 14, and no heir or legatee of such transferee, shall have power to bequeath his estate, or any portion thereof or any interest therein—

(1) (a) to a person who would have succeeded to such estate, portion or interest under the provisions of this Act applicable to such estate, had the person so bequeathing died intestate as to his estate at the time when the bequest took effect,

(b) to his daughter,

(c) to a son of his daughter, or

(d) to a younger son,

except by a will duly executed and attested ;

(2) to a person who might, in the absence of other heirs, have succeeded to such estate, portion or interest under the provisions of this Act applicable to such estate, had the person so bequeathing died intestate as to his estate at the time when the bequest took effect,

except by a will duly executed and attested not less than three months before the death of the testator

and presented for registration within one month from the date of its execution and registered;

(3) to any person other than a person mentioned in clauses (1) and (2),

except by a will duly executed and attested not less than three months before the death of the testator and registered according to the law for the time being in force relating to the registration of assurances, but presented for such registration within one month from the date of its execution.

1. Change in law.—This and the preceding section 13 have been substituted for the old section 13, which was as follows:—

“ 13. No taluqdar or grantee, and no heir or legatee of a taluqdar or grantee, shall have power to give or bequeath his estate, or any portion thereof or any interest therein, to any person being either—

(1) a person who, under the provisions of this Act, or under the ordinary law to which persons of the donor's or testator's tribe and religion are subject, would have succeeded to such estate or to a portion thereof, or to an interest therein if such taluqdar or grantee, heir or legatee, had died intestate, or

(2) a younger son of the taluqdar or grantee, heir or legatee, in case the name of such taluqdar or grantee appears in the third or the fifth of the lists mentioned in section 8,

except by an instrument of gift or a will executed and attested not less than three months before the death of the donor or testator, in manner herein provided in the case of a gift or will, as the case may be, and registered within one month from the date of its execution.

The words “ or by a transferee mentioned in section 14 or by his heir or legatee ” which did not occur in the old section 13 have been added to the opening clauses of sections 13 and 13A to make it clear that these persons

also are governed by the same rules of transfer and bequest as the Taluqdar or grantee or his heir or legatee.

The old section was described by their Lordships of the Privy Council as "most difficult section" (1), and it is their Lordships' interpretation of this section and of the old connected sections 14 and 15 of the Act that has led the Legislature to amend them. The object of these sections was evidently to maintain the operation of the Act in the event of transfers or bequests to other Taluqdars or to members of the Taluqdar's or testator's family, and to annul it in the event of transfers or bequests to outsiders (2). Their Lordships of the Privy Council, however, *in re* Balraj Koer v. Jagatpal Singh (3) after having referred to the terms of sections 13, 14 and 15 of the Act, *held* that the expression "would have succeeded" in section 14 of the Oudh Estate Act (I of 1869) must be confined to persons in the special line of succession that would have been applicable to the particular case if the transferor or testator had died intestate and the death had occurred at the date of transfer, or (in the case of a gift by will) at the time when the succession opened. In other words the expression "a person who would have succeeded" according to the provisions of this Act" is equivalent to "the person or one of the persons to whom the estate would have descended according to the provisions of the special clause of section 22, applicable to the particular case." The effect of the ruling has been to render the Act inapplicable in cases where a transfer or bequest was made to a remote as distinguished from an immediate heir and the main object of the new sections 13 and 13A is "to bring back within the Act estates which have passed outside its operation" (4).

(1) *Indar Kunwar v. Jaipal Kunwar*, 15 I. A., 127; 15 Cal., 725, 750.

(2) *Umutul Fatima v. Ashgar Ali Khan*, 8 O. C., 45, 49-50.

(3) 26 All., 393; 7 O. C., 248.

(4) U. P. Gazette, 1909, Part VII, p. 115.

Under the old law a devise of a portion of a Taluqa, made by a Taluqdar entered in the second of the lists prescribed by section 8, Act I of 1869, to the person who would have been the heir-at-law to the Taluqa, if the Act had not been passed, was held good though not made by a will registered within one month from the date of execution (1). Following the principle laid down in the above ruling it was further held that persons named in classes 1 and 2 of section 13 could take an estate under an oral transfer (2), but this view of the law was subsequently departed from (3). The word "intestate" in the old section 13 was interpreted to mean "intestate as to his estate" (4). This has been made clear in the new section. Regarding the new sections 13 and 13A the Select Committee's Report (5) is as follows :—

"(2) Clause 5 of the Bill as now amended provides a new section 13 of the Act which relates exclusively to cases of transfer by gift, other than gifts to religious or charitable uses. The section is intended to lay down a complete law of procedure in respect to such transfers. It makes provision for two classes of gifts, *viz.*, (1) gifts in favour of the immediate heir, and (2) gifts in favour of all other persons. With regard to the first class it is laid down that the gift may be made without other formalities relating to the instrument of gift than those required by the Transfer of Property Act, 1882. For gifts of the second class it is provided that the instrument of gift must be executed not less than three months before the

(1) *Bhaya Tribhawan Dat Ram v. Bhaya Shambhu Dat Ram*, S. C., No. 222.

(2) *Itraj Kuar v. Bacha Mahadeo Kuar*, 5 O. C., 345.

(3) *Thakurain Chhabraj Koer v. B. Gopal Lal*, 9 O. C., 113.

(4) *Bhasba Rabidat Singh v. Indar Kuar*, 16 I. A., 53; 16 Cal., 556.

(5) U. P. Gazette, 1909, Part VII, p. 131.

death of the donor, and presented for registration within one month from the date of execution, and registered. Sub-section (2) of the new section incorporates the provisions of section 17 of the Act as it now stands and renders delivery of possession within a stated time essential to the validity of the gift.

“(3) The new section 13A (clause 6 of the Bill as re-drafted) relates exclusively to cases of bequest. It provides for three classes of bequests, namely :—

- (i) bequests to the immediate heir, to a daughter's son, and to a younger son,
- (ii) bequests to possible heirs, and
- (iii) bequests to persons other than those mentioned in (i) and (ii).

In cases falling within the first class all that is needed is a will duly executed and attested. In cases falling within the second class the will must be duly executed and attested not less than three months before the death of the testator and ‘registered’ (*i.e.*, either openly or by deposit) within one month from the date of execution. For bequests of the third class it is necessary to have a will executed and attested not less than three months before the death of the testator and registered openly within one month from the date of execution.

“(4) With regard to the question of the succession of the daughter's son, it may be explained that in the majority of the opinions received it has been strongly represented that the Bill as introduced does not make adequate provision for him, although he is a near relation. The special provision in his favour contained in clause (4) of section 22 of the Act has been abrogated and his case now comes within

clause (1) of section 22 as re-drafted in the Bill as introduced. Under the personal law of many of the Taluqdars the daughter's son is excluded by custom, and in such cases, even if he took by transfer, the property would cease to be subject to the provisions of the Act, as he would not be a possible heir. In order to remove cases of hardship in this connection, section 13A as now proposed will enable a Taluqdar to provide by will for his daughter's son in exactly the same way as he could for his immediate heir, and the property so bequeathed will, under the provisions of new section 14 (clause 7 of the Bill as amended), continue to be subject to the provisions of the Act.

"(5) We have also considered it advisable to make a special provision for the case of a younger son so as not to render his position more unfavourable than it is under the Act as it now stands. We have arranged, accordingly, that a bequest may be made to a younger son in the same manner and with the same consequences as in the case of a bequest to the immediate heir."

It may be noted that clause (b) was added to sub-section (1) of section 13A on the day the Bill passed into law and the Select Committee's Report therefore mentions the daughter's son only but not the daughter.

2. Meaning of "interest."--The word "interest" is not easy to define. The Select Committee in para. 19 of their report say as follows:—"It has also been suggested that a definition of the term 'interest' as used in new section 13 (clause 5) and other sections, should be given. No satisfactory definition has been put forward and the Committee consider that no satisfactory definition of the term could be framed" (1). It will be noticed that the

(1) U. P. Gazette, 19 9, Part VII, p. 134.

word "interest" occurred in the old section 13 also, and the rulings under the old sections as to the meaning of the word would equally apply to the new. The question whether the right of maintenance is included in the word "interest" was twice argued before the Privy Council (1), but their Lordships did not consider it necessary to decide it on either occasion and it would appear also to have been discussed at bar in case of *Maharani Indar Kuar v. Maharani Jaipal Kuar* (2). In the first of these cases the Judicial Commissioner had held that the widow's right of maintenance was an interest within the meaning of section 13, but their Lordships "without expressing any dissent from the opinion expressed by the learned Judges of the Court below" decided the case on another ground. In the second case the Judicial Commissioner had held that the right of a nephew to receive maintenance would not come within the words "interest therein" and on appeal their Lordships of the Privy Council observed as follows:—"Their Lordships are far from affirming that a mere title to maintenance would be such an interest therein as would come in this clause, but it is not necessary to decide the question." In the third case of *Indar Kuar* their Lordships held that "if there had been no will, the junior widow would have succeeded to a life estate in the Taluqdari property expectant on the determination of the life estate of the first married widow but subject to be defeated by an adoption by the latter, this was an interest bringing her within the meaning of section 13, para. 1 of Act I of 1869. So that maintenance bequeathed to her by the will was payable, notwithstanding its not having been registered as that section required in other cases." A

(1) *Ajudhia Baksh and another v. Musammat Rukmin Kuar and another*, 11 I. A., 1; 10 Cal., 482; R. & J., 246; *Abdul Razzak v. Amir Haider*, 11 I. A., 121; 10 Cal., 976; R. & J., 260.

(2) 15 I. A., 127; 15 Cal., 725.

Bench of the Judicial Commissioner's Court has decided that the fact that plaintiff was entitled to a maintenance under section 24 of the Act did not bring a will in her favour within the exemption contained in sub-section 1 of section 13 of the Oudh Estates Act 1). In the above case, Mr. Burkitt, Additional Judicial Commissioner, expressed the view that the word "estate" referred to estates of persons entered in lists Nos. 2, 3 and 5, while the words "any portion thereof," or "any interest therein" referred to estates of persons entered in lists 4 and 6, which are governed by section 23, and he explained this by saying that in case of a Mobammedan taluqa entered in list 4 there might be several sharers entitled separately to a portion of the taluqa on the death of the Taluqdar while in case of a Hindu Taluqdar entered in list 4 dying intestate and leaving him surviving two or more sons, the sons would each succeed as joint tenants to an interest in the estate.

3. Sections 13 and 13A not retrospective.—Sections 13 to 18 are not retrospective and formalities required by these sections are not requisite to give validity to gifts or transfers executed by a Taluqdar before the passing of the Act (2).

4. Gift in remainder.—A bequest by a Talukdar giving property to his younger son on the termination of an estate for life to his widow is not invalid and does not fail for want of registration, but is accelerated by reason of the gift of such prior estate not taking effect (3).

(1) *Babunai Sukraj Kuar v. Babu Sheo Sahai Singh*, S. C., No. 193.

(2) *Harpershad v. Sheo Dayal*, 3, I.A., 259; R. & J., 121; Bal. 25; 26 W. R., 55; *Thakur Hardeo Singh v. Thakur Jawahir Singh*, 6 I. A., 161; R. & J., 190; Bal., 218.

(3) *Ajodhia Baksh v. Rukmin Koer*, 11 I. A., 1; 10 Cal., 482; R. & J., 246.

5. **Registration of wills.**—Section 13A makes an important distinction in the matter of registration of wills in favour of persons mentioned in clauses 2 and 3. In cases falling within the second clause the will may be registered either openly or by deposit, but in cases falling under the third clause it must be registered only openly. A will not registered within one month of its execution but referred to and explained in an addendum duly executed as a will and registered on the same day is effective as a testamentary instrument, whether the addendum be regarded as a codicil or will (1).

V.—Transfers and Bequests.

14. If any taluqdar or grantee, or his heir or legatee, shall heretofore have transferred or bequeathed, or if any taluqdar, or grantee, or his heir or legatee shall hereafter transfer or bequeath the whole or any portion of his estate—

Result of transfer or bequest of estate to taluqdars or heirs.

(a) to another taluqdar or grantee, or his heirs or legatee, or

(b) to any of the persons mentioned in clauses (1) and (2) of section 13A.,

the transferee or legatee and his heirs and legatees shall have the same rights and powers in regard to the property to which he or they may have become entitled under or by virtue of such transfer or bequest, and shall hold the same subject to the same conditions and to the same rules of succession as the transferrer or testator.

(1) Satrup Kunwar v. Bulas Kunwar, 25 All., 121 P. C.

Provided that, if the transferee or legatee had or has, at the time when the transfer or bequest took or takes effect, an estate, the succession to which was or is governed by the rules contained in section 22, the transferee or legatee and his heirs and legatees shall hold such property subject to those rules.

1. **Change in law.**—The old section 14 ran as follows :—

" 14. If any taluqdar or grantee shall heretofore have transferred or bequeathed, or if any taluqdar or grantee, or his heir or legatee, shall hereafter transfer or bequeath, the whole or any portion of his estate to another taluqdar or grantee, or to such younger son as is referred to in section 13, clause 2, or to a person who would have succeeded according to the provisions of this Act to the estate or to a portion thereof if the transferrer or testator had died without having made the transfer and intestate, the transferee or legatee and his heirs and legatees shall have the same rights and powers in regard to the property to which he or they may have become entitled under or by virtue of such transfer or bequest, and shall hold the same subject to the same conditions and to the same rules of succession as the transferrer or testator."

The object of the section was evidently to maintain the operation of the Act in the event of transfers or bequests to other Taluqdars or members of the transferrer's or testator's family (1), but the effect of the ruling of their Lordships of the Privy Council in *Balraj Kuar v. Jagatpal Singh* (2) has been to render the Act inapplicable in cases where the transfer or bequest was made to a remote as distinguished from an immediate heir of a Taluqdar, and it is to avoid the effect of this ruling that the words "to any of the persons mentioned in clauses (1) and (2) of section 13A" which include the immediate as well as a remote heirs have been substituted for the words "or to such a younger son as is

(1) *Ummul Fatima v. Asghar Ali Khan*, 8 O. C., 45, 49.

(2) 26 All., 393; 7 O. C., 248, 8 C. W. N., 699.

“ referred to in section 13, cl. (a), or to a person who would have succeeded according to the provisions of this Act to the estate or to a portion thereof.” See also note 1 to section 13A.

2. Subject to the same conditions and to the same rule of succession as the transferrer or testator.—The words “ same conditions ” obviously refer to conditions mentioned in sections 3 and 4 and the words “ same rule of succession ” to provisions of sections 22 and 23 of the Act. The section does not say subject to the same rules of transfer and bequest as the transferrer or testator. But this has now been clearly provided for in the amended sections 13, 13A, 16, 18 and 19 of the Act.

3. Proviso to section 14.—The effect of this section read with the proviso is that (a) when the transferrer is governed by section 22 and the transferee by section 23 of the Act, (b) when the transferrer is governed by section 23 and the transferee by section 22, and (c) when both the transferrer and transferee are governed by section 22, the succession to the estate transferred shall be governed by section 22, and it is only in one case, namely, when both the transferrer and the transferee are governed by section 23 that the succession to the estate transferred shall be regulated by the provisions of section 23.

15. If any taluqdar or grantee, or his heir or legatee shall heretofore have transferred or bequeathed or if any taluqdar or grantee or his heir or legatee shall hereafter transfer or bequeath the whole or any portion of his estate to any person who did not at the time when the transfer or bequest took effect belong to any of the classes

Result of transfer or bequest to persons out of line of succession.

specified in section 14, the transfer of and succession to the property so transferred or bequeathed shall be regulated by the rules which would have governed the transfer of and succession to such property if the transferee or legatee had bought the same from a person not being a Taluqdar or grantee, *heir or legatee*

1. Change in law.—The old section 15 was as follows:—

“15. If any taluqdar or grantee shall heretofore have transferred or bequeathed, or if any taluqdar or grantee or his heir or legatee, shall hereafter transfer or bequeath, to any person, not being a taluqdar or grantee, the whole or any portion of his estate, and such person would not have succeeded according to the provisions of this Act to the estate or to a portion thereof if the transferrer or testator had died without having made the transfer and intestate, the transfer of and succession to the property so transferred or bequeathed, shall be regulated by the rules which would have governed the transfer of and succession to such property if the transferee or legatee had bought the same from a person not being a taluqdar or grantee.”

The words “who did notsection 14,” in the amended section have been substituted for the words “not being a taluqdar or grantee and such person would not have succeeded according to the provisions of this Act to the estate or to a portion thereof if the transferrer or testator had died without having made the transfer and intestate;” for reasons given in note 1 to sections 13A and 14 *supra*.

2. Shall be regulated by the rules, &c—Does this mean that the provisions of the Act as regards succession to and transfer of such property having ceased to apply, the succession to estate so transferred shall be governed by the personal law of the transferee, or the provisions of the *Sanad* shall revive as soon as the Act ceases to apply and the succession thereto shall be regulated by the conditions laid

down in what is known as the "Primogeniture *Sanad*" granted to most of the Taluqdars. The solution of the question seems to depend on the meaning of the words "your successors," used in the *Sanad*. Does the word "successor" as used in the *Sanad* mean an heir or any person succeeding to the estate? In the Mahewa case the word "successor" was taken to include a legatee (1), but no arguments were addressed to their Lordships of the Privy Council on the point. Will it also include a donee and a transferee for valuable consideration?

16. No transfer, *otherwise than by gift*, of any estate, or of any portion thereof, or of any interest therein, made by a taluqdar or grantee or by his heir or legatee, or by a transferee mentioned in section 14, or by his heir or legatee, under the provisions of this Act shall be valid unless made by a *registered* instrument signed by the transferrer and attested by two or more witnesses.

Procedure relating to transfers otherwise than by gift.

Change in law.—Transfers by gift have been excepted from the operation of this section as they have now been provided for in the new section 13. As to addition of the words "or by a transferee mentioned in section 14 or by his heir or legatee," see note 2 to section 14.

17. *Repealed by section 10 of the Amending Act of 1910.*

The repealed section 17 was as follows:—

17. If any such transfer be made by gift, the gift shall not be valid, unless within six months after the execution of the instrument of gift, the gift be followed by delivery by the donor, or his

Further requisites to validity of gifts *inter vivos*.

(1) Sheo Sing v. Rani Raghubans Koer, 8 O. C., 317; 9 C. W. N., 1009; 27 All., 634.

representative in interest, of possession of the property comprised therein, nor unless the instrument shall have been registered within one month from the date of its execution."

This section has been repealed as its provisions have now been incorporated in the new section 13, sub-section (2).

18. No taluqdar or grantee, and no heir or legatee of a taluqdar or grantee, *and no transferee mentioned in section 14, and no heir or legatee of such transferee* shall have power to give his estate, or any portion thereof, or any interest therein, to religious or charitable uses, except by an instrument of gift *signed by the donor* and attested by two or more witnesses not less than three months before his death and *presented for registration within one month from the date of its execution and registered.*

Change in law.—The words "and no transferee mentioned in section 14 and no heir or legatee of such transferee" are new and have been added for reasons given in note 2 to section 14 *supra*. The words "and presented for registration.....registered" have been substituted for the words "and subject to the provisions contained in section 17," as section 17 has now been repealed. The words "signed by the donor" have been substituted for the word "executed."

VI.—Testamentary Succession

19. Sections 49, 50, 51, 54, 55, and 57 to 77 (both inclusive), and sections 82, 83, 85, and 88 to 98 (both inclusive) of the Indian Succession Act (No. X of 1865) shall apply to all wills and

Sections of Succession Act applied to wills of taluqdars.

codicils made by any taluqdar or grantee,² or by his heir or legatee, or by a transferee mentioned in section 14 or by the heir or legatee of such transferee under the provisions of this Act for the purpose of bequeathing to any person his estate, or any portion thereof, or any interest therein: Provided that marriage shall not revoke any such will or codicil: Provided also that nothing herein contained shall affect wills made before the passing of this Act.

In applying the said sections to wills and codicils made under this Act, all words hereinbefore defined, and occurring in such sections, shall (unless there be something repugnant in the subject or context) be deemed to have the same meaning as this Act has attached to such words respectively.

1. Change in law.—The words “or by any transferee mentioned in section 14, or by the heir or legatee of such transferee” have been added for reasons given in note 2 to section 14 *supra*.

2. Application of the section.—Section 19 is not retrospective (1). The last proviso only applies to sections or provisions contained in section 19 and not to those contained in the whole of Act I of 1869 (2).

3. Proof of will.—Previous admission of a will executed before Act I of 1869 is a sufficient proof thereof, but not of the codicil executed after the passing of the Act (3).

(1) Harparshad v. Sheo Dial, 3 I. A., 259; R. & J., 121, Bal., 25, 26; W. R., 65; Musammat Najban Bibi v. Syed Raza Husain, 4 O. C., 408.

(2) Thakur Ishri Singh v. Baldeo Singh, 11 I. A., 135; 10 Cal., 792; R. & J., 254.

(3) Najban Bibi v. Syed Raza Husain, 4 O. C., 408.

4. **Revocation of will.**—According to section 57 of the Succession Act, which is applied to wills of Taluqdar by section 19 of the Oudh Estates Act, no will or codicil executed by a Taluqdar nor any part thereof can be revoked *otherwise* than by marriage or by any will or codicil or by some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged will is required by the Succession Act to be executed, or by burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same. In *Maharaja Partab Narain Singh v. Maharani Subhao Koer* (1) it was held by their Lordships of the Privy Council that an authority given by the Maharaja to Mr. Carnegie to destroy a will made by the Maharaja in 1864 was sufficient in law to constitute a revocation although the instrument was not in fact destroyed. Neither section 19 of the Oudh Estates Act, nor section 57 of the Indian Succession Act is mentioned in the reported case. Either these sections were overlooked or the parties were agreed that they did not apply to revocation of a will made before the passing of the Oudh Estates Act. The decision is certainly no authority for the proposition that section 57 does not apply to the revocation of a will executed after the passing of the Act (2).

20. No taluqdar or grantee, and no heir or legatee of a taluqdar or grantee, ^{Bequests to religious and charitable uses.} having a child, parent, brother, unmarried sister, or a nephew being the naturally born son of a brother of such taluqdar or grantee, heir, or legatee, shall have power to bequeath his estate, or any part thereof, or

(1) 3 Cal., 626; 4 I. A., 228.

(2) *Lachman Singh v. Umrao Singh*, 11 O. C., 102, 110.

any interest therein, exceeding in amount or value the sum of two thousand rupees, to religious or charitable uses, except by a will executed not less than three months before his death, and registered within one month from the date of its execution.

A subsequent will of a Taluqdari estate if not registered according to the provisions of this section is invalid and does not revoke a previous will relating to the same property (1).

VII.—Intestate Succession.

21. In the next following section, unless where there is something repugnant in the context, the words 'son,' 'descendants,' 'male agnates,' 'brother,' 'widow,' defined. 'descendants,' 'brother,' and 'male agnates' apply only to najib-ul-tarfain, and the word 'widow' applies only to a woman belonging to the ahl-i-bradri of her deceased husband.

1. **Change in law.**—The words "daughter and" which preceded the word "brother" have been omitted from this section, as clause 4 of the old section 22 which contained the word "daughter" has been left out in the amended section 22 and the words "male agnates" have been added as a new clause (10) providing for their succession has been inserted in the section.

2. **Najib-ul-tarfain and Ahl-i-bradri.**—The heirs of a Hindu Taluqdar who become converted to the Mahomedan faith do not cease to be *Najib-ul-tarfain*. These words literally construed mean nothing more than of good family.

(1) *Haidar Ali v. Tassaduq Rasul Khan*, 17 I.A., 82; 18 Cal., 1; R. & J., 351.

on both sides and they intend that parents of the heir should be of the same rank. They cannot have the effect of repealing, so far as the Oudh Taluqdars are concerned, the provisions of Act XXI of 1850 (1). On a construction of the words *Ghair-kuf* and *Ghair-biradri* as used in a *Wajib-ul-arz*, it has been held that they have practically the same meaning; that previous inter-marriage was a rough and ready test of equality between families but not the only test thereof, and that recognition was the chief test of *biradri* for the purpose of a custom excluding a *Ghair-biradri* wife from succession. It has been further held, that a wife who is not *Ghair-kuf* to her husband must be treated as a *biradri* wife within the meaning of the *Wajib-ul-arz* (2). The above observations would, it is submitted, equally apply to the word "*Ahl-i-bradri*" as used in this section.

22. If any taluqdar or grantee whose name shall be inserted in the second, ^{Special rules of succession to intestate taluqdars and grantees.} third or fifth of the lists mentioned in section 8, or his heir or legatee, or if any taluqdar, grantee, heir or legatee whose name shall be inserted in the list referred to in section 31A, sub-section (3), or his heir or legatee, shall die intestate as to his estate, such estate shall descend as follows, namely:—

1. **Change in law.**—In view of the provisions of sub-section 4 of section 31A, the amendment made in the opening clause of the section was hardly necessary. This section will also govern the succession of certain transferees referred to in section 14 of the Act (3).

(1) *Babu Abul Qasim Khan v. Babu Hari Singh*, S. C., No. 171.

(2) *Hub Ali v. Wazir-un-nisa*, 28 All., 496; *Musammat Sarwari Begam v. Musammat Khatim-un-nisa and others*, 12 O. C., 111.

(3) *See* section 14 *supra*.

2. **Scope of the section.**—The section only applies to the succession to estates and not to all the properties of a Talukdar. But in case of Taluqdars mentioned in list II it may, in the absence of evidence to the contrary, be presumed that the same rule of succession which applies to estates applies to their other property also, that is to say, it will descend to a single heir as an impartible property (1). The single heir may be determined by the custom of family, as for instance by the law of Tanistry (2) or by the rules of the Hindu Law Section 22 of Act I of 1869 contains in itself a complete code of succession "*ab intestato*." It follows neither the Hindu nor the Mahomedan nor the English law, but borrowing something from each of them lays down a peculiar line of succession applicable to the estate of those Taluqdars and grantees dying intestate whose names are to be found in the second, third, or fifth of the lists prepared under section 8 of the Act (3).

(1) to the eldest son of such talu qdar or grantee, heir or legatee, and his male lineal descendants, subject to the same conditions and in the same manner as the estate was held by the deceased ;

The word "son" was in the Samarpara case (First Civil Appeal, No. 118 of 1900, decided on 11th April 1902) held, by a bench of the Court of the Judicial Commissioner of Oudh, to include a son adopted by a Hindu Taluqdar according to the rules of the Hindu Law, but the same bench differed on the point in the Mahewa case

(1) Isbri Singh v. Baldeo Singh, 11 L. A., 135; 10 Cal., 792; R. & J. 254.

(2) *Ibid.*

(3) Babu Abul Qasim v. Babu Hari Singh, S. C., 171.

(First Civil Appeal, No. 70 of 1902, decided on 26th March 1903).

(2) or if such eldest son of such taluqdar or grantee, heir or legatee, shall have died in his life-time, leaving male lineal descendants, then to the eldest and every other son of such eldest son successively, according to their respective seniorities and their respective male lineal descendants, subject as aforesaid ;

(3) or if such eldest son of such taluqdar or grantee, heir or legatee, shall have died in his father's life-time without leaving male lineal descendants, then to the second and every other son of the said taluqdar or grantee, heir or legatee, successively, according to their respective seniorities, and their respective male lineal descendants, subject as aforesaid ;

(4) or in default of such son or *his male lineal* descendants, then to such person as the said taluqdar or grantee, heir or legatee, shall have adopted, *and his male lineal descendants*, subject as aforesaid ;

Change in law.—The old clause 4 which ran as follows has been omitted :—

" (4), —or in default of such son or descendants, then to such son (if any) of a daughter of such Taluqdar or grantee, heir or legatee, as has been treated by him in all respects as his own son, and to the male lineal descendants of such son subject as aforesaid ; "

The reason for the omission is stated to be that "this clause which was inserted in the Act in order to

provide for the circumstances of one particular case has been the occasion of much expensive litigation and its retention appears to be no longer desirable" (1). This presumably refers to the well-known litigation concerning the Ajodhia or Mahdouna estate. The present clause 4 corresponds to old clause 5. The words "by a writing executed and attested in manner required in case of a will and registered" between the words "adopted" and "subject" which occurred in the old clause have been left out as the new section 29A now lays down the rules of a valid adoption.

(5) or in default of such adopted son, or his male lineal descendants, then to the eldest and every other brother of such taluqdar or grantee, heir or legatee, successively, according to their respective seniorities, and their respective male lineal descendants, *brothers of the whole blood and their descendants, being preferred to brothers of the half blood and to their descendants*, subject as aforesaid;

1. Change in law.—This clause corresponds to old clause 6. The word "brother" includes step-brother and hence under the old clause 6 the eldest step-brother was a preferential heir to a younger full brother (2). The amended clause now makes it clear that step-brothers cannot succeed in preference to full brothers.

(1) Notes on clauses referred to in the Statement of Objects and Reasons of the Bill.

(2) Balraj Kuar v. Jagatpal Singh, 31 I. A., 134; 26 All., 393; 7 O. C., 248; 8 C. W. N., 699.

2. **Meaning of clause 5.**—By the true construction of section 22, sub-section 5, brothers take in the same manner as sons are directed to take by the preceding sub-sections, and the descendants of a deceased elder brother are preferred as heirs to the younger surviving brother (1).

(6) or in default of any such brother, *or his male lineal descendants*, then to the widow of the deceased taluqdar or grantee, heir or legatee, *for her life-time only*; or if there be more widows than one, to the widow first married to such taluqdar or grantee, heir or legatee, *for her life-time only*;

This clause corresponds to old clause 7.

(7) and on the death of such widow, then to such son as the said widow shall, with consent in writing of her deceased husband, have adopted, *and his male lineal descendants*, subject as aforesaid;

Provided that after the expiration of six months from the commencement of this Act such consent shall be expressed by means of a registered instrument or by means of a will or codicil, executed and attested in the manner required by this Act.

Change in law.—This clause corresponds to old clause 8. The words “by a writing executed and attested in manner required in case of a will and registered” which occurred between the words “adopted” and “subject” in the old clause have been omitted as the matter is now separately dealt with in the new section 29A, which lays down the requisites of a valid adoption. The proviso is new and

(1) Haidar Ali v. Tassaduq Rasul Khan, 17 I. A., 82; 18 Cal., 1; R. & J., 351.

requires that the authority to adopt of which the registration was optional under the old law (1) shall also be registered.

(8) or on the death of such first married widow and in default of a son adopted by her with such consent as aforesaid, *and his male lineal descendants*, then to the other widow, if any, of such taluqdar or grantee, heir or legatee, next in order of marriage, for her life and on the death of such other widow, to a son adopted by her with such consent as aforesaid, and his male lineal descendants; or in default of such adopted son then to the other surviving widows *in the order of their respective marriages* for their respective lives, and on their respective deaths, to the sons so adopted by them respectively and to the male lineal descendants of such sons respectively, subject as aforesaid;

Change in law.—This clause corresponds to old clause 9. The words “in the order of their respective marriages” have been substituted for the words “according to their respective seniorities as widows,” as all the wives of a husband become widows at once on his death and there can therefore be no seniority in widowhood. The words “and in such manner” which occurred after the words “with such consent” in the old clause have been left out as section 29A now lays down the rule for valid adoption.

(9) *or in default of any such widow or any such adopted son or any such male lineal descendants,*

(1) *Bhasha Rabi Dat Singh v. Indar Kuar*, 16 I.A. 53; 16 Cal., 556; R. & J., 338.

then to the mother of the deceased Taluqdar or grantee, heir or legatee, for her life-time only;

EXPLANATION.—In this clause the word “mother” does not include a step-mother; and in the case where the deceased was an adopted son, it means that wife or widow of the father, who joined in or made the adoption, or, if the adoption was made by the father alone and there are at the time of the death of the deceased more widows than one, it means the one who was first married and, on her death, the other surviving widows in the order of their respective marriages in succession.

This clause is new.

(10) or in default of or on the death of such mother, then to the nearest male agnate according to the rule of lineal primogeniture, subject as aforesaid;

• • **Change in law.**—This clause is new and takes the place of the old clause 10 which ran as follows :—

“(10) or in default of any such widow or of any son so adopted by her, or of any such descendants, then to the male lineal descendants, not being *najib-ul-tarfain*, of such taluqdar or grantee, heir or legatee successively, according to their respective seniorities and their respective male lineal descendants, whether *najib-ul-tarfain* or not.”

(11) or in default of any such agnate then to such person as would have been entitled to succeed to the estate under the ordinary law to which persons of the religion and tribe of such taluqdar or grantee, heir or legatee, are subject :

Provided that, when there are more persons than one so entitled, the estate shall descend to a

single person according to the following rules, that is to say: -

- (i) where among such persons some are connected by blood relationship and some by reason of marriage, the blood relations shall exclude the relations by marriage;
- (ii) where among such persons some are related by the whole blood and some by the half blood, those related by the whole blood shall exclude those related by the half blood;
- (iii) where, subject to the provisions of rule (i) and (ii), among such persons some are related through males only and some through females, the persons related through males only shall exclude the other; and among the others those shall be preferred in whose relationship the steps from the deceased proceed furthest through males;
- (iv) where among such persons some stand in a nearer and some in a more remote relationship to the deceased, but both are equally qualified under the three preceding rules, those in the nearer degree shall exclude those in the more remote;
- (v) where such persons stand in equal degree of relationship to the deceased and are equally qualified under the four preced-

ing rules, the estate shall descend to the eldest male in the senior line; but if there be no male heir in that line, then to the eldest male in the next senior line in which there is a male heir; and if there be no male heir in any line, then to the eldest female in the senior line.

Nothing contained in the former part of this section shall be construed to limit the power of alienation conferred by section 11.

1. Change in law.—This proviso is new. An estate entered in list II and descending under the old clause 11 was held still subject to the provisions of the Act and descendible as an impartible estate (1) and the words ‘ordinary law’ were held to include family custom (2). It is apprehended, that under the old law the same rule would have been applicable to Taluqdars entered in list III. The Act, however, contained no rules for the determination of the single heir to whom the estate was to go under clause 11 as an impartible estate. In general, impartible estates descend by the rule of primogeniture but a family custom when established will determine the heir (3). For example where the rule of succession governing the family is by selection —“an able son without reference to seniority” such son will take, though not the eldest (4).

(1) *Dewan Ranbejay Bahadur Singh v. Rai Jagatpal Singh*; and *Besheshur Bakesh Singh v. Ran Bajai Bahadur Singh*, 17 I. A., 173; 18 Cal., 111; R. & J., 354; *Jagdish Bahadur v. Sheo Partab Singh*, 23 I. A., 100; 23 All., 369; 5 C. W. N., 602.

(2) *Narinder Bahadur Singh v. Achal Ram*, 20 I. A., 77, 79; 20 Cal., 349; *Partab Koer v. Rani Chandrapal Kuer*, 6 A. L. J., 767; 13 C. W. N., 1073; 31 All., 457.

(3) *Mayne*, Edn. 6th, 713, para. 541.

(4) *Ishri Singh v. Baldeo Singh*, 11 I. A., 135; 10 Cal., 792.

Impartible estates though descending to a single heir were not, however, to be considered as estates passing according to the rule of lineal primogeniture (1). If the heir according to lineal primogeniture is more remote in degree from the ancestor than other collaterals or other persons in the line of heirship, then the degree prevails over the line according to the classification under the Act, though if two collaterals or persons in the line of heirship are equal in degree, then as the property can go to one, recourse must be had to the seniority of line to find which that one is (2). Among the collaterals succeeding under this clause, according to the Hindu Law, the elder son of a wife married at a later date succeeds to an impartible estate in priority over the son later born of a senior wife and over the son later born of a wife first married (3). It will be noticed that all these cases relate to Taluqdars entered in list II. There is no reported case on the point relating to Taluqdars entered in list III. There was thus no settled law for determining the single heir under clause 11 though the estate being impartible must descend to one person only. The proviso is intended to remove the difficulty.

2. Succession to non-Taluqdari property.—So far as Taluqdars entered in list II are concerned, non-Taluqdari property will be presumed to descend to a single heir according to the custom of the family (4). As regards the Taluqdars entered in list III and grantees in list V no

(1) *Achal Ram v. Udi Partab Adit ya Dat Singh*, 11 I. A., 51; 10 Cal., 511; R. & J., 250.

(2) *Narindra Bahadur Singh v. Achal Ram*, 20 I. A., 77; 20 Cal., 649; R. & J., 374.

(3) *Jagdish Bahadur Singh v. Sheo Partab Singh*, 28 I. A., 100; 23 All., 369.

(4) *Thakur Ishri Singh v. Thakur Baldeo Singh*, 11 I. A., 135; 10 Cal., 732; R. & J., 254.

such presumption can arise and such property will descend according to their personal law or custom.

23. Except in the cases provided for by section 22, the succession to all property left by taluqdars and grantees, and their heirs and legatees, dying intestate, shall be regulated by the ordinary law to which members of the intestate's tribe and religion are subject.

" Ordinary law" includes custom (1).

VIII.—Maintenance.

24. When any taluqdar or grantee, or his heir or legatee, dies, leaving him surviving relatives as are hereinafter mentioned, the person for the time being in the possession of his estate or the rents and profits thereof shall be liable to pay to each of such relatives during his or her life, or for such other period as is hereinafter mentioned, by twelve equal monthly payments, an annuity in accordance with the custom of the country not exceeding such amount as is hereinafter mentioned: Provided that such relative was at the date of the death of the deceased living together with him: Provided also that such relative is and continues to be without any other adequate means of maintenance.

(1) Narindra Bahadur Singh v. Achal Ram, 20 I. A., 77, 79; Partab Kunwar v. Rani Chandarpal Kunwar, 6 A. L. J., 767; 13 C. W. N., 1073; 31 All., 457.

If any part of such estate shall have been transferred or bequeathed by the deceased, the person for the time being in possession of such part, or of the rents and profits thereof, shall be liable to pay proportionate parts of the said annuities during the continuance thereof respectively.

25. In the case of the grand-parents, parents, and senior widows of the deceased, the maximum amount of the annuity shall be as follows:—

Grand-parents, parents, and senior widows.

- (a) where the annual revenue payable to Government in respect of the estate is or exceeds 1,50,000 rupees—a sum not exceeding 6,000 rupees :
- (b) where such revenue is or exceeds 1,00,000 rupees, but is less than 1,50,000 rupees —a sum not exceeding 2,400 rupees :
- (c) where such revenue is or exceeds 50,000 rupees, but is less than 1,00,000 rupees —a sum not exceeding 1,200 rupees :
- (d) where such revenue is or exceeds 25,000 rupees, but is less than 50,000 rupees —a sum not exceeding 600 rupees :
- (e) where such revenue is or exceeds 15,000 rupees, but is less than 25,000 rupees —a sum not exceeding 360 rupees :
- (f) where such revenue is or exceeds 7,000 rupees, but is less than 15,000 rupees— a sum not exceeding 240 rupees : and

(g) where such revenue is less than 7,000 rupees—a sum not exceeding 180 rupees.

In the case of a junior widow of the deceased, the maximum amount of the annuity shall be one-half of the maximum amount to which a senior widow of the deceased would be entitled under the former part of this section.

Junior widows.

26. In the case of brothers and minor sons of the deceased, the maximum amount of the annuity shall be a sum not more than 1,200 rupees.

Brothers and minor sons.

In the case of nephews of the deceased, being fatherless minors, the maximum amount of the annuity shall be a sum not more than 600 rupees.

Nephews.

27. In the case of unmarried daughters of the deceased, widows of his sons and brothers, and his widows not of his ahl-i-bradri, the maximum amount of the annuity shall be a sum not more than 360 rupees.

Unmarried daughters, widows of sons and brothers and inferior widows.

28. Subject to the provisions hereinbefore contained, the said annuities shall continue—

Continuance of annuities.

(a) in the case of a minor son or nephew, till he ceases to be a minor ;

(b) in the case of a daughter or widow, till she voluntarily leaves the household of the heir or legatee of the deceased, or would, according to the custom of the country, cease to be entitled to maintenance; and

(c) in all other cases, till the annuitant dies.

This section has no retrospective effect and does not affect awards already made and decreed under section 33 (1).

IX.—Miscellaneous.

29. Every Muhammadan taluqdar, grantee, heir, or legatee, and every widow of a Muhammadan taluqdar or grantee, heir or legatee, with the consent in writing of her deceased husband, shall, for the purposes of this Act, have power to adopt a son whenever, if he or she were a Hindu, he or she might adopt a son.

1. **Change in law.**—The concluding sentence “such power shall be exercisable only by writing executed and attested in manner required by section 19 in case of a will and registered” of the old section 29 has been omitted as the new section 29A now provides for the formalities requisite for a valid adoption.

2. **Effects of adoption.**—How far the doctrine of the Hindu Law that adoption practically cuts off the adopted child from the family of his natural father and engrafts

(1) *Thakur Surat Singh v. Jawahir Singh*, S. C. No. 42.

him, as if were, into the family of his adoptive father or mother would apply to a Mahomedan or Christian, or even to a Hindu Taluqdar, is a question on which the Act is altogether silent. Will a Taluqdar's eldest son or brother who has been adopted by some other member of the family or by another Taluqdar succeed under the Act to his father's or brother's estate as the natural son or brother of the deceased, or will he cease to be the son or brother of the Taluqdar, and the estate will descend to his other heirs? Will the natural brother of the adopted son of a Taluqdar or of his widow succeed to the estate of such an adopted son as his own brother under Act I of 1869? The question of the effects of adoption was considered by a bench of two Judges of the Court of the Judicial Commissioner of Oudh in the Mahewa case (1) and the learned Judges differed on the point. The case went up on appeal before their Lordships of the Privy Council, but was decided on other grounds (2). Again, the section lays down that a Taluqdar or the widow of the Taluqdar with the consent in writing of her deceased husband "shall for the purposes of this Act have power to adopt a son whenever, if he or she were a Hindu, he or she might adopt a son." Under the Hindu Law a sonless Hindu may either himself adopt a son or permit his widow to do the same and such son takes the place of a naturally begotten son. Reading section 29 with section 22 of the Act under which a Taluqdar's brother succeeds in preference to his widow's adopted son, it is not easy to find out "the purposes of the Act" for which the widow of a Taluqdar may adopt a son with the consent of her deceased husband who dies leaving a brother but no son, grandson, or great-grandson. Will such an adopted son "for the purposes of this Act" stand in the relation of nephew to a Taluqdar's brother

(1) F. C. A. No. 70 of 1902, decided on 26th March 1903.

(2) *Thakur Sheo Singh v. Rani Raghubans Koer*, 8 O. C., 317; 32 I. A., 203; 27 All., 634; 9 C. W. N., 1009.

and succeed to his estate, were he to die intestate without leaving any male issue or brother?

29A. *No adoption made by a taluqdar or grantee, or by his heir or legatee, or by the widow of any such taluqdar or grantee, heir or legatee, shall be deemed to be valid, unless, in addition to the requirements, if any, imposed by the personal law of the adopter, the fact of such adoption has been declared by the adopter, in a writing executed and attested in manner required in case of a will and registered.*

This means a will executed and attested according to section 50 of the Indian Succession Act which by section 19 of the Act is applicable to all wills made under the provisions of the Act.

30. Any taluqdar or grantee whose name has been entered in the third or fifth of the lists mentioned in section 8, or his heir or legatee, may at any time hereafter, present to the *Local Government* a declaration in writing, executed and registered in the manner required by this Act for the execution and registration of an instrument of gift, that he is desirous that the succession to his estate shall, in case of his intestacy, cease to be regulated in the manner described in section 22, and that it shall in future be regulated by the ordinary law to which members of his tribe and religion are subject.

On receiving such declaration, the said *Local Government* shall cause to be inserted the name of such taluqdar or grantee, heir or legatee, in

the fourth or sixth (as the case may be) of the lists mentioned in section 8, and shall cause a note thereof to be made in the proper place in the third or fifth (as the case may be) of the said lists, and succession to such estate shall thenceforward, in case of intestacy, be regulated in the manner provided by section 23.

1. Change in law.—The words “Local Government” have been substituted for “the Chief Commissioner of Oudh.” Originally the Province of Oudh formed a separate Administration with the Chief Commissioner of Oudh at its head. Later on the Province was placed under the same Administration as the North-Western Provinces (now Province of Agra) and the Head of the Administration was known by the name of the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh. In 1902 the name of the two provinces was changed into the “United Provinces of Agra and Oudh” and the United Provinces were placed under the Administration of a Lieutenant-Governor (1). The words “Chief Commissioner of Oudh” have, therefore, been substituted by the words “Local Government.” Note that this section is referred to in section 9 of the Act, though it makes no mention of Taluqdars entered in lists I and II.

2. For provisions relating to execution and registration of an instrument of gift see S. 13A, *ante*. This would seem not to include the requirements of registration within a given period, that being a matter of time and not manner.

31. Any taluqdar or grantee, heir or legatee, may, at any time hereafter, present to the *Local Government* a declaration in writing, executed

Reverter to ordinary law of succession.

(1) Act VII of 1902; Proclamation (Public), No. 996, dated 22nd March 1902; Gazette of India, 1902, Part I, p. 228.

and registered in the manner required by this Act for the execution and registration of instruments of gift, that he is desirous that his estate should in future be held subject to the ordinary law of succession to which members of his tribe and religion are subject.

On receiving such declaration, the *Local Government* shall cause a note thereof to be made in the proper places in each of the lists mentioned in section 8 in which the name of such taluqdar or grantee, heir or legatee, has been entered, and thenceforward none of the provisions of this Act shall apply to such estate, which shall thenceforward be held subject in all respects to the ordinary law of succession to which members of his tribe and religion are subject.

1. Change in law.—For the substitution of the words “Local Government” for the “Chief Commissioner of Oudh,” see note 1 to section 30 of the Act, *supra*.

2. Meaning of the section.—Sections 30 and 31 are not happily worded and seem to overlap each other. Their meaning, however, seems to be that while section 30 relates to change in the law of succession only, section 31 empowers a Taluqdar to take his estate out of the provisions of the Act.

3. As to manner of execution and registration of declaration.—see note 2 to S. 30, *ante*.

31A. (1) *Any taluqdar whose name has been inserted in the fourth of the lists prepared under section 8 or any grantee whose name has been inserted both in the first and in the sixth of the said lists, or the heir or legatee of such taluqdar or grantee may declare*

Alteration of rules of intestate succession in cases of taluqdars named in list 4 and grantees named in lists 1 and 6.

that the succession to his estate shall, in case of his intestacy, cease to be regulated in the manner described in section 23 and that it shall in future be regulated in the manner described in section 22.

(2) Every such declaration shall be in writing, signed by the declarant attested by two or more witnesses and registered, and shall be presented to the Local Government.

(3) On receiving such declaration the Local Government shall cause the name of such taluqdar, grantee, heir or legatee to be inserted in a list which shall, as occasion may arise, be published in the Gazette of India, and shall cause a note thereof to be made in the proper place in the fourth or sixth (as the case may be) of the said lists.

(4) Thenceforward the succession to the estate shall, in the case of intestacy, be regulated in the manner provided by section 22.

(5) The Courts shall take judicial notice of such list and shall regard it as conclusive evidence that such declaration has been made, registered and presented as above to the Local Government and that the Local Government has made the note referred to in sub-section (3).

32. Nothing hereinbefore contained shall affect

Saving of rights of any right which the creditors of
creditors. any person making a transfer,
bequest or declaration under the provisions of this
Act would have possessed as against the property

comprised in such transfer, bequest or declaration, if this Act had not been passed.

32A. (1) *Any taluqdar or grantee or his heir or legatee may, by a registered instrument bearing a non-judicial stamp of fifteen rupees signed by him and attested by two or more witnesses, declare that the immovable property situated in the United Provinces in which he has a separate, permanent, heritable and transferable right, and which is specified in the instrument, is a part of his estate, for the purposes of this Act.*

Power to declare property subject to the Act.

Such declaration shall take effect from the date of the registration thereof.

(2) *It shall be the duty of the registering officer to furnish the Collector of every district in which any portion of the property is situated with a properly authenticated copy of the declaration and on receipt of such copy the Collector shall cause a note to be made in the record of rights relating to immovable property specified and shall also cause a copy of the declaration to be published in the Gazette in English and in the vernacular.*

33. And whereas bodies of taluqdars have in several cases made awards respecting the provision to be made for certain relatives of taluqdars, and it is expedient to render such awards legally enforceable, it is hereby further enacted that every such award shall, if approved by the Financial

Awards as to compensation and maintenance.

Commissioner of Oudh, and filed in his Court within six months after the passing of this Act, be enforceable as if a Court of competent jurisdiction had passed judgment according to the award, and a decree had followed upon such judgment.

1. Rules regulating the Awards.—The awards were made according to certain Rules of Practice framed by the corporate body of Taluqdars known by the name of “The British Indian Association.” A complete translation in English of these Rules will be found in 7 O. C., pp. 220-221 but the translation, as pointed out in 32 All. at p 97, is not quite accurate in some places and the original Rules in Urdu are therefore for facility of reference reproduced *in extenso* in Appendix I. These rules do not operate against awards made previous to the passing of the Act (1).

2. Construction of Awards and Rules.—The dictum of Mr. Capper in Select Case No. 42 to the effect that unless the contrary is expressly stated in the award whether the maintenance consisted of land originally or of cash now converted into land on an assumed total rental the then first incumbent should hold rent-free for life, the next generation should pay 25 per cent. or half the ordinary rent while the third generation 50 per cent. or the ordinary rent is not an authority for the proposition that all awards made by the Association should be read subject to the rules of Association (2). • When the purpose of the grant is the *guzara* or the maintenance of the grantee, it is immaterial whether the words “in perpetuity” or words to the effect appear and the grant must be taken to be for life only (3) The expression “50 per cent” in rule 1 of the Rules of Practice framed by the British Indian Association, dated the

(1) Thakur Surat Singh v. Thakur Jawahir Singh, S. C. No. 42.

(2) Ganga Baksh v. Dalip Singh, 7 O. C., 218, 225-226.

(3) Raja Rameshwar Baksh Singh v. Baba Bhagwan Baksh Singh, 7 O. C., 90.

25th September 1867, regarding the provision for maintenance which is as follows:—"This class will remain in possession of what they actually had at annexation rent-free during their life-time but subject to payment in the second generation of 25 per cent. to the Talukdar and in the third 50 per cent. and will not have transferable rights," means 50 per cent. of a bulk on the basis of which Government revenue for the time being is assessed, *viz.*, the assumed rental which being based on a comparison of the actual receipts for several years is taken to represent the fair average of the Talukdar's annual receipts (1).

3. Committee of Talukdars not a Court.—The Committee of Talukdars referred to in section 33 was not in any sense a court, much less a court with such jurisdiction as is described in section 13 of the Code of Civil Procedure and the affirmation by the Financial Commissioner of the award of the Committee of Talukdars rejecting a claim for maintenance did not give validity to the decision of the Committee given in the same matter on a question of adoption which it had no jurisdiction to decide (2).

4. Awards made and decreed under this section are not affected by section 28 of the Act which is not retrospective(3). An award made by the Financial Commissioner in his private capacity is not an award made by the British Indian Association or subject to the rules of that Association (4). An award not having been filed within six months after the passing of the Act, and thus not coming within section 33 of the Act is not on that ground invalid. It is obligatory upon both parties to the submission and upon those whose interests they represented (5).

(1) Thakur Nawab Ali Khan *v.* Wahid Ali, 14 C. W. N., 237; 32 All., 92.

(2) Har Shanker Partab Singh *v.* Lal Raghuraj Singh, 29 All., 514; 10 O. C., 343 P. C.

(3) Thakur Surat Singh *v.* Jawahir Singh, S. C. No. 42.

(4) Ganga Baksh *v.* Dalip Singh, 7 O. C., 218.

(5) Bhajya Ardlawan Singh *v.* Udaipertab Singh, 23 I. A., 64; 23

SCHEDULES.

FIRST SCHEDULE.

(See section 3.)

I.

From C. BEADON, Esq., Secretary to the Government of India, Foreign Department, to C. J. WINGFIELD, Esq., Chief Commissioner of Oudh—(No. 6268, dated 19th October 1859).

I AM directed by the Governor-General in Council to acknowledge the receipt of your Secretary's letters noted in the margin, relative to the taluqdari settlement of Qudh.

No. 1091, dated the 4th June.
No. 1377, dated the 15th July.

2. His Excellency in Council, agreeing with you as to the expediency of removing all doubts as to the intention of the Government to maintain the taluqdars in possession of the taluqas for which they have been permitted to engage, is pleased to declare that every taluqdar with whom a summary settlement has been made since the re-occupation of the Province, has thereby acquired a permanent hereditary and transferable proprietary right, namely, in the taluqa for which he has engaged, including the perpetual privilege of engaging with the Government for the revenue of the taluqa.

3. This right is, however, conceded, subject to any measure which the Government may think

proper to take for the purpose of protecting the inferior zamindars and village-occupants from extortion, and of upholding their rights in the soil in subordination to the taluqdars.

4. The Governor-General in Council desires that you will have ready, by His Excellency's arrival at Lakhnau, a list of the taluqdars upon whom a permanent proprietary right has now been conferred; and that you will prepare sanads to be issued to these taluqdars at that time. The sanads will be given by, and will run in the name of, the Chief Commissioner, acting under the authority of the Governor-General.

5. I am directed to add that, as regards zamindars and others, not being taluqdars, with whom a summary settlement has been made, the orders conveyed in the Limitation Circular No. 31 of the 28th of January 1859, must not be strictly observed. Opportunity must be allowed at the next settlement to all disappointed claimants to bring forward their claims, and all such claims must be heard and disposed of in the usual manner.

II.

From C. BEADON, Esq., Secretary to the Government of India, Foreign Department, with the Governor-General, to Chief Commissioner, Oudh—(No. 23, dated 19th October 1859).

I AM directed by His Excellency the Governor-General to acknowledge the receipt of your demi-

official letter of the 15th instant, enclosing a form of sanad to be given to the taluqdars of Oudh, granting them a full and permanent proprietary right in the taluqas for which they have severally been permitted to engage at the summary settlement.

2. This form of sanad is generally approved, and a revised copy, with some few alterations, is herewith enclosed for adoption and for careful translation into the Hindustani language, in which the sanads will be prepared.

3. The sanads declare that while, on the one hand, the Government has conferred on the taluqdars and on their heirs for ever the full proprietary right in their respective estates, subject only to the payment of the annual revenue that may be imposed from time to time, and to certain conditions of loyalty and good service, on the other hand, all persons holding an interest in the land under the taluqdars will be secured in the possession of the subordinate rights, which they have heretofore enjoyed.

4. The meaning of this is that, when a regular settlement of the Province is made, wherever it is found that zamindars or other persons have held an interest in the soil intermediate between the raiyat and the taluqdar, the amount or proportion payable by the intermediate holder to the taluqdar, and the net *jama* finally payable by the taluqdar to the Government, will be fixed and recorded after careful and detailed survey and inquiry into each case, and

will remain unchanged during the currency of the settlement, the taluqdar being, of course, free to improve his income and the value of his property by the reclamation of waste-lands (unless in cases where usage has given the liberty of reclamation to the zamindar), and by other measures of which he will receive the full benefit at the end of the settlement. Where leases (*pattas*) are given to the subordinate zamindars, they will be given by the taluqdar, not by the Government.

5 This being the position in which the taluqdars will be placed, they cannot, with any show of reason, complain if the Government takes effectual steps to re-establish and maintain in subordination to them the former rights, as those existed in 1855, of other persons whose connection with the soil is in many cases more intimate and more ancient than theirs; and it is obvious that the only effectual protection, which the Government can extend to these inferior holders, is to define and record their rights, and to limit the demand of the taluqdar as against such person during the currency of the settlement to the amount fixed by the Government as the basis of its own revenue demand.

6. What the duration of the settlement shall be, and what proportion of the rent shall be allowed in each case to zamindars and taluqdars, are questions to be determined at the time of settlement.

The Governor-General agrees in your observation that it is a bad principle to create two classes of recognized proprietors in one estate, and it is likely to lead to the alienation of a larger proportion of the land-revenue than if there were only one such class. But whilst the taluqdari tenure, notwithstanding this drawback, is about to be recognized and re-established, because it is consonant with the feelings and traditions of the whole people of Oudh, the zamindari tenure intermediate between the tenures of the taluqdar and the raiyat is not a new creation, and it is a tenure which, in the opinion of the Governor-General, must be protected.

SECOND SCHEDULE.

(See section 4.)

- (1) Dig-Bijay Singh, Raja of Balrampur.
- (2) Rao Hardo Bakhsh Singh, of Katiari.
- (3) Kashi Parshad, Taluqdar of Sissendi.
- (4) Jhabba Singh, Zamindar of Goral Khera.
- (5) Chandan Lal, Zamindar of Moraon (Baiswara).

THE
OUDH ESTATES (AMEND-
MENT) ACT, 1885.

CONTENTS.

SECTION		PAGE
1.	Amendment of definition of 'registered' in section 2 of Act I of 1869	... 347
2.	Saving of certain wills	... 348

THE
OUDH ESTATES (AMEND-
MENT) ACT, 1885.*

ACT No. X OF 1885.

*(Received the assent of the Governor-General
on the 12th June 1885.)*

An Act to amend the Oudh Estates Act, 1869.

WHEREAS it is expedient to amend the Oudh Estates Act, 1869; it is hereby enacted as follows:—

1. Subject to the saving in section 2 of this Act, for the definition of “registered” in section 2 of the said Act, there shall be deemed to have been substituted, from the date of the passing of the said Act, the following definition, namely,

Amendment of definition of “registered” in section 2 of Act I of 1869.

‘Registered’ means—

“(a) In the case of a Will, registered according to the law for the time being in force relating to the Registration of Assurances, or deposited with a Registrar according to the law for the time being in force relating to the deposit of Wills; and

* No special title has been given to this Act by the Legislature. The above title has been assumed for facility of reference.

“(b) In the case of any other instrument, registered according to the law for the time being in force relating to the Registration of Assurances.”

The Oudh Estates Act (Act I of 1869) defined the word “registered” as follows:—

“Registered means registered according to the provisions of the rules relating to the registration of assurances for the time being in force in Oudh.”

A will deposited with the registrar was held by their Lordships of the Privy Council not to have been registered under the provisions of the Act (1) and it was to recognize the deposit of wills with the registrar as equivalent to registration that the amending Act X of 1885 was passed.

The first Registration Act in force in Oudh was Act VIII of 1871. Before this, Registration in Oudh was carried on under the rules sanctioned by Government in No. 5702, dated the 6th September 1859 (2).

2. Nothing in section 1 shall affect any Will—(a) declared by a judicial decision pronounced before the passing of this Act to be invalid on the ground that it was not registered in accordance with the provisions of the said Act; or

(b) of which the validity is at the time of the passing of this Act being questioned on that ground in a suit commenced before the twenty-third day of October 1884.

The 23rd day of October 1884 is the date of the introduction of the Bill into the Legislative Council.

(1) Haji Abdul Razzak v. Munshi Amir Haider, 11 I. A., 121; 10 Cal., 976; R. & J., 260.

(2) Paper 1, § 4; Paper No. 3, p. 1, § 2.

THE
OUDH ESTATES (AMEND-
MENT) ACT, 1910.

CONTENTS.

SECTION	PAGE
1. Short title	354
2. Amendment of section 2, Act I, 1869 ...	354
3. Amendment of section 3, Act I, 1869 ...	358
4. Amendment of section 11, Act I, 1869 ...	359
5. Substitution of new section for section 13, Act I, 1869	360
6. Insertion of new section after section 13, Act I, 1869	361
7. Substitution of new section for section 14, Act I, 1869	364
8. Substitution of new section for section 15, Act I, 1869	365
9. Substitution of new section for section 16, Act I, 1869	366
10. Omission of section 17, Act I, 1869 ...	367
11. Substitution of new section for section 18, Act I, 1869	367
12. Amendment of section 19, Act I, 1869 ...	368
13. Amendment of section 12, Act I, 1869 ...	368
14. Substitution of new section for section 22, Act I, 1869	369
15. Amendment of section 29, Act I, 1869 ...	376
16. Insertion of new section after section 29, Act I, 1869	376
17. Amendment of sections 30 and 31, Act I, 1869	377
18. Insertion of new section after section 31, Act I, 1869	377
19. Amendment of section 32, Act I, 1869 ...	379
20. Insertion of new section after section 32, Act I, 1869	379
21. Saving clause	380

THE
OUDH ESTATES (AMEND-
MENT) ACT, 1910.

UNITED PROVINCES ACT No. III OF 1910.

(Passed by the Lieutenant-Governor of the
United Provinces of Agra and Oudh in
Council on the 10th November 1909.)

*(Received the assent of His Excellency the Governor-
General on the 21st February 1910.)*

An Act further to amend the Oudh Estates Act, 1869.

WHEREAS according to the construction which has been placed upon certain provisions of the Oudh Estates Act, 1869, some estates or portions of estates of *taluqdars* and grantees whose names are entered in the lists prepared under section 8 of the said Act, which were *intended to be or were* formerly subject to the said Act, are not, or have ceased to be so subject, and whereas it is expedient that such estates and portions of estates should, as far as possible, be made subject to the said Act; and whereas doubts have arisen regarding other provisions of the said Act and it is expedient to remove such doubts; and whereas it is further expedient to

make other provisions with respect to the estates and other immoveable property of *talukdars* and grantees and their heirs and legatees ; It is hereby enacted as follows :—

1. Preamble and Statement of Objects and Reasons of the Bill as originally introduced.—The preamble of the Bill as introduced into the Council was as follows :—

“Whereas according to the construction which has been placed upon certain provisions of the Oudh Estates Act, 1859, some estates or portions of estates of talukdars and grantees whose names are entered in the first and fifth of the lists prepared under section 8 of the said Act, and which were formerly subject thereto, have ceased to be so subject, and whereas it is expedient that such estates and portions of estates should, as far as possible, be again made subject to the said Act ; and whereas doubts have arisen regarding other provisions of the said Act and it is expedient to remove such doubts ; and whereas it is further expedient to make other provisions with respect to the estates and other immoveable property of talukdars and grantees and their heirs and legatees ; It is hereby enacted as follows ” (1) :—

And the following Statement of Objects and Reasons was appended to the Bill :—

“The main object of the present Bill is to amend the Oudh Estates Act, 1869 (Act I of 1869), so as to remove the difficulties which have been experienced by the courts in the interpretation of its provisions. The Act has given rise to much litigation and the uncertainty of its language has created much embarrassment. Their Lordships of the Privy Council have described some of its provisions as being ‘not happily expressed’ (2), while other provisions have been declared to be ‘most difficult of construction’ (3).

“The result has been that following the course of Judicial interpretation, the Act has in several important respects ceased to operate as intended. In this connection it is sufficient to refer to the judgment of the Judicial Committee of the Privy Council reported in the Law Reports, 31 Indian Appeals, at page 132 (Balraj Kunwar v. Jagatpal Singh). The effect of the ruling in that case has been to render the Act inapplicable to many estates in Oudh and to deprive

(1) U. P. Gaz., 1909, Part VII, p. 108.

(2) See *Maharajah Partab Narain v. Maharani Subhao Koer*, 3 Cal., 626, 631.

(3) See *Indar Kuar v. Jaipal Kunwar*, 15 Cal., 725, 750.

talukdars to a great extent of the power of bequest conferred upon them by section 11 of the Act. Some of the amendments which it is now proposed to introduce into the Act are designed to restore the view of the law which had been accepted previous to the ruling quoted above and to bring back within the Act estates which have passed outside its operation. Another important object of the Bill is to remove an inconvenient anomaly which now exists in connection with the rules relating to the disposal and devolution of immoveable property in the possession of talukdars. At the present time many of the talukdars and grantees are owners of immoveable property which is not within the meaning of the term 'estate' as defined in the Act. Property of this description is subject to all the limitations prescribed by the personal law of the owner: his powers of disposal over it are restricted and in the course of descent the property is dissipated by partition among numerous heirs. In most instances such property has been acquired out of the profits of property which is strictly 'estate' and is in the nature of an accretion to such 'estate.' It seems proper, therefore, that some provision should be made to enable property of this nature to be subjected to the law which governs the property to which it has accreted. It is proposed accordingly to give talukdars and grantees power to declare immoveable property of this kind to be a portion of their estate for the purposes of the Act. The Bill proposes further alterations of importance in the rules relating to succession, proof of adoption, transfer of property and other matters which it is unnecessary to refer to here in detail" (1).

2. Preamble as amended by the Select Committee.—

The changes made in the preamble of the Act as passed by the Council are thus explained by the Select Committee:—

"(1) 'Talukdar' has been altered to 'taluqdar' in order to conform with the spelling of that term in Act I of 1869.

"(2) The words 'first and fifth of the' have been omitted. Some estates in lists 2 and 3 of the lists prepared under section 8 have also ceased to be subject to the provisions of the Act.

"(3) It has been pointed out that there are some estates in respect of which it is doubtful whether they ever were within the Act. To provide for such cases it is necessary to alter the language of the preamble so as to make it clear that the Bill is also to apply to estates of this description. With this object the words 'intended to be or were' have been inserted in the.....the preamble between the words 'were' and 'formerly' and the words 'are not or' have been inserted.....before the words 'have ceased.' The word 'again' has in consequence been omitted in line 8" (2).

(1) U. P. Gaz., 1909, Part VII, p. 115.

(2) U. P. Gaz., 1909, Part VII, p. 129.

1. This Act may be cited as the Oudh Estates
 Short title. (Amendment) Act, 1910.

The Bill was introduced into the Council of the Lieutenant-Governor of the United Provinces of Agra and Oudh for the purpose of making Laws and Regulations on the 3rd April 1909 and passed into law on the 10th November 1909 (1).

2. (1) In section 2 of the Oudh Estates
 Amendment of sec- Act, 1869, for the definitions of
 tion 2, Act I. 1869. "transfer," "signed," "grantee,"
 "estate," "heir," and "legatee," the following
 definitions shall be substituted, namely:—

“ ‘Transfer,’ with its grammatical variations
 and cognate expressions, means
 Transfer. to make an alienation *inter*
vivos, whether before or after the commencement
 of this Act ;”

“ ‘Sign,’ with its grammatical variations and
 cognate expressions, shall, with
 Sign. reference to a person who is
 unable to write his name, include ‘mark’ with its
 grammatical variations and cognate expressions ;”

“ ‘Grantee’ means any person whose name is
 entered in the fifth or sixth
 Grantee. of the lists mentioned in sec-
 tion 8 ;”

(1) U. P. Gazette, 1909, Part VII, pp. 107, 238.

“ ‘Estate’ means—

(a) the *taluqa* or immoveable property acquired
 Estate. or by a *taluqdar* or grantee in the
 manner mentioned in section 3,
 section 4 or section 5, and

(b) the other immoveable property situated
 in the *United Provinces*, in which a *taluqdar* or
 grantee or his heir, or legatee or *ā transferee*
referred to in section 14 has a separate, permanent,
 heritable and transferable right, and in respect of
 which he has made a declaration in accordance with
 the provisions of section 32A of this Act ;”

“ ‘Heir’ means a person who has inherited
 Heir. or inherits otherwise than as a
 widow or mother, an estate or
 portion of an estate whether before or after the
 commencement of this Act ;”

“ ‘Legatee’ means a person to whom there
 Legatee. has been or is bequeathed an
 estate or portion of an estate
 whether before or after the commencement of
 this Act.”

“ *EXPLANATION.*—The words ‘heir’ and ‘legatee’ used with reference to a *taluqdar* or grantee or a person whose name has been inserted in the list referred to in section 31A, sub-section (3), are not restricted to the immediate heirs and legatees of such *taluqdar*, grantee or person.”

(2) In section 2 of the said Act, after the definition of the word "sign," the following definition shall be inserted, namely:—

“ ‘Attest,’ with the grammatical variations,
 when used with reference to any
Attest. instrument other than a will,
 means to sign such instrument as a witness in the
 presence of the executant after having seen the
 executant sign the same or after having received
 from the executant a personal acknowledgment of
 his signature to the same ;

*Provided that, where attestation by more than
 one witness is required, it shall not be necessary that
 more than one of such witnesses should be present at
 the same time :*

*Provided also that no particular form of attes-
 tation shall be required.”*

Regarding this section (clause 2 of the Bill) the Select Committee in their Report say as follows:—

“ (1) Definition of ‘estate’—

According to the wording of clause (2) of this definition in the Bill as introduced, the immoveable property (other than taluqdari property, in respect of which a declaration can be made under section 34 (now section 32A) must be situated in Oudh. It has been pointed out in many of the opinions received that many taluqdars possess immoveable property in different parts of the Agra Province—especially houses and temples in Benares, Allahabad, Muttra and Naini Tal—which are essentially appurtenances of the main estates. The Oudh courts have held that all the property of persons whose names are entered in list 2 descends according to the same rule, and in this respect no distinction appears to have been drawn between the case of property in Oudh and property outside Oudh. In one case (that of Babu Udres Singh of Dhaurua) it was ruled that property situated in the Jaunpur district was subject to the same rule

of descent as other property of the same owner situated in Oudh on the ground that section 22 of the Oudh Estates Act embodied a family custom. With a view to removing the anomaly of property such as is referred to above being governed by a rule of succession different from that which applies to property in Oudh, it has been suggested that provision should be made to enable a taluqdar to make a declaration under section 34 (now section 32A) in respect of any immoveable property (other than taluqdari property) situated in the United Provinces. A majority of the Committee are in favour of this proposal, holding that it would be inconsistent with the rulings of the courts referred to above to limit the power to declare to property situated in Oudh.

The view of the minority of the Committee is that as Act I of 1869 is an Act relating to Oudh only, and as the institution of taluqdari estates is one peculiar to that province and maintained there for special reasons, the concession by which a declaration adding to the 'estate' is to be permitted is in the nature of a privilege granted to proprietors whose taluqas or grants are situated in Oudh and should not be extended to property situated outside the limits of that province in territory to which Act I of 1869 does not apply. Moreover as it appears that in practice the particular properties in Agra referred to by the majority of the Committee have always been treated by the courts as subject to the same rule of succession as the other property of the same owners situated in Oudh, it seems unnecessary to extend the power of declaring in the manner suggested. Again in the letter of the United Provinces Government to the Government of India (No. 525 of 1908, dated the 6th July 1908, with which the Bill, as originally drafted, was submitted to the Government of India, the proposal to extend the definition of 'estate' was supported on the ground that the principle of treating non-taluqdari property as 'estate' had already been accepted by the Secretary of State in connection with the provisions of section 7 of the Oudh Settled Estates Act, 1900 (U. P. Act II of 1900). Section 7 of the Oudh Settled Estates Act, however, applies only to property situated in Oudh, and it cannot therefore be said that the principle above referred to has been recognized with respect to property outside that province. It seems doubtful, in consequence, if it is competent to the Select Committee to enlarge the scope of the term 'estate' in the manner suggested. The minority, therefore, would retain the words 'in Oudh' which appear in the Bill as introduced, but, in deference to the opinion of the majority, the words 'United Provinces' have been substituted for them in the Bill as amended.

(2) A further alteration has been made in clause (2) of the definition of 'estate' to provide for the case of a transferee under section 14. Such transferees are on the same footing as taluqdars and grantees with respect to the property obtained by transfer under the circumstances set out in section 14.

(3) In some of the opinions received it has been suggested that the term 'estate' should apply to all non-taluqdari property in respect of which a declaration has not been made, it being left to the proprietor to declare what property should not be treated as 'estate.' The Committee are of opinion that such property should not become 'estate' merely by force of the Act and that the proper course is to leave it to the parties interested to have such property treated as 'estate' if they so desire.

(4) We have altered the definition of the word 'heir' in consequence of the provision in new section 22, clause (9), (clause 14 of the Bill as now amended) by which the mother is given a place in the line of succession with a life estate only. Her position will thus be analogous to that of the widow and it is therefore necessary to provide that, like the widow, she is not to be deemed an 'heir' for the purposes of the Act. This amendment will not operate retrospectively.

(5) Definition of 'legatee' (explanation. The words 'section 30, sub-section (4), clause b,' have been altered to 'section 31A; sub-section (3)' in consequence of another amendment to be noticed hereafter. The words 'grantee or person' have been substituted for 'grantee' in the last line to make the explanation complete.

(6) In the Bill as amended the Committee have inserted a definition of the term 'attest' in its application to instruments other than wills. Various interpretations of the term have been given by the different High Courts in India and it is considered desirable that no room should be left for doubt in the matter. The definition has been adopted from section 50, Act X of 1865, the provisions of which already relate to wills made by taluqdars (*cf.* section 19, Act I of 1869) (1).

3. In the last clause of section 3 of the said Act, between the words "conditions" and "contained," the words "other than those relating to succession" shall be inserted.

"And at the end of that section the following explanation shall be added:—

"EXPLANATION:—Notwithstanding anything contained in the Crown Grants Act, XV of 1895, the

(1) U. P. Gaz., 1909, Part VII, pp. 129 and 130.

conditions of the sanad relating to succession, in so far as they are inconsistent with the provisions of this Act, shall not apply to the estate.

See note to section 4 infra.

4. In the first clause of section 11 of the said Act, between the words "conditions" and "under," the words "other than those relating to succession" shall be inserted.

Amendment of section 11, Act I, 1869.

The Select Committee's report as to sections 3 and 4 (clauses 3 and 4 of the Bill) runs thus :—

"The Committee consider it advisable to suggest the amendment of sections 3 and 11 of the Act in the manner proposed in clauses 3 and 4 of the Bill as amended. In the opinion of the Committee succession to the estate affected by the Act should be regulated exclusively by the provisions of the Act, and not by the terms of the *sanad* read alone or in connection with the provisions of the Crown Grants Act, 1895 (XV of 1895) (*cf. Thakur Sheo Singh v. Rani Raghubans Kunwar, &c.*, L. R., I.A., Vol XXXII, page 203). It is proposed, accordingly, to make it clear that the term 'conditions' in sections 3 and 11 of the Act does not include 'conditions' relating to succession" (1).

Clause 2 of section 3 was added on the day the Bill passed into law. The Hon'ble Mr. Hose in moving that the above be added to clause 3 said :—

"The amendment which I have to propose in clause 3 of the Bill is put forward in consequence of weighty legal opinions, received informally, that the clause as it stands does not go far enough to effect the object aimed at in amending section 3 of the Act. It is intended simply to make it quite clear what rule of succession it is desired to establish, namely, the rule provided in the Act. There is no question of principle involved in the amendment" (2).

(1) U. P. Gaz., 1909, Part VII, pp. 130-131.

(2) U. P. Gaz., 1909, Part VII, p. 232.

5. For section 13 of the said Act the following section shall be substituted, namely:—

Substitution of new section for section 13. Act I, 1869.

“13. (1) No taluqdar or grantee, and no heir or legatee of a taluqdar or grantee, and no transferee referred to in section 14, and no heir or legatee of such transferee, shall have power to give his estate, or any portion thereof, or any interest therein—

Procedure relating to transfers by gift.

(a) to any person who would have succeeded to such estate, portion or interest under the provisions of this Act applicable to such estate, had the donor died intestate as to his estate at the time when the gift took effect,

except by a registered instrument, signed by the donor and attested by two or more witnesses;

(b) to any person other than a person mentioned in clause (a),

except by an instrument signed by the donor and attested by two or more witnesses not less than three months before his death and presented for registration within one month from the date of its execution and registered;

(2) No gift made under sub-section (1) shall be valid unless followed within six months from the date of execution of the instrument of gift, by delivery by the donor, or his representative in interest, of possession of the property comprised therein.

See note to section 6 *infra*.

6. After section 13 of the said Act the following
Insertion of new section after section
13, Act I, 1869.

“13A. No taluqdar or grantee, and no heir or
Procedure relating to bequests. legatee of a taluqdar or grantee,
and no transferee referred to in
section 14, and no heir or legatee of such transferee,
shall have power to bequeath his estate, or any portion
thereof, or any interest therein—

(1) (a) to a person who would have succeeded to
such estate, portion or interest under the provisions of
this Act applicable to such estate, had the person so
bequeathing died intestate as to his estate at the time
when the bequest took effect,

(b) to his daughter,

(c) to a son of his daughter, or

(d) to a younger son,

except by a will duly executed and attested ;

(2) to a person who might, in the absence of other
heirs, have succeeded to such estate, portion or interest
under the provisions of this Act applicable to such
estate, had the person so bequeathing died intestate, as
to his estate at the time when the bequest took effect,
except by a will duly executed and attested not less
than three months before the death of the testator, and
presented for registration within one month from the
date of its execution and registered ;

(3) *to any person other than a person mentioned in clauses (1) and (2),*

except by a will duly executed and attested not less than three months before the death of the testator and registered according to the law for the time being in force relating to the registration of assurances, but presented for such registration within one month from the date of its execution."

The Select Committee's report on sections 5 and 6 (clauses 5 and 6 of the Bill) is as follows:—

"(1) The language of clauses 3 and 4 of the Bill as introduced in Council has been the subject of much adverse criticism in the various opinions which have been received and the Committee are of opinion that the clauses should be recast.

(2) Clause 5 of the Bill as now amended provides a new section 13 of the Act which relates exclusively to cases of transfer by gift, other than gifts to religious or charitable uses. The section is intended to lay down a complete law of procedure in respect to such transfers. It makes provisions for two classes of gift, viz., (1) gifts in favour of the immediate heir, and (2) gifts in favour of all other persons. With regard to the first class it is laid down that the gift may be made with no other formalities relating to the instrument of gift than those required by the Transfer of Property Act, 1882. For gifts of the second class it is provided that the instrument of gift must be executed not less than three months before the death of the donor, and presented for registration within one month from the date of execution and registered.

Sub-section (2) of the new section incorporates the provisions of section 17 of the Act as it now stands and renders delivery of possession within a stated time essential to the validity of the gift.

(3) The new section 13A (clause 6 of the Bill as redrafted) relates exclusively to cases of bequest. It provides for three classes of bequests, namely:—

- (i) bequests to the immediate heir, to a daughter's son and to a younger son;
- (ii) bequests to possible heirs; and
- (iii) bequests to persons other than those mentioned in (i) and (ii).

In cases falling within the first class all that is needed is a will duly executed and attested. In cases falling within the second class the will must be duly executed and attested not less than three months before the death of the testator and "registered" (i.e., either openly or by deposit) within one month from the date of execution. For bequests of the third class it is necessary to have a will executed and attested not less than three months before the death of the testator and registered openly within one month from the date of execution.

(4) With regard to the question of the succession of the daughter's son it may be explained that in the majority of the opinions received, it has been strongly represented that the Bill as introduced does not make adequate provision for him, although he is a near relation. The special provision in his favour contained in clause (4) of section 22 of the Act has been abrogated and his case now comes within clause (11) of section 22 as redrafted in the Bill as introduced. Under the personal law of many of the taluqdars the daughter's son is excluded by custom, and in such cases, even if he took by transfer, the property would cease to be subject to the provisions of the Act, as he would not be a possible heir.

In order to remove cases of hardship in this connection section 13A as now proposed will enable a taluqdar to provide by will for his daughter's son in exactly the same way as he could for his immediate heir, and the property so bequeathed will, under the provisions of new section 14 (clause 7 of the Bill as amended) continue to be subject to the provisions of the Act.

(5) We have also considered it advisable to make a special provision for the case of a younger son so as not to render his position more unfavourable than it is under the Act as it now stands. We have arranged, accordingly, that a bequest may be made to a younger son in the same manner and with the same consequences as in the case of a bequest to the immediate heir" (1).

The words

- "(b) to his daughter,
- (c) to a son of his daughter, or
- (d) to a younger son"

were substituted for the following words :—

(1) U. P. Gaz., 1909 Part VII, pp. 131-132.

“(b) to a son of his daughter, or
 (c) to a younger son”

on the day the Bill passed into law.

In moving the amendment the Hon'ble Mr. Hose said :—

“Hon'ble Members will have observed that there have been letters in the Press advocating an improvement in the position of the daughter among Muhammadans in the table of succession given in the proposed section 22 of the Act, and the matter has in fact been thoroughly discussed among the Muhammadan taluqdars themselves, and I have had the advantage of hearing their opinions and the opinions of other gentlemen well-qualified to form one. The original suggestion for giving a better position to the daughter of a Muhammadan taluqdar was that she should be placed with the mother in sub-section (9) of section 22 or in any case preferred to a male agnate in the case of Musalmans only in sub-section (10) of that section. The question was complicated by a consideration also of the case of the sister and of the daughter's and sister's sons. When it was thoroughly discussed it became apparent that there were so many possibilities of an eventual succession foreign to that intended by the Act, and not likely to be desired by the taluqdar himself, that it was finally considered that the utmost that could be done with safety to improve the daughter's position would be to include her along with the daughter's son and the younger son of the taluqdar in section 13A of the Act among these persons in whose favour a taluqdar can make a will with a minimum of formalities. This course is no doubt not all that is desired by some taluqdars in whose family the position of the daughter has always been high among the heirs. On the other hand, it affords everybody an easy means of giving a daughter any position that is desired, while at the same time it prevents the estate in the absence of such a will descending in a line which may eventually take it away entirely from the family to which it pertains” (1).

Substitution of new
 section for section
 14, Act I, 1869.

7. For section 14 of the said Act, the following section shall be substituted, namely :—

Result of transfer
 or bequest of estate
 to taluqdars or heirs.

“If any *taluqdar* or grantee, or his heir or legatee, shall heretofore have transferred or bequeathed, or if any *taluqdar* or grantee, or his

(1) U. P. Gaz., 1909, Part VII, p. 232.

heir or legatee, shall hereafter transfer or bequeath the whole or any portion of his estate—

(a) to another *taluqdar* or grantee, or his heir or legatee, or

(b) to any of the persons mentioned in clauses (1) and (2) of section 13A,

the transferee or legatee and his heirs and legatees shall have the same rights and powers in regard to the property to which he or they may have become entitled under or by virtue of such transfer or bequest, and shall hold the same subject to the same conditions and to the same rules of succession, as the transferrer or testator :

Provided that, if the transferee or legatee had or has, at the time when the transfer or bequest took or takes effect, an estate, the succession to which was or is governed by the rules contained in section 22, the transferee or legatee and his heirs and legatees shall hold such property subject to those rules.”

This takes the place of clause 5 of the Bill as introduced and proposes an amended section 14 in place of section 14 of the Act. The clause has been redrafted to bring it into harmony with the provisions of the preceding two clauses as amended (1).

8. For section 15 of the said Act, the following section shall be substituted, namely:—

Substitution of new section for section 15, Act I, 1869.

(1) Select Committee's Report, U. P. Gaz., 1909, Part VII, p. 132.

15. If any, *taluqdar* or grantee, or his heir or legatee, shall heretofore have transferred or bequeathed or if any *taluqdar* or grantee or his heir or legatee shall hereafter transfer or bequeath *the whole or any portion of his estate to any person who did not at the time when the transfer or bequest took effect belong to any of the classes specified in section 14, the transfer of and succession to the property so transferred or bequeathed shall be regulated by the rules which would have governed the transfer of and succession to such property if the transferee or legatee had bought the same from a person not being a taluqdar or grantee, heir or legatee.*"

This clause is in substitution of clause 6 of the Bill as introduced and the wording has been altered in consequence of amendments in the preceding three clauses (1).

Substitution of new section for section 16, Act I. 1869.

9. For section 16 of the said Act the following section shall be substitute, namely :--

16. *No transfer, otherwise than by gift, of any estate, or of any portion thereof, or of any interest therein, made by a taluqdar or grantee or by his heir or legatee, or by a transferee mentioned in section 14 or by his heir or legatee, under the provisions of this Act, shall be valid unless made by a registered instrument signed by the transferrer and attested by two or more witnesses.*"

Procedure relating to transfers otherwise than by gift

(1) Select Committee's Report, U. P. Gaz., 1909, Part VII, p. 132.

Section 16 of the Act has been recast in this clause so as to make it relate to transfers otherwise than by gift. Transfers by gift have already been provided for in clause 5 (new section 13) (1).

Omission of section 17. Act I, 1869. 10. Section 17 of the said Act shall be omitted.

This is new. As the provisions of section 17 relating to delivery of possession in cases of gift have now been incorporated in clause 5 (new section 13) it was no longer necessary to retain section 17 in the Act (2).

Substitution of new section for section 18. Act I, 1869. 11. For section 18 of the said Act the following section shall be substituted, namely :—

“18. No taluqdar or grantee, and no heir or legatee of a taluqdar or grantee, and no transferee mentioned in section 14 and no heir or legatee of such transferee, shall have power to give his estate, or any portion thereof, or any interest therein, to religious or charitable uses, except by an instrument of gift signed by the donor and attested by two or more witnesses not less than three months before his death and presented for registration within one month from the date of its execution and registered.”

This is an amendment of section 18. It was pointed out that provisions relating to delivery of possession are not required in the case of a gift to religious or charitable uses (3).

(1) Select Committee's Report, U. P. Gaz., 1909, Part VII, p. 132.

(2) *Ibid.*

(3) *Ibid.*

12. *In section 19 of the said Act, between the words "legatee" and "under" the words "or by any transferee, mentioned in section 14, or by the heir or legatee of such transferee" shall be inserted.*

Amendment of section 19, Act I, 1869.

As transferees under new section 14 (see clause 7 of the Bill as amended) hold property transferred to them by a taluqdar or grantee subject to the same conditions as the transferrer, it was desirable to amend section 19 so as to make the sections of the Indian Succession Act, 1865, referred to therein, also applicable to such transferees (1).

13. *In section 21 of the said Act, for the words "daughter" and "brother" the words "brother" and "male agnate," shall be substituted.*

Amendment of section 21, Act I, 1869.

The Select Committee's report on section 13 is as below :—

- "(1) This takes the place of clause 10 of the Bill as introduced. The Committee have decided to introduce into section 21 the words "male agnate" after the word "brother" so as to render it impossible for any male agnate to succeed who is not *najib-ul-tarfain*. As the daughter is not mentioned in new section 22 clause 14 of the Bill as amended, it is no longer necessary to retain the word "daughter" in section 21 of the Act.
- "(2) The proposal contained in sub-clause (1) of clause 10 of the Bill as introduced to insert the word "widow" after the word "son" in section 21 has been abandoned. It has been brought to notice that the expression *najib-ul-tarfain* is not strictly applicable to a widow.
- "(3) Sub-clause (2) of clause 10 of the Bill as introduced is omitted in deference to the many opinions received to the effect that it is still necessary to retain the qualification for a widow implied in the word *ahl-i-bradri*" (2).

(1) Select Committee's Report, U. P. Gaz., 1909, Part VII, p. 132.

(2) *Ibid.*

14. For section 22 of the said Act the following section shall be substituted namely :—

Substitution of section shall be substituted
new section for section 22, Act I, 1869. namely :—

“ 22. *If any taluqdar or grantee whose name shall be inserted in the second, third or fifth of the lists mentioned in section 8, or his heir or legatee, or if any taluqdar, grantee, heir or legatee, whose name shall be inserted in the list referred to in section 31A, sub-section (3), or his heir or legatee, shall die intestate as to his estate, such estate shall descend as follows, namely :—*

Special rules of succession to intestate taluqdars and grantees.

- (1) to the eldest son of such *taluqdar* or grantee, heir or legatee, and his male lineal descendants, subject to the same conditions and in the same manner as the estate was held by the deceased ;
- (2) or if such eldest son of such *taluqdar* or grantee, heir or legatee, shall have died in his life time, leaving male lineal descendants, then to the eldest and every other son of such eldest son, successively according to their respective seniorities, and their respective male lineal descendants, subject as aforesaid ;
- (3) or if such eldest son of such *taluqdar* or grantee, heir or legatee, shall have died in his father's life-time without leaving male lineal descendants, then to the

second and every other son of the said *taluqdar* or grantee, heir or legatee, successively according to their respective seniorities, and their respective male lineal descendants, subject as aforesaid ;

- (4) or in default of such son or his male lineal descendants, then to such person as the said *taluqdar* or grantee, heir or legatee, shall have adopted, and his male lineal descendants, subject as aforesaid ;
- (5) or in default of such adopted son, or his male lineal descendants, then to the eldest and every other brother of such *taluqdar* or grantee, heir or legatee, successively, according to their respective seniorities, and their respective male lineal descendants, brothers of the whole blood and their descendants being preferred to brothers of the half blood and their descendants, subject as aforesaid ;
- (6) or in default of any such brother, or his male lineal descendants, then to the widow of the deceased *taluqdar* or grantee, heir or legatee, *for her life-time only* ; or, if there be more widows than one, to the widow first married to such *taluqdar* or grantee, heir or legatee, *for her life-time only* ;

(7) and on the death of such widow, then to such son as the said widow shall, with the consent in writing of her deceased husband, have adopted, and his male lineal descendants, subject as aforesaid ;

Provided that after the *expiration of six months from the commencement of this Act* such consent shall be expressed by means of a registered instrument or by means of a will or codicil, executed and attested in the manner required by this Act.

(8) or on the death of such first married widow and in default of a son adopted by her with such consent as aforesaid, and his male lineal descendants, then to the other widow, if any, of such *taluqdar* or grantee, heir or legatee, next in order of marriage, for her life, and on the death of such other widow, to a son adopted by her with such consent as aforesaid, and his male lineal descendants ; or in default of such adopted son, then to the other surviving widows *in the order of their respective marriages*, for their respective lives and on their respective deaths, to the sons so adopted by them respectively, and to the male lineal descendants of such sons respectively, subject as aforesaid ;

- (9) or in default of any such widow or any such adopted son or any such male lineal descendants, then to the mother of the deceased taluqdar, or grantee, heir or legatee, for her life-time only;

EXPLANATION.—In this clause the word “mother” does not include a step-mother; and in the case where the deceased was an adopted son, it means that wife or widow of the father who joined in or made the adoption, or, if the adoption was made by the father alone and there are at the time of the death of the deceased more widows than one, it means the one who was first married and, on her death, the other surviving widows in the order of their respective marriages in succession.

- (10) or in default of or on the death of such mother, then to the nearest male agnate according to the rule of lineal primogeniture, subject as aforesaid;

- (11) or in default of any such agnate, then to such person as would have been entitled to succeed to the estate under the ordinary law to which persons of the religion and tribe of such taluqdar or grantee, heir or legatee, are subject:

Provided that, when there are more persons than one so entitled, the estate shall descend to a single person according to the following rules, that is to say:—

- (i) where among such persons some are connected by blood relationship and some

by reason of marriage, the blood relations shall exclude the relations by marriage ;

(ii) *where among such persons, some are related by the whole blood and some by the half blood, those related by the whole blood shall exclude those related by the half blood ;*

(iii) *where, subject to the provisions of the rule (i) and (ii), among such persons some are related through males only and some through females, the persons related through males only shall exclude the others ; and amongst the others those shall be preferred in whose relationship the steps from the deceased proceed furthest through males ;*

(iv) *where among such person some stand in a nearer and some in a more remote relationship to the deceased, but both are equally qualified under the three preceding rules, those in the nearer degree shall exclude those in the more remote ;*

(v) *where such persons stand in equal degree of relationship to the deceased and are equally qualified under the four preceding rules, the estate shall descend to the eldest male in the senior line, but if there be no male heir in that line, then to the eldest male in the next*

senior line in which there is a male heir; and if there be no male heir in any line, then to the eldest female in the senior line

Nothing contained in the former part of this section shall be construed to limit the power of alienation conferred by section 11."

The report of the Select Committee on this section (clause 14 of the Bill) is as follows:—

- (1) We are agreed that the words 'subject to the provisions of section 14' at the beginning of the new section 22 should be omitted.
- (2) In line 5 of the first portion of new section 22 we have substituted for the word 'person' the words 'taluqdar, grantee, heir or legatee' as these are the words used in the new section 31A., sub-section (3).
- (3) 'Section 30, sub-section (4), clause (b),' lines 6 and 7 of the first portion of new section 22, are altered to 'section 31A., sub-section (3)' in consequence of an amendment to be noticed hereafter.
- (4) In clause (5) of new section 22 the word 'to' has been inserted in the last line before the words 'their descendant' for the sake of greater clearness.
- (5) In clause (6) of the new section 22 in the third line, the words 'for her life-time only' are inserted after the word 'legatee' in order to make it clear that in all cases the widow of a deceased taluqdar takes an estate for her life-time only.
- (6) In the proviso to clause (7) we have fixed the period after which a consent to adoption must be expressed by means of a registered instrument or a will or codicil.
- (7) In clause (8) for the words 'according to their respective seniorities as widows' the words 'in the order of their respective marriages' have been substituted.
- (8) Clause (9). This is a new provision introduced in consequence of many opinions to the effect that special provision should be made for the mother. The explanation is added to show that the term 'mother' does not include the step-mother, who is not an heir under either Hindu or Muhammadan Law, but does include an adoptive mother. Provision is made for succession in the case where the adoptive father of the deceased has left more than one widow.

- (9) Clause (10) takes the place of clause (9) of the Bill as introduced. It has been suggested that some limit should be placed on the degree of agnatic relationship entitling a person to succeed under this clause : but as special provision has now been made for the daughter's son and also for the mother, the Committee are of opinion that no limit need now be fixed. A further suggestion that special provision be made for the case of a daughter has been negatived. Apart from the fact that in a large number of families the daughter is excluded by custom, it appears to the Committee that any special provision which would result in the passing of an estate into another line of succession is undesirable as being inconsistent with the scheme of the Act.
- (10) Clause (11) stands in place of clause (10) of the Bill as introduced. The Committee deem it necessary to make some provision for the purpose of ascertaining the single heir who is to succeed, and for that purpose three rules have been incorporated in the proviso attached to this clause.
- (11) In the opinion of the Committee the words in the last paragraph of section 22 of the Act as it stands should be retained and an addition has been made accordingly" (1).

The proviso was substituted, on the day the Bill passed into law, for the one proposed by the Select Committee which was worded as follows :—

“ Provided that, when there are more persons than one so entitled, the estates shall descend to a single person according to the following rules, that is to say :—

- (i) when such persons stand in an equal degree of relationship to the deceased and are of the same sex, to the eldest ;
- (ii) when such persons stand in an equal degree of relationship to the deceased and are of different sexes, to the eldest male ;
- (iii) when such persons stand in different degrees of relationship to the deceased, to the eldest person in the senior line.

Nothing contained in the former part of this section shall be construed to limit the power of alienation conferred by section 11” (2).

In moving that the new proviso be substituted in place of the one proposed by the Select Committee, the Hon'ble Mr. Hose said :—

“ It was one of the instructions to the Select Committee that they should endeavour to make the table of succession in section 22 of the

(1) U. P. Gaz., 1909, Part VII, p. 133.

(2) U. P. Gaz., 1909, Part VII, pp. 144 and 233.

Act as clear as possible, and as complete as possible. There was no great difficulty in carrying out this instruction as far as sub-section (11), but regarding that sub-section and particularly that portion of it in which an attempt was made to decide the rule of succession by a single person in the case of the ultimate heirs, the Select Committee found great difficulty. The proviso to that sub-section included in the Bill appended to our report was worded in the way which was accepted as best at the time, but two members of the Committee were not satisfied that it was either entirely right or entirely complete. The point has since been discussed both in writing and verbally, and the advice of those outside the Committee qualified to give an opinion of weight in legal matters has been obtained. The present members of the Committee are now agreed that in the amendment which I am now to put forward, the rules are stated in the most complete and clearest form that we can work out. They provide for the exclusion of relations by marriage by relations by blood, for the exclusion of relations of the half blood by relations of the whole blood, for the exclusion of females as far as possible by males and of the more remote relations by the nearer relations, and finally of the younger by the elder. It may in practice be found that the statement of the rule is not complete and has not precisely the result which is desired, but it should be explained that under this sub-section there falls a large diversity of relationships and it is not easy to calculate all possibilities. All that can be said is that we have given our best endeavour to obtain a satisfactory rule " (1).

15. From section 29 of the said Act the words

Amendment of section 29, Act I, 1869.

"such power" to "and registered" shall be omitted.

Insertion of new section after section 29, Act I, 1869.

16. After section 29 of the said Act, the following section shall be inserted, namely :—

Attestation and registration of adoptions.

"29A. No adoption made by a *tabuqdar* or grantee, or by his heir or legatee, or by the widow of any such *tabuqdar* or grantee, heir or legatee, shall be deemed to be valid unless, in addition to the requirements, if any, imposed by the personal law of the adopter, the fact of such

(1) U. P. Gaz., 1909, Part VII, p. 233.

adoption has been declared by the adopter in a writing executed and attested in manner required in case of a will and registered."

17. *In sections 30 and 31 of the said Act, for the words "Chief Commissioner of Oudh" and "Chief Commissioner" wherever they occur, the words "Local Government" shall be substituted.*

Amendment of sections 30 and 31, Act I, 1869.

18. *After section 31 of the said Act the following section shall be inserted, namely:—*

Insertion of new section after section 31, Act I, 1869.

"31A. (1) *Any taluqdar whose name has been inserted in the fourth of the lists prepared under section 8, or any grantee whose name has been inserted both in the first and in the sixth of the said lists, or the heir or legatee of such taluqdar or grantee, may declare that the succession to his estate shall, in case of his intestacy, cease to be regulated in the manner described in section 23 and that it shall in future be regulated in the manner described in section 22.*

Alteration of rules of intestate succession in cases of taluqdar named in list 4 and grantees named in lists 1 and 6

(2) *Every such declaration shall be in writing, signed by the declarant, attested by two or more witnesses and registered, and shall be presented to the Local Government.*

(3) *On receiving such declaration the Local Government shall cause the name of such taluqdar,*

grantee, heir or legatee, to be inserted in a list which shall, as occasion may arise, be published in the Gazette of India, and shall cause a note thereof to be made in the proper place in the fourth or sixth (as the case may be) of the said lists.

(4) *Thenceforward the succession to the estate shall, in the case of intestacy, be regulated in the manner provided by section 22.*

(5) *The Courts shall take judicial notice of such list and shall regard it as conclusive evidence that such declaration has been made, registered and presented as above to the Local Government, and that the Local Government has made the note referred to in sub-section (3)."*

On this section (clause 18 of the Bill), the report of the Select Committee is as follows :—

"The Committee have decided to drop clause 14 of the Bill as introduced. The object of that clause was to substitute a new section 30 incorporating some alterations in present section 30 and making a new provision whereby taluqdars and grantees whose names are entered in lists 1, 4 and 6 might bring their estates under the rule of succession laid down in section 22. It seems to the Committee that this object can be better attained by allowing sections 30 and 31 to remain as they are in the Act, and by introducing a new section 31A, laying down the procedure to be observed in cases where a taluqdar whose name appears in list 4 or a grantee whose name appears in both list 1 and list 6 wishes to alter the rule of succession. The Committee do not consider it desirable to fix any limit of time within which the declaration of an intention to alter the rule of succession should be made. Such a limit would lead to difficulties in cases where estates are held by minors and widows at the time the Bill becomes law, and no such limit is laid down in the cognate cases under sections 30 and 31 of the Act" (1).

(1) U. P. Gaz., 1909, Part VII, p. 134.

19. In section 32 of the said Act, for the words
"transfer or bequest" wherever
they occur, the words "transfer,
bequest or declaration" shall be substituted.

Amendment of section 32, Act I, 1869.

Regarding this section the Select Committee say :—

"Provision ought to be made in section 32 for the case of a declaration made under the provisions of the Act so as to save the rights of creditors. The words 'transfer or bequest' have been altered, therefore, to 'transfer, bequest or declaration' " (1).

20. After section 32 of the said Act, the following section shall be inserted, namely :—

Insertion of new section after section 32, Act I, 1869.

"32A. (1) Any *taluqdar* or grantee or his heir or legatee may, by a registered instrument bearing a non-judicial stamp of fifteen rupees, signed by him and attested by two or more witnesses, declare that the immoveable property situated in the United Provinces in which he has a separate, permanent, heritable and transferable right, and which is specified in the instrument, is a part of his estate for the purposes of this Act.

Such declaration shall take effect from the date of the registration thereof.

(2) It shall be the duty of the registering officer to furnish the Collector of every district in which any portion of the property is situated with a properly authenticated copy of the

(1) U. P. Gaz., 1909, Part VII, p. 134.

declaration, and on receipt of such copy the Collector shall cause a note to be made in the record of rights relating to the immoveable property specified and shall also cause a copy of the declaration to be published in the Gazette in English and in the vernacular."

The Select Committees' Report on this section is as follows :—

"This corresponds to clause 15 of the Bill as introduced. The Committee are of opinion that the new section introduced by this clause can be more conveniently inserted after section 32 of the Act as section 32A. The wording of the new section has been altered with a view to ensuring, as far as possible, that due publicity shall be given to the declaration not only by publication in the Gazette but also by the making of an entry in the record of rights relating to the property affected by the declaration. The words "in the United Provinces" have already been explained in the note on clause 2 of the Bill" (1).

Saving clause. 21. *Unless there is something repugnant in the subject or context—*

(a) *section 2, sub-section (1) of this Act, with the exception of*

(i) *clause (b) of the definition of the word "estate";*

(ii) *the words "or a mother" in the definition of the word "heir"; and*

(b) *sections 3, 4, 7, and 8 of this Act,*

shall operate retrospectively; but nothing contained in the said sections shall affect suits pending at the commencement of this Act, or shall be deemed to vest in or confer upon any person any right or title to

(1) U. P. Gaz., 1909, Part VII, p. 134.

any estate or any portion thereof, or any interest therein which is at the commencement of this Act, vested in any other person who would have been entitled to retain the same if this Act had not been passed; and the right or title of such other person shall not be affected by anything contained in the said sections.

This section corresponds to clause 16 of the Bill as introduced, which ran as follows:—

“ 16. Unless there is something repugnant in the subject or context, this Act shall operate retrospectively; **Saving clause.** but nothing in this Act shall affect suits pending at the commencement thereof, or shall be deemed to vest in, or confer upon, any person any right or title to any estate or any portion thereof or any interest therein which is at the commencement of this Act vested in, and in the possession or enjoyment of any other person who would have been entitled to retain the same if this Act had not been passed; and the possession or enjoyment of such other person shall not be affected by anything contained in this Act” (1).

The Select Committee's report on this section is as follows:—

“ We have altered the wording of this clause considerably (clause 16 of the Bill as introduced). We do not think it necessary that retrospective effect should be given to the whole of the Act. It will be sufficient if such effect is given to section 2, sub-section (1) [excepting clause (b) of the definition of 'estate'; and the words 'as a mother' in the definition of 'heir'], and to sections 3, 4, 7 and 8 as they stand in the Bill as now amended. The words 'and in the possession or enjoyment of' in line 8 of the clause in the Bill as introduced are, if retained, likely to cause difficulty and may be safely omitted: and in the 10th and 11th lines the words 'possession or enjoyment' have been replaced by 'right or title'" (2).

(1) U. P. Gaz., 1909, Part VII, p. 114.

(2) U. P. Gaz., 1909, Part VII, p. 134.

**THE
INDIAN SUCCESSION
ACT.**

CONTENTS.

	PAGE
Preamble... 	357
SECTION	
49. Will may be revoked or altered ...	387
50. Execution of unprivileged wills ...	388
51. Incorporation of papers by reference ...	394
54. Effect of gift to attesting witness ...	395
55. Witness not disqualified by interest or by being executor 	396
57. Revocation of unprivileged will or codicil ...	396
58. Effect of obliteration, interlineation, or alteration in unprivileged will ...	397
59. Revocation of privileged will or codicil ...	398
60. Revival of unprivileged will 	399
Extent of revival of will or codicil partly revoked and afterwards wholly revoked ..	399
61. Wording of will 	407
62. Enquiries to determine questions as to object or subject of will 	407
63. Misnomer or misdescription of object ...	409
64. When words may be supplied ...	416
65. Rejection of erroneous particulars in descrip- tion of subject 	416
66. When part of description may not be rejected as erroneous 	417
67. Extrinsic evidence admissible in case of latent ambiguity 	417
68. Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency ...	418
69. Meaning of any clause to be collected from entire will 	419
70. When words may be understood in a restrict- ed sense and when in a sense wider than usual 	421

SECTION	PAGE
71. Which of two possible constructions preferred	422
72. No part rejected if it can be reasonably construed	423
73. Interpretation of words repeated in different parts of will	423
74. Testator's intention to be effectuated as far as possible	423
75. The last of two inconsistent clauses prevails	423
76. Will or bequest void for uncertainty ...	424
77. Words describing subject refer to property answering description at testator's death	429
82. Bequest without words of limitation ...	429
83. Bequest in alternative	437
85. Bequest to class of persons under general description only	437
88. Rules of construction where will purports to make two bequests to same person ...	438
89. Constitution of residuary legatee ...	439
90. Property to which residuary legatee entitled	440
91. Time of vesting of legacy in general terms ...	441
92. In what case legacy lapses	442
93. Legacy does not lapse if one of two joint legatees die before testator	444
94. Effect in such a case of words showing testator's intention that the shares should be distinct'	446
95. When lapsed share goes as undisposed of ...	446
96. When bequest to testator's child or lineal descendants does not lapse on his death in testator's life-time	446
97. Bequest to A for benefit of B does not lapse by A's death	448
98. Survivorship in case of bequest to described class	448

THE INDIAN SUCCESSION - ACT.

ACT No. X OF 1865.

[SECTIONS 49--51, 54, 55, 57--77, 82, 83, 85,
88--98].*

*Received the assent of the Governor-General
on the 16th March 1865.*

An Act to amend and define the Law of Intestate and Testamentary Succession in British India.

WHEREAS it is expedient to amend and define the rules of law applicable to Intestate and Testamentary Succession in British India; It is enacted as follows:—

Preamble.

PART VII.

• OF WILLS AND CODICILS.

49. A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will.

Will may be revoked or altered.

A will may be revoked or altered at any time.—A testator, although he promised not to give the property to

* These sections apply to Taluqdars and Grantees by section 19 of Act I of 1869.

any one else, is competent to give it to whom he pleases, and can, for that purpose, revoke his first will (1). A will executed by a widow in accordance with the oral wish of her husband does not become the will of the husband and can be revoked by the widow (2).

PART VIII.

OF THE EXECUTION OF UNPRIVILEGED WILLS.

[Unprivileged wills.—Any soldier being employed in an expedition or engaged in actual warfare or any mariner being at sea may, if he has completed the age of eighteen years, dispose of his property by a will whether in writing or by word of mouth. Such wills are called privileged wills (*see* sections 52 and 53 of the Indian Succession Act). Other wills are called unprivileged wills.]

50. Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or a mariner at sea, must execute his will according to the following rules :—

First.—The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

Second.—The signature or the mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(1) *Basant Singh v. Muna Kuar*, 2 O. C., 226.

(2) *Kishan Dayal v. Musammat Champa Kuar*, 4 O. C., 145.

Third.—The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

1. **This section is mandatory.**—The language of section 50 is not merely declaratory but imperative and unless the prescribed rules are observed, the court cannot recognize the instrument as will (1).

2. **Testator's signature or mark.**—A testator who was an employee of the East India Railway Company died leaving as his will a printed form of will provided by the Railway Company for the use of their servants. He omitted to insert his name and description at the head of the document and to append his signature thereto. He had, however, written his name in the attestation clause and completed the disposition clause, bequeathing all his property to his wife and appointing her sole executor. The document was only attested by two witnesses. *Held* that this was a valid will (2). Signature includes initial (3). Thumb impression

(1) *Esias v. Gabriel*, 3 N.-W. P., H. C. R., 32.

(2) *In the goods of R. Porthouse*, 24 Cal., 784.

(3) *Ammayee v. Yalumulai*, 15 Mad., 261.

is a mark (1). A will is validly signed if a *fac simile* stamp bearing the testator's name is affixed to it under his direction (2).

3. Acknowledgment of signature by testator—It is a sufficient acknowledgment by a testator of his signature to his will if he makes the attesting witnesses understand that the paper which they attest is his will, though they do not see him sign it, or observe any signature to the paper which they attest, provided that the court is satisfied that the testator's signature was on the will when the witnesses attested it (3). The signature of a testator at the commencement of a will, when the witnesses attested it, and his admission to the attesting witnesses that the paper which they attest is his last will, constitute sufficient acknowledgment of his signature to his will, even though the witnesses do not see him sign it, or observe any signature to the paper which they attest (4).

4. Testator's signature to precede attestation.—The signature of the two or more attesting witnesses to a will required by section 50 of the Indian Succession Act (X of 1865), must be attached to the will after, and not before, the testator's signing or affixing his mark to it (5).

5. Strict affirmative proof of due attestation not necessary in all cases.—S, the widow of J, the testator, applied for probate of his will. The writer of the will deposed that he had signed the will before the testator

(1) *Nirmal Chunder Bandopadhyaya v. Saratmoni Dehya*, 25 Cal., 911, 914.

(2) *Ibid.*

(3) *Manickbai v. Hormasji Bomanji*, 1 Bom., 547.

(4) *Amarendra Nath Chatterjee v. Kashi Nath Chatterjee*, 27 Cal., 169.

(5) *Bissonath Dinda v. Doya Ram Jana*, 5 Cal., 738; 5-C. L.R., 565.

signed and that the testator signed immediately after him and that none of the witnesses signed in his presence. D, one of the witnesses, said that he signed the will after the testator had personally acknowledged his signature to it and that when he signed other witnesses' names were on the will. Of the other witnesses three were proved to have been dead, and the remaining witness was not examined, but his signature as well as the signatures of the witnesses who were dead were proved. There was no direct evidence that the testator had acknowledged his signature to these witnesses or that the will was otherwise properly attested by a second witness:—*Held* that strict affirmative proof of due attestation is not absolutely necessary in cases of this class; and if the circumstances are such as to warrant the Court in reasonably concluding from these circumstances that the will has been duly attested, probate may be granted (1).

6. Attesting a will in the presence of testator.—

With reference to the argument that it was not necessary to hold that at the instant of signature the testator must be able to see the persons signing the attestation and that in an English case (2) it has been *held* that if by raising herself in bed the testatrix could have seen the witnesses in an adjoining room, it was a sufficient presence. *Held* that the words "in the presence of the testator" in clause 3 of section 50 of the Indian Succession Act may receive the same construction that has been put upon them in the English Courts but cannot receive a larger interpretation (3). After execution of her will by a testatrix, a *pardanashin* lady, and its attestation in her presence by a witness who had seen her execute it, it was presented for registration, the

(1) *Sibo Sundari Debi v. Hemangini Debi*, 4 C. W. N., 204.

(2) *Vinnicombe v. Butler*, 10 Jur. N. S., 1109.

(3) *Esaius v. Gabriel*, 3 N.-W. P., H. C. R., 32.

testatrix sitting behind one fold of a door which was closed, the other fold being open, and the Registrar and another person who identified the testatrix being in a *verandah* outside the room, behind the door of which the testatrix sat, all that the Registrar actually saw of her being her hand. The testatrix admitted her execution of the will, and her admission was endorsed on the will and witnessed by the Registrar and the person who identified her at the same time. *Held*, that the witness was "in the presence" of the testatrix within the meaning of section 50 of the Succession Act (X of 1865) (1). The attestation is sufficient to comply with the provisions of section 50 of the Transfer of Property Act when a document is signed by a *pardunashin* lady in the presence of witnesses even though owing to there being a screen between them the witnesses at the time of the signature are not able to see the lady, and especially when there is other evidence to prove that the person who was behind the *parda* and who signed was the lady whose signature was affixed to the document (2).

7. Persons signing a will for testator not competent attesting witnesses.—The word "some other person" in clause 3 of section 50 mean some person other than witnesses. If any one of the attesting witnesses made the testator's signature himself, it is clear that he could not have seen it made by "some other person"; and inasmuch as the section requires that each attesting witness should have seen the signature made by "some other person" it necessarily follows that the words "some other person" must mean some person other than any of the attesting witnesses. The words "such other person" in the subsequent

(1) *Horendranarain Acharji Chowdhry v. Chandra Kanta Lahiri*, 16 Cal., 19.

(2) *Harmaugal Narain Singh v. Gauaur Singh*, 13 C. W. N., 40, 42.

part of the third sub-division of the section directly refer to the preceding words "some other person" and must also, therefore, mean some person other than the attesting witnesses and therefore a person making the signature of the testator to the will is not competent attesting witness (1).

8. Witness to sign and not to put mark, etc.—It is necessary for the validity of a will that the signature distinguished from a mark of at least two witnesses should appear on the will (2). Signature includes initial (3). Subscription in whatever form it may be must be intended to be a signature by name, mark or description, and an attestation by a witness simply to the effect that "this is the testator's signature" is no attestation under section 50 (4).

9. Form of attestation.—By the Succession Act, section 50, no particular form of attestation is necessary: therefore, where a document purporting to be her last will and testament the name of a testatrix was written by A, and the testatrix then, in his presence, affixed her mark, and A in her presence wrote beneath it, "by the pen of A"; and the testatrix was then identified to the Registrar, who was present, by B, who had seen her affix her mark to the document, and who in her presence put his signature as having identified her. *Held* that the above was a sufficient attestation and probate was granted (5). The registration of

(1) *Avabai v. Pestanji Nanabhai*, 11 B. H. C. R., 87; In the matter of the petition of Hemlota Dabee, 9 Cal., 226; *Ammayee v. Yalumalai*, 15 Mad., 261, 262.

(2) *Nitye Gopal Sircar v. Nagendra Nath Mitter Mozumdar*, 11 Cal., 429; *D. Fernandez v. R. Alves*, 3 Bom., 382.

(3) *Ammayee v. Yalumalai*, 15 Mad., 261.

(4) In the goods of Wynne deceased, 13 B. L. R., 392.

(5) In the goods of Roymoney Dossee, 1 Cal., 150; *Hurro Sundari Dabia v. Chunder Kant Bhattacharjee*, 6 Cal., 17; *Horendranarain Acharji v. Chandra Kanta Lahiri*, 16 Cal., 19.

his will by a testator and his signature to the certificate of admission of execution, testified by the signatures of the sub-registrar and of a witness, is sufficient attestation to satisfy the requirements of section 50 of Act X of 1865 (1).

10. Proof of execution.—Mere mechanical execution is not sufficient. Proof of consciousness of the testator and that he knew of and understood the contents of the document which he signed is necessary (2). In case of an illiterate person proof of the knowledge of the contents of the will is necessary and mere mechanical execution is not sufficient (3).

51. If a testator, in a will or codicil duly attested, refers to any other document then actually written, as expressing any part of his intentions, such document shall be considered as forming a part of the will or codicil in which it is referred to.

Incorporation of papers by reference.

Where a will made by an Oudh Taluqdar was executed on 29th of April 1881, but was not registered within one month of its execution under section 13 of the Oudh Estates Act (I of 1869), and on the 26th of April 1883 an addendum was made to it, in which the will was referred to and explained, and the addendum was then duly executed as a will and registered on the same day, an objection that the original will had not been registered in accordance with section 13 of the Oudh Estates Act and was therefore invalid, was over-ruled, and the document was held to be effective as a testamentary instrument whether the addendum was regarded as a codicil or a will (4).

(1) Amarendra Nath Chatterji v Kashi Nath Chatterji, 27 Cal., 169.

(2) Kuppayammal v. Ammani Ammal, 22 Mad., 345; Kalee Tara Dossia v. Nobin Chunder Kur, 21 W. R., 84 (Civil)

(3) Ram Prasad v. Jokhu, 11 O. C., 20.

(4) Satrupa Kunwar v. Hulas Kunwar, 25 All., 121.

PART X.

OF THE ATTESTATION, REVOCATION, ALTERATION, AND REVIVAL OF WILLS.

54. A will shall not be considered as insufficiently attested by reason of any benefit thereby given, either by way of bequest or by way of appointment, to any person attesting it, or to his or her wife or husband but the bequest or appointment shall be void so far as concerns the person so attesting, or the wife or husband of such person, or any person claiming under either of them.

EXPLANATION.—A legatee under a will does not lose his legacy by attesting a codicil which confirms the will.

A legacy to the attesting witness of a will is void under section 54 of the Act, whether or not the attestation of the witness is indispensable to the validity of the will. Where a testator directed that a debt due to him by an attesting witness of his will should not be claimed, demanded, or enforced but that his wish was that the sum should be specially devoted to the education of the children of such attesting witness. *Held*, that there was no release of the debt or legacy to the attesting witness, but a valid trust in favour of the children (1).

(1) The Administrator-General of Madras v. Lazar Stephen Lazar and others, 4 Mad., 244.

55. No person, by reason of interest in, or of his being an executor of, a will, is disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.

Witness not disqualified by interest or by being executor.

57. No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another will or codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which an unprivileged will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Revocation of unprivileged will or codicil.

Illustrations.

(a) A has made an unprivileged will; afterwards A makes another unprivileged will which purports to revoke the first. This is a revocation.

(b) A has made an unprivileged will. Afterwards A, being entitled to make a privileged will, makes a privileged will, which purports to revoke his unprivileged will. This is a revocation.

1. Otherwise.—The provisions of section 57 of the Indian Succession Act which have been made applicable to the wills of Taluqdars and grantees apply to all the wills and codicils executed by them and not to any particular class of such will and codicils and an unprivileged will cannot be revoked otherwise than as provided by this section (1).

2. A subsequent will which is not forthcoming does not necessarily revoke a previous will.—A will, duly

(1) *Lachman Singh v. Umrao Singh*, 11 O. C., 102.

executed, is not to be treated as revoked, either wholly or in part, by a will which is not forthcoming, unless it is proved by clear and satisfactory evidence that the will contained either words of revocation or dispositions so inconsistent with those of the earlier will that the two cannot stand together. It is not enough to show that the will, which is not forthcoming, differed from the earlier one, if it cannot be shown in what the difference consisted (1).

2. Burden of Proof.—It is settled that the burden of proof lies upon him who challenges the existing will (2).

58. No obliteration, interlineation, or other alteration made in any unprivileged will after the execution thereof shall have any effect, except so far as the words or meaning of the will shall have been thereby rendered illegible or undiscernable, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; save that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

(1) *Sahib Mirza v. Umda Khanum, and Sahib Mirza v. Gunna Khanum*, 19 Cal., 444.

(2) *Ibid.*

Blanks, alterations, etc., in a will no ground for refusing probate.—The circumstance that blank spaces are left in the body of a will is no objection to its being a valid will. If a will contains alterations and erasures, the presumption will be that they were made after the will was executed; and, if there is no evidence rebutting that presumption, they will form no part of the will. The lower Court having declined to grant probate of a will (which it held to be proved), on the ground that it was an incomplete will, being of opinion that the blanks, alterations and cancellations in the will showed that the deceased intended it to be a draft and not the final expression of his wishes. *Held*, that the will being one which did not require to be signed by the testator, probate should be granted to include a pencil addition proved to have been made by the attesting witness at the desire of the testator, but excluding all other additions, erasures or cancellations (1).

59. A privileged will or codicil may be revoked by the testator, by an unprivileged will or codicil, or by any act expressing an intention to revoke it, and accompanied with such formalities as would be sufficient to give validity to a privileged will, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction with the intention of revoking the same.

EXPLANATION.—In order to the revocation of a privileged will or codicil by an act accompanied with such formalities as would be sufficient to

(a) *Pandurang Hari Vaidya v. Vinayak Vishnu Kane*, 16 Bom., 652.

give validity to a privileged will, it is not necessary that the testator should at the time of doing that act be in a situation which entitles him to make a privileged will.

Privileged will.—Any soldier being employed in an expedition or engaged in actual warfare or any mariner being at sea may, if he has completed the age of 18 years, dispose of his property by a will either by writing or by word of mouth. Such wills are called privileged wills (1). All other wills are called unprivileged wills.

60. No unprivileged will or codicil, nor any part thereof, which shall be in any manner revoked, shall be revived, otherwise than by the re-execution thereof, or by a codicil, executed in manner hereinbefore required, and showing an intention to revive the same ;

and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil.

Extent of revival of will or codicil partly revoked, and afterwards wholly revoked.

See note to section 50 supra.

(1) Sections 52 and 53 of the Indian Succession Act.

PART XI.

OF THE CONSTRUCTION OF WILLS.

The following rules as laid down by the Privy Council and the High Courts in addition to or in explanation of those contained in the various sections in this Part will, it is hoped, serve as a useful guide in construing a will.

1. General rules of construing a will.—There are two cardinal principles in the construction of wills, deeds, and other documents. The first is that clear and unambiguous dispositive words are not to be controlled or qualified by any general expression of intention. The second is that technical words, or words of known legal import, must have their legal effect, even though the testator uses inconsistent words, unless those inconsistent words are of such a nature as to make it perfectly clear that the testator did not use the technical terms in their proper sense (1). The rule of construction applicable to a will is that words in general are to be taken in their ordinary and grammatical sense unless a clear intention to use them in another can be collected. If the language of a will is perfectly unambiguous and precise, it cannot be strained for the purpose of giving effect to what possibly might have been the intention of the testator but is not expressed or implied in the terms of the testament (2).

Where a testator devises all his property, the generality of the disposition will not be cut down unless the intention so to cut down is clear (3). The will must be construed as a

(1) *Lalit Mohan Singh Roy v. Chukkhan Lal Roy*, 24 I. A., 834; 24 Cal., 834.

(2) *George v. George*, 6 N. W., 219.

(3) *Mary Harriett Annie Wilson v. George Dukes*, 31 Mad., 283.

whole and in a manner consistent with the intentions of the testator and its general tenor (1).

Where the language of a will is clear and consistent, it shall receive its literal construction, unless there is something in the will itself to suggest a departure from it (2). To ascertain the meaning intended to be applied to a particular phrase, it is necessary first to consider the words of the will and next the surrounding circumstances, which may affect the testator's meaning (3). Considerations which only show that a testator has made a disposition in his will which the court is surprised to find there, though they might have determined the sense in which the testator has used an ambiguous expression, cannot of themselves lead the court to refuse to give effect to the plain language he has employed, *e.g.*, to read a bequest to "children" as a bequest to "son" only (4).

A bequest "to the children of R, living at his decease," where some such children are in existence at the date of the will, need not be construed as a gift to a class of which some members might come into existence after the testator's death, when such a construction would manifestly defeat the primary object of the testator (5). • Where in a will or legacy was given in the following words:—

"On my death my daughter Surajmai, who has got sons and who is resident of... shall possess as owner and possessor of all the rights of gift, sale, etc., in respect of all my property movable and immovable, and on the

(1) *Mary Harriett Annie Wilson v. George Dukes*, 31 Mad., 283.

(2) *Gurusami Pillai v. Shivakami Amal*, 22 I. A., 119; 18 Mad., 347.

(3) *Bhuggobutty Prosonno Sen v. Goroo Prosonno Sen*, 25 Cal., 112.

(4) *Krishnarao v. Bena Bai*, 20 Bom., 571.

(5) *Ibid.*

death of my aforesaid daughter, the sons born of her womb will equally own all my property." *Held* upon a construction of the will, that it was the intention of the testator to give to Surajmani an absolute estate (1). The principle that a trustee cannot take beneficially has no application where the trust is in terms in favour of the party in whom the legal estate is vested. Where both the legal and equitable estates are given to the same person the two estates merge, and the person to whom they are given takes the legal estate (2). The words "in trust" do not invariably create a trust (3). The words "as to her may seem best" mean as she may think fit (4). Where a person is authorised to draw money for certain purposes "as he may require," he can draw only such amounts as may be necessary for the purpose and not any amount as he may think fit (5). A direction in a will to trustees to pay to a Hindu lady so much of certain dividends as she might from time to time require for her own use and support, etc., and to accumulate the surplus not required by her upon certain trusts specified, entitles the legatee to receive, if she requires it, the whole interest as it falls due, but not to claim afterwards amounts which she did not require as they fell due and which have been accumulated, and this is so whether the trust for which accumulation is directed, is valid or invalid (6). A clause in a will to the effect that G and B shall be owners of the property for their lives under S's management must be interpreted as expressing merely a wish or direction that S

(1) *Gobinda Chander Gupta v. Benode Chander Dutt*, 12 C. W. N., 44.

(2) *Mary Harriett Annie Wilson v. George Dukes*, 31 Mad., 283.

(3) *Ibid.*

(4) *Ibid.*

(5) *Ibid.*

(6) *Kriehnarao v. Bena Bai*, 20 Bom., 571.

should act as their manager and that such wish or direction was not binding on them (1).

2. Rule against perpetuity not applicable to charitable bequest.—If there is a valid dedication of premises for religious purposes, this is not invalid merely because it transgresses against the rule forbidding the creation of perpetuities (2). Trusts and bequests of land or money for the purpose of devoting the incomes thereof in perpetuity for the purpose of performing ‘Muqtad,’ ‘Baj,’ ‘Yejushni’ and other like ceremonies are valid charitable bequests and as such exempt from the application of the rule of law forbidding perpetuities (3).

3. Construction of Hindu wills.—The rule of construction in a Hindu as in an English will is to try and find out the meaning of the testator taking the whole of the document together and to give effect to this meaning. In applying the above principle, courts of justice in this country ought not to judge the language used by a Hindu according to the artificial rules which have been applied to the language of people who live under a different system of law and in a different state of society (4). In the expounding of Hindu wills the court should presume that the holder did not intend to depart from the general law beyond what he explicitly declares (5). A gift by will, attempting to exclude the legal course of inheritance, is only effectual, in favour of such person as can take to the extent to which the will is consistent with the Hindu Law. And it is distinct departure from that law to restrict the

(1) *Sitla Baksh v. Brij Raj Kuar*, 4 O. C., 87.

(2) *Bhugobutty Prosonno Sen v. Guru Prosunno Sen*, 25 Cal., 112.

(3) *Jamshedji Carsetjee Tara Chand v. Soonabai*, 33 Bom., 122.

(4) *Din Tarini Dabi v. Krishna Gopal Bagchi*, 13 C. W. N., 291; 36 Cal., 149.

(5) *Lakshminibai v. Herabai*, 11 Bom., 69.

order of succession to males excluding females (1). In construing the will of a Hindu it is not improper to take into consideration what are known to be the ordinary notions and wishes of Hindus with respect to the devolution of property. It may be assumed that a Hindu generally desires that an estate, especially an ancestral estate, shall be retained in his family; and it may be assumed that a Hindu knows that as a general rule at all events, women do not take absolute estates of inheritance which they are enabled to alienate (2). In a Hindu will an heritable and alienable estate is to be understood by the use of the words "shall become *malik*," unless the context indicates a different intention. The words *putra putrade krame* have acquired a technical force and are used as meaning an estate of inheritance. That a testator may have imperfectly understood the words which he has used, or the effects of conferring an hereditary estate, would not justify the giving an interpretation to his words other than their legal meaning (3).

When the question was whether a Hindu widow acquired a right to alienate the property (immovable) in suit under a deed of gift or testamentary disposition of her late husband, wherein the word used was 'malik wa Khud Ikhtiyar' their Lordships held that in order to cut down the full proprietary rights that the word 'malik' imports something must be found in the context to qualify it and that the fact that the donee was a woman and a widow did not suffice to displace the presumption of absolute ownership implied in the word 'malik.' The donee in the case of Lalit Mohan

(1) Tarokessur Roy v. Soshi Shikhuressur Roy, 9 Cal., 952; 10 I. A., 51.

(2) Moulvi Mohammad Shumsool Haider v. Sewakram alias Roy Doorga Pershad, 14 B. L. R., 226; 2 I. A., 7.

(3) Lalit Mohan Singh Roy v. Chukkanlal Roy, 24 I. A., 76; 24 Cal., 834.

Singh Roy v. Chukkanlal Roy, 24 I.A., 76; 24 Cal., 834, was a man, but the principles of interpretation laid down in that case are of general application (1). Unless there is something in the context qualifying it, the word *malik* used in a will bears its technical meaning. When a testator bequeathed to his issue, if he happened to have any, and if he had no issue then to his mother and wife who were to be "malik aur kabiz," held that the ladies obtained an absolute interest (2). The question, whether a Hindu widow has acquired, under a devise by her husband, a larger estate than a "widow's estate," is to be decided upon the terms of the devise, and not upon the mere absence or otherwise, in the will, of express language such as will ordinarily create an estate of inheritance (3). A Hindu executed a will in favour of his daughter-in-law (son's widow) in these terms: "I have no *aulad* (meaning no male child, for he had a daughter) and therefore make this will in favour of my daughter-in-law to the effect that all the movable and immovable property which is in my possession at the time of executing this will and any other property which may come into my possession in my life-time or to which I may become entitled shall after my death remain in the proprietary (*malikana*) possession of the devisee and the said devisee shall be the owner (*malik*) of all the bequeathed property, and it shall be incumbent on the devisee to perform my funeral rites after my death,.....the devisee shall be owner of the property that is left after the funeral rites, etc., the devisee has power in case of my not adopting any one in my life-time to adopt after my death any person of my family whom she may think fit.....if

(1) Musammat Surajmani v. Rabi Nath Ojha, 12 C. W. N., 231; 7 C. L. J., 131; 30 All., 84.

(2) Thakurpershad v. Jamna Koer, 31 All., 308; 6 A. L. J., 420.

(3) Basant Singh v. Muna Koer, 2 O. C., 226.

any of my relations and heirs or any strangers claim the bequeathed property from the devisee then that claim shall be false." *Held*, that having regard to the context and the rules for the construction of Hindu wills the will under consideration conferred only a life-interest upon the devisee (1). In a will, the words "*putra poutradi krame*," recognized as apt for conveying an estate of inheritance, do not limit the succession to male descendants, and will include female heirs of a female, where by law the estate would descend to such heirs (2). A will cannot institute a course of succession unknown to the Hindu Law: and in conferring successive estates, the rule is that an estate of inheritance must be such a one as is known to the Hindu Law which an English estate tail is not. It is competent to a Hindu testator to provide for the defeasance of a prior absolute estate contingently upon the happening of a future event; but an important part of the rules relating thereto is, first, the event must be one that will happen, if at all, at latest immediately upon the close of a life in being at the time of the gift (as decided in the *Mullick case*); secondly, that a defeasance, by way of gift over, must be in favour of some person in existence at the time of the gift (as laid down in the *Tugore case*); the latter case deciding not only that a gift to a person unborn is invalid, but that an attempt to establish a new rule of inheritance is invalid (3). The power left to a Hindu widow to adopt more than one son in succession in the event of the previously adopted son dying without male issue, comes to an end when the first adopted son dies leaving a widow as his heiress. A second adoption made after the adoptive mother has

(1) *Musammatt Satta v. Kashi Nath*, 9 O. C., 119.

(2) *Ram Lal Mookerjee v. The Secretary of State for India in Council*, 7 Cal., 304.

(3) *Krishtoromoni Dasi v. Narindro Krishna*, 16 Cal., 333.

succeeded to the estate on the death of the widow of the first adopted son is therefore invalid (1).

61. It is not necessary that any technical words or terms of art shall be used in a will, but only that the wording shall be such that the intentions of the testator can be known therefrom.

Documents treated as wills.—An entry in a *wajib-ul-arc* may amount to will (2). A document which contains directions regarding the executant's property after his death which in certain circumstances may be revoked is a will (3). No technical words are necessary for a will. It is immaterial what the form of the document may be, but if it embodies the legal declaration of the testator with respect to his property which he desires to be carried into effect after his death it is a will. One of the tests for ascertaining whether a document is a will is to see if it is revocable, its irrevocability being inconsistent with its being a will. A will is not the less a will because the bequest is to take effect on the death of a person who might or might not survive the testator (4).

62. For the purpose of determining questions as to what person or what property is denoted by any words used in a will, a Court must enquire into every material fact

Enquiries to determine questions as to object or subject of will.

(1) *Manikya Mala Bose v. Nandu Kumar Bose*, 11 C. W. N., 12.

(2) *Lali v. Murlidhar*, 28 All., 488 P. C.; *Muthra Das v. Bikhanmal*, 19 All., 16.

(3) *Ram Moni Dasi v. Ram Gopal Shaha*, 12 C. W. N., 942.

(4) *Din Tarini Debi v. Krishna Gopal Bagchi*, 13 C. W. N., 291; 36 Cal., 149.

relating to the persons who claim to be interested under such will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used.

Illustrations.

(a) A, by his will, bequeaths 1,000 rupees to his eldest son, or to his youngest grandchild, or to his cousin Mary. A Court may make inquiry in order to ascertain to what person the description in the will applies.

(b) A, by his will, leaves to B "his estate called Black Acre." It may be necessary to take evidence in order to ascertain what is the subject-matter of the bequest; that is to say, what estate of the testator's is called Black Acre.

(c) A, by his will, leaves to B "the estate which he purchased of C." It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

A taluqdar who died childless, but leaving two widows, bequeathed, by an unregistered will, to the "Maharani Sahiba" his entire estate, and gave a power to the same to adopt a son to him; also providing maintenance for both his widows after such adoption. *Held*, that, to determine whether the will referred, in such bequest and power, only to the elder or to both of the testator's wives, extrinsic evidence of his intention was not admissible; but that the true construction was that which would indicate a reasonable and probable intention consistent with his conduct, and his will generally. As his views appeared to favour single heirship, and the whole state of things, as well as the language of the will, pointed to the owner of the estate being one, and the donee of the power to adopt being one: *Held*, that accordingly the words "Maharani Sahiba" were

not here used as a collective term for both widows, but signified only the elder, although, when qualified, as they were in another part of the will, they might include both (1).

See also notes to section 63 infra.

63. Where the words used in the will to designate or describe a legatee, or **Misnomer or mis- description of object** a class of legatees, sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect.

A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

Illustrations.

(a) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother, named John, who has no son named Thomas, but has a second son whose name is William. William shall have the legacy.

(b) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother, named John, whose first son is named Thomas, and whose second son is named William. Thomas shall have the legacy.

(c) The testator bequeaths his property "to A and B, the legitimate children of C." C has no legitimate child, but has two illegitimate children, A and B. The bequest to A and B takes effect, although they are illegitimate.

(d) The testator gives his residuary estate to be divided among "his seven children," and, proceeding to enumerate them, mentions six names only. This omission shall not prevent the seventh child from taking a share with the others.

(e) The testator having six grandchildren, makes a bequest to "his six grandchildren," and, proceeding to mention them by their

(1) *Iudar Kunwar v. Jaipal Kunwar*, 15 Cal., 725.

Christian names, mentions one twice over, omitting another altogether. The one whose name is not mentioned shall take a share with the others.

(f) The testator bequeaths "1,000 rupees to each of the three children of A." At the date of the will, A has four children. Each of these four children shall, if he survives the testator, receive a legacy of 1,000 rupees.

1. Bequests held operative in spite of misdescription of the legatee.—The distinction between what is description only and what is the reason or motive for a gift or bequest may often be fine, but it is a distinction which must be drawn from a consideration of the language and the surrounding circumstances (1). A Hindu made a will in the following terms:—"And as I am desirous of adopting a son, I declare that I have adopted *Koibullo*, third son of my eldest brother. My wives shall perform the ceremonies according to the *shastras*, and bring him up, and until that adopted son comes of age, those executors shall look after and superintend all the property movable and immovable, in my own name or *benami*, left by me. Also that adopted son, when he comes to maturity the executors shall make over everything to him to his satisfaction."

"God forbid, but should this adopted son die, and my younger brother, *Nilruttun*, have more than one son, then my wives shall adopt a son of his. If at that time *Nilruttun* has not a son eligible to adoption they shall adopt another son of *Saroda*, and the wives and executors shall perform all the aforementioned acts."

After the death of testator, one of the widows sued to cancel the will and recover one moiety of the estate on the ground that the ceremonies of adoption directed under the will were performed only by the other widow, that, consequently, the adoption of *Koibullo* was invalid,

(1) *Faniindra Deb Raikat v. Rajeshwar Das and others*, 11 Cal. 463; 12 L. A., 72.

and that she (plaintiff) was, as one of the widows of the testator, entitled to succeed to a moiety of the estate. *Held*, that the bequest was to a designated person; and that, therefore, the boy, *Koibullo*, was entitled to succeed to the whole estate, notwithstanding the performance or non-performance of the ceremonies because, on a true construction of the will, it did not appear that the testator intended *Koibullo's* taking the estate to be dependent on the widow's choosing or not choosing to perform the ceremonies (1).

A testator bequeathed all his property to S, and on her death to her adopted son K. K being daughter's son of S could not be adopted under the Hindu Law. The testator further directed under the will that his daughter and his predeceased son's daughters were to be excluded. *Held* that it was the intention of the testator to make K the object of his bounty irrespective of adoption (2). By the terms of a will the testator gave all his property to his wife for her life, and then declared that after her death Lalta Prasad, his adopted son, should be owner of the property. The testator's wife predeceased him. *Held* that after the death of the testator, Lalta Prasad took as a *personu designata*, whether in fact his adoption was valid or not (3).

A bequest was made to a person whom the testator falsely described as his "aurasa" or "naturally-born" son. This false description, not involving any condition that the legatee should be the testator's son did not invalidate the bequest to the designated person (4).

(1) *Nidhoemani Dehya v. Saroda Pershad Mookerjee*, 26 W. R., 91; 3 I. A., 253.

(2) *Murari Lal and another v. Kundan Lal*, 31 All., 339; 6 A.L.J., 411.

(3) *Lalta Prasad v. Salig Ram and another*, 31 All., 5.

(4) *Sri Raja Rao Venkata Surya Mahipati Rama Krishna Rao Bahadur v. The Court of Wards and Venkata Kumari Mahipati Surya Rao*, 22 Mad., 383 P. C. For the decision of the High Court see 20 Mad., 167.

Where in a will, there was a clear indication of the testator's intention before making an adoption to give the greater part of his property to the boy whom he was about to adopt, and the bequest was by name to the latter, who was not selected as being the adopted son, but for reasons which, though likely to lead to the adoption, were independent of it, *held* that the bequest was effectual, notwithstanding that there had been no adoption (1).

A testator stated in his will that he had been keeping a minor as his adopted son, and recited—in a bequest of property to him—“whereas my adopted son is a minor.”

In appeal the question was whether the meaning and effect of the will was to entitle the minor to inherit under the bequest, assuming that he had not been validly adopted by the testator :

Held, that the expression that the testator had been keeping the minor as his adopted son meant keeping him with a view to his adoption, and that the bequest to the minor was not conditional on his having been adopted, but was effectual, whether he had been adopted or not (2).

2. Bequests held inoperative because of misdescription of the legatee.—*Held*, upon the true construction of an *Angikar-patro* whereby an estate was given to the donee in virtue of his being “adopted son” of the donor, that the gift did not take effect, inasmuch as the adoption was invalid (3).

The will of a childless testator directed that the widow of his deceased son should adopt a boy, then aged nine

(1) *Bireswar Mukerji v. Ardha Chander Roy*, 19 Cal., 452.

(2) *Subbarayar v. Subbammal*, 24 Mad., 214; 4 C. W. N., 808.

(3) *Fanindar Deb Raikat v. Rajeswar Das*, 11 Cal., 463; 12 I. A., 72.

years, who was the son of the testator's nephew. To this boy the testator bequeathed his residuary estate to be made over to him at the age of twenty-one years. The widow, having refused to adopt him, died while he was still a minor, without having done so.

During her life the question arose whether this bequest was to take effect only upon the condition that the adoption should have taken place, or was a legacy validly made in his favour, as a person designated, without the adoption having been carried out.

In 1887, before the death of the widow, a suit for the construction of the will was decided to the effect that the adoption was a condition precedent to the minor's taking the legacy. A review of that judgment was refused when, after coming of age, in 1894, he applied for it. His application to be allowed to appeal from that judgment was, however, granted, the circumstances being deemed by the Appellate Court to be sufficient cause for the delay, within section 5 of the Limitation Act (XV of 1877). The Appellate Court subsequently heard the appeal and affirmed the decision of the Division Court. On appeal to the Privy Council,

Held, affirming the decree of the High Court, that the adoption was a condition precedent and that the boy not having been adopted could not take under the will (1).

A testator bequeathed all his property to a family Thakur; and, to secure the *debsheba*, directed that his two widows should each adopt a son to him, the sons to become *shebait*s of the property dedicated, of which the widows, during the sons' minority, were to have control.

(1) *Karamsi Madhoji v. Karsandas Natha and others*, 23 Bom., 271. For the Judgment of the High Court in the above case see 20 Bom., 718.

When the two sons should have attained their majority, the two widows were, by the will, to make over to them, as *shebait*s, all the property dedicated; and out of the surplus income, after payment of the expenses of the *debsheba*, the two sons were to receive a fixed allowance, the residue being undisposed of.

The widows having purported to adopt according to the will then bound themselves by an *ikrarnama*, each to the other, to bring up the sons as their mothers and guardians; and, after payment of the expenses for the *debsheba*, to divide the surplus income into two equal shares, making accumulations, which should be handed over by each to the son adopted by her on his attaining majority.

In a suit by the son purported to have been adopted by the elder widow, who was then dead, against the younger widow, and the son purported to have been adopted by her, in effect for the administration of the testator's estate, with a claim for relief based on acts of the widows, including the *ikrarnama* executed by them; *held*—that it being settled law that such an adoption was not valid, the plaintiff could take nothing under the will, because there was no gift to him except in the character of *shebait*; there having been no intention on the part of the testator, who apparently had no doubt as to the legality of his scheme, to bring in a stranger as *shebait* (1).

A Hindu made his will whereby he provided that his property should be enjoyed by his widow, who should maintain certain persons, including the plaintiff, whom she was thereby directed to take in adoption, and added: "my aforesaid wife shall enjoy all my above-mentioned properties

(1) Surendro Keshub Roy v. Doorgasoondery Dossee and another, 19 Cal., 513.

in every way as long as she may be alive, and after her death the same shall be taken possession of by the aforesaid adopted son." The testator died, not having taken the plaintiff in adoption, and his widow did not adopt him. In a suit by the plaintiff for maintenance and for the declarations of his title under the will: *Held* that all the provisions of the will relating to the plaintiff were intended by the testator to come into effect only in the event of the adoption being made, and consequently that the plaintiff had no right to the family property or to maintenance in the family (1).

The sole proprietor of a certain village caused the following entry to be recorded in the village *wajib-ul-arz*: "I am a Marwari Brahmin. Seven years ago I adopted my sister's son, Murli. He is my heir and successor (*malik*). If, after this agreement, a son is born to me, half the property would be received by him and half by the adopted son. If more than one son be born to me, the property would be equally divided among them, including the adopted son, as brothers. I have two wives now. They will receive their maintenance from him (Murli)." A son was born to the person making this declaration, but he died before the plaintiff's suit. As to the adoption of Murli, it was found that, although Murli had been brought up by his alleged adoptive father, and more or less treated by him as his son, it was not satisfactorily proved that there had been any valid adoption, even if such adoption were legally possible. *Held* that the declaration in the *wajib-ul-arz* above cited amounted to a testamentary declaration of the wishes of the proprietor of the village, and that the person described therein as the adopted son was entitled by virtue of it to half the village. The description of the devisee as an adopted son was treated as a mere misdescription, which ought not

(1) *Abbu v. Kuppammal*, 16 Mad., 355.

to affect what appeared to be the real intention of the testator (1). *Held* on appeal by the Privy Council that the gift did not take effect as the intention of the testator was to give Murli the property as an adopted son capable of inheriting by virtue of the adoption, and as his adoption was invalid by Hindu law and not warranted by family custom it gave him no right to inherit (2).

64. Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.

When words may be supplied.

Illustration.

The testator gives a legacy of "five hundred" to his daughter A and a legacy of "five hundred rupees" to his daughter B. A shall take a legacy of five hundred rupees.

65. If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect.

Rejection of erroneous particulars in description of subject.

Illustrations.

(a) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, but had no marsh-lands in the occupation of X. The words "in the occupation of X" shall be rejected as erroneous, and the marsh-lands of the testator lying in L shall pass by the bequest.

(b) The testator bequeaths to A "his zamindari of Rampur." He had an estate at Rampur, but it was a taluk and not a zamindari. The taluk passes by this bequest.

(1) *Lali v. Murlidhar*, 24 All., 195.

(2) *Lali v. Murlidhar*, 28 All., 488.

66. If the will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply.

When part of description may not be rejected as erroneous.

EXPLANATION.—In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under section 65 are to be considered as struck out of the will.

Illustrations.

(a) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, some of which were in the occupation of X and some not in occupation of X. The bequest shall be considered as limited to such of the testator's marsh-lands lying in L as were in the occupation of X.

b. A bequeaths to B "his marsh-lands lying in L, and in the occupation of X, comprising 1,000 bighas of land." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The measurement is wholly inapplicable to the marsh-lands of either class, or to the whole taken together. The measurement shall be considered as struck out of the will, and such of the testator's marsh-lands lying in L as were in the occupation of X shall alone pass by the bequest.

67. Where the words of the will are unambiguous, but it is found by extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic

Extrinsic evidence admissible in case of latent ambiguity.

but it is found by extrinsic evidence that they admit of applications, one only of which

evidence may be taken to show which of these applications was intended.

Illustrations.

(a) A man, having two cousins of the name of Mary, bequeaths a sum of money to "his cousin Mary." It appears that there are two persons, each answering the description in the will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(b) A, by his will, leaves to B "his estate called Sultanpur Khurd." It turns out that he had two estates called Sultanpur Khurd. Evidence is admissible to show which estate was intended.

See notes to section 68 *infra*.

68. Where there is an ambiguity or deficiency

Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency.

on the face of the will, no extrinsic evidence as to the intentions of the testator shall be admitted.

Illustrations.

(a) A man has an aunt Caroline and a cousin Mary, and has no aunt of the name of Mary. By his will he bequeaths 1,000 rupees to "his aunt Caroline" and 1,000 rupees to "his cousin Mary," and afterwards bequeaths 2,000 rupees to "his before-mentioned aunt Mary." There is no person to whom the description given in the will can apply and evidence is not admissible to show who was meant by "his before-mentioned aunt Mary." The bequest is therefore void for uncertainty under the seventy-sixth section.

(b) A bequeaths 1,000 rupees to . . . , leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(c) A bequeaths to B . . . rupees, or "his estate of" Evidence is not admissible to show what sum or what estate the testator intended to insert.

Extrinsic evidence not admitted.—A taluqdar, who died childless, but leaving two widows, bequeathed, by an

unregistered will, to the "Maharani Sahiba" his entire estate, and gave a power to the same to adopt a son to him; also providing maintenance for both his widows after such adoption. *Held*, that, to determine whether the will referred, in such bequest and power, only to the elder or to both of the testator's wives, extrinsic evidence of his intention was not admissible; but that the true construction was that which would indicate a reasonable and probable intention consistent with his conduct, and his will generally.

As his views appeared to favour single heirship, and the whole state of things, as well as the language of the will, pointed to the owner of the estate being one, and the donee of the power to adopt being one: *Held*, that accordingly the words "Maharani Sahiba" were not here used as a collective term for both widows, but signified only the elder, although, when qualified, as they were in another part of the will, they might include both (1). In a will the testator directed his executor and trustee out of a certain sum of Rs. 500 to "disburse various petty pensions to some proper people who have been mentioned to him" (the executor and trustee) "by me:" *Held* that there was a deficiency on the face of the will as to the objects of this bequest, and by section 68 of the Indian Succession Act no extrinsic evidence could be admitted as to the intention of the testator, and that this legacy therefore failed (2).

69. The meaning of any clause in a will is to

Meaning of any clause to be collected from entire will.

be collected from the entire instrument, and all its parts are to be construed with reference to each other; and for this purpose a codicil is to be considered as part of the will.

(1) *Indar Kunwar v. Jaipal Kunwar*, 15 Cal., 725; 15 I. A., 127.

(2) *Administrator-General of Madras v. Money*, 15 Mad., 418.

Illustrations

(a) The testator gives to B a specific fund or property at the death of A, and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life, and after his decease in B. It appearing from the bequest to B that the testator meant to use in a restricted sense the words in which he describes what he gives to A.

(b) Where a testator, having an estate one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part of his will bequeaths Black Acre to B, the latter bequest is to be read as an exception out of the first, as if he had said, "I give Black Acre to B, and all the rest of my estate to A."

When, by acting on one interpretation of the words used, we are driven to the conclusion that the person using them is acting capriciously, without any intelligible motive contrary to the ordinary mode in which men in general act in similar cases, then, if the language admits of two constructions, we may reasonably and properly adopt that which avoids these anomalies, even though the construction adopted is not the most grammatically accurate (1).

A Hindu in 1884 made a will therein described as being executed in favour of the testator's wife in which he said "you must adopt for me a boy you like from the children that may be born in the families of my brothers," and after making certain provisions as to his property, etc., added, "the principal object of this will is that you should adopt for me any suitable boy." After the testator's death the widow, as in exercise of the power conferred on her by the will, purported to adopt a boy who did not come within the description in the first of the above clause, although one of the testator's brothers offered his own son in adoption. In a suit by the testator's brothers for a declaration that the adoption purported to have been made by the widow was

(1) *Abbott v. Middleton*, 7 H. L. C., 89, quoted in 15 Cal., 725, 749.

invalid—*Held*, that notwithstanding the general terms, of the second of the above clauses, the widow's power to adopt was restricted by the first and the adoption purported to have been made by her was invalid (1). Two widows of a Hindu each adopted a son to their deceased husband, under an authority from him, thus expressed: "You.....the elder widow, may adopt three sons successively, and you...the younger widow, may adopt three sons successively." *Held*, that, this might more reasonably be constructed as giving the elder widow authority to adopt three sons successively, and then a similar power to the younger, than as authorizing simultaneous adoption (2).

See also notes to sections 62 and 63 *supra* and section 82 *infra*.

70. General words may be understood in a restricted sense where it may be collected from the will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear where it may be collected from the other words of the will that the testator meant to use them in such wider sense.

When words may be understood in a restricted sense and when in a sense wider than usual.

Illustrations.

(a) A testator gives to A "his farm in the occupation of B," and to C "all his marsh-lands in L." Part of the farm in the occupation of

(1) *Amirthayyan v. Ketharamayyan*, 14 Mad., 65.

(2) *Akhoy Bunder Bagchi v. Kalapahar Haji*, 42 Cal., 406; 12 I. A., 198. For other cases in which the rule laid down in this section has been followed see *Shookmay Chandra Dass v. Monohari Dassi*, 11 Cal., 684, 692; *Kali Das Mullick v. Kanbaya Lal Pundit*, and on his decease, *Behari Lal Pundit*, 11 Cal., 121; *Amirthayyan v. Ketharamayyan*, 14 Mad., 65; *Anandrao Vinayak v. The Administrator-General of Bombay*, 20 Bom., 45; *Ramdhari v. Manibai*, 25 Bom., 420; *S. M. Hara Kumari Dasi v. Mohim Chandra Sarkar*, 12 C. W. N., 412.

B consists of marsh-lands in L. and the testator also has other marsh-lands in L. The general words, "all his marsh-lands in L," are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marsh-lands in L.

(b) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons, and chest of clothes, and to his friend A (a ship-mate) his red box, clasp-knife, and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(c) A, by his will, bequeathed to B all his household furniture, plate, linen, china, books, pictures, and all other goods of whatever kind; and afterwards bequeathed to B a specified part of his property. Under the first bequest, B is entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

The words *putra putrade krame* have acquired a technical force and are used as meaning an estate of inheritance (1).

Where a testator after clearly indicating an intention to exclude entirely certain of his relations from succession to his property proceeded to bequeath his "money" to two legatees, with directions as to its disposal, it was held that the intention of the testator being apparently, from a perusal of the whole will, to bequeath all his personal property to the legatees, it was not necessary to construe the terms used in its strict limited signification but the whole of the testator's personal estate passed (2).

71. Where a clause is susceptible of two meanings, according to one of which it has some effect, and according to the other it can have none, the former is to be preferred.

Which of two possible constructions preferred.

See notes to section 69 *supra*.

(1) Lalit Mohan Singh Roy v. Chukken Lal Roy, 24 Cal., 834; 24 I. A., 76.

(2) Cheda Lal v. Govind Ram, 30 All., 455.

72. No part of a will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

No part rejected if it can be reasonably construed.

See notes to section 69 supra.

73. If the same words occur in different parts of the same will, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.

Interpretation of words repeated in different parts of will.

74. The intention of the testator is not to be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

Testator's intention to be effectuated as far as possible.

Illustration.

The testator, by a will made on his death-bed, bequeathed all his property to C D for life, and after his decease to a certain hospital. The intention of the testator cannot take effect to its full extent, because the gift to the hospital is void under section 105, but it shall take effect so far as regards the gift to C D.

75. Where two clauses or gifts in a will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.

The last of two inconsistent clauses prevails.

Illustrations.

(a) The testator, by the first clause of his will, leaves his estate of Ramnagar "to A" and, by the last clause of his will, leaves it "to B" and not "to A." B shall have it.

(b) If a man, at the commencement of his will, gives his house to A, and at the close of it directs that his house shall be sold and the proceeds invested for the benefit of B, the latter disposition shall prevail.

The rule that if there be a repugnancy the first in a deed and the last in a will shall prevail, has no application when the supposed inconsistencies are found in one and the same provision (1).

76. A will or bequest not expressive of any definite intention is void for uncertainty.

Will or bequest void for uncertainty.

Illustration.

If a testator says, "I bequeath goods to A;" or, "I bequeath to A;" or, "I leave to A all the goods mentioned in a schedule," and no schedule is found; or "I bequeath 'money,' 'wheat,' 'oil,'" or the like, without saying how much, this is void.

1. **Void Bequests.**—The following bequests have been held void for uncertainty:—

(1) A bequest for purposes of popular usefulness or for purposes of "charity" in such manner as the executors may unanimously think proper (2).

(2) A bequest for *Dharam* (3).

(3) A bequest by a testator to his wife in the following terms:—

"Rs. 2,000 to be credited in our shop in the name of my wife, Bai Bapi. Interest at 6 per cent. to be paid to

(1) *The Advocate-General of Bombay v. Harmsuji Noshirwanji, Vakil*, 29 Bom., 375.

(2) *Trikundās Damodhar v. Hari Das*, 31 Bom., 533.

(3) *Ranchordas Vandravandas v. Parbatibai*, 23 Bom., 725; 26 I. A., 71; *Gangai, wife of Mir Muhammad, Dattu Bhai v. Thavar Mul'a, Executor of Bhaimatbai, widow of Sayjan Mir Alli*, 1 B. H. C. R., 71; *Cursandas Govindji v. Vundravandas Parshotam and F. L. Lathan*, 11 Bom., 482; *Morarji Cullanji v. Nenbai*, 17 Bom., 351; *Vundravandas Parshotamdas v. Cursondas Govindji*, 21 Bom., 646.

her every year. If in her life-time she demands the money to use in a good work (*sara kam*), it should be given to her, but if she has not taken in her life-time, Jamnadas and Bhaghubhai are to dispose of it according to their own pleasure after death."

[This was held not a bequest for good works (*sara kam*), but a bequest to the testator's wife, with a direction to use it in good works *sara kam*), and as the direction was void for uncertainty she was entitled to the money as if the will had contained no such direction (1).]

(4) A bequest that "if after the performance of all the above acts" (*i.e.*, acts enumerated in the will) "there remains any money or moveable property as surplus, then the executors shall be able to spend the same in proper and just acts for the testator's benefit" (2).

(5) A will by a testator empowering his executor to lay out such portion of his estate as the executor might think fit towards charitable purposes and not disposing of the residue of the estate (3).

(6) A bequest in favour of *Dharmada* (4).

(7) A direction in a will by the testator to his executors and trustees out of a certain sum of Rs. 500 to "disburse various petty pensions to some proper people who have been mentioned to him by me" (5).

2. Valid Bequests.—The following bequests have been held valid and not void for uncertainty:—

(1) A bequest to plaintiff of one Kani of land out of land measuring one Kani and three quarters. [The plaintiff

(1) *Bai Bapi v. Jamnadas Hathi Sang*, 22 Bom., 774.

(2) *Gokool Nath Guba v. Issuar Lochan*, 14 Cal., 222.

(3) *Surbomungola Dabee v. Mohendronath Nath*, 4 Cal., 508.

(4) *Devshankar Naranbhal v. Moti Ram Jageshvar*, 18 Bom., 136.

(5) *Administrator-General of Madras v. Money*, 15 Mad. 448.

was held to have the right to make his selection in this case (1).]

(2) A bequest containing a direction to the executors to set apart a specific sum for distribution among the testator's "poor relations, dependents, and servants" (2).

(3) A bequest of the residuary estate "to my executor in trust to spend and give away the whole thereof in charity in such manner and to such religious and charitable purposes as he may in his discretion think proper." [It was held in this case that the direction to spend and give away the whole of the residue in charity governs the words that immediately follow and therefore the purposes for which the fund is to be spent must be charitable, although they may at the same time be religious (3).]

(4) A bequest by a Khoja Mahomedan written in the English language and form, of a fund "to be disposed of in charity as my executors shall think right" (4).

(5) A will directing that the executors should "get a Shiva's temple erected at a reasonable cost in a suitable place within the compound of the brick-built baitakhana house, inclusive of the building and garden thereto," in which he had constantly resided (5).

(6) A bequest in the following terms:—"I do hereby direct my trustee to feed the really needy and poor at Gopeenathjee out of a separate expense out of my estate, to be contributed to the worship of Luckeejouardunjee, my ancestral goddess. I do direct my trustee to spend suitable

(1) Narayanasami Gramani v. Periathambi Gramani, 18 Mad., 460.

(2) Manoranua Dassi v. Kali Charan Banerjee, 31 Cal., 166.

(3) Parbati Bibee v. Ram Baran Upadhya, 31 Cal., 895.

(4) Gangai, wife of Mir Muhammad Dattu Bhai v. Thavar Mulla, Executor of Rahimatbai, widow of Sajan Mir Ali, 1 B. H. C. R., 71.

(5) Gookal Nath Guba v. Issur Lochun, 14 Cal., 222.

sums for the annual *scalds* or anniversaries of my father, mother, and grandfather, as well as of myself after my demise, for the performance of the ceremonies and the feeding of the Brahmins and the poor; to spend suitable sums for the annual contribution and gifts to the Brahmins, Pundits holding *tolls* for learning in the country at the time of the Doorga Poojah; to spend suitable sums for the perusal of Mahabharat and Pooran and for the prayer of God during the month of Kartick; should there be any surplus after the above expenditure, then I do hereby direct my trustee to spend the said surplus in the contribution towards the marriage of the daughters of the poor in my class and of the poor Brahmins, and towards the education of the sons of the poor amongst my class and of the poor Brahmins, and other respectable castes, as my trustee will think fit to comply" (1).

[*Quare*—Whether the bequests to Pundits holding *tolls* and for the reading of the Mahabharat and Pooran and for prayer to God, were valid (2).]

(7) A bequest directing certain rents to be used for *sadarart* where from the wording of the will it appeared that the testator intended his executors to establish a definite *sadarart* in some definite place (3).

(8) A direction in a will for feeding and paying the Brahmins on the day following the night of Sheoratri (4).

(9) A bequest in the following terms:—"For the worship and *puja* of *Shiva Thakur* and *Dharma Sabha*, the house of which the boundaries and descriptions are given below and in which the *Shiva Thakur* has been established and the income derived from the promissory notes of the value of Rs. 10,000 out of those numbers of which the numbers are given below shall be devoted to the worship and *puja* of

(1) Dwarkanath Bysack v. Burroda Persaud Bysack, 4 Cal., 443.

(2) *Ibid.*

(3) Morarji Cullianji v. Nembai, 17 Bom., 351.

(4) Kedar Nath Datt v. Atul Krishna Ghose, 12 C. W. N. 1083.

Shiva Thakur and the repair of the said house and whatever remains, it may be used by the principal executor for meeting the family expenses. The aforesaid house shall not be transferred by sale, mortgage, gift or by any other way. The principal executor may live in it and may let it out on rent: provided that such acts do not interfere with the *Seva* and *puja* of *Shiva Thakur* and the *Dharma Sabha*; and the aforesaid sum of Rs. 10,000 which is set aside for the service of *Shiva Thakur* shall be kept in such a way that it may not be destroyed on any account whatever" (1).

(10) A forfeiture clause in a will that if there should be any dispute or disagreement between my two wives, or if there being any disagreement between either or both of them and the executors above-named, she or they live in my family dwelling house or according to the rules of Hindu religion in some holy place maintaining a good character, then each of them shall receive a monthly allowance of Rs. 10 for their maintenance, but if otherwise she shall be entirely deprived of her right (2).

3. Void bequests and not Precatory Trusts.—The following bequests have been held void and not to create a precatory trust:—

(1) A direction in a will that, "if after the performance of all the above acts there remains any money or movable property* as surplus, then the executors shall be able to spend the same in proper and just acts for the testator's benefit" (3).

(1) *Benode Behari Maulik v. Sita Ram Naik Daji Kalia* and another, 6 A. L. J., 444.

(2) *Bhoba Tareni Debya v. Peary Lal Sanyal*, 24 Cal., 646. For other cases on the point see *Ganendro Mohan Tagore v. Juthendro Mohan Tagore*, 1. I. A., 397; 14 B. L. R., 60; *Mulji Bhaishanker v. Bai Ujam*, 13 Bom., 218; *Girianna Murkundi Naik v. Honama*, 15 Bom., 236.

(3) *Gokool Nath Guba v. Issur Lochun*, 14 Cal., 222.

(2) A bequest by a testator in the words, "I give to my dearly beloved wife the whole of my property both real and personal (described), feeling confident that she will act justly to our children in dividing the same when no longer required by her." [In this case it was *held* that the widow took an absolute interest in the property, and that no trust for the benefit of the children was created] (1).

(3) A bequest by a Hindu appointing certain persons executors for the purpose of managing his estate after his death and directing that, "you should give my brothers, their wives and children according to your wishes" (2).

77. The description contained in a will, of property, the subject of gift, shall, unless a contrary intention appear by the will, be deemed to refer to and comprise the property answering that description at the death of the testator.

Words describing subject refer to property answering description at testator's death

The owner of land, measuring one *kani* and three-quarters, died, leaving a will by which he divided one *kani* thereof to the plaintiff, who now sued to recover one *kani* selected by him out of the land in question: *Held*, that plaintiff had the right to make his selection and was entitled to a decree (3).

82. Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein.

Bequest without words of limitation

(1) The Mussorie Bank, Limited, v. Albert Charles Raynor, 4 All., 500; 4 I. A., 70.

(2) Kumarasami v. Subbaraya, 9 Mad., 325.

(3) Narayanasami v. Periathambi, 18 Mad., 460.

unless it appears from the will that only a restricted interest was intended for him.

A Hindu, by a petition to the Collector of Patna, recited the death of his sons, of his brother without leaving issue, his brother's wife, and his own wife, and then proceeded to dispose, as if by testament, of his property as follows: "Only D K, widow of my son, who, too, excepting her two daughters born of her womb, S and D, has no other heirs, is my heir. Except D K none other is, nor shall be, my heir and *malik*.....Furthermore, to the said D K, too, these very two daughters named above, together with their children, who after their marriage may be given in blessing to them by God Almighty, are and shall be heir and *malik*." D K survived the testator. S predeceased him without issue; D survived him and then died leaving S R, her only son and heir. D K, in 1854, after the testator's death, sold part of the lands mentioned in the petition to M for Rs. 41,000, of which Rs. 14,000 were devoted to pay off a mortgage thereon. In a suit by S R against M and D K, to protect his future right and title to the property sold by cancellation of the deed of sale,—*held*, that the intention of the testator must be construed to have been that D K should not take an absolute estate, but that she should be succeeded therein by her two daughters (1).

Though a mere gift of immoveable property by a Hindu husband to his wife does not carry with it the power of alienation, yet where any such property is given by the husband to the wife with express power of alienation, or when this power is implied by the grant, she would acquire an absolute power of disposal over the property; and when the gift is made by a will, the legatee is entitled, under the

(1) *Moulvi Mahomed Shumsool Hoober v. Shewukram alias Roy Doorga Pershad*, 2 I. A., 7; 14 B. L. R., 226, 231; 22 W. R., 409.

provisions of section 82 of the Indian Succession Act, to the whole interest of the testator unless it appears from the will that only a restricted interest was intended to be given(1).

The expression *malik* ordinarily implies an absolute gift, and there is no authority for introducing into the will the idea that a female ought not to obtain anything beyond an estate for her life-time (2). Where a Hindu governed by the *Mitakshara* law devised immoveable property to his wife stating that she would be the "*malik*" of the property after his death, *held* that the word "*malik*" imported an absolute proprietary interest, and that, in the absence of any indication of a contrary intention on the part of the testator the widow took an absolute, and not merely a life estate in the property so devised (3). Unless there is something in the context qualifying it the word "*malik*" used in a will bears its technical meaning. When a testator bequeathed his property to his issue, if he happened to have any, and if he had no issue, then to his mother and wife, who were to be "*malik aur kabiz*," *held* that the ladies obtained an absolute interest (4).

Where a Hindu testator bequeathed a 4-anna share of a zemindari to his youngest widow and her son, "for your maintenance," with power to them to alienate by sale or gift the property bequeathed. *Held*, that on the true construction of such gift each of the two legatees took an absolute interest in a 2-anna share of his estate, and the words *for your maintenance* did not reduce the interest of either legatee to one for life only.

(1) *Saroda Sundari Dassi v. Kristo Jiban Pal*, 5 C. W. N., 360.

(2) *Lala Ramjewan Lal v. Dal Koer*, 24 Cal., 406.

(3) *Padam Lal v. Tek Singh*, 29 All., 217.

(4) *Thakur Parshad v. Jamna Kuuwar*, 31 All., 308.

Held also, that the widow's conveyance of her share operated as a severance of the joint tenancy which had been created by the will between her and her son, and was effectual without her son's consent (1).

An absolute bequest, by a Hindu, of his separate immovable property to his widow confers on her as full dominion and power of alienation over that property as if the bequest has been made to a stranger (2).

To constitute a gift by implication in a will, there must be a reasonable degree of certainty as to the persons intended to take and the nature of the estates which they are intended to take. A direction that until the son or sons of the tenant for life of immovable property should attain a certain age, no person on behalf of such son or sons should ask the tenant for life for an account or raise any objection, does not sufficiently define the persons to take or the estates in which they are to take to constitute a gift by implication.

If the estate cannot be implied from the words used in the will, the Court cannot create such estate for the testator by implication, since to do so would be to construct a will for him based upon his supposed intention, not on the words which he has used (3).

There is no real difference in the meaning of the words "*waris*" (heir) and "*malik*" (owner) (4).

A Hindu by will bequeathed to his daughters his separate property to be enjoyed by them, 'as they pleased': *Held*, that the daughters took an absolute estate (5).

1) *Jogeswar Narain Deo v. Ram Chundra Dutt*, 23 Cal., 670.

(2) *Seth Mulchand Badharsha, deceased, his heirs, Ghela Bhai Mulchand v. Bai Manaha, widow of Seth Nagindas Mayachand*, 7 Bom., 491.

(3) *Anandro Winayak v. The Administrator-General of Bombay*, 20 Bom., 450.

(4) *Chuni Lal v. Bai Muli*, 24 Bom., 430.

(5) *Kamaraza v. Venkataratnam*, 20 Mad., 293.

Held that under the circumstances and having regard to the sentiments prevalent amongst Hindus on the subject of the devolution of immoveable property upon females, the devise of the villages D and A must be taken to convey an estate for life only and not the absolute ownership in the villages (1).

An absolute gift of immoveable property to a widow for maintenance is not unknown to Hindus or repugnant to their ideas of propriety. In construing a will every portion of it must be given full effect, which on a natural and grammatical construction of the will must be allowed to it and no portion of it ought to be rejected unless such a construction makes the provisions of the will inconsistent with each other or leads to results which must be repugnant to the testator's ideas of propriety.

Where a Hindu testator by his will gave immoveable property to a widow stating it to be for her maintenance and after making various other gifts added a clause by which he declared that all the gifts under the will should be absolute, there is no such inconsistency or repugnancy in giving the clause its natural and grammatical construction by making it applicable to the gift to the widow and she will accordingly take an absolute interest in the property. By so construing the will the subsequent clause only removes the ambiguity in the case of all the gifts and does not alter any material portion of the will. The statement by the testator that he gave such property out of sympathy will not affect the absolute nature of the estate given, if there was no legal obligation on him to provide for such widow's maintenance.

Where a person takes possession of the property under a will which cannot legally operate to convey such property.

- (1) Mathura Das v. Bhikhan Mal, 19 All., 16.

the person so entering on possession must be presumed to prescribe for the interest which the will purports to give him, and the burden of proving that he prescribed for something less will be on the party alleging it (1).

A will addressed by the testator to his wife was to this effect : " you are my legally married wife and entitled to the property to be left by me ; should I on a sudden die you shall under this will become possessor of my properties, etc., and perform my *sradh* at a suitable cost, and for the benefit of my soul you shall purchase a house and establish *Mahadeva* in it and perform its sheba and services, etc., and you shall fix a suitable allowance as '*pranam*' for my spiritual guide. You will have the right and power to alienate by gift or sale all the aforesaid moveable and immoveable properties ; my daughter, Sreemutty Hara Kumari, shall become entitled to and possessor of whatever properties will remain after your death and she shall enjoy the same keeping up and maintaining the aforesaid shebas, etc. The said daughter shall have the same rights in the aforesaid properties as you have and he to whom my daughter may willingly give away those properties shall possess the same and enjoy them keeping up and maintaining the shebas, etc. "

Held—That giving effect to all the words of the will, the widow took an estate for life with a power of alienation and to the extent to which such power was not exercised, the daughter similarly took the property (2). The question whether a Hindu widow has acquired, under a devise by her husband, a larger estate than a " widow's estate," is to be decided upon the terms of the devise, and not upon the mere

(1) Rama Chandra Naiker v. Vijaya Ragavulu Naidu, 31 Mad. 349.

(2) S. M. Hara Kumari Dasi v. Mohim Chandra Surkar, 12 C. W. N., 412.

absence or otherwise, in the will, of express language such as will ordinarily create an estate of inheritance (1).

A Hindu executed a will in favour of his daughter-in-law (son's widow) in these terms:—"I have no *aulad* (meaning no male child for he had a daughter) and therefore make this will in favour of my daughter-in-law to the effect that all the movable and immovable property which is in my possession at the time of executing this will and any other property which may come into my possession in my life-time or to which I may become entitled shall, after my death, remain in the proprietary (*malikana*) possession of the devisee, and the said devisee shall be the owner (*malik*) of all the bequeathed property, and it shall be incumbent on the devisee to perform my funeral rites after my death,....., the devisee shall be owner of the property that is left after the funeral rites, etc., the devisee has power in case of my not adopting anyone in my life-time to adopt after my death any person of my family whom she may think fit if any of my relations and heirs or any strangers claim the bequeathed property from the devisee then that claim shall be false." *Held*, that having regard to the context and the rules for the construction of Hindu wills the will under consideration conferred only a life interest upon the devisee (2).

A Hindu testator gave a twelve anna share of his property to his two wives by clause 2 of his will which was as follows:—"My first and second wives shall together be entitled to twelve annas of all the properties left by me, and D and R, sons of my father's sister's son R N C, deceased, who have been living in commensality from the time of my predecessor, shall be entitled to a four anna share in equal shares, according to the following.

(1) *Basant Singh v. Muna Koer*, 2 O. C., 226.

(2) *Musammatt Salta v. Kashi Nath*, 9 O. C., 119.

rules." Clause 4 was as follows:—"If there should be any dispute or disagreement between my two wives or if there being any disagreement between either or both of them and the executors above-named, she or they live in my family dwelling-house, or according to the rules of Hindu religion in some holy place, maintaining a good character, then each of them shall receive a monthly allowance of Rs. 10 for maintenance, but if otherwise she shall be entirely deprived of her right." Clause 9 provided that no person of the family of the father of his two wives should be able to exercise any control over the money and the property left by the testator. Clause 5 provided for the education of the testator's sister's son. The gift over was to the effect that any one acting contrary to the terms of the will should be deprived of his interest which should in due course devolve on the other heirs. It was found on the evidence that forfeiture under clause 4 of the will had been incurred by the defendant B, the younger widow of the testator, by reason of her having broken the condition relating to residence. *Held*, that section 82 of the Indian Succession Act (X of 1865), which enacts that "where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him," applied to the case. *Held*, also, that the will gave only a restricted interest to the widows, and that clause 2 of the will should be construed as giving to the widows, as joint tenants, a life interest in a twelve anna share of the estate with the right of survivorship. The clause in the will as to residence was valid and binding.

Held, further, that the plaintiff, the son of the testator's sister, who was in existence at the date of the testator's death, and who was the next reversionary heir after his widows, was entitled to take under the gift over, and not

the heirs to the *stridhan* of P, the elder widow of the testator (1).

83. Where property is bequeathed to a person, with a bequest in the alternative to another person or to a class of persons; if a contrary intention does not appear by the will, the legatee first named shall be entitled to the legacy, if he be alive at the time when it takes effect; but if he be then dead, the persons or class of persons named in the second branch of the alternative shall take the legacy.

Illustrations.

(a) A bequest is made to A or to B. A survives the testator. B takes nothing.

(b) A bequest is made to A or to B. A dies after the date of the will, and before the testator. The legacy goes to B.

(c) A bequest is made to A or to B. A is dead at the date of the will. The legacy goes to B.

(d) Property is bequeathed to A or his heirs. A survives the testator. A takes the property absolutely.

(e) Property is bequeathed to A or his nearest of kin. A dies in the life-time of the testator. Upon the death of the testator the bequest to A's nearest of kin takes effect.

(f) Property is bequeathed to A for life, and after his death to B or his heirs. A and B survive the testator. B dies in A's life-time. Upon A's death the bequest to the heirs of B takes effect.

(g) Property is bequeathed to A for life, and after his death to B or his heirs. B dies in the testator's lifetime. A survives the testator. Upon A's death the bequest to the heirs of B takes effect.

85. Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not

Bequest to class of persons under general description only.

(1) *Bhoba Tarini Debya and another v. Peary Lall Sastry and others*, 24 Cal., 646.

in, their ordinary sense applicable shall take the legacy.

88. Where a will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of or in addition to the first; if there is nothing in the will to show what he intended, the following rules shall prevail in determining the construction to be put upon the will:—

Rules of construction where will purports to make two bequests to same person.
First.—If the same specific thing is bequeathed twice to the same legatee in the same will, or in the will and again in a codicil, he is entitled to receive that specific thing only.

Second.—Where one and the same will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.

Third.—Where two legacies of unequal amount are given to the same person in the same will, or in the same codicil, the legatee is entitled to both.

Fourth.—Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies.

EXPLANATION.—In the four last rules, the word will does not include a codicil.

Illustrations.

(a) A having ten shares, and no more, in the Bank of Bengal, made his will, which contains near its commencement the words "I bequeath my ten shares in the Bank of Bengal to B." After other bequests, the will concludes with the words "and I bequeath my ten shares in the Bank of Bengal to B." B is entitled simply to receive A's ten shares in the Bank of Bengal.

(b) A having one diamond ring, which was given him by B, bequeathed to C the diamond ring which was given him by B. A afterwards made a codicil to his will, and thereby, after giving other legacies, he bequeathed to C the diamond ring which was given him by B. C can claim nothing except the diamond ring which was given to A by B.

(c) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, in the same will, repeats the bequest in the same words, B is entitled to one legacy of 5,000 rupees only.

(d) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, by the same will, bequeaths to B the sum of 6,000 rupees. B is entitled to 11,000 rupees.

(e) A, by his will, bequeaths to B 5,000 rupees, and by a codicil to the will he bequeaths to him 5,000 rupees. B is entitled to receive 10,000 rupees.

(f) A, by one codicil to his will, bequeaths to B 5,000 rupees, and, by another codicil, bequeaths to him 6,000 rupees. B is entitled to receive 11,000 rupees.

(g) A, by his will, bequeaths "500 rupees to B because she was his nurse," and in another part of the will bequeaths 500 rupees to B "because she went to England with his children." B is entitled to receive 1,000 rupees.

(h) A, by his will, bequeaths to B the sum of 5,000 rupees, and also, in another part of the will, an annuity of 400 rupees. B is entitled to both legacies.

(i) A, by his will, bequeaths to B the sum of 5,000 rupees, and also bequeaths to him the sum of 5,000 rupees if he shall attain the age of 18. B is entitled absolutely to one sum of 5,000 rupees, and takes a contingent interest in another sum of 5,000 rupees.

89. A residuary legatee may be constituted by

any words that show an intention
 Constitution of resi- on the part of the testator that
 duary legatee.

the person designated shall take the surplus or residue of his property.

Illustrations.

(a) A makes her will, consisting of several testamentary papers, in one of which are contained the following words:— 'I think there will be something left, after all funeral expenses, etc., to give to B, now at school, towards equipping him to any profession he may hereafter be appointed to.' B is constituted residuary legatee.

(b) A makes his will, with the following passage at the end of it:—"I believe there will be found sufficient in my banker's hands to defray and discharge my debts, which I hereby desire B to do, and keep the residue for her own use and pleasure." B is constituted the residuary legatee.

(c) A bequeaths all his property to B, except certain stocks and funds, which he bequeaths to C. B is the residuary legatee.

90. Under a residuary bequest, the legatee is entitled to all property belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect.

Property to which residuary legatee entitled.

Illustrations.

A, by his will, bequeaths certain legacies, one of which is void under section 105, and another lapses by the death of the legatee. He bequeaths the residue of his property to B. After the date of his will, A purchases a zamindari, which belongs to him at the time of his death. B is entitled to the two legacies and the zamindari as part of the residue.

By his will, a testator, after giving a life interest in certain property to his wife, directed that after her death the property should be divided into equal shares between his "three children, James, Cornelius, and Florence, or the survivors or survivor of them," and the will contained a residuary bequest in favour of the wife. James (who was

appointed a trustee) was an attesting witness to the will. The widow having died, Florence brought this suit, seeking to have it declared that James was incapacitated from taking under the will (by reason of his having attested it) and that she was entitled to a moiety of the property bequeathed.

Held, that the share of the legacy to James, which had lapsed, fell into the residue. The effect of the bequest to the three children "or the survivors or the survivor of them" would, in case James had predeceased the testator, have been to take the case out of the ordinary rule that a legacy lapses where the legatee dies during the life-time of the testator. But as the two children had not survived James, the contingency on the happening of which they were to take, had not happened. The testator having made a testamentary disposition which was incapable of taking effect, the share of James fell into the residue. The doctrine of acceleration could not be applied to such a case (1).

91. If a legacy be given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and, if he dies without having received it, it shall pass to his representatives.

The testator directed his trustees and executors to hold his real and personal estate upon trust, to sell the real estate either together or in parcel and either by public auction or private contract, and to call in, sell, and convert into the money such part of his personal estate as should not consist of money, and to divide the said moneys,

(1. *Camani v. Barefoot*, 26 Mad., 433.

and the ready money which might belong to such estate, amongst the several persons named in the schedule to the will, and to pay the same to them in the shares and proportions therein mentioned, as and when they should respectively attain the age of twenty-one years in the case of males, or, in the case of females, when they should respectively attain that age or marry. He directed that, in the event of any of such persons dying in his life-time, or at any time thereafter "prior to the said division," leaving lawful issue, such issue should be entitled to the share which their deceased parent would have taken. One of the legatees, who had attained the age of twenty-one years at the testator's death, died five months after him, before payment of the legacy, and left lawful issue.

Held that the legacy vested in interest in the legatee at the testator's death, but that the legatee having died prior to the division of the estate, it became divested; that the "division" of the testator's estate meant, in this will, the ascertainment of the amounts allotable to the share of each legatee, after the conversion of the estate into money, and that the gift over in favour of the legatee's issue was not void for uncertainty, but took effect (1).

92. If the legatee does not survive the testator, the legacy cannot take effect but shall lapse and form part of the residue of the testator's property, unless it appear by the will that the testator intended that it should go to some other person.

In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

(1) *Bachman v. Bachman*, 6 All., 583.

Illustrations.

(a) The testator bequeaths to B "500 rupees which B owes him." B dies before the testator; the legacy lapses.

(b) A bequest is made to A and his children. A dies before the testator, or happens to be dead when the will is made. The legacy to A and his children lapses.

(c) A legacy is given to A, and, in case of his dying before the testator, to B. A dies before the testator. The legacy goes to B.

(d) A sum of money is bequeathed to A for life, and after his death to B. A dies in the life-time of the testator; B survives the testator. The bequest to B takes effect.

(e) A sum of money is bequeathed to A on his completing his eighteenth year, and, in case he should die before he completes his eighteenth year, to B. A completes his eighteenth year, and dies in the life-time of the testator. The legacy to A lapses, and the bequest to B does not take effect.

(f) The testator and the legatee perished in the same shipwreck. There is no evidence to show which died first. The legacy will lapse.

A, a Parsi inhabitant of Surat, died there on the 13th February 1879, leaving him surviving the following relations, *viz.*:—a daughter J (the respondent) by his first wife who had predeceased him; his second wife, Dhanbai, who lived apart from him; his third wife, who had been divorced by him, and whose son, A did not recognize as his own; and his three sisters, D, S, and G, the first-named of whom had been married to K, and whose son E was the appellant. By his will, A expressly directed that neither his daughter J, nor his widow, Dhanbai, should take any share of his property, the whole of which he bequeathed to his brother R, who, however, predeceased him. On the 6th September 1879, J applied to the District Court of Surat, that letters of administration to A's estate might be granted to her husband as her attorney, alleging that A died intestate. Her application was opposed by E, D, and S (the nephew and two

sisters of A) on the ground that J was expressly excluded by A from inheriting his property, and that neither she nor her husband resided permanently within the Presidency of Bombay. The District Judge granted limited letters of administration to J's husband as her attorney, under section 214 of Act X of 1865. On an appeal to the High Court by E alone, *Held* that A had died intestate, not having made any bequest or devise of his property which could take effect, inasmuch as his sole devisee (R) had predeceased him, and that the estate must, therefore, go in accordance with the law of succession.

The use of mere negative words, unaccompanied by any effective disposition of his property, could not exclude his daughter J or his widow, Dhanbai, from succeeding to their shares of the estate.

Under the Parsi Succession Act (XXI of 1865), widows and children rank before brothers or sisters (1).

Legacy does not lapse if one of two joint legatees die before testator.

93. If a legacy be given to two persons jointly, and one of them die before the testator, the other legatee takes the whole.

Illustration.

The legacy is simply to A and B. A dies before the testator, B takes the legacy.

The section is in terms confined to only two persons but the same rule would apply where there is a devise or bequest to more than two persons (2).

(1) *Erasha Kaikhasru alias Kharsedji, minor, by his guardian Kaikhasru alias Kharsedji Dosabbai v. Jerbai, wife of Ratonji Ras-tonji*, 4 Bom., 537.

(2) Jarman, 5th edition, vol. 2, 1115.

Jehangirji Nusserwanji Wadia, a Parsi, died in 1843 leaving a widow (Manckbai) and a daughter (Motlibai) and two grandsons (sons of Motlibai) him surviving. By his will (written in the Gujrati language) he directed that during her life his widow and daughter were "to agree together and to manage the affairs with unanimity" and after Manckbai's death he gave the whole power over his estate to his daughter Motlibai "and so long as Motlibai enjoys her natural life, everything is to remain with her." The will then continued: "After the death of Motlibai--Motlibai has two sons, namely, Bhai Navroji and Bhai Nusserwanji—these two boys are the owners of whatever property and estate there may be belonging to me. They are considered as my children. No one is to offer them any hindrance or impediment. I have presented all to my wife and to my daughter, Motlibai."

Held (i) (confirming Fulton, J.) that Manckbai and Motlibai took only a life interest in the estate.

(ii) (Varying the decree of Fulton, J.) that Motlibai's two sons took the estate as joint tenants—subject to the life interest of Manckbai and Motlibai and not as tenants in common (1).

Where a Hindu testator bequeathed a 4 anna share of a zemindari to his youngest widow and her son, "for your maintenance," with power to them to alienate by sale or gift the property bequeathed.

Held, that on the true construction of such gift each of the two legatees took an absolute interest in a 2 anna share of his estate, and the words *for your maintenance* did not reduce the interest of either legatee to one for life only.

(1) Navroji Manockji Wadia v. Perozbai, 23 Bom., 80.

Held, also, that the widow's conveyance of her share operated as a severance of the joint tenancy which had been created by the will between her and her sons, and was effectual without her son's consent (1).

94. But where a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then, if any legatee dies before the testator so much of the legacy as was intended for him shall fall into the residue of the testator's property.

Effect in such a case of words showing testator's intention that the shares should be distinct.

Illustration.

A sum of money is bequeathed to A, B, and C, to be equally divided among them. A dies before the testator. B and C shall only take so much as they would have had if A had survived the testator.

95. Where the share that lapses is a part of the general residue bequeathed by the will, that share shall go as undisposed of.

When lapsed share goes as undisposed of.

Illustration.

The testator bequeaths the residue of his estate to A, B and C, to be equally divided between them. A dies before the testator. His one-third of the residue goes as undisposed of.

96. Where a bequest shall have been made to any child or other lineal descendant of the testator, and the legatee shall die in the life-time of the testator, but any lineal descendant of his shall survive

When bequest to testator's child or lineal descendant does not lapse on his death in testator's life-time.

(1) *Jogeswar Narain Deo v. Ram Chandra Dutt*, 23 Cal. 670.

the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Illustration.

A makes his will by which he bequeaths a sum of money to his son B for his own absolute use and benefit. B dies before A, leaving a son C who survives A, and having made his will whereby he bequeaths all his property to his widow D. The money goes to D.

A testator, by his will dated the 22nd April 1878, gave a legacy of Rs 5,000 to his son's daughter, Jodha, to be paid to her out of a certain sum owing to the testator by the Rajah of Bettia. The testator died on the 2nd February 1881, and Jodha in October 1879. The money due by the Rajah of Bettia was realized on the 7th December 1884. Jodha left an only child, Binda, who was born before the death of the testator.

Binda sued to recover the legacy left to her mother; the defence was that the legacy had lapsed.

Held, that Jodha was, in point of law, within the meaning of section 96 of the Succession Act, a person in existence at the death of the testator, because a lineal descendant of her's survived the testator (1).

A Hindu testator, who had no male issue, bequeathed certain real property to his eldest daughter and her sons from generation to generation. The legatee, who had daughters, predeceased the testator, who then also died, leaving a widow and other daughters him surviving. The daughters of the deceased legatee claimed the property as the lineal descendants of the testator, contending that

(1) Jitu Lal Mahta v. Binda Bibi, 16 Cal., 549.

although section 96 of the Indian Succession Act did not apply to the case, it should be held to govern it by analogy, as affording a guide to justice, equity and good conscience.

Held, that the words used in the will must be construed as meaning "heirs," and that the provision contained in section 96 of the Indian Succession Act could not be extended to such a case (1).

97. Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator's life-time, of the person to whom the bequest is made.

Bequest to A for benefit of B does not lapse by A's death.

98. Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as shall be alive at the testator's death.

Survivorship in case of bequest to described class.

Exception.—If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest or otherwise, the property shall at that time go to such of them as shall be then alive, and to the representatives of any of them who have died since the death of the testator.

Illustration.

(a) A bequeaths 1,000 rupees to "the children" of B without saying when it is to be distributed among them. B had died previous to the date of the will, leaving three children, C, D, and E. E died

(1) Ramamirtham v. Ranganathan, 24 Mad., 299.

after the date of the will, but before the death of A. C and D survive A. The legacy shall belong to C and D, to the exclusion of the representatives of E.

(b) A bequeaths a legacy to the children of B. At the time of the testator's death, B has no children. The bequest is void.

(c) A lease for years of a house was bequeathed to A for his life, and after his decease to the children of B. At the death of the testator, B had two children living, C and D; and he never had any other child. Afterwards, during the life-time of A, C died leaving E his executor. D has survived A. D and E are jointly entitled to so much of the leasehold term as remains unexpired.

(d) A sum of money was bequeathed to A for her life, and after her decease to the children of B. At the death of the testator, B had two children living, C and D, and after that event, two children, E and F, were born to B. C and E died, in the life-time of A, C having made a will, E having made no will. A has died, leaving D and F surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one to D, one to the administrator of E, and one to F.

(e) A bequeaths one-third of his lands to B for his life, and after his decease to the sisters of B. At the death of the testator, B had two sisters living, C and D, and after that event another sister E was born. C died during the life-time of B; D and E have survived B. One-third of A's lands belongs to D, E, and the representatives of C, in equal shares.

(f) A bequeaths 1,000 rupees to B for life, and after his death equally among the children of C. Up to the death of B, C had not had any child. The bequest after the death of B is void.

(g) A bequeaths 1,000 rupees to "all the children born or to be born" of B, to be divided among them at the death of C. At the death of the testator, B has two children living, D and E. After the death of the testator, but in the life-time of C, two other children, F and G, are born to C. After the death of C, another child is born to B. The legacy belongs to D, E, F, and G, to the exclusion of the after-born child of B.

(h) A bequeaths a fund to the children of B, to be divided among them when the elder shall attain majority. At the testator's death, B had one child living, named C. He afterwards had two other children, named D and E. E died, but C and D were living when C attained majority. The fund belongs to C, D, and the representatives of E, to the exclusion of any child who may be born to B after C's attaining majority.

A gift by will to persons unborn at the time of the death of the testator is void (1).

P, a Hindu, died in September 1886, and left two sons, *viz.*, the plaintiff and one Manmohandas. By his will P left the residue of his property to trustees who were to invest it in Government promissory notes and to pay the interest thereof to the wife of his son Manmohandas and after her death to pay it to Manmohandas. He further directed that after Manmohandas' death "the amount of the interest to be paid from time to time to his sons or daughters who may be alive according to what may be considered proper." By a subsequent clause he directed that if there should be no one living of his son Manmohandas' race or descent the said Government notes should be given to a certain charitable fund. At the time of the testator's death the wife and daughter (Chandakuvar) of Manmohandas were living. Subsequently a son was born to Manmohandas, but this child died shortly after its birth. The wife of Manmohandas died in September 1889, and Manmohandas himself died in October 1889. The plaintiff then filed this suit, claiming the property in question as heir of the testator to the exclusion of Chandakuvar, the daughter of Manmohandas. He contended that she could only claim as one of the class of "sons or daughters" of Manmohandas mentioned in the will; that the gift to this class was void, as it included or might include persons who were not in existence at the time of the testator's death. *Held*, that Chandakuvar was entitled to the property under the will. The primary intention of the testator was that all the members of the class specified should take, and his secondary intention was that if all could not take, those who could,

(1) *Alangamonjori Dabee v. Saumoni Dabee*, 8 Cal., 637; 10 C. L. R., 459.

should do so. Here there was one member of the class, who could take the property, and it might be inferred that the testator meant that she should take it, rather than that his intention should be defeated altogether (1).

Where the intention of a donor is to give a gift to two named persons capable of taking that gift, although it is also his intention that other persons unborn at the date of the gift should afterwards come in and share therein, the part of the gift which is capable of taking effect should be given effect to, notwithstanding that the intention of the donor cannot be carried out in its entirety.

Semble.—As a general rule, where there is a gift to a class, some of whom are, or may be, incapacitated from taking, because not born at the date of the gift or the death of the testator, as the case may be, and where there is no other objection to the gift, it should enure for the benefit of those members of the class who are capable of taking (2).

Mancharam Pitambardas, by his will, dated 14th April 1873, after appointing his brother, Jamnadas, to be his executor, bequeathed all his estate, etc., to Jamnadas, upon trust to pay debts, etc., and to stand possessed of the residue in trust (i) for his (testator's) wife Javerbai, and Ambavahu, the wife of his brother, Jamnadas, during the life of both, or the survivor of them, for their or her sole use; and (ii) from and after the decease of the survivor of them, in trust for the male issue of Jamnadas, if any there were; and (iii) in default of such male issue, in trust for any person or persons, in any shares or share, and in such manner as his brother Jamnadas should, by any deed or deeds or writing or writings appoint, with or without power of revocation or

(1) Mangaldas Parmanandas v. Tribhuvandas Narsidas, 15 Bom., 652.

(2) Ram Lal Sett v. Kanai Lal Sett, 12 Cal., 663.

new appointment. Jamnadas proved the will, and as executor managed the estate until his death on the 17th October 1888. He had no male issue, but two daughters, who were the defendants in this suit. On the 7th October 1888 he made a will; by which, in accordance with the authority given to him by the last clause of the will of Mancharam, he directed that twelve months after the death of Javerbai (Ambavahu being dead) the estate should be divided equally between his two daughters, Kabli and Moti. Kabli was born in Mancharam's life-time, but Moti not till after his death. *Held*, that the devise in Mancharam's will in favour of the male issue of Jamnadas meant in favour of such male issue as should be living at the time of the death of the survivor of the tenants for life, whether born in the life-time of the testator, or after his death: and as, at the death of the testator, Jamnadas had no male issue, it was a gift to a person or persons not in being at that time, and, therefore, void under the rule in the *Tagore case*. *Held*, also, that the devise over, in default of such male issue, was an alternative gift, to take effect on an event to be determined at the death of the survivor of the tenants for life, and consequently was not open to objection. *Held*, further—as to the bequest to such person or persons as Jamnadas should, by deed or writing, appoint—that there was no clear principle of Hindu Law which forbade such a bequest being construed, and effect given to it, according to its plain and literal terms; always, subject, however, to the same restrictions as the Hindu testamentary law imposes on the testator himself, *viz.*, that the appointment should be made, so that (i) the appointee might be ascertained when the event arose on which he was to take (in this case, therefore, before the death of the surviving tenant for life), and (ii) the appointee be a person who was alive at the death of the testator. *Held*, accordingly, that in

making this bequest the testator's intention was clearly to give Jamnadas the ultimate disposal of the property, but not that it should form part of Jamnadas' estate. The circumstances that English Courts, in such cases, treat the property when the power has been exercised, as part of the estate of the appointor, in the interest of creditors, and some other persons favoured by the Court of Equity, could not affect the questions as to what was the intention of Mancharam when he made his will. Original Court's decree varied accordingly, the share in the residue appointed by Jamnadas to his daughter Moti (born after the testator's death) being declared to be part of Mancharam's estate of which he died intestate, and to belong, therefore, to his (Mancharam's) heir (1).

(1) Javerhai v. Kablibai, 16 Bom, 492.

THE
CROWN GRANTS ACT.

CONTENTS.

SECTION	PAGE
1. Title, extent, and commencement ...	457
2. Transfer of Property Act, 1882, not to apply to Crown Grants ...	458
3. Crown Grants to take effect according to their tenor ...	458

THE
CROWN GRANTS ACT.

ACT No. XV OF 1895.

Passed by the Governor-General of India
in Council.

*(Received the assent of the Governor-General
on the 10th October 1895.)*

An Act to explain the Transfer of Property Act, 1882, so far as relates to grants from the Crown, and to remove certain doubts as to the powers of the Crown in relation to such grants.

WHEREAS doubts have arisen as to the extent and operation of the Transfer of Property Act, 1882, and as to the power of the Crown to impose limitations and restrictions upon grants and other transfers of land made by it or under its authority, and it is expedient to remove such doubts; It is hereby enacted as follows:—

Title, extent, and commencement.

1. (1) This Act may be called the Crown Grants Act, 1895.

(2) It extends to the whole of British India and

(3) It shall come into force at once

2. Nothing in the Transfer of Property Act, 1882, contained shall apply, or be deemed ever to have applied, to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made by or on behalf of Her Majesty the Queen-Empress, her heirs or successors, or by or on behalf of the Secretary of State for India in Council to, or in favour of, any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.

Transfer of Property Act, 1882, not to apply to Crown Grants.

3. All provisions, restrictions, conditions, and limitations, ever contained in any such grant or transfer as aforesaid shall be valid, and take effect according to their tenor, any rule of law, statute, or enactment of the Legislature to the contrary notwithstanding.

Crown Grants to take effect according to their tenor.

Paragraph 3 of the primogeniture sanad given to most taluqdars of Oudh provides that "it is another condition of this grant that in the event of your dying intestate or of any of your successors dying intestate, the estate shall descend to the nearest male heir according to the rule of primogeniture."

In the case of Brij Indar Bahadur Singh v. Rani Janki Koer, decided by their Lordships of the Privy Council in the year 1877, this condition was held to have been superseded by the special rules of succession to intestate taluqdars

laid down in section 22 of the Oudh Estates Act of 1869(1). The question whether since the passing of the Crown Grants Act the provisions of the *sana* relating to succession have revived notwithstanding the passing of Act I of 1869 was raised in *Musammat Parbati Koer v. Rani Chandarpal Koer* and decided in the negative with the remark "that it is quite clear from sections 2 and 3 of the Crown Grants Act read together that the Act has no such effect" (2).

See also note 1 to section 3 of the Oudh Estates Act, 1869, *supra*.

(1) 5 I. A., 1; 1 O. L. R., 318; B. & J., 161.

(2) 8 94, 98.

THE
ODDH SETTLED
ESTATES ACT.

CONTENTS.

	PAGE
Preamble	463
SECTION	
1. Short title	463
2. Interpretation clause	464
3. Application for permission to settle property	465
4. Rejection of application	466
5. Issue of notice	466
6. Grant or refusal of permission... ..	466
7. Application for permission to add to the settled estate.	467
8. Application for permission to revoke a declaration	468
9. Form, contents, and publication of permission	468
10. Execution of declaration	469
11. Procedure	469
12. Power to make certain declarations irrevocable	470
13. Duties of registering officer and Collector ...	470
14. Local Government empowered to exclude settled estate from the operation of the Act	470
15. Dealings with settled estate to the prejudice of successors prohibited	471
16. Leases of settled estates	471
17. Jurisdiction of Courts to be barred in certain matters	472
18. Devolution and bequest of settled estates ...	473
19. Saving clause	475
20. Power to make rules	475

THE
OUDH SETTLED
ESTATES ACT.

UNITED PROVINCES ACT No. II OF 1900
AS AMENDED BY UNITED PROVINCES ACT II OF 1910.

Passed by the Lieutenant-Governor, N.-W.P.
and Oudh in Council.

*(Received the assent of the Governor-General on
the 29th May 1900.)*

An Act to make better provision for the preservation of certain
estates and other immoveable property in Oudh.

WHEREAS it is expedient to make better provi-
sion for the preservation of cer-
tain estates and other immove-
able property in Oudh; It is hereby enacted as
follows:—

1. This Act may be called
the Oudh Settled Estates Act,
1900.

It shall extend only to the estates and other
immoveable property hereinafter
referred to, and it shall come into
force at once.

Extent and com-
mencement.

Short title.

Preamble.

2. Unless there be something repugnant in the subject or context, all words occurring in this Act, which are defined in the Oudh Estates Act, 1869, as amended by Act X of 1885 and the Oudh Estates (Amendment) Act, 1910, shall be deemed to have the meanings respectively assigned to them by that Act.

“Settled estate” means immoveable property for the time being subject to the provisions of this Act by virtue of a declaration made under section 10.

“Competent to contract” means competent to contract within the meaning of section 11 of the Indian Contract Act, 1872.

“Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject” (1). Every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice, and every minor under the jurisdiction of any Court of Wards, shall, notwithstanding anything contained in the Indian Succession Act (No. X of 1865) or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years, and not before: Subject as aforesaid, every other person domiciled in British India shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before (2).

(1) Contract Act (Act IX of 1872), s. 11.

(2) Indian Majority Act (Act IX of 1875), s. 3.

3. Notwithstanding any enactment to the contrary, it shall be lawful for—

Application for permission to settle property.

- (a) any *taluqdar* or grantee whose name is inserted in the second, third or fifth of the lists prepared under section 8 or section 9 of the Oudh Estates Act, 1869 or the heir or legatee of such *taluqdar* or grantee, or
- (b) any person whose name has been inserted in a list published under section 31A., sub-section (3), of the said Act, or the heir or legatee of such person, or
- (c) such a transferee or legatee of any of the persons specified in clauses (a) and (b) as is referred to in section 14 of the Oudh Estates Act, 1869, or
- (d) the heir or legatee of such a transferee or legatee as is referred to in clause (c), being entitled to a permanent, heritable and transferable right in an estate, and in possession thereof, and competent to contract, to apply in writing to the Local Government for permission to declare that such estate or a portion thereof shall in future be held subject to the provisions of this Act.

The words "or the heir or legatee of such *taluqdar* or grantee" in clause (a) formed old clause (b) of the section. The new clause (b) has been enacted because of the new section 31A having been added to Act I of 1869 by the Amending Act III of 1910.

4. The Local Government may in its discretion reject such application either summarily or after such inquiry as it may think proper to make.

5. If such application is not rejected under section 4, the Local Government shall publish, in the Gazette, a notice in English and in the Vernacular, reciting the fact that an application has been made and the purport thereof, and calling upon all persons having claims enforceable against the applicant or his immoveable property to notify the same in writing within six months, from the date of publication of the notice in English, and to show cause also in writing within such period why the permission sought by the applicant should not be granted, and shall, where such a course is practicable, serve a copy of such notice upon all persons known, or appearing from the application or other information received to be interested in opposing the application.

6. The Local Government, after considering the application and the result of any inquiry made by it or under its orders, and any further particulars or information called for by it, and the cause, if any, shown by any person against the application, may in its discretion either grant or refuse permission, or grant permission in respect of a portion only of the property to which the application relates:

Provided that where any portion of the immoveable property of the applicant is subject to any encumbrance or charge, or may be held liable for any existing debt, demand or claim, the Local Government shall not grant such permission unless the consent of all the encumbrancers upon, or persons entitled to charges upon, or persons having claims enforceable against, the immoveable property of the applicant is obtained, or the encumbrances, charges or claims of such persons as object to the grant of such permission are discharged, or arrangements considered satisfactory by the Local Government are made for their discharge, or the Local Government is satisfied that such persons will not be prejudiced by the grant of such permission.

•7. (1) It shall be lawful for any person for the time being entitled to and in possession of a settled estate, and competent to contract, to apply to the Local Government for permission to add to the settled estate any other immoveable property in respect of which an application might be made by him under section 3.

(2) On receipt of such application the Local Government shall proceed according to section 4 or sections 5 and 6.

The concluding words "or in which he has otherwise a permanent, heritable and transferable right" in subsection (1) of this section have been omitted as the Oudh Estates (Amendment) Act, 1910, provides a new definition

of the term "estate" which includes any immoveable property of a taluqdar or grantee in which he has a permanent, heritable and transferable right and in respect of which he has made a declaration under the new section 32A. Any person, therefore, desiring to add to his settled estate under the provisions of section 7 of the Oudh Settled Estates Act, 1900, can, by resorting to the provisions of new section 32A of the Oudh Estates Act, convert the property which he proposes to add to the settled estate into "estate," after which it becomes property in respect of which he might make an application under section 3 of the Oudh Settled Estates Act, 1900 (1).

8. (1) Subject to the provisions of section 12, it shall be lawful for any person for the time being entitled to and in possession of a settled estate, and being a male and competent to contract, to apply to the Local Government for permission to revoke wholly or in part any declaration that property shall be held subject to the provisions of this Act.

(2) The Local Government, after considering the application and the result of any inquiry made by it or under its orders and any further particulars or information called for by it, may in its discretion either grant or refuse permission, or grant permission in respect of a portion only of the property to which the application relates.

9. (1) Permission granted under section 6, 7 or 8 shall be in writing, signed by one of the Secretaries to the Local Government, and shall contain a

Form, contents,
and publication of
permission.

description of the immoveable property, in respect of which permission is granted sufficient to identify the same.

(2) Every such permission shall be published in the Gazette in English and in the Vernacular, and shall remain in force until the expiry of three months from the date of publication in English thereof, or until the death of the applicant, whichever shall first happen.

10. The applicant may, by an instrument in writing, signed by him and attested by two or more witnesses, and registered within three months from the date of publication in English of such permission (but not by a Will), declare that the whole or any portion of the property in respect of which permission has been granted under sections 6, 7 or 8 shall in future be held subject to, or exempt from, the provisions of this Act, as the case may be.

Such declaration shall take effect from the date of the registration thereof.

11. Every declaration presented for registration under section 10 shall be accompanied by the writing mentioned in section 9, and the registering officer shall satisfy himself that the property specified in the declaration presented for registration is included in the permission granted under that section, and that such permission is still in force.

12. The person executing a declaration that any property shall be held subject to the provisions of this Act may, in such declaration or by a subsequent instrument in writing, signed and attested as aforesaid, and registered, and any successor in interest of such person, if possession of the settled estate and competent to contract, may, by an instrument signed and attested as aforesaid, and registered, provide that any such declaration shall, as regards the whole or any specified portion of the settled estate, be irrevocable.

Power to make certain declarations irrevocable

13. (1) On the registration of a declaration under section 11 or of such subsequent instrument as is mentioned in section 12, it shall be the duty of the registering officer to furnish the Collector of every district in which any portion of the property is situated with a properly authenticated copy of the same.

Duties of registering officer and Collector.

(2) On receipt of such copy, the Collector shall cause a note to be made in such record or register as the Local Government shall direct, and shall also cause a copy of the declaration to be published in the Gazette in English and in the Vernacular.

14. Notwithstanding anything in this Act contained, it shall be lawful for the Local Government if, in its opinion, the holder for the time being of a settled estate is guilty

Local Government empowered to exclude settled estate from the operation of the Act.

of a breach of the conditions of the *sanad* under which such estate is held or for any other sufficient reason, to declare by notification in the Gazette that the settled estate to which such person is entitled and of which he is in possession shall cease to be subject to the provisions of this Act.

Such declaration shall take effect from the date of the publication thereof.

15. No person entitled to a settled estate shall have power to transfer, dispose of, alienate, convey, charge, encumber or (except as hereinafter provided) lease the same or any part thereof or the profits thereof, for any greater or larger interest or time than during his life, nor shall a settled estate, or any part thereof, or the profits thereof, be held by any Court to be or have vested in such person for any larger or greater interest or time than for his life, and subject to the provisions of this Act.

Dealings with settled estate to the prejudice of successors prohibited.

16. (1). The person for the time being entitled to and in possession of a settled estate may lease the same or any part thereof from year to year or for a term not exceeding seven years, and with the previous consent in writing of the Collector may lease the same for any term not exceeding fourteen years, such term to expire with the then current revenue settlement of the district.

Leases of settled estates.

(2) On such lease no premium or fine shall be taken, but best rent payable year by year shall be reserved that can be reasonably obtained.

(3) No payment of any instalment of rent before it falls due shall operate to the prejudice of any successor in interest of the person to whom the payment is made.

17. (1) No Court shall question the validity or propriety of any declaration made under section 10—

Jurisdiction of
Courts barred in
certain matters.

- (a) except in so far as the declaration purports to affect property not included in the written permission granted by the Local Government, or
- (b) (where permission has been granted under section 6 or 7) except in so far as the person by whom the declaration is made shall be found not to have been entitled to and in possession of a permanent, heritable and transferable right in the immoveable property included therein, or such person was not competent to contract, or
- (c) (where permission has been granted under section 8) unless such person shall be found not to have been entitled to and in possession of the settled estate at the date of the application under that

section, or the declaration sought to be revoked was irrevocable.

(2) Except as provided in sub-section (1), no Court shall exercise jurisdiction in or over the following matters:—

- (a) the legality, propriety, or regularity of an application under section 3, 7 or 8, or of any proceeding held or order passed thereon ;
- (b) the legality, propriety, regularity or sufficiency of any notice issued under section 5 ;
- (c) the rejection of an application under section 4, or the grant or refusal of permission under section 6, 7 or 8 ;
- (d) the legality, propriety or regularity of any permission granted under section 9, or of any proceeding held under section 13, sub-section (2) ;
- (e) the sufficiency or otherwise of the reasons for the issue of a notification under section 14 ;
- (f) the grant, refusal, modification or withdrawal of consent under section 16.

18. (1) Notwithstanding the provisions of any contract or disposition to the contrary, every person for the time being entitled to settled

Devolution and bequest of settled estates.

estate being a female who, under the ordinary law to which persons of her religion and tribe are subject, would constitute a fresh stock of descent if she succeeded to the estate on an intestacy shall, *unless such person succeeds as a widow or a mother*, constitute a fresh stock of descent for the purposes of section 22 of the Oudh Estates Act, 1869, and on the death of such person intestate the settled estate shall descend according to the provisions of that section.

(2) Notwithstanding the provisions of any contract or disposition to the contrary, every person for the time being entitled to a settled estate who constitutes a fresh stock of descent according to subsection (1) shall be competent to bequeath the same subject to the provisions of the Oudh Estates Act, 1869 :

Provided that such person shall not be competent to bequeath the same except as an impartible estate to be held by one person only and according to the provisions of this Act, or to subject the same or the profits thereof to any demand, charge or encumbrance whatsoever, or to bequeath the same to a stranger so as to exclude from succession any person belonging to any of the classes specified in section 22 of the Oudh Estates Act, 1869.

Under the Oudh Estates Act, 1869, as amended by the Oudh Estates (Amendment) Act, 1910, the mother has been given a place in the line of succession with an interest limited to her life-time only. Her position being in

this respect similar to that of the widow, the words "otherwise than as a widow" after the word "intestacy" have been omitted and the words "unless, such person succeeds as a widow or mother" inserted between "shall" and "constitute" (1).

19. Nothing in this Act shall be deemed to deprive the holder for the time being of a settled estate of his right to adopt, or to empower his widow to adopt a son, or to affect the right of any person to maintenance under Part VIII of the Oudh Estates Act, 1869, or to affect the provisions of the Oudh Rent Act, 1886, or the right of the Local Government or any public authority to recover by legal process any sum due on account of land revenue or recoverable as such or recoverable under the provisions of the Revenue Recovery Act, 1890.

20. (1) The Local Government may, after previous publication, make rules for carrying out the purposes of this Act, provided that such rules shall not be inconsistent with the provisions of the Oudh Estates Act, 1869.

(2) In particular, and without prejudice to the generality of the foregoing provisions the Local Government may make rules for all or any of the following matters:—

(a) The procedure to be followed in submitting an application to the Local Government under this Act;

(1) U. P. Gaz., 1909, Part VII, p. 136.

- (b) the form and contents of such an application and the documents, if any, by which such an application shall be accompanied ;
- (c) the issue and service of notices under section 5 ;
- (d) the form of any declaration to be made under section 10
- (e) the procedure to be adopted by the Collector under section 13, sub-section (2) ;
- (f) the payment or recovery of any expenses incurred in, or in connection with, proceedings held under this Act.

For rules framed by the Local Government in exercise of the powers conferred by this section, *see* Appendix J.

THE
OUDH SUB-SETTLEMENT
ACT.

CONTENTS.

	PAGE
Preamble...	479
SECTION	
1. Rules as to sub-settlements contained in schedule to have force of law	479
2. Repealed by Act XIV of 1870 ...	481
3. Short title	481
Schedule	481

THE
**OUDH SUB-SETTLEMENT
ACT.**

ACT No. XXVI OF 1866.

Passed by the Governor-General of India
in Council.

*Received the Assent of the Governor-General on the
12th October 1866.*

An Act to legalize the rules made by the Chief Commissioner of Oudh for the better determination of certain claims of subordinate proprietors in that Province.

WHEREAS rules have been made by the Chief Commissioner of Oudh for the better determination of certain claims by persons possessed of subordinate rights of property in the territories subject to his administration; and whereas it is expedient that such rules should have the force of law; It is hereby enacted as follows:—

1. The rules for determining the conditions under which persons possessed of subordinate rights of property in taluqas in the territories.

Rules as to sub-
settlements con-
tained in schedule
to have force of law.

subject to the administration of the Chief Commissioner of Oudh shall be entitled to obtain a sub-settlement of lands, villages or sub-divisions thereof, which they held under Taluqdars on or before the thirteenth day of February 1856, and for determining the amounts payable to the Taluqdar by such subordinate proprietors, which rules were made by the said Chief Commissioner, sanctioned by the Governor-General of India in Council, and published in the *Gazette of India*, for September 1st, 1866, and which are republished in the Schedule to this Act, are hereby declared to have the force of law.

1. The title of the Act [(namely, "an Act to legalize, etc., etc."), the preamble and the title of the Rules as well as the provisions contained in them, go beyond the tenement contained in the first section of the Act, since they cover not only the case of sub-settlement but also that of "other subordinate rights of property in Oudh"; whereas the language of the 1st section is in strictness confined to giving legislative force to the rules as to sub-settlement contained in the schedule.

2. As to cases where the holding was not subordinate or under-proprietary in any sense but proprietary, or where the holding did not become one under the Taluqdar until after the date mentioned, the holder's remedy is under the provisions of the rules proposed by the Taluqdars and sanctioned by the Government of India and known as Hard Case Rules. See Introduction, page 160 and on.

3. The wording of the title is peculiar. The rules being the reduction into writing of the terms agreed upon

by the Taluqdars as to under-proprietary rights were perfectly legal from the first, so far as the Taluqdars, the consenting parties to the arrangement, were concerned; what was sought by the Act to be done was not simply to "legalize" them but to give them statutory effect, as stated in section 1 of the Act.

2. [Repealed by Act XIV of 1870.]

3. This Act may be called
Short title. "The Oudh Sub-settlement Act,
1866."

SCHEDULE.

Rules regarding Sub-settlement and other Subordinate
Rights of Property in Oudh.

The provisions of the Act, and the rules to which it gives statutory effect are not clearly worded (1), nor are they exhaustive (2). They do not contain any negative words which say that there shall not be a sub-settlement of subordinate zemindari included in a taluk, unless the zemindar is bound to pay substantial rent to his superior (3). A letter from a Taluqdar may be treated as an acknowledgment of some sort of subordinate interest under the Taluqdar being possessed by the claimant (4). But where there is no evidence of any grant, or sub-settlement or recognition of a claimant's rights by Government, mere length

(1) Sir Drigbejai Singh v Umanpal Singh and another, R. & J. 175; Bal., 180; 5 I. A., 225.

(2) Gauri Shanker v. Maharaja of Balrampur, 6 I. A., 1; R. & J. 176, 179; Murad Baksh v. Raja Muntaz Ali Khan, 4 O. C., 31.

(3) Gauri Shankar v. Maharaja of Balrampur, 6 I. A., 1; R. & J., 176, 179.

(4) Krishnanand Miera v. The Superintendent of Encumbered Estate, Mehdowans, R. & J., 199; Bal., 278.

of time and undisturbed enjoyment will not convert a holding into a species of ownership and entitle the claimant to an under-proprietary right (1). Nor is a person who merely had been at some time a proprietor and has held for a long time at a favourable rent necessarily an under-proprietor. There must be evidence of some specific grant of an under-proprietary right such as *birt* or *shankalap* or of an acknowledgment by the Taluqdar (2).

1. The extension of the term of limitation for the hearing of claims to under-proprietary rights in lands makes of itself no alteration in the principles hitherto observed in the recognition of a right to sub-settlement.

1. By the Record of Rights Circular dated 8th January 1861, the enquiry was at first limited to such under-proprietary rights only as were enjoyed in 1855, *i.e.*, just before the annexation of the Province. It was subsequently by the Governor-General's order of the year 1864 extended to all claims to under-proprietary rights which were enjoyed within 12 years before the annexation (3).

2. The effect of the Circular of 1861 on the question of limitation was considered by their Lordships of the Judicial Committee in *Maharaja Sir Drigbejai Singh v. Gopal Dat Panday* (4). "Sections 1 and 24" (of the Circular of 1861), say their Lordships, "enact in effect that if a *birt* is out of possession in the year 1855, his claim cannot be recognized. They are not, in the technical sense, enactments of limitation, though their effect is in some respects

(1) *Thakur Rohan Singh v. Thakur Surat Singh*, R. & J., 277; 11 Cal., 318; 12 I. A., 25.

(2) *Raja Bhagwan Baksh v. Mazhar Hosain*, 9 O. C., 167.

(3) Introduction, pp. 129-144.

(4) 7 I. A., 17; 8 Cal., 218; R. & J., 208.

the same, *viz.*, to prevent the owner of a *birt* tenure being heard to support his claim; and they appear to be treated as enactments of limitation by the authorities in Oudh, and to some extent by the Legislature itself. We then come to a statute, No. XVI of 1865, which is entitled, 'An Act to remove doubts as to the jurisdiction of the Revenue Courts in the Province of Oudh.' Section 5 is in these terms: 'No suit relating to any under-tenure which shall be cognizable in any Revenue Courts under this Act'—and claims of this kind come under that category—'shall be debarred from a hearing under the rules relating to the limitation of suits in force in the Province of Oudh, if the cause of action shall have arisen on or after the 13th day of February 1844,' that is twelve years before the annexation of Oudh, which occurred on the 13th February 1856. Act XIII of 1866 followed, which is very much *in pari materia*. The 1st section, after re-enacting in almost the same words the provisions of the 5th section of the former Act, goes on to say: 'And any suit or appeal relating to any tenure and cognizable as aforesaid, which may have been rejected or dismissed upon the ground that the suit was barred under the said rules, may be revived and heard on the merits, if the cause of suit shall have arisen on or after such day,' that day being the 13th February 1844. It appears to their Lordships that, whether the provisions in the Chief Commissioner's Circular order referred to be considered a provision of limitation or not, it was in effect repealed by these statutes, and that the suit of a *birtuh* became cognizable, notwithstanding that he may not have been in possession in 1855. Therefore, as far as any objection could be raised on the question of limitation, their Lordships are of opinion that these two statutes are an answer to it" (1). It will be seen that the

(1) *Drigbejai Singh v. Gopal Dat Panday*, 6 Cal., 218, 223, 224.

result has been arrived at by their Lordships of the Privy Council independently of the Governor-General's order of 1864, and on the assumption that the Circular order of 1861 had the force of law which it had not (1).

3. By this section the extension of the term of limitation "of itself" made no alteration in the principle, but it was coupled with provisions which did and which are stated and brought out in the other rules, particularly rules 2 and 3.

4. Till the passing of the Act there were no settled principles on which the Oudh Courts acted in this matter. The principles on which those Courts acted are mentioned in Chapter III of the Introduction.

2. When no rights are proved to have been exercised or enjoyed by an under-proprietor during the period of limitation, beyond the possession of certain lands as *seer* or *nankar*, no sub-settlement can be made; but the claimant will be entitled, in accordance with the rules contained in the circular orders which have hitherto been in force in Oudh upon this subject, to the recognition of proprietary right in such lands. To entitle a claimant to obtain a sub-settlement, he must show that he possesses an under-proprietary right in the lands of which the sub-settlement is claimed, and that such right has been kept alive, over the whole area claimed, within the period of limitation. He must also show that he, either by himself or by some other person

(1) See Introduction, Chapter III.

or persons from whom he has inherited, has by virtue of his under-proprietary right, and not merely through privilege granted on account of service, or by favour of the Taluqdar, held such lands under contract (*pucka*) with some degree of continuousness since the village came into the taluqa.

1. Rights which entitle a claimant to sub-settlement.--

As to some of the other rights which may have been exercised or enjoyed by a sir or nankar holder beyond his sir or nankar and which may be effectual to take his case out of this provision, see Introduction, Chapter III. For instance it will frequently be found that a holder of sir or nankar has simultaneously exercised and enjoyed an under-proprietary right in groves (Baghat) which might serve to take his case out of this exclusion from sub-settlement. Mere possession of certain land as sir or nankar during the period of limitation, *i.e.*, 12 years computed backwards from the 13th February 1856, the date of the annexation of Oudh, does not entitle an under-proprietor to sub-settlement, but to the recognition of "proprietary rights" in such lands. The expression "proprietary right" as used in this section means under-proprietary right. The same confusion of language occurs in the 10th rule. The right is proprietary because the holder has a heritable and transferable right of property in his holding; it is under-proprietary as all sir holdings in taluqas are.

In these rules there seems to be an antithesis between this and the later clauses requiring that the holding should have been "with some degree of continuousness." That requirement seems to be restricted to the later clauses of the section so that an under-proprietor, who has possessed sir or nankar within limitation may obtain a recognition of

proprietary right in such lands irrespective of the continuance of his holding. On the other hand it may be said that the word "during" has the effect of applying the requirement of continuousness of holding to all cases, for if it were otherwise the word "within" would have been used in place of the word "during" as it is used elsewhere in the rules. But here again it must be remembered how these rules obtained statutory authority and that the latter construction requires the word "during" to be read as equivalent to "throughout the whole of" which would extend it at least as much as the other construction would limit it. Moreover, in the subsequent tenth Rule "within" is used as the equivalent of "during" in this clause.

2. What must a Claimant to Sub-settlement prove.—

A claimant to Sub-Settlement must prove :—

- (i) that he possesses an under-proprietary right in the land of which sub-settlement is claimed. As a claimant seeking sub-settlement the under-proprietor would have to prove his case, the onus of showing the circumstances required by this rule would be upon him on ordinary principles. The Regular Settlement of the Province being now concluded, the Taluqdar seeking to oust a holder from possession will be plaintiff as frequently as the asserter of under-proprietary rights entitling to sub-settlement; but this will not affect the question of *onus probandi*, for the payments by the under-proprietors will be taken to be *prima facie* rent and to establish the relationship of landlord and tenant, which *prima facie* case it will be for the *prima facie* tenant to displace by showing the circumstances required

by this rule (1). The result of this will be to show that what is *primâ fuc'e* rent is not a competition rent or rent in the pure and simple acceptation of the term, but an ascertained and defined payment of what is almost if not entirely revenue due by an under-proprietor to a superior proprietor to whom the revenue is payable. The first thing to be shown is the possession of under-proprietary right in the lands of which sub-settlement is claimed. An under-proprietor need not prove that the under-proprietary tenure of which he claims sub-settlement, is held by him by virtue of a former proprietary right. Birt tenures which are tenures created by a Taluqdar carved out of an estate also entitle their holders to a sub-settlement. They are heritable and transferable (2). It is also not essential to the existence of under-proprietary right that the Taluqdar should have any pecuniary interest in the sub-tenure (3);

- (ii) that the under-proprietary right has been kept alive over the whole area claimed within the period of limitation. This does not mean that an under-proprietor who was able to fulfil all the necessary conditions should be deprived of his right to sub-settlement because the Taluqdar had on some occasion, given away a patch of ground

(1) Thakur Rohan Singh v. Thakur Surat Singh, 12 I. A., 52; 11 Cal., 318.

(2) Gauri Shanker v. Maharaja of Balrampur, 6 I. A., 1; R. & J., 176, 179; Raja Kishen Dat Ram v. Raja Mumtaz Ali Khan, 6 I. A., 145; 5 Cal., 193, 206, 207; R. & J., 194; Sir Maharaja Drigbejai Singh v. Gopal Das Panday, 7 I. A., 17; 6 Cal., 218.

(3) Gauri Shanker v. Maharaja of Balrampur, 6 I. A., 1; R. & J., 176, 179.

in the village to some other party. Thus an under-proprietor might obtain a sub-settlement of the lands in his possession although they fall somewhat short of the entire area of a village or Pattee (1);

- (iii) that he has held such lands as of right under contract (pucka) with some degree of continuousness since the village came into the taluqa. The words "holding under contract" would embrace any holding under arrangements from which a contract may be inferred (2).

Where it was proved that the plaintiffs were cadets of the family of Maharaja of Balrampur and that the estate which they claimed was under the native rule incorporated in the larger taluqa or Raj of Balrampur for protection, the Court held that the plaintiffs held under the Maharaja of Balrampur as sub-proprietor by virtue of hereditary right and under contract with the degree of continuousness required by Act XXVI of 1866 (3).

It is not sufficient for a claimant to show that he has been a proprietor of the land by a title adverse to the Taluqdar, nor can it be said that although he has lost his title to engage for the Government revenue, it should be presumed that having once had the better title to the land, he has nevertheless a right to a sub-settlement in respect of the land. He must prove that he or some other person through whom he claims had within the prescribed period held

(1) F. C. B. C. 12th of 1867, p. 7, § 8.

(2) Sir Maharaja Drigbejai Singh v. Umanpal Singh, 5 I. A. 225; R. and J., 175; Bal., 180, followed in Sir Drigbejai Singh v. Gopal Das, 7 I. A. 17; 6 Cal., 218; R. and J., 208.

(3) Bhairya Udit Singh v. Maharani Indar Kuar, S. C. No. 109.

the lands that he claims as an under-proprietor under a Taluqdar⁽¹⁾.

Where under the explanation given in Rule 3, a person having held *independently* of the Taluqdar is on that account debarred from sub-settlement and in other like cases, his remedy is under the Hard Case Rules—see Introduction, Chapter III, pp. 160 and on. Similarly the wording of the rule excludes from its operation cases in which the village or land as to which sub-settlement is claimed is not included in a taluqa; notwithstanding that Mr. Strachey says that “The rules apply to all cases of the sub-settlement, whether the village be included in Taluqdar’s sanad or not” (2); and see the wording of the 1st section of this Act. Such claims must, therefore, be dealt with under the ordinary law. For the meaning of the word *packa*, see Introduction, Chapter III, pp. 150-153. The words “some degree of continuousness” are defined in the following section 3.

3. The words “some degree of continuousness” will be interpreted as follows—

If the village was included in the talooka before the 13th February 1836, the lease must have been held for not less than twelve years between that date and the annexation of the province. If the village was included in the talooka after the 13th February 1836, but before the 13th February 1844, the lease must have been held for not less than one year more than half the period between the time in which the village was so included and the annexation of the province. Further, the lease must, in all

(1) Sayed Mir Wahid Ali v. Rani Sadha Bibi, R. & J., 103.

(2) F. C. B. C. 12th of 1867, p. 6, § 6.

cases, have been held for not less than seven years during the term of limitation, unless the village was included for the first time in the talooka after the 13th February 1844, in which case the lease must have been held for not less than one year more than half of the period between the time in which the village was so included and the annexation of the province: Provided that, if, for any reason, the Talookdar was, for any period, dispossessed of the village, and the under-proprietor was dispossessed from the lease during the same period, the term of such dispossession shall not be reckoned against the under-proprietor: Provided also, that nothing in this rule will apply to any village which was included for the first time in the talooka after the 13th February 1844, and in which the under-proprietor has held no lease for any period under the taluqdar.

This rule was explained by Mr. Strachey before the sanction of the Government of India was given to the rules, as follows:—

“It defines the meaning which is ordinarily to be attached to the words ‘some degree of continuousness.’ The diversity of practice has hitherto been great, and experience has shown it to be essentially necessary that an arbitrary rule should be laid down for the guidance of the settlement. The proposed rule has at first sight a somewhat complicated appearance but in reality it is very simple. It amounts to this—(1st, that no enquiries will be made regarding any lease that may have been held before the 13th February 1836, that is, more than twenty years before the annexation of the Province; (2nd) that the lease must have been held for one

year more than half of the period that may have elapsed between the time at which the village was included in the talooka and annexation; and (3rd) that unless the village was for the first time included in the talooka after 13th February 1844, the lease must have been held for seven out of the last twelve years before annexation. This rule is liable to exception in certain cases in which it would operate harshly. Cases in which a village was included for the first time in a talooka during the term of limitation and in which the under-proprietor has held no lease for any period under the Talookdar have not been provided for by this rule. Regarding these cases I propose to address the Government hereafter. The proposed rule although less favourable to the under-proprietors than that which has lately been followed in some cases is very much more favourable to them than the rules contained in the Oudh Circulars, which have hitherto been considered to be in force" (1).

The hard cases mentioned above were provided for by the Hard Case Rules set out in Chapter III, *ante*, pp. 160 and on.

"It must be remembered that this rule refers to sub-settlement only." (See the wording of Rule 2). "To establish a right to a beneficial interest not entitling to sub-settlement, it is not necessary that a claimant should have held with the degree of continuousness contemplated by this rule. In this respect no alteration has been made in the rules which were in force when Act XXVI of 1866 became law" (2).

"It must be observed that there is nothing in Rule III which requires that the possession of the lease by the

(1) Supp. Gaz. of India, 1st September 1866, pp. 386-7.

(2) F. C. B. C. 12th of 1867, p. 7, § 9.

claimant shall have been unbroken during the periods mentioned." "The real point for determination will be whether the under-proprietor held the lease for one year more than half the number of years during which the Talookdar was in possession" (1).

4. If an under-proprietor, who is entitled to a sub-settlement, can show by documentary evidence that he had entered into an agreement with the Talookdar that he should hold, in perpetuity, the lease of the lands to the sub-settlement of which he is entitled at a uniform (*istimrari*) rate of payment, and that such agreement has been acted on within the period of limitation, he will not be liable to payment at an increased rate during the currency of the present or revised settlement. If, in consequence of any future re-adjustment of the Government demand, the former proportion between the respective shares of the profits derived from the land by the under-proprietor and the Talookdar should be altered, the amount payable by the under-proprietor to the Talookdar will be liable to readjustment, so that the proportion between their respective shares of the profits may remain unaltered.

What was meant to be provided was that if an under-proprietor who fulfils the requirements of rules 2 and 3 can show that "he has entered into another agreement," etc., etc. (2). But the words of the rule let in the case of an oral agreement established by documentary evidence: as, for instance, if the

(1) F. C. B. C. 12th of 1867, p. 9, § 11.

(2) Supp. Gaz. of India, 1st September 1866, p. 287.

agreement was that the rate of payment should be a certain percentage above the Government revenue demand, it might be established by documentary evidence showing that changes in the amount of Government Revenue demand were accompanied by corresponding changes in the amount paid by the under-proprietor and other evidence of a like nature (1). The uniform rate of payment may be Government Revenue demand without any further payment whatever to the Talookdar (2).

5. If an under-proprietor, entitled to sub-settlement, can show by documentary evidence that he had entered into an agreement with the Talookdar that he should hold the lease of the lands to the sub-settlement of which he is entitled, on payment of the Government demand imposed before the annexation of the province on such lands, with the addition only of certain dues to the Talookdar, or other charges and such agreement has been acted upon within the period of limitation, such under-proprietor will in future be liable only for the payment to the Talookdar of the Government demand for the time being, with the addition of ten per cent. in lieu of Talookdaree dues and other charges.

6. If an under-proprietor, entitled to sub-settlement, has held the lease of the lands to the sub-settlement of which he is entitled, under an agreement that he shall pay to the Talookdar a

(1) *Thakur Rohan Singh v. Thakur Surat Singh*, 12 I. A., 52; 11 Cal., 318.

(2) *Gouri Shanker v. Maharaja of Balrampur*, 6 I. A., 1; R. & J., 176, 179.

certain share or proportion of the profits or produce of such lands, and such agreement has been acted upon within the term of limitation, the under-proprietor will in future continue to be liable for the payment to the Talookdar of such share or proportion.

7. In all cases in which an under-proprietor is entitled to a sub-settlement other than those described in Rules 4 to 6, the amount payable by the under-proprietor to the Talookdar will be determined according to the following principles:—

1st.—The payments made by the under-proprietor to the Talookdar before annexation, will form the standard by which the present payments are to be regulated.

2nd.—In no case can the amount payable by the under-proprietor to the Talookdar, during the currency of the settlement, exceed the gross rental of the village less ten per cent. in *seer* or *nankar* land.

In no case can the amount payable by the under-proprietor to the Talookdar exceed 25 per cent. of the gross rental, under Rule 9, which was added to the rules in super-session of this the 2nd sub-rule which was in the original draft of the rules, and was inadvertently allowed to remain as part of rule 7 (1): under Rule 9, moreover what will be decreed to the under-proprietor is not merely a *sir* or *nankar* holding representing the proportion of the profits; but a

(1) F. C. B. C. 12th of 1867, pp. 10-11, § 12.

sub-settlement of the whole of his under-proprietary holding upon the terms of that rule (1).

3rd.—In no case can the amount payable during the currency of the settlement by the under-proprietor to the Talookdar be less than the amount of the revised Government demand, with the addition of ten per cent.

4th.—If the gross rental of the village before annexation and at the present time be approximately the same, the under-proprietor will pay to the Talookdar the same amount which he paid before annexation.

For the meaning of "gross rental" see Rule 6th.

5th.—If the present gross rental of the village exceed or fall short of the former gross rental, the payment of the under-proprietor to the Talookdar will be adjusted according to the following rule, namely, as the former gross rental is to the former payment of the under-proprietor, so is the present gross rental to the present payment of the under-proprietor.

For the meaning of "gross rental" see Rule 6th.

6th.—In determining the amount payable by the under-proprietor to the Talookdar, under the two last preceding rules, the former gross rental and former payment of the under-proprietor will be held to be the average amount of the gross rental, and

(1) F. C. B. C. 12th of 1867, pp. 10—11, § 12.

the average amount of the former payments of the under-proprietor for the twelve years preceding annexation, or for such portion of that time as the under-proprietor held a lease of the village from the Talookdar, or for such portion of that time as necessary information may be obtained.

8. In any case in which the clear share of the profit to which the under-proprietor is entitled, under the rules contained in the last preceding paragraph does not exceed twelve per cent. of the gross rental, no sub-settlement shall be made. In this case the under-proprietor will retain all *sir* and *nankar* land to which his right is established. If the profits derived from such land be less than one-tenth of the whole rental of the land to the sub-settlement of which the right was established, the Talookdar shall increase the amount of such land, so that the total profits to the under-proprietor shall not fall below one-tenth of the gross rental.

The under-proprietor will possess in the whole of such land a transferable and heritable right of property.

"The words 'clear share of the profits' in this rule signify the profits actually enjoyed by the under-proprietor. Thus, for example, if the nominal share of the profit were 15 per cent. of the gross rental, and out of this he paid 5 per cent. for village expenses, his 'clear share of the profit' would only be 10 per cent. and he would not obtain a sub-settlement. The word 'profit' in these rules means the nett profit after payment of the revenue assessed upon the

lands" (which in this explanation is taken to be one-half of the gross rental). "In cases coming under the Rule VIII the under-proprietor who is excluded, from sub-settlement will obtain land yielding 20 per cent. or one-fifth of the Government demand. If the under-proprietor already hold *seer* or *nankar* lands yielding a profit, after payment of the Government demand, of not less than 10 per cent. of the gross rental, he will retain that land. If the value of such land fall short of that amount, the under-proprietor will receive such additional amount of land as may be required to make up his holding to the full value" (1).

There seems to be no difference between the "whole rental" and "gross rental" as used in this rule.

The *sir* or *nankar* land awarded under this rule carries with it the element of transferability; which in other cases is to be assumed to attach to *sir* till distinctly shown not to do so (2).

9. In any case in which an under-proprietor is entitled to a sub-settlement under the preceding rules and in which the share of the gross rental which such under-proprietor is entitled to receive exceeds twelve per cent. but falls short of twenty-five per cent., such share will be increased, so that it shall not be less than twenty-five per cent. of the gross rental. The cost of such increase will be borne half by the Government and half by the Talookdar. In this case, the cesses on account of roads, schools, etc., amounting to two and a half

(1) F. C. B. C. 12th of 1867, p. 12, § 15.

(2) Syed Ghazaffer Husain v. Sobha Singh, S.C. VIII of 1872.

per cent. on the Government demand, will be payable by the Talookdar; while the village expenses, including the allowance to the Patwari and Chaukeedar, will be payable by the under-proprietor.

In submitting this rule for the approval of the Government of India, Mr. Strachey stated:—

“ The principle upon which this rule is based is this,— the Talookdars are bound by the conditions of the sannuds to maintain all holding under them ‘ in the possession of all the subordinate rights they formerly enjoyed.’ An under-proprietor who is entitled to a sub-settlement of a village, but whose share of the profits is small, will undoubtedly, if we make a sub-settlement with him for a term of thirty years, and oblige him to pay the same amount which he paid to the Talookdar before the annexation of the province, be placed as a general rule in a worse position than that which he held under the native Government. Under our system a single bad season may easily complete his ruin; for if he fail to pay punctually the amount due to the Talookdar, his tenure being a heritable and transferable property, may be brought to sale in satisfaction of a summary decree. No such Penalties attached under the native Government to default of payment, and we have no right to place the under-proprietor in a worse position than that which he formerly held, consequently he ought to receive such an increase to his share of the profits as will compensate him for the injury done to him. It is considered that this object will be gained in an equitable manner by the proposed rule. It would not be right to throw the whole burden on the Talookdar, because it has been by the introduction of our revenue system that the position of the under-proprietor has been injured. On the other hand, it is right that the Talookdar should bear a

portion of the charge, because he will, otherwise, be placed in a better position than that in which we have agreed to maintain him. The proposal is that Government and the Talookdar shall share between them the charge on this account" (1). To this proposal the Government of India consented when approving of the rules (2).

10. When a former proprietor, who is not entitled to a sub-settlement, has retained within the period of limitation, either by himself or by some other person or persons from whom he has inherited, possession of land which by virtue of his proprietary right he held as *seer* or *nankar* when he was in proprietary possession he will be deemed in respect of such land to be an under-proprietor, and will possess a heritable and transferable right of property therein, subject to the payment of such amount as may be due by him to the superior proprietor.

Mr. Strachey says "the words when he was in proprietary possession are redundant and refer to under-proprietary right" (3), but this may be doubted for they may have effect given to them by holding that they refer to the *sir* or *nankar* held by an ex-proprietor at the time when he was proprietor, as in some measure his separate property as distinct from the joint holding of himself and co-sharers.

In order to establish an under-proprietary title, it is, under Rule 10 of the Rules in Schedule attached to Act XXVI of 1866, necessary for a claimant to prove (i) that he has formerly been a proprietor, (ii) that the land in suit has been held by him or some person from whom he inherited

(1) Supp. Gaz. of India, 1st September 1866, p. 388.

(2) *Id.*, p. 395.

(3) F. C. B. C. 12th of 1867, p. 5, § 5.

at some time, since the 13th February 1844, and (iii) that this has been held by such person as *vir* or *nankar* when he was in proprietary possession. The fact that in the settlement records the claimant is recorded as a tenant of the land raises the presumption that he is only a tenant and it is for him to rebut this presumption (1).

11. If in any case the founder of a Poorwa or hamlet, who is unable to establish a right to sub-settlement, can show that, in consideration of having founded such Poorwa or hamlet, he has held therein within the period of limitation possession of *seer* or *nankar* land, he will be recognised as an under-proprietor in such land subject to the payment of such amount as may be due by him to the Talookdār. The amount of such payment will be determined according to the rules for determining the amount of the payments due by other under-proprietors on their *seer* or *nankar* lands.

See Introduction, Chapter III, pp. 184 and on, *ante*.

12. Claims to proprietary and under-proprietary rights in *jagheers* will be treated according to the same rules which are applicable to similar claims in talookas.

13. Cases in which claims to under-proprietary rights have been disposed of otherwise than in accordance with these rules will be open to revision, but this rule will not apply to cases disposed of by arbitration or by agreement of the parties.

(1) Maharaja Jagatjit Singh Bahadur v. Suraj Baksh Singh, 8 O. C., 145.

In a suit brought by the Talookdar to recover possession of a village within his talooka, the facts as found by the Courts were that in 1864 the predecessor in title of the present holders had made a claim for under-proprietary settlement of the village, that the Assistant Settlement Officer had granted him a decree for a "permanent lease" of the village which was affirmed by the Settlement Commissioner and the Chief Commissioner, that soon after the passing of Act XXVI of 1866 the Talookdar had applied for a review of the judgment and the case was remanded by the Financial Commissioner to the Settlement Court for re-investigation under the new rules, that ultimately on 6th January 1869, the Financial Commissioner, holding that the plaintiff was in no way entitled to sub-settlement decreed to him a farming lease on payment of the Government demand and plus 25 per cent. to the Talookdar for a period of thirty years.

Held, that the Financial Commissioner under Rule 13 in the Schedule to Act XXVI of 1866 had jurisdiction to make a decree of 6th January 1869, and that it was a valid and binding decree. Claims which have been theretofore disposed of "otherwise than in accordance with those rules" within the meaning of Rule 13 refer to claims which have not been supported by the proof prescribed by Rules 2 and 3, amongst others, for the establishment of future claims.

Held, further, that the lease decreed was only a lease for a term of 30 years from the date of the decree.

Held, also, that the present holders were in the position of tenants whose tenancy had expired and the proper course for their ejection was by notice under section 52 (2) of the Oudh Rent Act (1).

(1) Maheshar Parshad and others v. Muhammad Ewaz Ali Khan and Muhammad Ewaz Ali Khan v. Maheshar Parshad and others, 12 O. C., 293.

APPENDICES.

CONTENTS

	PAGE
APPENDIX A.—Lord Canning's Proclamation of 15th March 1858	506
APPENDIX B.—Parwanah addressed to landholders by Major-General Sir J. Outram, G.C.B., Chief Commissioner of Oudh, dated 25th March 1858 *	509
APPENDIX C.—Translation of a Circular letter addressed to the Taluqdars of Oudh, dated 23rd June 1858	510
APPENDIX D I.—Proposed form of Sanad ...	512
APPENDIX D II.—Approved form of Sanad ...	513
APPENDIX D III.—Form of Primogeniture Sanad	514
APPENDIX D IV.—Form of Grantees' Sanad ...	516
APPENDIX E.—Chief Commissioner's Circular No. $\frac{143}{221}$, dated 11th October 1859 ...	517
APPENDIX F.—Chief Commissioner's Circular No. $\frac{1}{1217}$, dated 18th January 1860 ...	519
APPENDIX G.—Original and Supplementary Lists of Taluqdars and Grantees prepared under sections 8 and 9 of Act I of 1869 ...	521
APPENDIX H.—List of most important permanently confiscated estates	546
APPENDIX I.—Rules of Practice of the British Indian Association relating to maintenance of Taluqdars' relatives	547
APPENDIX J.—Rules framed by Local Government under s. 20 of the Oudh Settled Estates Act...	552

APPENDIX A(a).

Lord Canning's Proclamation of the 15th March 1858.

PROCLAMATION.

The Army of His Excellency the Commander-in-Chief is in possession of Lucknow, and the city lies at the mercy of the British Government, whose authority it has for nine months rebelliously defied and resisted.

This resistance, began by a mutinous soldiery, has found support from the inhabitants of the city and of the Province of Oude at large. Many who owed their prosperity to the British Government, as well as those who believed themselves aggrieved by it have joined in this bad cause and have ranged themselves with the enemies of the State.

They have been guilty of a great crime and have subjected themselves to a just retribution.

The capital of their country is now once more in the hands of the British Troops.

From this day it will be held by force which nothing can withstand and the authority of the Government will be carried into every corner of the Province.

The time then has come at which the Right Hon'ble the Governor-General of India deems it right to make known the mode in which the British Government will deal with the Talookdars, Chiefs, Landholders of Oude, and their followers.

(a) Calcutta Gazette, January to June 1858, p. 993; No. 743 of 1858.

The first care of the Governor-General will be to reward those who have been steadfast in their allegiance at a time when the authority of the Government was partially overborne, and who have proved this by the support and assistance which they have given to British Officers.

Therefore the Right Hon'ble the Governor-General hereby declares, that Drigbyjeye Singh, Rajah of Bulrampore, Koolwunt Singh, Rajah of Padbaha, Rao Hurdeo Buksh Singh of Kutiaree, Kashee Pershad, Talookdar of Sissaindee, Zuber Singh, Zemindar of Gopal Khair, and Chundee Lall Zemindar of Moraon (Baiswarah) are henceforward the sole, hereditary proprietors of the land, which they held when Oude came under British Rule, subject only to such moderate assessment as may be imposed upon them; and that these loyal men will be further rewarded in such manner and to such extent as, upon consideration of their merits and their position, the Governor-General shall determine.

A proportionate measure of reward and honour, according to their deserts, will be conferred upon others in whose favor like claims may be established to the satisfaction of the Government.

The Governor-General further proclaims to the people of Oude that, with the above-mentioned exceptions, the proprietary right in the soil of the Province is confiscated to the British Government, which will dispose of that right in such manner as to it may seem fitting.

To those Talookdars, Chiefs, Landholders, with their followers who shall make immediate submission to the Chief Commissioner of Oude, surrendering their arms and obeying his orders, the Right Hon'ble the Governor-General promises that their lives and honor shall be safe, provided that their hands are not stained with English blood murderously shed.

But as regards any further indulgence which may be attended to them, and the condition in which they may hereafter be placed, they must throw themselves upon the justice and mercy of the British Government.

To those amongst them who shall promptly come forward and give to the Chief Commissioner their support in the restoration of peace and order, this indulgence will be large and the Governor-General will be ready to view liberally the claim which they may thus acquire to a restitution of their former rights.

As participation in the murder of Englishmen or Englishwomen will exclude those who are guilty of it from all mercy, so will those who have protected English lives be specially entitled to consideration and leniency.

APPENDIX B.

Parwanah addressed to Landholders by Major-General Sir J. Outram, G.C.B., Chief Commissioner of Oudh.

The Major-General Chief Commissioner of Oudh in sending you this Proclamation wishes to inform you that if you at once come in ready to obey his orders, provided you have taken no part in the atrocities committed on helpless Europeans, none of your lands will be confiscated, and your claims to lands held by you prior to annexation will be heard.

LUCKNOW :

25th March 1858 (.

(a) Nawab Malka Jehan v. Deputy Commissioner of Lucknow, L. R. 6, I. A., 63-67.

APPENDIX C.

Translation of a circular addressed to the Taluqdars of Oudh, dated 7 June 1858.

All the Taluqdars of Oudh are hereby informed that provided they present themselves at Lucknow and tender their allegiance, all their offences will be forgiven. Many Taluqdars have presented themselves and have been pardoned and their estates have been re-settled with them for three years; but some are still at large in rebellion, and have not yet tendered their allegiance.

The Chief Commissioner has been given to understand that some persons, from ignorance and evil tendency, are trying to mislead Taluqdars and others with evil reports and false representations to the effect that the Government should not be trusted as all the persons returning to the city will be made Christians, and those who will not present themselves will be hanged. These groundless rumours are spread by those only who, from complicity in the murder of Europeans, are beyond the pale of mercy and pardon; and because they are well aware of this, they wish to mislead you also into the belief that the Government is equally severe upon you, and by keeping you back will deter you from taking advantage of the period of amnesty, for which, as a matter of course, you will be charged with protracted rebellion.

The object with which this letter is written to you is to assure you that the Government will preserve to you your life and property and confirm you in the estates possessed by you during the nawabee. "A Rahdaree Perwanah" (safe

conduct pass) is hereby enclosed to pass you without any hindrance to the city; and on your presenting yourself, the conditions of the puttahs and kupooliyat will be made known to you, which if not acceptable, you will be at liberty to return unmolested.

The term allowed in the pass is 30 days, within which period they should attend, if not, the Government forces will proceed against the estates of recusants and destroy them as they have done the city of Lucknow, and such recusants will meet with the punishment which their protracted rebellion will entail upon them.

This is the last invitation to be issued, and if you do not take advantage of its liberal provisions, the result will be unfavourable to you; but the Chief Commissioner confidently trusts you will see the advantage to be gained by rendering your allegiance and the consequent benefit resulting to yourself therefrom.

If you cannot present yourself, you may send your agent to represent you (a).

(a) O. P. Cal., 1867, 793-4.

APPENDIX D.

I.

PROPOSED FORM OF SANAD (a).

Know all men, that whereas by the Proclamation of March 1858, by His Excellency the Right Hon'ble the Governor-General and Viceroy of India, all proprietary rights in the soil of Oude, with a few special exceptions, were confiscated and passed to the British Government, which became free to dispose of them as it pleased, — I, Charles John Wingfield, Chief Commissioner of Oude, under the authority of His Excellency the Governor-General of India in Council, do hereby confer on you the full proprietary right, title and possession of the estate of _____ consisting of the villages as per list attached to the Kuboolyut you have executed of which the present Government *rent* is _____. Therefore this Sannud is given you in order that it may be known to all whom it may concern, that the above estate _____ have been conferred upon you and your heirs for ever, subject to the payment of such annual *rent* as may from time to time be imposed, and to the conditions of surrendering all arms, destroying* forts, preventing and reporting crime, rendering any service you *and they* may be called upon to perform, and of showing constant good faith, loyalty, zeal and attachment, in every way in which they can be manifested, to the British Government according to the provisions of the engagement* you have executed, the breach of any one of which at any time shall be held to annul the right and title now conferred on you and your heirs.

It is also a condition of this grant that you will, so far as in your power, *restore* the agricultural prosperity of your estate *wherever it has deteriorated, and that you will treat all holding under you with consideration, and secure them, in the possession of all the subordinate rights they have heretofore enjoyed.* As long as the above obligations are observed by you and your heirs in good faith, so long will the British Government maintain you* as full proprietor of the above-mentioned estate, in confirmation whereof I herewith attach my seal and signature.

(a) O. P. Calcutta, 1865, p. 100; O. P. 62, 1865, p. 137, where this form is, wrongly given as the revised form. The first reference makes the mistake clear and were it otherwise a comparison of the terms of the approved form, and of the letter of 19th October 1859, would remove all doubt on the point. The italics and asterisks are mine to direct attention to the main alterations made in Mr. Wingfield's draft.

II.

APPROVED FORM OF SANAD^(a).

Know all men that whereas by the Proclamation of March 1858 by His Excellency the 'Right Hon'ble the Viceroy and Governor-General of India, all proprietary rights in the soil of Oude, with a few special exceptions were confiscated and passed to the British Government, which became free to dispose of them as it pleased,—I, Charles John Wingfield, Chief Commissioner of Oude, under the authority of His Excellency the Governor-General of India in Council, do hereby confer on you the full proprietary right, title and possession of the estate _____ of _____ consisting of the villages as per list attached to the Kuboolyut you have executed of which the present Government Revenue is _____. Therefore, this Sunnud is given you in order that it may be known to all whom it may concern, that the above estate _____ has been conferred upon you and your heirs for ever, subject to the payment of such annual revenue as may from time to time be imposed and to the conditions of surrendering all arms, destroying all forts, preventing and reporting crime, rendering any service you may be called upon to perform and of showing constant good faith, loyalty, zeal and attachment to the British Government, according to the provisions of the engagement which you have executed, the breach of any one of which at any time shall be held to annul the right and title now conferred on you and your heirs.

It is also a condition of the grant that you will, so far as in your power, promote the agricultural prosperity of your estate, and that all holding under you shall be secured in the possession of all the subordinate rights they formerly enjoyed. As long as the above obligations are observed by you and your heirs in good faith, so long will the British Government maintain you and your heirs as proprietors of the above-mentioned estate. In confirmation of which I herewith attach my seal and signature.

(a) O. P. 426, 1861, p. 33.

III

FORM OF PRIMOGENITURE SANAD AS GIVEN TO MOST
TALUQDARS(a).

Know all men that whereas by the Proclamation of March 1858, by His Excellency the Right Hon'ble the Viceroy and Governor-General of India, all proprietary rights in the soil of Oude, with a few special exceptions, were confiscated and passed to the British Government, which became free to dispose of them as it pleased, I, George Udny Yule, Officiating Chief Commissioner of Oude, under the authority of His Excellency the Governor-General of India in Council, do hereby confer on you the full proprietary right, title and possession of the estate of _____ consisting of the villages as per list attached to the *kubooliat* you have executed, of which the present Government revenue is _____. Therefore this sunnud is given you in order that it may be known to all whom it may concern that the above estate _____ been conferred upon you and your heirs for ever, subject to the payment of such annual revenue as may from time to time be imposed, and to the conditions of surrendering all arms, destroying all forts, preventing and reporting crime, rendering any service you may be called upon to perform, and of showing constant good faith, loyalty, zeal and attachment to the British Government, according to the provisions of the engagement which you have executed, the breach of any one of which at any time shall be held to annul the right and title now conferred on you and your heirs.

It is another condition of this grant that in the event of your dying intestate or of any of your successors dying intestate, the estate shall descend to the nearest male heir

(a) O. P. Calcutta, 1865, p. 232.

according to the rule of primogeniture (a), but you and all your successors shall have full power to alienate the estate either in whole or in part by sale, mortgage, gift, bequest, or adoption to whomsoever you please.

It is also a condition of this grant that you will, so far as is in your power, promote the agricultural prosperity of your estate, and that all holding under you shall be secured in the possession of all the subordinate rights they formerly enjoyed. As long as the above obligations are observed by you and your heirs in good faith, so long will the British Government maintain you and your heirs as proprietors of the above-mentioned estate, in confirmation of which I here-
with attach my seal and signature.

(a) This means rule of lineal primogeniture and is an essential part of the "ordinary law" of the religion and tribe of the Taluqdars and Grantees entered in Lists 3 and 5. *Debi Baksh Singh v. Chandrabhan Singh*, 14 C. W. N., 1010.

IV.

FORM OF GRANTEES' SANAD.

"Translation of a Zamindari Sanad in the name of Kashee Purshaud, son of Gunesh Purshaud, granted by His Excellency the Governor-General and signed by the Secretary to the Government of India.

As during the days of mutiny good services of Kashee Purshaud, and his loyalty to the British Government have been proved, His Excellency the Viceroy and Governor-General of India with great kindness and mercy has bestowed on him and on his heirs, the proprietary rights of the Elaqua of Doolbah, consisting of fourteen villages in the parganah of Futtehpur, district Oonao, and that of Lalgunj, &c., consisting of three villages in the parganah of Daundia Khera, on conditions that he and his heirs shall pay the revenue, which from time to time shall be fixed by the Government on the said Elaqua, and shall always continue firm and constant in obedience, good service and loyalty to Government.

21st October 1859"(a).

(a) Paper No. 3, Act I of 1863, p. 19.

APPENDIX E.

*Chief Commissioner's Circular No. $\frac{148}{2421}$, dated
11th October 1859(a).*

I am directed to call on you to furnish a list for your Division, in the subjoined form, of the Talookas in which the law of primogeniture prevails in opposition to the Hindoo Law of succession, such as are known as having a guddee, and resemble the magnates of Continental Europe.

2. The Chief Commissioner considers this custom highly to be esteemed and most conducive to the maintenance of the Talokdaree settlement. He therefore desires that all influence of the authorities may be directed to uphold it, should, as is sometimes the case, efforts be made by the younger branches to subvert it. Sufficient provision is made for them in a few villages of the Talooka held as Nankar.

3. Any departure from it where it has prevailed, and the consequent division of the Talooka, has always been accomplished by violence. Thus Bbinga was separated from Gonda, and Esanuggur from Dourera; such means cannot be employed now, but we must be careful that this end is not attained under cover of our laws.

4. Should then any younger son or collateral (heir) sue for possession of his share, his claim should be summarily rejected wherever the rule of succession above described prevails.

5. In other Talookas where the custom does not prevail, it is still desirable to prevent sub-division as far as

(a) O. P., Cal. 1865, p. 326.

possible; and when the present settlement has been made with one person as the representative, the Authorities should be cautious of allowing others to be recorded as sharers of fractional interests, and participating in the profits without his consent. But when they are so recorded, separation of their shares should not be granted, not by imperfect partition even, except by mutual consent. If properties are split up the vital principle of a Talookdaree settlement which is to have great landholders instead of a peasant proprietary will be destroyed; the Talookdars will become petty Zemindars.

Division.	District.	Name of Talookdar.	Name of Talooka.	Number of villages of Talookas and their aggregate Jummah.	Remarks.

APPENDIX F.

Chief Commissioner's Circular No. $\frac{1}{1217}$, dated 18th January 1860(a).

With reference to Circular No. $\frac{100}{2715}$ of 1st December, and No. $\frac{143}{2281}$ of 11th October, I am directed by the Chief Commissioner to observe that it is quite certain that, if the Hindu Law of succession, by which sons share equally, is allowed to prevail in the Talookdaree families where there is no Guddee, the property will ultimately be split up, and we shall have a numerous beggared proprietary instead of a few great landlords, and the distinctive features of a Talookdaree settlement and its great advantages will be quite lost.

2. Where Talookas have become putteedaree, that is, where they have become divided, it is impossible to reunite them now, but the Chief Commissioner is anxious to preserve Talookas now intact from that fate. It is far more likely to befall them under our rule unless some preventive measures are adopted than under the former Government, because then the most energetic of the heirs often took and kept possession of the estate, and a sense of common danger from the Government Officers made the other claimants acquiesce in his ascendancy. Under our Government, the tendency will be for each to try and set up for himself, and moreover their numbers will increase greatly.

3. The Chief Commissioner thinks the object we have in view may be attained if the present Talookdar, who hold the property by gift of the British Government (for, all estates are held by no other title in Oude), were to file a

written declaration, expressing his desire that his estate should not be sub-divided at his death, or in any future generation; the observance in all ages of this desire being inserted in the sunnuds as one of the conditions of the grant.

4. The Chief Commissioner requests that you will explain to all the Talookdars entitled to receive sunnuds the advantages of the proposed measure, how it will preserve the name and importance of their families to all time, which must otherwise soon be obliterated; and invite them to submit applications of the nature above detailed. To ensure uniformity of practice, the Chief Commissioner submits a form for conveying this desire on the part of the Talookdars and a translation of it.

5. Pending the result of these instructions the Chief Commissioner will suspend giving sunnuds to those Talookdars who were not summoned to Durbar, and a list for (sic) whom he has called for.

6. From those Talookdars who have received sunnuds and in whose families the law of primogeniture does not prevail, a similar expression of their wish should be invited and the condition can be inserted as a supplementary clause in their sunnuds.

7. The Chief Commissioner calls early attention of officers to this important matter.

The British Government having conferred on me the full proprietary and hereditary rights in the Illaqua of

It is my desire and will that, on my death, my Illaqua descend entirely by the rule that governs succession to landed property where there is a gudee in the family, the younger being supported by the head of the house.

APPENDIX G.

THE GAZETTE OF INDIA, JULY 31, 1869.

POLITICAL

The 20th July 1869.

No. 1003.—Under the provisions of Section 9, Act F of 1869, His Excellency the Viceroy and Governor-General in Council is pleased to direct the publication of the following lists, prepared by the Chief Commissioner of Oudh under Section 8 of the aforesaid Act:—

General list of persons who are declared to be Talukdars in the Province of Oudh under Act I of 1869, being List No. I referred to in Section 8 of the said Act.

Number.	Subordinate list.	Number in Subordinate list.	Name of Talukdar.	Name of Estate.	District.	Remarks.
<i>Lucknow District.</i>						
1	III	1	Kunr Bhagwant Singh...	Asni Dalu Khora ...	Lucknow.	
2	III	2	Musamat Syad-u-Nissa ...	Mothri ...	Barabankee.	
3	III	3	Rajah Kashi Parshad ...	Ghazipur ...	Lucknow.	
	V	1	"	Bhysampur ...	Roy Bareilly.	
			"	Dadelta ...	Oonao.	
4	III	4	Musamat Kuth-u-Nissa ...	Lalgauj ...	Roy Bareilly.	
5	III	5	Sirdar Jhabba Singh ...	Gauria Kalan ...	Lucknow.	
6	V	2	"	Pursehi ...	"	
			"	Dalauna ...	Oonao.	
			"	Akobri ...	Roy Bareilly.	
6	III	6	Mirza Abu Torab Khan ...	Ganaba ...	Lucknow.	
7	II	1	Chaudhri Nawab Ali ...	Diaurera ...	Lucknow.	
			"	Salimpur ...	"	
			"	Chakar ...	Barabankee.	
			"	Maulabad ...	Roy Bareilly.	
8	II	2	Rajah Rattan Singh ...	Balpur Ekdarris ...	Lucknow.	
9	II	2	Abu Pirthipal Singh ...	Mehgaon ...	"	
10	III	7	Mahomed Ahmed Khan ...	Kosmaudi Khurd ...	"	
11	III	8	Mahomed Nasir Khan ...	Lalmanu ...	"	
12	III	6	Rajah Sobah Singh ...	Bampur Blehaull ...	"	

List No. I of Talukdars in Oudh &c.—(continued).

Number.	Subordinate list.	Number in Subordinate list.	Name of Talukdar.	Name of Estate.	District.	Remarks.
<i>Lucknow District—</i> (concl.)						
13	III	10	Umed Ali ...	Unchgaon ...	Lucknow.	
14	III	11	Musamat Shams-u-Nissa ...	Sarai Shekh ...	"	
15	IV	1	Mirza Jafr Ali ...	Behta ...	"	
16	III	12	Janjit Singh ...	Kantha ...	Oonao.	
17	V	3	" " "	Kantha ...	"	
17	III	13	Chaudhri Musahib Ali & Karim Baksh ...	Umpanah ...	Lucknow.	
18	V	4	Mir Wajid Ali Darogha ...	Ahmamsau ...	"	
<i>Oonao District.</i>						
19	IV	2	Rajah Gauri Shankar ...	Morawan ...	Oonao.	
			" " "	Jabrauli ...	Lucknow.	
			" " "	Thalendi ...	Roy Bareilly.	
20	II	4	Mahant Gurnarain Doss ...	Maswasli ...	Oonao.	
			" " "	Hemraj ...	Lucknow.	
			" " "	Anji ...	Hurdoi.	
			" " "	Fassantipur ...	Gondah.	
			" " "	Ranipur ...	Karaich.	
			" " "	Akbarpur ...	S-etapoor.	
			" " "	Kakral ...	Kheree.	
21	III	14	Chaudhri Gulab Singh ...	Sarosi ...	Oonao.	
22	III	15	Chaudhri Gopal Singh ...	Mahmudabad ...	"	
23	III	16	Sifa Baksh ...	Gaura ...	"	
24	IV	3	Dina Singh ...	Malaura ...	"	
25	III	17	Umrao Singh ...	Galgalba ...	"	
	V	6	" " "	Nazra Piparkhera ...	"	
26	III	18	Chaudhri Dost Ali ...	Ooran ...	"	
27	III	19	Rajah Dya Shankar ...	Pare da ...	"	
28	IV	4	She-rath Pajpal and Dya Shankar ...	Kurdaha Lohraman ...	"	
29	IV	5	Beni Madho Baksh ...	Akbarpur ...	"	
30	IV	6	Sheodis Singh and Mahabai Singh ...	Patan, Behar ...	"	
31	V	9	Babu Sheo Parshad ...	Banhar ...	"	
32	V	7	Mulvi Habib-u-Rehman ...	Miangunj ...	"	
33	VI	1	Melpal Singh ...	Jainmau ...	"	
34	V	8	Rajah Sheonath Singh ...	Bethar ...	"	
<i>Barabunkee District.</i>						
35	III	20	Shekh Abd' Ali ...	Shahpur ...	Barabunkee.	
			" " "	Sydsah ...	Lucknow.	
36	III	21	Muhammad Amir and Ghulam Abbas ...	Shahapur ...	Barabunkee.	
37	III	22	Chaudhri Mahomed Hussein ...	Kharka ...	Barabunkee.	
			" " "	Sindaul Usarpur ...	Lucknow.	
38	II	6	Rajah Farzand Ali Khan, Bahadur ...	Jhangirabad ...	Barabunkee.	
			" " "	Abgaon ...	Lucknow.	
			" " "	O-ba Khera ...	Sitapoor.	
39	III	23	Kazi Sarfraz Ali ...	Satrik ...	Barabunkee.	
40	II	6	Hakim Karam Ali ...	Ghantia ...	"	
41	II	7	Pandey Bahadur Singh ...	Asdamau ...	"	

List No. I of Taluqdars in Oudh, &c. (continued).

Number.	Subordinate list.	Number in Subordinate list.	Name of Talukdar.	Name of Estate.	District.	Remarks.
<i>Barabunkee District—</i>						
<i>(contd.)</i>						
42	III	24	Mir Bunnad Hussein and Mir Amjad Hussein.	Bhanmau	Barabunkee.	
43	II	8	Mir Amjad Hussein.	Sohilpur ...	"	
44	II	9	"Hakur Ram Sahal	Simraon ...	"	
45	IV	7	Shekh Zain-ul-Abdin	Rasauli ...	"	
46	III	25	Thakur Singh Tirbedi	Gadli ...	Lucknow.	
			"	Mankapur	Barabunkee.	
			"	Tirbediganj	"	
47	IV	8	Shekh Lutfat ullah and Shekh Wajshatulla.	Shekorabad	"	
48	II	10	Nawab Ali Khan	Sydanpur	"	
49	II	11	Badsah Hussein Khan	Malla Raiganj	"	
50	II	12	Rajah Narajit Singh	Bhatwamau	"	
51	III	26	Thakur Ganga Singh	Katori Khurd	Seetapoor.	
52	III	27	Bakshat Harprasad	Ramnagar	Barabunkee.	
53	IV	9	Mahomed Nasir-ud-din	Mahomedpur	"	
			"	Lilauli ...	"	
			"	Mirpur ...	"	
			"	Teha Kalan	Lucknow.	
54	III	28	Shekh Bu Ali	Sheklpur	Barabunkee.	
55	II	13	Chaudhri Sarfraz Ahmed	"Hilwal ...	"	
			"	Khanpur	Su'tanpoor.	
			"	Sixandarpur	Barabunkee.	
56	V	10	Rajah Udit Partab Singh	Surajpur	"	
57	II	15	Rajah Narendar Bahadur Singh.	Harha ...	"	
58	II	14	Raj Ibrahim Belli	Rampur ...	"	
59	IV	10	Chaudhri Gholam Farid	Barrai ...	"	
			"	Aghiali ...	Fyzabad.	
60	II	17	Chaudhri Hussein Baksh.	Narauli ...	Barabunkee.	
61	III	29	Mir Mahomed Abid	Pufal ...	"	
62	III	30	Chaudhri Inayat Rasul	Amirpur	"	
63	II	18	Rajah Syjam Baksh	Pokra Usri	"	
64	III	31	Babu Chand Baksh	Tamnagar	"	
65	III	32	Babu Bhikam Sah	Akbarpur	"	
66	II	19	Thakurain Zahur-u-Nissa	Usranpur	"	
67	II	20	Bhya Anwar Singh	Bani mau	"	
68	II	21	Shir Khan	Noora	"	
69	II	22	Chaudhri Wazir Ali	Barauli	"	
70	III	33	Raghonath Singh	Fail	"	
71	V	11	Dewan Hakim Rai	Yakutganj	"	
<i>Seetapoor District.</i>						
72	III	34	Kanaya Lal and Sitaram	Bhagpur	Seetapoor.	
			"	Tehra Tika	"	
73	IV	35	Jauahir Singh	Bessadih ...	"	
			"	Barnauli	"	
74	II	23	Thakur Beni Singh	Kanhmau	"	
			"	Banguria	"	
75	V	14	Mirza Ahmed Beg	Kutbnagar	"	
76	II	25	Thakur Bhawanidin	Nilgaon ...	"	
			"	Jalaipur ...	"	
77	II	26	Mirza Agha Jan	Aurangabad	"	

List No. I of Taluqdars in Oudh, &c.—(continued).

Number.	Subordinate list.	Number in subordinate list.	Name of Talukdar.	Name of Estate.	District.	Remarks.
<i>Seetapoor District—</i> (concluded.)						
78	III	36	Murli Manohar and Sitaram.	Moiudinpur ...	Seetapoor.	
	V	16	Murli Manohar ... Sitaram ...	Katgarria ... Alua Mahna Kohla ...	" "	
79.	II	27	Ebakur Guman Singh ...	Rampur Mathra ... Naujipur ...	Barabunkee.	
80	II	28	Thakur Fazi Ali ...	Akbarpur ...	Seetapoor.	
81	II	29	Nawab Anjad Ali Khan ...	Kanus Khera ...	" "	
82	II	30	Rajah Shamshir Bahadur ...	Sadatnagar ...	" "	
83	II	31	Thakur " Sheebakhsh Singh.	Disoria ... Katesar ...	Hurdul. Seetapoor.	
84	III	37	Thakur Darrlau Singh ...	Rampur ...	" "	
	V	17	" " " "	Piprawan ...	" "	
85	II	32	Thakur Ganga Baksh ...	Sarora ...	" "	
86	II	33	Rajah Amir Hassan Kuan.	Mahmudabad ...	" "	
			" " " "	Salanagar ... Kunadouda ...	Lucknow. Barabunkee.	
87	II	34	Rajah Ibad Ali Khan ...	Paintapur ... Jasanwat & Bilabra,	Seetapoor. Barabunkee.	
88	IV	11	Kalka Baksh and Ganga Baksh.	Ramkot ...	Seetapoor.	
	VI	3	" " " "	Hajipur ...	" "	
89	III	28	Rajah Jagannath Baksh Singh.	Wazirnagar ...	" "	
90	IV	12	Chaudhari Ramnaran ...	Mobarikpur ...	" "	
91	III	29	Mir Mahomed Hussein ...	Rajpara ...	" "	
92	V	18	Mirja Abbas Beg ...	Baragaon ...	" "	
93	V	19	Mulvi Mazhar Ali ...	Mahewa ...	" "	
94	V	20	Ragunath Singh ...	Jarsadnagar ...	" "	
95	V	21	Thakur Ragunath Singh ...	Rajpur ...	" "	
<i>Hurdul District.</i>						
96	II	25	Rajah Hardeo Baksh, C.S.I.	Katlari ...	Hurdul.	
	V	22	" " " "	Daultpur Marna ...	" "	
97	II	36	Rajah Mardan Singh ...	Fattehpur ... Bharawan ...	Ounao. Hurdul.	
	IV	23	" " " "	Basantpur ...	Lucknow.	
98	II	37	Chaudhari Hashmat Ali ...	Marhapur ... Kakrail ...	Ounao. Hurdul.	
	V	24	" " " "	Azaleh ...	Ounao.	
99	II	28	Thakur Bharat Singh ...	Arbi Bahinpur ...	Hurdul.	
	V	25	" " " "	Atua ...	" "	
100	II	39	Syad Mahomed Ibrahim ...	Nasirpur ...	" "	
	V	30	Syad Mahomed Ashraf ...	Bhogaitapur ...	" "	
101	III	40	Fazi Rasul ... Mahomed Ahmad Mahomed Askari	Ashrafpur ...	" "	
	V	26	" " " "	Rampur Majaura ...	" "	
102	III	41	Mulvi Fazi Rasul ...	Jalapur ...	" "	
	V	27	" " " "	Paranmat ... Daudpur & Kalkai ...	Kheree. "	

List No. I of Taluqdars in Quidh, &c.—(continued).

Number.	Subordinate list.	Number in Subordinate list.	Name of Taluqdar.	Name of Estate.	District.	Remarks.
<i>Hurdul District—(concd.)</i>						
103	II	40	Chandka Bakhtsh ...	Laurasatpur* ...	Hurdul.	
104	II	41	Rajah Darriat Singh ...	Tawaljpur ...	"	
105	III	42	Thakur Dal Singh ...	Khajrahra ...	"	
	V	28	"	Bahura ...	Seetapoor.	
106	II	42	Nawab Dost Ali ...	Sasatnagar ...	Hurdul.	
107	II	43	Ubanpat Rai and Fatteh Chand.	Sarwan Baragaon ...	"	
	V	29	"	Siraswa ...	Kheres.	
103	III	43	Thakur Sri-pal Singh ...	Panawan ...	Hurdul.	
109	III	44	Murtiza Bakhtsh ...	Behrora ...	Lucknow.	
110	VI	3	Saidar Hussain Khan ...	Gopamau ...	Hurdul.	
				Bhaupur ...	"	
<i>Kheres District.</i>						
111	II	44	Rajah Ashraf Ali Khan	Bahadornagar ...	Kheres.	
112	III	45	Captain Fidda Hussein Khan.	Atua Piparia ...	"	
113	II	45	Thakur Lal Khan	Raipur ...	"	
114	IV	13	Raj Ganga Singh	Bhira ...	"	"
			" Ahied Singh			
			" Barrier Singh			
			" Sacho Singh			
115	II	46	Chand Bibi ...	Kotwarra ...	"	
116	II	47	Niamatulla Khan ...	Agar Buzurg ...	"	
117	II	48	Rajah Anrudh Singh ...	Oel ...	"	
118	II	49	Thakur Gajraj Singh ...	Mahewa ...	"	
			"	Achangirabad ...	Seetapoor.	
119	II	50	Rajah Narpal Singh ...	Kymara ...	Kheres.	
120	II	51	Rajah Ranjit Singh ...	Isanagar ...	"	
			"	"	Seetapoor.	
			"	"	Baraich.	
121	II	52	Rao Maueshar Bakhtsh...	Mallapur ...	Kheres.	
			"	"	Seetapoor.	
			"	"	Baraich.	
122	II	53	Rajah Randhir Sah ...	Khyrigarh ...	Kheres.	
123	V	30	Rao Tularam ...	Pyla ...	"	
124	V	31	Mr. G. Shilling ...	Fathra ...	"	
125	V	32	Captain A. F. W. Orr ...	Karla ...	"	
126	V	33	Mrs. Orr (now Mrs. Rose)	Rehra Bhadeori ...	"	
127	V	34	Captain J. Hearsey ...	Mathera ...	"	
128	V	35	Captain William Hearsey	Kokra Mylani ...	"	
<i>Fyzabad District.</i>						
129	II	54	Maharajah Sir Man Singh K C. S. I.	Mehdauna ...	Fyzabad.	
			"	Bhrauli ...	Lucknow.	
			"	Ahlar ...	Barabunkee.	
			"	Tulsipur ...	Gondah.	
	V	38	"	Bisambarpur ...	"	
130	III	46	Babu Amresh Singh ...	Meopur Baragaon ...	Fyzabad.	

List No. I of Talukdars in Oriss, &c.—(continued).

Number.	Subordinate list.	Number in Subordinate list.	Name of Talukdar.	Name of Estate.	District.	Remarks.
			<i>Fyzabad District—</i>			
			(concl'd.)			
131	III	47	Babu Udresh Singh and Babu Chandresh Singh	Meopur Dhaureri ...	Fyzabad.	
132	III	48	Thakurain Birj Kunr ...	Mudhera ...	"	
133	III	49	Mir Guzafr Hussein and Mir Bakar Hussein.	Firpur ...	"	
134	III	50	Mir Karamat Hussein ...	Kataria ...	"	
135	III	51	Babu Jydat Singh ...	Bhiti ...	"	
136	III	52	Babu Abhydat Singh ...	Karahat ...	"	
137	III	53	Thakurain Ragorath Kunr.	Sihipur ...	"	
138	III	54	Thakur Ramsarrup Singh	Kamradih ...	"	
139	III	55	Babu Janshed Ali Khan	Deogson ...	"	
140	III	55	Babu Kishu Parshad Singh.	Birhar ...	"	
141	III	56	Babu Sheoparkash Singh	"	"	
142	III	57	Baboo Madhoparshad Singh.	"	"	
143	III	58	Babu Mahipnarain Singh	"	"	
144	III	59	Thakurain Udit Kunr ...	Meopur Dehla ...	"	
145	III	60	Babu Eshraj Singh ...	Kolanpur ...	"	
146	III	61	Baboo Pirthipal Singh ...	Tigra ...	"	
147	III	56	Matik Hidayat Hussein and Taffazul Hussein.	Sammanpur ...	"	
148	V	37	Anant Ram ...	Rasulpur ...	"	
149	V	38	Rao Barriar Singh ...	Suitanpur ...	"	
			<i>Barach District.</i>			
150	II	57	Rajah Narpal Singh ...	Pyagpur ...	Barach.	
151	II	58	Rajah Jang Bahadur Khan.	Nanpara ...	"	
152	II	59	Rajah Sitla Bukhsh Singh	Gangauli ...	"	
153	II	60	Rajah Ragunath Singh ...	Rehna ...	"	
154	II	61	Bhaya Kishudatt Singh	Bhinga ...	"	
155	II	62	Thakur Fatteh Mahomed	Tipraha ...	"	
156	II	63	Thakur Nirman Singh ...	Inchapur Umri ...	"	
157	II	64	Thakur Indrajit Singh...	Mustafabad ...	"	
158	II	65	Sheikh Wazir ...	Ambhapur ...	"	
159	III	62	Mir Zafr Mehndi ...	Alinagar ...	"	
160	III	63	Mir Mozaf Hussein ...	Azra Kazi ...	"	
161	V	39	Nawab Ali Raza Khan ...	Nawabganj ...	"	
162	V	40	Sirdar Jai Singh ...	Jamdan ...	"	
163	V	41	Sirdar Syad Mahomed Shah.	Sisal Salon ...	"	
164	V	42	Sirdar Shrir Singh ...	Bhangaba ...	"	
165	V	43	Sirdar Fatteh Singh and Sirdar Jagat Singh.	Chilari ...	"	
			<i>Gondak District.</i>			
166	II	66	Maharajah Str Dig Bijay Singh, K.C.S.I.	Dalrampur ...	Gondah.	
	V	44	"	Tulsipur ...	"	
167	II	67	Rajah Kishudatt Ram ...	Charda ...	Barach.	
			"	Singha Chanda ...	Gondah.	

List No. I of Talukdars in Oudh, &c. (continued).

Number.	Subordinate list.	Number in Subordinate list.	Name of Talukdar.	Name of Estate.	District.	Remarks.
<i>Gondah District - contd.</i>						
168	II	68	Rajah Pirthipat Singh...	Mankapur ...	Gondah.	
169	II	69	Rajah Mahipat Singh ...	Parasapur ...	"	
170	II	70	Bhaya Shih Bahadur ...	Deoli ...	"	
			"	Kamhar ...	Burabunsee.	
171	II	71	"	Barhauil ...	Baraich.	
			Bhaya Mirtanji Bakshah	Chahpur ...	Gondah.	
172	II	72	Bhaya Raghu Singh ...	Katka Narautha ...	Baraich.	
			"	Dhanson ...	Gondah.	
173	II	73	Bhaya Nipal Singh ...	Dhandiari ...	Baraich.	
174	II	74	Rabu Lukraj Singh ...	Baska ...	Gondah.	
175	IV	14	Bhaya Harattan Singh ...	Ata ...	"	
	VI	4	"	Mehgaon ...	"	
176	III	64	Pande Harnaran Ram...	Auradhih ...	"	
177	II	75	Rani Sarfraz Koor ...	Akbarpur ...	"	
178	II	78	Rajah Mumtaz Ali Khan	Banimpair ...	"	
179	II	77	Bhaya Pirthipat Singh...	Biaspur ...	"	
			"	Birwa ...	"	
<i>Roy Bareilly District.</i>						
180	II	78	Rajah Dig Bijay Singh, O.S.I.	Morarmau ...	Roy Bareilly.	
	V	45	"	Singrampur ...	Oonao.	
181	II	79	Rajah Jagpal Singh ...	Tilul ...	Roy Bareilly.	
	V	46	"	Bholpur Katawar ...	Patalgurh.	
182	II	80	"	Mastatabad ...	"	
183	V	47	Rana Shankar Baksh...	Thalrai ...	Roy Bareilly.	
184	II	81	Raja Bahadur Singh ...	Katgarh ...	"	
185	II	82	Rajah Jagmohan Singh ...	Barsapur ...	"	
186	II	83	Rajah Hindpal Singh ...	Kurri Sadauli ...	"	
187	II	84	Rajah Jagmohan Singh ...	Atra Chandapur ...	"	
			Thakur Jagannath Baksh	Sinri ...	"	
188	II	85	Thakurain Parrain Koor	Patautadasi ...	Oonao.	
189	II	86	Thakur Fattah Bahadur Singh	Sinarpaha ...	Roy Bareilly.	
			"	Kurair Sataon ...	"	
190	II	87	Thakurain Achal Koor...	Gaura Kaseti ...	"	
191	II	88	Thakur Bhup Singh ...	Pahu ...	"	
192	II	89	Thakur Bishnath Baksh	Gularria ...	Oonao.	
193	III	48	Babu Sarabjit Singh ...	Henaspur ...	Roy Bareilly.	
	V	48	"	Tikari ...	"	
			"	Bhagapur ...	"	
194	II	60	Thakur Bishnath Singh, and Thakur Adjudia Baksh.	Asogipur ...	Gondah.	
			"	Narindpur Charhar ...	Roy Bareilly.	
195	II	91	Thakur Sirdar Singh ...	Hamirmau Kaifa ...	"	
196	III	66	Sadat Khan and Abdul Hakim Khan.	Amawan ...	"	
197	III	67	Zottakar Khan Karam Ali Khan Assad Ali Khan Mahalat Khan	"	"	
198	II	92	Thakurain Golab Koor.	Pahreman ...	"	
			"	Uderna ...	"	
			"	Kasmora ...	Lucknow.	

List No. I of Talukdars in Oudh, &c.—(continued).

Number.	Subordinate list.	Number in Subordinate list.	Name of Talukdar.	Name of Estate.	District.	Remarks
<i>Roy Bareilly District—(contd.)</i>						
199	III	68	Chandhri Ragonath Singh	Pahrauli ...	Roy Bareilly.	
200	III	69	Mir Fakrul Hasan	Binaura ...	"	
201	III	70	Thakur Jagmohan Singh	Deogana ...	"	
202	III	71	Lala Byjnath	Hardaspur	"	
203	II	93	Batu Sheoamber Singh	Ausah	"	
204	IV	15	Maharaj Bakhsh	Pilkha	"	
205	III	72	Sitaram	Sehgaon, Pachimgaon.	"	
206	III	73	Kamta Bakhsh	Khajuri	"	
207	III	74	Thakur Bakhsh	Kafirani	"	
208	III	75	Babu Bijay Singh	Dehli	"	
209	IV	16	Hira Lal Mier	Menahar Katra	"	
210	II	84	Bhikam Khan	Bahua	"	
211	IV	17	Sukhuangal Singh	Shahmau	"	
212	II	95	Sheorattan Singh	Panona	"	
213	II	98	Thakuram Kadam Kunr	Nurudinpur	"	
214	V	18	Mehpal Singh	Nara	"	
215	II	67	Rudr Partab Singh	Soni	"	
216	III	76	Subhan Ahmed	Arizabad	"	
217	V	49	Shahzada Shadoo Singh	Pindri Ganeshpur	"	
218	V	50	Captain Golab Singh	Bela Rela	"	
219	V	51	Sirdar Antar Singh Sirdar Tej Singh	Bela Rela	"	
220	V	52	Babu Dakinaranjan Mukerji.	Shankerpur	"	
221	V	53	Mir Jafr Ali Khan	Raghopur	"	
222	VI	5	Farzand Ali Khan	Kotwara	"	
223	VI	6	Major A. P. Orr	Ludwari	"	
224	VI	7	Captain W. D. Bunbury	Rampur Kalan	"	
225	VI	8	Syad Abdul Hakim Khan	Alipur Chakri	"	
			Gajraj Singh	Mehgaon	"	
<i>Sultanpore District.</i>						
226	II	98	Rajah Hussein Ali Khan	Hassanpur	Sultanpore.	
227	II	99	Rajah Madho Partab Singh.	Kurwar	"	
228	II	100	Babuan Sogra Bibi	Maniarpur	"	
229	III	77	Kamta Perabad and Bisnath Singh.	Bhadeyan	"	
230	III	78	Thakurain Darriam Kunr	Garapur	"	
231	IV	19	Jabba Singh and Byjnath Singh.	Partabpur	"	
232	IV	20	Kalka Bakhsh	Rampur	"	
233	II	101	Rajah Rustam Sah	Dera	"	
	V	54	"	Amhat	"	
			"	Manjad Hanspur	"	
234	II	102	Rajah Madho Singh	Amethi	"	
235	II	103	Babu Balwant Singh	Shahgarh	"	
236	II	104	Rani Sada Bibi	Mahona	"	
237	III	79	Nabbi Bakhsh Khan	Bhadsaur	"	
238	II	105	Rajah Sarram Singh	Katiari	"	
239	II	106	Rajah Jagannath Bakhsh	Jamu	"	
240	II	107	Sripal Singh	Baraulia	"	

*Notification No. 708, 6th May 1870, Post.

List No. I of Talukdars in Quidh, &c.—(continued).

Number.	Subordinate list.	Number in Subordinate list.	Name of Talukdar.	Name of Estate.	District.	Remarks.
<i>Sultanpore District—(concl.)</i>						
241	II	108	Sitta Bakhs Singh ...	Bhauenshapur ...	Sultanpur.	
242	II	109	Arjun Singh ...	Resi ...	"	
243	III	80	Babu Baheshar Parshad ...	Simratpur ...	"	
244	III	81	Babu Jahangir Bakhs Khan ...	Gangaon ...	"	
245	III	82	Babu Talu Shah ...	Meopur Dehla ...	"	
246	II	110	Babu Sitta Bakhs Singh ...	Naninau ...	"	
<i>Pertabgurh District</i>						
247	II	111	Rajah Hanwant Singh...	Rampur ...	Pertabgurh.	
	V	55	"	Bhakal ...	Barah.	
248	II	112	Rajah Bijay Bahadur Singh.	Baholpur ...	Pertabgurh.	
249	II	113	Rajah Mohesh Narain Singh.	Parhat ...	"	
	V	56	"	Mangola ...	Sultanpur.	
250	II	114	Rajah Jageshar Bakhs ...	Kethaula ...	Pertabgurh.	
251	II	115	Babu Ajit Singh ...	Tiraul ...	"	
	V	57	"	Deotaha ...	Gundah.	
252	II	116	Raj Pirthihal Singh ...	Raipur Bichor ...	Pertabgurh.	
253	II	117	Rao Madho Parshad Singh.	Adharganj ...	"	
254	II	118	Raj Jagat Bahadur Singh	Bhadri ...	"	
255	III	83	Dewan Hanjit Singh ...	Patti Syfabad ...	"	
256	III	84	Thakurain Ajit Kaur ...	"	"	
257	II	119	Thakurain Kublas Kaur	Phausi ...	"	
			Dhunia Singh	"	"	
			Jagat Singh	"	"	
			Hanuman Singh	"	"	
258	IV	21	Sultanath Singh	Madhpur ...	"	
			Sheodai Singh	"	"	
			Chauharam Bakhs Singh.	"	"	
			Thakurain Byjnath Kaur.	"	"	
259	IV	22	Chattarpal Singh	Kundrajit ...	"	
			Surajpal Singh	"	"	
			Chandarpal Singh	"	"	
260	II	120	Babu Sripat Singh ...	Dandi Kach ...	"	
261	II	121	Dewan Harmangal Singh	Uria Dili ...	"	
			Raj Bhagwant Singh.	"	"	
262	IV	23	Bishehar Bakhs	Darriapur ...	"	
			Jagmohan Singh	"	"	
			Arat Singh	"	"	
263	II	122	Sheodat Singh ...	Dhyawan ...	"	
264	II	123	Daukal Singh ...	Shekhpur Chauras... ..	"	
	V	58	"	Sandi ...	Roy Bareilly.	
265	II	124	Hannman Bakhs ...	Domipur ...	Pertabgurh.	
266	II	125	Beniparshad ...	Pirthiganj ...	"	
267	II	126	Sultanath Bahadur Singh	Ratapur ...	"	
268	II	127	Balbalidar Singh ...	Sujakar ...	"	
269	III	85	Ghis'awan Singh ...	Isanpur ...	"	

List No. I of Talukdars in Oudh, &c.—(concluded).

Num. ser.	Subordinate list.	Number in Subordinate list.	Name of Talukdar.	Name of Estate.	District.	Remarks.
<i>Pertabgurh District—</i> (concld.)						
270	II	128	Hanumaf Singh ...	Daeratpur ...	Pertabgurh.	
271	II	129	Sarrabdaun Singh ...	Anthu ...	"	
272	III	86	Hindupat Singh ...	Atgson ...	"	
272	III	87	¶ari Bakhsh ...	Umrar ...	"	
274	III	88	Raiah Chatpal Singh ...	Nurpur ...	"	
275	IV	24	Sitla Bakhsh and Sha- kar Singh.	Dhangarh ...	"	
276	III	89	Sheambar Singh ...	Rajapur ...	"	

List No. II prepared in accordance with Section 8 of Act I of 1869.

Number.	Number in List No. 1.	Name of Talukdar.	Remarks.	Number.	Number in List No. 1.	Name of Talukdar.	Remarks.
		<i>Lucknow District.</i>				<i>Hurdai District.</i>	
1	7	Chaudhri Nawab Ali.		35	96	Rajah Hardeo Baksh.	
2	8	Rajah Rattan Singh.		36	97	C.S.I.	
3	9	Babu Pirthipal Singh.		37	98	Rajah Mardan Singh.	
		<i>Oonao District.</i>		38	99	Chaudhri Hashmat Ali.	
				39	100	Thakur Bharat Singh.	
				40	103	Syad Mahomed Ibrahim.	
4	20	Mahant Gurnarain Dass.		41	104	Chandka Baksh.	
		<i>Barabankur District.</i>		42	106	Rajah Darriau Singh.	
				43	107	Nawab Dost Ali.	
						Dhanpat Rai and Fatted Chand.	
						<i>Kheree District.</i>	
5	34	Rajah Farzud Ali Khan Bahadur.		44	111	Rajah Ashraf Ali Khan.	
6	40	Hakim Karam Ali.		45	113	Thakur Lal Khan.	
7	41	Fauze Bahadur Singh.		46	115	Chand Bibi.	
8	43	Mir Ampul Hussein.		47	116	Niamatulla Khan.	
9	44	Thakur Roin Sahai.		48	117	Rajah Anrudh Singh.	
10	44	Nawab Ali Khan.		49	118	Thakur Gajraj Singh.	
11	49	Badsahb Hussein Khan.		50	119	Rajah Narpal Singh.	
12	50	Rajah Sarajit Singh.		51	120	Rajah Ranjit Singh.	
13	55	Chaudhri Sarfaraz Ahmed.		52	121	Rao Maneshar Baksh.	
14	56	Rajah Udit Partab Singh.		53	122	Rajah Randhir Sah.	
15	57	Rajah Narendar Bahadur Singh.				<i>Fyzabad District.</i>	
16	68	Rai Ibrahim Balli.					
17	69	Chaudhri Hussein Baksh.		54	129	Maharajah Sir Man Singh, C.S.I.	
18	63	Rajah Syjam Baksh.		55	139	Babu Jarnahed Ali Khan.	
19	66	Thakurnia Zahur-u-Nissa.		56	147	Mallik Hidayat Hussein & Taffazul Hussein.	
20	67	Bhya Aular Singh.				<i>Burairch District.</i>	
21	68	Shir Khan.					
22	69	Chaudhri Wazir Ali.		57	150	Rajah Narpal Singh.	
		<i>Seetapoor District.</i>		58	151	Rajah Jeng Bahadur Khan.	
23	74	Thakur Beui Singh		59	152	Rajah Sitla Bakshi Singh.	
24	75	Mirza Ahmed Beg.		60	153	Rajah Ragonath Singh.	
25	76	Thakur Bhawanidin.		61	154	Bhaya Kishindat Singh.	
26	77	Mirza Aga Jan.		62	155	Thakur Fatted Mahomed.	
27	79	Thakur Guman Singh.		63	156	Thakur Nirman Singh.	
28	80	Thakur Fazl Ali.		64	157	Thakur Indar Singh.	
29	81	Nawab Amjad Ali Khan.		65	158	Shekh Wazir Ali.	
30	82	Rajah Samshir Bahadur.					
31	83	Thakur Sheobaksh Singh.					
32	85	Thakur Ganga Baksh.					
33	86	Rajah Amir Hassan Khan.					
34	87	Rajah Ibad Ali Khan.					

List No. II prepared, &c.—(concluded).

Number	Number in List No.	Name of Talukdar.	Remarks.		Name of Talukdar.	Remarks.
			Number.	Number in List No. 1.		
		<i>Gondah District.</i>			<i>Sultanpore District.</i>	
66	166	Maharaja Sir Dig Bijay Singh, K. C. S. I.	98	226	Rajah Hussein Ali Khan.	
67	167	Rajah Kishudatt Ram.	99	227	Rajah Madho Partab Singh.	
68	168	Rajah Pirthipat Singh.	100	228	Babusin Sogra Bibi	
69	169	Rajah Mahipat Singh.	101	233	Rajah Rustam Sah.	
70	170	Bhaya Shri Bahadur.	102	234	Rajah Madho Singh.	
71	171	Bhaya Mirtanji Bakhsh.	103	235	Babu Balwant Singh.	
72	172	Bhaya Raghubar Singh.	104	236	Rani Sada Bibi.	
73	173	Bhaya Nipal Singh.	105	238	Rajah Sarnam Singh.	
74	174	Babu Lukraj Singh.	106	239	Rajah Jaganath Bakhsh.	
75	177	Rani Sarfraz Kunnr.	107	240	Sirpal Singh.	
76	178	Rajah Mumtaz Ali Khan.	108	241	Sitla Bakhsh Singh.	
77	179	Bhaya Pirthipat Singh.	109	242	Arjun Singh.	
			110	246	Babu Sitla Bakhsh Singh.	
		<i>Koy Bareilly District.</i>			<i>Pertabgarh District.</i>	
78	180	Rajah Dig Bijay Singh, C. S. I.				
79	181	Rajah Jagpal Singh.	111	247	Rajah Hanwant Singh.	
80	182	Rana Shankar Bakhsh	112	248	Rajah Bijay Bahadur Singh.	
81	184	Rajah Jagmohan Singh.				
82	185	Rajah Hindpal Singh.	113	249	Rajah Mohesh Narain Singh.	
83	186	Rajah Jagmohan Singh.				
84	187	Thakur Jaganath Bakhsh.	114	250	Rajah Jageshwar Bakhsh.	
85	188	Thakurain Parriau Kunnr.	115	251	Babu Ajit Singh.	
86	189	Thskur Fattah Bahadur Singh.	116	252	Rai Pirthipal Singh.	
87	190	Thakurain Achal Kunnr.	117	253	Rao Madho Parshad Singh.	
88	191	Thakur Bhup Singh.	118	254	Rai Jagat Bahadur Singh.	
89	192	Thakur Bisbnath Bakhsh.	119	257	Thakurain Kublas Kunnr	
90	194	Thakur Bishnath Singh & Thakur Ajudhia Bakhsh.	120	260	Babu Sripat Singh.	
91	195	Thakur Sinder Singh.	121	261	Dewan Harmangal Singh.	
92	198	Thakurain Gobai Kunnr.	122	263	Sheelat Singh.	
93	203	Babu Sheoamber Singh.	123	266	Daukal Singh.	
94	210	Bhikam Khan.	124	265	Hanuman Bakhsh.	
95	212	Sheoratta Singh.	125	268	Beniparshad	
96	213	Thakurain Kadam Kunnr	126	267	Saltanath Bahadur Singh.	
97	215	Rudr Partab Singh.	127	268	Balbaddar Singh.	
			128	270	Hanuman Singh.	
			129	271	Sarrabdaun Singh. c	

List No. III prepared in accordance with Section 8 of Act I of 1869.

Number.	Number in List No. I.	Name of Talukdar.	Remarks.	Number.	Number in List No. I.	Name of Talukdar.	Remarks.
		<i>Lucknow District.</i>				<i>Hurdut District.</i>	
1	1	Kunr Bhagwant Singh.				Syad Mahomed Ashraf.	
2	2	Massamat Syad-u-Nissa.		40	101	Fazl Rasul.	
3	3	Rajah Kashi Parshad.				Mahomed Ahmed.	
4	4	Massamat Kutb-u-Nissa.		41	102	Mahomed Askari.	
5	5	Siraj Jhabba Singh.		42	105	Maulvi Fazl Rasul.	
6	6	Mirza Abu Torab Khan.		43	108	Thakur Dal Singh.	
7	10	Mahomed Ahmed Khan.		44	106	Thakur Sripal Singh.	
8	11	Mahomed Nassim Khan.				Murtiza Baksh.	
9	12	Rajah Sobah Singh.				<i>Kherree District.</i>	
10	13	Umed Ali.				Captain Fidda Hussein Khan.	
11	14	Massamat Shams-u-Nissa.		45	112		
12	16	Ranjit Singh.				<i>Fyzabad District.</i>	
13	17	Chaudhri Musahib Ali and Karim Baksh.		46	130	Babu Amresh Singh.	
		<i>Onna District.</i>		47	131	Babu Torash Singh and Babu Chandresh Singh.	
14	21	Chaudhri Golab Singh.		48	132	Thakurain Brij Kunr.	
15	22	Chaudhri Gopal Singh.		49	133	Mir Guzafr Hussein and Mir Bakar Hussein.	
16	23	Sitla Baksh.		50	134	Mir Karamat Hussein.	
17	25	Umrao Singh.		51	135	Babu Jydat Singh.	
18	26	Chaudhri Dost Ali.		52	136	Babu Abhydat Singh.	
19	27	Rajah Dya Shankar.		53	137	Thakurain Hagonath Kunr.	
		<i>Barabunkee District.</i>		54	138	Thakur Ramsarrup Singh.	
20	35	Shekh Abid Ali.		55	140	Babu Kishn Parshad Singh.	
21	36	Mahomed Amir & Gholam Abbas.		56	141	Babu Sheoparkash Singh.	
22	37	Chaudhri Mahomed Hussein.		57	142	Babu Madhoparshad Singh.	
23	39	Kazi Sarfraz Ali.		58	143	Pau Mahimarin Singh.	
24	42	Mir Hunsid Hussein and Mir Amjad Hussein.		59	144	Thakurain Udit Kunr.	
25	46	Thakur Singh Tirbedi.		60	145	Babu Eshraj Singh.	
26	51	Thakur Ganga Singh.		61	155	Babu Pirthipal Singh.	
27	52	Bakshid Harparshad.				<i>Barrich District.</i>	
28	54	Shekh Bu Ali.		62	159	Mir Zafr Mehndi.	
29	61	Mir Mahomed Abid.		63	160	Mir Mozaf Hussein.	
30	62	Chaudhri Inayat Rasul.				<i>Gondah District.</i>	
31	64	Babu Chandl Baksh.				Fande Harnarin Ram.	
32	65	Babu Bhikam Sah.		64	176		
33	70	Hagonath Singh.				<i>Roy Bareilly District.</i>	
		<i>Setlapoor District.</i>		65	193	Babu Sambhit Singh.	
34	73	Kanaya Lal and Sitaram.		66	196	Sadat Khan and Abdul Hakim Khan.	
35	75	Jasahir Singh.					
36	78	Murl Manohar & Sitaram.				Zulfkar Khan.	
37	84	Thakur Darriau Singh.				Karn Ali Khan.	
38	89	Rajah Jagannath Baksh Singh.		67	197	Asad Ali Khan.	
39	91	Mir Mahomed Hussein.				Mahabat Khan.	

List No. III prepared, &c.—(concluded).

Number.	Number in List No. I.	Name of Talukdar.	Remarks.	Number.	Number in List No. I.	Name of Talukdar.	Remarks.
		<i>Rooy Bareilly District—</i> (concl.)				<i>Sultanpoor District—</i> (concl.)	
68	199	Chaudhri Ragonath Singh		79	237	Nabbi Bakhsh Khan.	
69	200	Mir Fakrul Hassan.		80	243	Babu Mahesbar Parshad.	
70	201	Thakur Jagmohan Singh.		81	244	Babu Bahangir Bakhsh	
71	202	Lala Byjnath.				Khan.	
72	205	Sitaram.		82	245	Babu Lalu Sah.	
73	206	Kamta Bakhsh.				<i>Pertalgurh District</i>	
74	207	Thakur Bakhsh.				Dewan Ranjit Singh.	
75	208	Babu Bijay Singh.		83	255	Thakurain Ajit Kaur.	
76	208	Subhan Ahmed		84	256	Ghisiawan Singh.	
		<i>Sultanpoor District.</i>		85	259	Hindupat Singh.	
77	229	Kamta Parshad and Bish-		86	272	Isri Bakhsh.	
		nath Singh.		87	273	Rajah Chatpal Singh.	
78	230	Thakurain Darriau Kaur.		88	274	Sheoambar Singh.	
				89	276		

List No. JV prepared in accordance with Section 8 of Act I of 1869.

Number.	Number in List No. 1.	Name of Talukdar.	Remarks.	Number.	Number in List No. 1.	Name of Talukdar.	Remarks.
		<i>Lucknow District.</i>				<i>Gondah District.</i>	
1	15	Mirza Jatar Ali.		14	175	Bhaya Harattan Singh.	
		<i>Oonoo District.</i>				<i>Roy Barilly District</i>	
2	19	Raja Gauri Shankar.		15	204	Maharaj Bakhsh.	
3	24	Dina Singh.		16	209	Hira Lal Mir.	
4	28	Sheonath Bajpal and Dya Shankar.		17	211	Bukhmangal Singh.	
5	29	Beni Madho Bakhsh.		18	214	Mehpal Singh.	
6	30	Sheodin Singh and Mahabal Singh.				<i>Saltanpoor District.</i>	
		<i>Barabankie District.</i>		19	231	Jhabba Singh and Byjnath Singh.	
7	45	Shekh Zain-ul-abdin.		20	232	Kalka Bakhsh.	
8	47	Shekh Lutfatullah & Shekh Wajshatulla.				<i>Pertalpurh District.</i>	
9	53	Mahomed Nasir-u-din.					
10	59	Chaudhri Gholam Farid.					
		<i>Seetapoor District.</i>		21	258	Dhunja Singh.	
11	88	Kalka Bakhsh and Ganga Bakhsh.				Jagat Singh.	
12	90	Chaudhri Hamnarsin.				Hanuman Singh.	
		<i>Kheroe District.</i>		22	259	Saltanath Singh.	
						Sneodial Singh.	
						Chauharja Bakhsh Singh.	
						Thakurain Byjnath Kunr.	
						Chattarpal Singh.	
						Surajpal Singh.	
						Chandarpal Singh.	
						Rai Bhagwant Singh.	
						Bisheshar Bakhsh.	
						Jagmohan Singh.	
						Arat Singh.	
13	114	Raj Ganga Singh.		23	262	Sitla Bakhsh and Shankar Singh.	
		Raj Ahlad Singh.					
		Raj Barria Singh.		24	275		
		Raj Sadho Singh.					

*List No. V prepared in accordance with Section 8 of
Act I of 1869.

Number.	Number in List No. I.	Name of Grantee.	Remarks.	Number.	Number in List No. I.	Name of Grantee.	Remarks.
		<i>Lucknow District.</i>				<i>Fyzabad District.</i>	
1	3	Rajah Kasbi Parshad.					
2	5	Sirdar Jabba Singh.					
3	14	Ranjit Singh.		36	129	Maharajah Sir Man Singh, K.C.S.I.	
4	18	Mir Wajid Ali Darogha.		37	148	Annant Ram	
		<i>Onao District.</i>		38	149	Rao Barriar Singh.	
5	25	Umrao Singh.				<i>Bahraich District.</i>	
6	31	B. bu Sheo Parshad.					
7	22	Mulvi Habib-u-Rehman.					
8	34	Raja Sheonath Singh.					
		<i>Barabankie District.</i>		39	141	Nawab Ali Raza Khan.	
9	46	Thakur Singh Tirbedi.		40	142	Sirdar Jai Singh.	
10	55	Chaudhri Sarfraz Ahmed.		41	143	Sirdar Sad Mahomad Shah.	
11	71	Dewan Hakim Rai.		42	144	Sirdar Shir Singh.	
		<i>Seetapoor District.</i>		43	145	Sirdar Fatteh Singh and Sirdar Jagat Singh.	
12	72	Kanava Lal and Sitaram.				<i>Gondah District.</i>	
13	73	Jaushir Singh.					
14	74	Thakur Beni Singh.		44	166	Maharaja Sir Dig Bijay Singh, K.C.S.I.	
15	75	Thakur Bhawaudin.				<i>Roy Bareilly District.</i>	
16	78	Murli Manohar. Sitaram.					
17	80	Thakur Darriau Singh.					
18	82	Mirza Abbas Beg.					
19	83	Mulvi Mazhar Ali.					
20	84	Ragonath Singh.					
21	85	Thakur Ragonath Singh.		45	180	Rajah Dig Bijay Singh, C.S.I.	
		<i>Hurdai District.</i>		46	181	Rajah Jagpal Singh.	
22	96	Raja Hardeo Bakhsh, C.S.I.		47	183	Babu Bismath Singh.	
23	97	Raja Mardan Singh.		48	193	Babu Sarabjit Singh.	
24	98	Chaudhri Hashmat Ali.		49	217	Shahzada Shadoo Singh	
25	99	Thakur Bharut Singh.		50	218	Captain Golab Singh.	
		Syad Mahomad Ashraf.		51	219	Sirdar Autar Singh.	
26	101	Fazl Rasul.		52	220	Sirdar Tej Singh.	
		Mahomed Ahmed.		53	221	Babu Dakinaraman Mu- karji.	
		Mahomed Askari.				Mir Jafr Ali Khan.	
27	102	Mulvi Fazl Rasul.				Farzand Ali Khan.	
28	105	Thakur Dal Singh.				<i>Sultanpoor District.</i>	
29	107	Dhanput Rai and Fatteh Chand.		54	223	Rajah Rustam Sah.	
		<i>Kherree District.</i>				<i>Fartabgurb District.</i>	
30	123	Rao Tularam.					
31	126	Mr. G. Shilling.		55	247	Rajah Hanwant Singh.	
32	125	Captain A. P. W. Orr.		56	249	Rajah Mohesh Nsrain Singh.	
33	130	Mrs. Orr (now Mrs. Rose).					
34	127	Captain J. Hearsey.		57	251	Babu Ajit Singh.	
35	124	Captain William Hearsey.		58	264	Daukal Singh.	

List No. VI prepared in accordance with Section 8 of Act I of 1869.

Number.	Number in List No. 1.	Name of Grantee	Estate.	District.
1	83	Mehpal Singh ...		
2	88	Kulka Bakhet ?		
3	110	Safdar Hussein Khan		
4	175	Bhaya Harattan Singh		
5	222	Major A. P. Orr ...	Talukdara.	
6	223	Captain W. D. Bunnory		
7	224	Syad Abdul Hakim ..		
8	225	Gajraj Singh		
		Gajraj Singh		
<i>Petty Grantees</i>				
9		Darogha Poran Singh ...	Miranpur Gudsaura...	Lucknow.
10		Mardan Ali, Subedar, and Munshi Ram-dial	Mahora Kalan ...	"
11		Himmat Ali ...	Jhandaaur ...	"
12		Bakar Ali ...	Jandasapur ...	"
13		Hamgholam, Havildar ...	Dadapur ...	"
14		Baji Singh, Thaudar ...	Baira Khera ...	"
15		Narain Singh, Nalk ...	Rampur Atrauli ...	"
16		Harnam Singh, Subedar ...	Gezafrnaggar ...	"
17		Sheodiu Singh, Subedar ...	Azraut Gaddi ...	"
18		Kashi Parsbad, Native Doctor	Nizampur ...	"
19		Babu Pragdoss ...	Salanaggar ...	"
20		Mahomed Riasat Ali ...	Rasulabad ...	Oonao.
21		Hidayat Ali ...	Nihalpur ...	"
22		Sheeambar Singh ...	Karhar Fafari ...	"
23		Sarifraz Hyder ...	Pankaur Kpera ...	"
24		Amir Ali ...	Jamunna ...	"
25		Balwant Singh ...	Fattehpur ...	"
26		Mr. Shepberd ...	Selapur ...	"
27		Pirthi Singh ...	Deori ...	"
28		Dingor Mall ...	Faudhain ...	"
29		Biswanath, and Jaganath, Jemadar	Adam Banal ...	"
30		Bhola Singh ...	Pawai ...	"
31		Labsuk and Latta ...	Kalu Khera ...	"
32		Chet Singh ...	Shahabad ...	"
33		Gyaparebad Awasti ...	Mawal ...	"
34		Balwant Singh ...	Ugrapur ...	"
35		Baldeo Singh ...		
36		Karam Khan ...		
37		Husein Khan ...		
		Sadal Khan ...		
		Babal Singh ...		
		Kuram Ali ...		
		Mir Khan ...		
38		Jaburi, Darogah ...	Saral Malik Adam...	"
39		Durjan, Abir ...	Salapur ...	"
40		Hira Lal ...	Lalpur ...	"
41		Sheodiu Singh ...	Kunal ...	"
42		Jin Lal ...	Bargaon ...	"
43		Rajah Ali ...	Gandua ...	"
44		Harnparshad ...	Baikar ...	"
45		Sukha Singh ...	Turkmanaggar ...	"

List No. VI prepared, &c.—(continued).

Number.	Name of Grantee.	Estate.	District.
<i>Petty Grantees—(contd.)</i>			
46	Zalim Singh	Arzimpur	Oonao.
47	Harnam Singh	Dyaspur	"
48	Khuda Bakhsh	Isanjal	"
49	Hardial Singh	Misrapur	"
50	Ranjit Singh	Shrapur	Barabunkee.
51	Mahomed Askari	Gangwal	"
52	Surebhi Singh	Kasfur	"
53	Sital Singh	Omrai	"
54	Baldi Ram Subedar	Udhfull	"
55	Mir Narain Datt	Sarai Saif	"
56	Ode Singh		
56	Pokhan Singh	Chuleta Kakarka	Seetapoor.
	Ujgar Singh		
57	Bakht Singh	Kunarpur	"
	Rijay Singh		
	Bhikan Singh		
58	Zalim Singh	Adhaura	"
	Widow of Hari Singh		
59	Lil Chand, Thasadar	Bariabi	"
60	Lalta Bakhsh	Mirzapur	"
61	Zalim Singh	Simrawan	"
62	Lohang Singh	Baganpur	"
63	Mahomed Bakhsh Risaldar	Bohilla	"
64	Hem Singh	Ramboapur	"
	Shankarparshad		
65	Baldi	Maglapur	"
	Jaganath		
	Pitan Singh		
66	Dewan Singh	Maglapur	"
	Bakhtawar Singh		
67	Harparshad, Tahsildar	Ajappur	"
68	Roban Singh	Rudanpur	"
69	Mahomed Hussein Khan, Daffadar	Palu Dib	"
70	Bassawan Singh and Harpat Singh	Kasipur	"
71	Jan Mahomed	Bilautah	"
72	Sada Mali and Sitaran	Akbarpur	Hurdul.
73	Munsh Azizuddin	Atua Ali Mardanpur	"
74	Wazir Singh	Budamau	"
75	Kasri Singh	Suklapur Bhatag	"
76	Rai Kidarnath	Balemau	"
77	Mu tiza Hussein Khan	Garipur	"
78	Ibrahim Ali Khan and Iradat Ali Khan	Kussat Khurd	"
79	Bhabuti and Balgobind	Daulatgarpur	"
80	Mirza Hassu Beg	Nunklera	"
81	Tikaram	Gauria	"
82	Gokal Singh	Jaktapur	"
83	Hira Lal, Subadar	Atua Mazra of Baran Chatoka	"
84	Mehrban and Galgu Singh	Baramau	"
85	Panjab Singh	Bahria	Kheree.
86	Bassant Singh	Karnpur	"
87	Syad Zamin Ali	Atua	"
88	Mehi Lal	Kyma	"
89	Mahomed Wahim Khan	Lakhrwan	"
90	Lachari and Hiranau	Lakhpura	"
91	Kulrat Ali	Galaula	"

List No. V prepared, &c.—(continued).

Number.	Name of Grantee.	Estate.	District.
<i>Petty Grantees—(contd.)</i>			
92	Gaiand Singh, Subadar	Bhiti Risalpur	Fyzabad.
93	Sufraj Singh, Subadar	Khaspur	"
94	Gurdatt Dube	"	"
95	Hamdin, Subadar	"	"
96	Baldeo Singh, Subadar	"	"
97	Janga Singh, Subadar	"	"
98	Sheo Tewari	"	"
99	Amir Singh	Lila Rasulpur	"
100	Lachman Pandit	Kalkapur	"
101	Kabut Singh	Asbraipur	"
102	Hirtu Singh	Nadauli	"
103	Hira Singh	Malomedpur	"
104	Ali Baksh	"	"
105	Baldeo Singh	Tshapur	"
106	Bakur Ali Khan	Bhite Hasulpur	"
107	Lala Khansam	Daulatpur Ikara	"
108	Daulatram, Subadar	Gayampur	"
109	Ramcharan Tewari	Patti Naif	"
110	Babu Indrajit Singh	Bhaugahi	Bahraich.
111	Jemadar Jewan Singh	Bbinga and Chilar	"
112	Sarajit Singh	Bankatua	"
113	Bhojraj Singh	Bhitti Rulia	"
114	Jangli Singh	Tilokpur	"
115	Raj Kishu Sahai	Bichla	"
116	Beni Singh	Basull	"
117	Dulam Singh	Guthia	"
118	Mataadin Singh	Blupia Bhysahi	"
119	Sitaram	Ramgarh	Gonda.
120	Ragonath Tewari	Bhagarria	"
121	Durgaparsad	Radgarh Nausaha	"
122	Bhagu Singh	Majson	"
123	Singar Man Singh	Bhuanpur	"
124	Ghisa Dube	Karpur	"
125	Mahomed Amir Khan	Jalwasa	Roy Bareilly
126	Ajudhia Prasad	Rejha Gokalpur	"
127	Jawala Prasad	Pakhrail	"
128	Jyanki Prasad	Darapur	"
129	Bhuru Singh	Mahomedpur	"
130	Anand Singh	Pachington	"
131	Sital Singh and Mahomed Hussein	Katra Dewan Khara	"
132	Sheomargal Singh, Subadar	Tikar Agachipur	"
133	Bindraban	Siesau	"
134	Durgaparsad, Subadar	Budanpur	"
135	Salar Baksh	Rupnagar	"
136	Hanwant Singh	Mainapur	"
137	Kanauji Lal	Sankua	"
138	Munna Lal	Paharpur Kasu	"
139	Din Mahomed	Tila Barauli	"
140	Dingar Tewari	Purabgaon	"
141	Burtiza Khan	Kasu	"
142	Devidan	Wyna Kama	"
143	Anup Singh	Madkarpur	"
144	Aokarnath	Bishndaspur	"
145	Thakar Singh, Subadar	Sibipur	"

List No. VI prepared, &c.—(concluded).

Number.	Name of Grantee.	Estate.	District.
<i>Petty Grantees—(concl.)</i>			
144	Hira Singh	Ranigson	Roy Bareilly.
147	Pradad Mir	Sarat Mubarik	"
148	Bhikari Singh	Pasi Tusi	"
149	Sheoratan Singh	Bhupati or	"
150	Rambaksh	Kandra Bazurg	"
151	Laltaprasad	Sarai Umar	"
152	Mehndi-u-zimma, Risaldar	Bandraman	"
153	Babu Sheoprasad	Madau Tusi	"
154	Mataadin, Kanungo	Patan	"
155	Baba Adinath	"	"
156	Pancham Singh	Misr Khera	"
157	Raninarain Pande	Bhitaura	Sultanpoor.
158	Huda Baksh	Bhitarpur	"
159	Hirhi Singh	Baskata	"
160	Rustam Singh	Belua	"
161	Mahabat Khan	Bhat-ara	"
162	Sital Singh	Tisa Kanupur	"
163	Imam Baksh, Dirzi	Jesnah	"
164	Chhinta Singh	Rajapur Kanepur	"
165	Gangadai	Sirsa	"
166	Baktawar Mir	Kasmaura	"
167	Bisheshar Singh	Kakepur	"
168	Lachmidatt Pandit	Kaouadi Sangarpur	"
169	Saeoraj Singh	Katwa Mahmudabad	"
170	Sardamand Uja Gauri Shankar Dube Bhola Kabar	Maghlagson	"
171	Pirali, Subedar	Nahuria	"
172	Gaind Singh	Jamaulia	"
173	Rameharan, Sower, and Durga Pattak	Sarmanau	"
174	Asaf Ali	Asan	Pertabgurh.
175	Bhryrasi Singh and Jaskarn Singh	Bhagsura	"
176	Pirbhudan Pandit	Bhy-ara	"
177	Luchman Farshad	Katha Modiba	"
178	Pir Khan and Madho Ram	Audalpur	"
179	Patnam Mir and Sheodin Mir	Hue-singpur	"
180	Gajra Singh	Ranghauil	"
181	Sheolal	Sarsi Lalsah	"
182	Jharbandan	Sarwa	"
183	Devidin Mir	Sarai Tabat	"
184	Bisheshar Singh and Mahabal Singh	Katathi	"
185	Chandkumar	Katwa Sukalpur	"
186	Sheoratan Singh	Kalianpur	"
187	Jaganath Pande	Misrpur	"
188	Binda	Purwa Bhagwan	"
189	Kalka Baksh	"	"
190	Byjnath	Sadipur Katra	"
191	Jhatba Singh	"	"
192	Karam Singh	Sarakpur	"

GAZETTE OF INDIA.

The 25th November 1869.

No. 1698.—Whereas it appears to His Excellency the Viceroy and Governor-General in Council, that the name of the Raja of Kapurthala has been wrongly omitted from the first and fifth of the lists of Taluqdars, which were prepared by the Chief Commissioner of Oudh, under Section 8 of Act I of 1869, and were published under the provisions of Section 9 of the said Act in the *Gazette of India* in Notification, dated 20th July 1869, the Governor-General in Council, under Section 9 of Act I of 1869, is pleased to declare that the name of the Raja of Kapurthala shall be inserted in the aforesaid first and fifth lists, and the Raja's name is accordingly published in the following Supplementary List:—

Supplementary and General List of Persons, who are to be Taluqdars in the Province of Oudh, under Act I of 1869, being List No. I, referred to in Section 8 of the said Act.

Number.	Subordinate list.	Number in Subordinate list.	Name of Talukdar.	Name of Estate.	District.	Remarks.
377	V	59	Farzand Dilband Rosth-ul-ikad Daulat-i-Englishia, Raja Rajgan Sir Bahadur Singh, G.C.S.I., of Kapurthala.	Bondi Ekauna Bithauli.	Bahrach. Bars Bankl.	

GAZETTE OF INDIA, MAY 7, 1870, P. 292.

FOREIGN DEPARTMENT.

NOTIFICATION.

The 6th May 1870.

No. 708.—Whereas it appears to His Excellency the Governor-General in Council, that the name of Sookhmungul Singh, Talooqdar of Shahmow, in the District of Roy Bareilly in Oudh, has been wrongly entered in the fourth list of Talooqdars and Grantees, which was prepared by the Chief Commissioner of Oudh, under Section 8 of Act I of 1869, and published in the *Gazette of India* in Notification No. 1003, dated 20th July 1869, the Governor-General in Council, under Section 9 (Clause 2) of the said Act, is pleased to order that the name of Sookhmungul Singh be removed from List No. IV and inserted in List No. II, and the Talooqdar's name is accordingly published in the following Supplementary List:—

Supplementary List No. II, prepared in accordance with Section 8, Act I of 1869.

Number.	Number in List No. 1	Name of Talooqdar.
430	211	Sookhmungul Singh.

THE GAZETTE OF INDIA, JUNE 10, 1869.

DEPARTMENT OF REVENUE, AGRICULTURE, AND COMMERCE.

NOTIFICATIONS.

LAND REVENUE AND SETTLEMENTS.

Simla, the 6th June 1876.

No. 391.—In continuation of the Notification by the Foreign Department, No. 1003, dated the 20th July 1869, the Governor-General in Council is pleased to direct the publication, in accordance with Clause 2, Section 9 of Act I of 1869, of the following supplementary list of Talukdars and Grantees in Oudh, prepared by the Chief Commissioner of that Province:—

I.

Supplement to the general list of persons who are declared to be Talukdars in the Province of Oudh under Act I. of 1869, being List No. I referred to in Section 8 of the said Act.

Number.	Subordinate list.	Number in Subordinate list.	Name of Talukdar.	Name of Estate.	District.
278	II	131	Raja Mehpai Singh ...	Umri	Partabgarh.
299	III	90	Sital Singh ...	Behra	Unao.

II.

*Supplement to List No. II prepared in accordance with
Section 8 of Act I of 1869.*

Number.	Number in list No. 1.	Name of Talukdar.
131	278	PARTABGARH DISTRICT. Raja Mehpal Singh.

III.

*Supplement to List No. III prepared in accordance
with Section 8 of Act I of 1869.*

Number.	Number in List No. 1.	Name of Talukdar.
131	279	UNAO DISTRICT. Sital Singh.

*Supplement to List No. VI prepared in accordance
with Section 8 of Act I of 1869—Petty Grantees.*

Number.	Number in List No. 1.	Name of Grantee.	Estate.	District.
183	2...	Shiu Charan Lal ...	Deogaon and Uditpur.	Rai Bareilly.

GAZETTE OF INDIA, OCTOBER 7, 1876.

FOREIGN DEPARTMENT.

NOTIFICATIONS.

POLITICAL.

The 6th October 1876.

No. 2293 P.—The Governor-General in Council is pleased to direct that the following amendment be made in the "General list of persons who are to be declared to be Talukdars in the Province of Oudh under Act I. of 1869, being List No. 1, referred to in Section 8 of the said Act," which was published under Notification of this Department No. 1003, dated 20th July 1869:—

Number.	Subordinate list.	Number in subordinate list.	Name of Talukdar.	Name of Estate.	District.
251	II	116	Babu Ajit Singh ...	Tiraul ...	Partabgarh.
251	V	57	" " " ...	Deotaha ...	Gonda.
READ.					
251	II	115	Babu Ajit Singh ...	Tiraul ...	Partabgarh.
251	V	57	" " " ...	Chamiani ...	Unao.
			" " " ...	Harouli Kutubnager... Aurangabad ...	Hardoi. Kheri.

APPENDIX H.

*List of the most important permanently confiscated
Estates (a).*

TALUKDAR.	...	ESTATE.
Rajah Deves Buksh	...	Gondā.
Rajah Jodh Singh	...	Churdāh.
Rajah Hurdit Singh	...	Bondee. Bittowlee. Ekowna. Tulseepore.
Rajah Ram Buksh	...	Doondeo Khera.
Rana Bener Madho Buksh	...	Shunkerpore.
Ram Gholam Singh	...	Mustafabad.
Joossa Singh	...	Futtehpore Chourussee
Ehopal Singh	...	Jajhmain.
Kubraj Singh	...	Padnaha.

(a) Montgomery, Appendix B, p. 63; Ante, p. 49.

APPENDIX I.

[The following "Rules of Practice" have been copied from pages 77 to 80 of "Majma'i Report Anjuman Hind, Oudh, Minibtidai'san. 1865 Iswi Lagaet 1870 Iswi" printed at the "Anjuman Hind" Press under the orders of the Members of the Committee of Anjuman Hind (the British Indian Association)].

نقل دستور العمل مشعر نقشہ مقدمات متدايرة و تاگري و غيره

يادداشت آنکه

تعلقداران قبول کرتے ہیں کہ گزارہ مفصلہ ذیل واسطے اپنے رشتہداران کے تجویز کردیں بشرطیکہ یہ فیصلہ انکا سرکار میں قبول ہو اور فیصلہ اس امر کا ہر ایک قسم کے مقدمہ مفصلہ ذیل میں قطعی اور آخري گنا جائے۔

(الف) — ایسے مقدمات کہ جسمیں
رواج گدی نشینی جاری رہے

نمبراً — حصے ایسے
چاندان کے کہ جسمیں
تقسیم نہ ہوئی ہو
اور قائلتزع سلطنت
قبضہ مشترک رہا ہو

(ب) — ایسے مقدمات کہ جنمیں
تعلقہ قابل تقسیم نہوا ہو

تجویز گزارہ

قسم الف -- میں تعلقداران تمہیک
اوسقدر دیونگے کہ جسقدر بروقت
ہوئے عملداری انگریزی دیتے تھے لیکن
اگر رشتہ دار چاہیں تو انکے سابق کی
مقدار گزارہ کے موافق اراضی بھی مل
سکتی ہے

قسم ب -- ہر حصہ دار فیصدی
۲۵ روپیہ کے حساب سے اوس مقدار
کی نکاسی خام پر پاڑیکا کہ جسقدر
اوسکا حصہ واجب ہوتا اگر تعلقہ تقسیم
کیا جاتا اور اوسکو دوسری پشت میں
فیصدی ۲۵ روپیہ اور تیسری پشت میں
فیصدی ۵۰ روپیہ رشتہ دار تعلقہ دار کو
مالگزارہ دیکھا

مثال

نکاسی ۲۰۰۰۰ روپیہ
دو بھائی حصہ ہر ایک برابر ۱۰۰۰۰
روپیہ
حصہ برادر خورد بحساب فیصدی
۲۵ روپیہ بلا لگان
اول پشت میں ۲۵۰۰ روپیہ ہوگا
دوسرے پشت میں ۶۲۵ روپیہ دینے
پڑینگے
تیسرے پشت میں ۱۲۵۰ روپیہ دینے
پڑینگے

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یہہ امور میرے لکھنؤ سے جانے سے پیشتر فیصل ہو گئے تھے ہر حالت میں میرے نزدیک تعلقہ داروں نے جہانتک کہ ہمکو امید تھی اپنی رشتہ داروں کے ساتھ سخاوت کو کام کیا ہے یہہ شرایط رشتہ داروں کے حق میں زیادہ مفید ہیں بہ نسبت اوں شرایط کے جو ایک سال پیشتر حاصل ہوئی میرے نزدیک واسطے اظہار رائے گورنمنٹ کے گورنمنٹ کو طلاع دینی چاہیئے

دستخط آر ایچ دیوس قائم مقام

چیف کمشنر فیض آباد

۲۵ ستمبر سنہ ۱۸۶۷ ع

APPENDIX J.

Rules framed by the Local Government. (a)

REVENUE DEPARTMENT.

MISCELLANEOUS.

The 3rd January 1901.

No. 1-²⁵/₂₅₆ B.—In exercise of the powers conferred by section 20 of the Oudh Settled Estates Act (II of 1900), the Lieutenant-Governor and Chief Commissioner is pleased to make the following rules for the purpose of carrying out the said Act:—

RULES.

1. Every application under section 3 of the Act shall be signed by the applicant, and shall be presented by him in person, or by a duly authorized agent, or sent by post registered to the Secretary to the Local Government, in the Revenue Department.

Before submission of the application to the Government, the applicant's signature shall be verified by a Magistrate of the 1st class exercising jurisdiction in the district in which the applicant resides, and the fact and date of such verification shall be endorsed on the application, and the Magistrate shall attach his signature thereto.

2. Every such application shall be in Form I annexed to these rules, and shall be accompanied by statements in Forms II and III annexed to these rules and by such documents or certified copies of documents as will show in what

manner the immovable property in respect of which the applicant seeks for permission became "estate" within the meaning of the Oudh Estates Act, 1869, and shall also be accompanied by such verified extracts from the registers prepared and maintained by the Collector under Chapter IV of the Oudh Revenue Act (XVII of 1876 as may be sufficient to establish the nature and extent of the rights of the applicant in the estate to which his application refers.

3. (1) If the Government rejects the application under section 4 of the Act, the applicant shall be so informed.

(2) If the application is not so rejected, the notice required by section 5 of the Act to be published in the Gazette shall be so published in Form IV annexed to these rules: and the inquiry referred to in section 6 of the Act shall be made through the Collector of any of the districts in which the property to which the application relates is situated.

4. (1) The Collector shall, when such a course is practicable, serve a copy of the notice referred to in rule 3 (2) upon all persons known or appearing, from the application or other information received, to be interested in opposing the application; and

(2) shall make such inquiry as may be necessary to ascertain the accuracy and completeness of the entries made in Forms II and III attached to the application; and

(3) shall, as soon as may be after the time limited by section 5 of the Act, submit to Government through the Commissioner and Board of Revenue a report on the application and on any claims made or cause shown under that section and on all proceedings taken by him under this rule.

5. Every application under section 7 (1) of the Act shall be in Form V annexed to these rules, and Rules 1, 3,

and 4 shall apply, to it in the same way and to the same extent as if it were an application under section 3 of the Act. The application shall be accompanied by such verified extracts from the registers prepared and maintained by the Collector under Chapter IV of the Oudh Revenue Act (XVII of 1876), and such other documents as may be sufficient to establish the nature and extent of the rights of the applicant in the immovable property to which the application refers.

6. Every application under section 8 of the Act shall be in Form VI annexed to these rules, and shall be signed, presented, or sent, and verified as required by rule 1.

7. The permission under sections 6, 7, and 8 of the Act shall be granted in the forms appended to these rules, as Forms VII-A, VII-B and VII-C.

8. The declaration to be made under section 10 of the Act that property shall be held subject to the provisions of the Act shall be in Form VII appended to these rules, or to the like effect. The declaration under the same section that property shall be held exempt from the provisions of the Act shall be in Form IX, or to the like effect.

9. Upon the receipt from the registering officer of the copy of the declaration under section 10, the Collector shall make a note of such declaration in the register prescribed in Form X appended to these rules, and in the registers maintained under clauses (b) and (c) of section 56 of Act XVII of 1876 (The Oudh Land Revenue Act), namely, the *khewat* of each *mauza* concerned and the *malguzari* register of the *pargana*. He shall also, in accordance with section 13 (2) of the Act, cause a copy of such declaration to be published in the Gazette in English and in the Vernacular.

10. There shall be payable in respect of every notice served under section 5 of the Act, and of every notice or

summons which it may be necessary to serve or issued for the purposes of the Act and of these rules, and for every commission which it may be necessary to issue for the purpose of verifying any application, or to make any inquiry or to take evidence under the Act or under these rules, the fees specified in the "Schedule of fees" attached to these rules, and such fees shall be payable by the applicant under sections 3, 7 or 8 of the Act (as the case may be). Such fees shall be levied by means of Court-fee stamps, and such stamps shall be attached to the duplicate copy of the notice or summons or to the order for the issue of the commission on account of which the fee is paid.

If the Government considers it desirable to take legal advice in respect of any application or any proceeding in connection with any application under the Act, the applicant shall deposit the fees payable for such advice. The amount of such fees shall in each case be fixed by Government, but shall in no case exceed Rs. 500.

11. There shall be payable for every entry made by the Collector in the register to be maintained under section 13 a fee of the same amount as if the entry were one relating to an alteration in the lists and registers prepared and maintained by him under Chapter IV of the Oudh Revenue Act, 1876, and such alteration had become necessary by reason of succession or inheritance. Provided that no fee levied under this rule shall exceed Rs. 100. Every fee payable under this rule shall be recovered and credited in the same way as if it were a fee prescribed under section 60 of the Oudh Revenue Act, 1876.

12. Where any expenses, other than the fees payable in respect of notices and summonses under Rule 10 are incurred in or in connection with proceedings held under this Act, the Collector is empowered to recover such expenses

from the applicant under the Act, or from such other person as the Collector may consider liable for their payment in the same way as if they were arrears of land revenue. An appeal shall lie to the Commissioner from the order of a Collector under this section, and the order of the Commissioner upon such appeal shall be final.

13. All applications under the Act, or under these rules, and all forms which by these rules are required to be attached to such applications shall be in the English language, or, if they are prepared in the vernacular, they shall be accompanied by a correct English translation.

14. Any notice, summons or order, issued under the Act, may be served either—

- (a) by delivering it to the person to whom it is addressed, or to any agent of such person authorized to accept service of a summons issued by a Court of Revenue or to any adult member of such person who is residing with him, or
- (b) by leaving it at or affixing it to the outer door of the usual or last known place of abode of such person, or
- (c) by forwarding it by post registered addressed to such person at his usual or last known place of abode.

FORM I.

*Form of Application under section 3, Act II of 1900,
and Rule 2.*

**To the Hon'ble the Lieutenant-Governor, North-Western
Provinces and Chief Commissioner of Oudh.**

THE humble petition of

HUMBLY SHEWETH—

J. That your petitioner, _____, son of
residing at _____, is

[The applicant must here state to which of the classes specified in section 3 of the Act he belongs, and, if he is an "heir" or "legatee," the mode in which the title has devolved upon him should be clearly indicated.]

2. That your petitioner has a permanent, heritable, and transferable right in the immovable property specified in the first statement (Form II) hereto attached, and he is in possession thereof to the extent indicated in such statement.

3. That, to the best of the knowledge and belief of your petitioner, the whole of the encumbrances, charges, debts, demands, and claims to which the immovable property of your petitioner, as specified in the first statement (Form II) hereto attached, is liable or which can be enforced against it, are specified in the second statement hereto attached.

4. That your petitioner is years of age, and is competent to enter into a contract with reference to such immovable property within the meaning of section 11 of the Indian Contract Act of 1872.

5. That your petitioner desires that permission may be granted to him, under section 6, Act II of 1900, to declare that the estate specified in the first statement (Form II) hereto attached shall, in future, be held subject to the provisions of the Oudh Settled Estates Act (II of 1900).

And your petitioner will ever pray, &c.

Dated the day of in the year 19 .

(Signature).

[ENDORSEMENT.]

Signature verified at on the
before me.

(Sd.) A. B.,

Magistrate.

*NOTE.—If it is desired that permission may be granted with reference only to a portion of the estate, such portion should be specified.

FORM IV.

Notice under section 5 of Act II of 1900, and Rule 3 (2).

WHEREAS . . . , son of . . . of . . . in the Province of Oudh, has presented an application under section 3 (or 7) of the Oudh Settled Estates Act of 1900 for permission to declare that the immovable property specified in the annexed statement shall, in future, be held subject to the provisions of the said Act :

Notice is hereby given that all persons having claims enforceable against the applicant or his immovable property are required to notify the same in writing to the Collector of the district of . . . within six months of the date of the publication of this notice, and to show cause also in writing, within such period, why the permission sought by the applicant should not be granted.

Dated . . . day . . . 19 . . .

Secy. to Govt., N.-W.P. and Oudh.

District.	Name of estate.	Mauza.	Extent of interest of the applicant.

COPY of this Notice is addressed, under section 5 of Act II of 1900, to . . . son of . . .

. . . , residing at . . . Dated . . . Collector.

FORM V.

*Form of Application under section 7 (1), Act II of 1900,
and Rule 5.*

To the Hon'ble the Lieutenant-Governor, North-Western
Provinces and Chief Commissioner of Oudh.

The humble petition of

HUMBLY SHEWETH—

1. That your petitioner, _____, son of _____, residing at _____, was on the _____ day of _____ permitted by the Local Government, under section 6 of the Oudh Settled Estates Act, 1900, to make a declaration that his estate (or "the portion of his estate specified in such permission," as the case may be) should in future be held subject to the provisions of the said Act.

2. That your petitioner accordingly executed a declaration with reference to such estate, which was duly registered by the registering officer under section 11 of the Act on the _____ day of _____, and that such declaration is still in force, and that your petitioner is in possession of the settled estate referred to therein.

3. That, besides such settled estate, your petitioner has permanent, heritable, and transferable right in the immovable property specified in the first statement (Form II) hereto attached, and he is in possession thereof to the extent indicated in such statement.

4. That, to the best of the knowledge and belief of your petitioner, the whole of the encumbrances, charges, debts,

* NOTE.—Paragraphs 1 and 2 will require modification, according to circumstances, where the applicant is not the person who made the declaration, but is a successor in interest of that person.

demands, and claims to which the immovable property of your petitioner, as specified in the first statement (Form II) hereto attached is liable, or which can be enforced against it, are specified in the second statement hereto attached.

5. That your petitioner is _____ years of age, and is competent to enter into a contract with reference to such immovable property within the meaning of section 11 of the Indian Contract Act of 1872.

6. That your petitioner is desirous that permission may be granted to him, under section 7 of the Oudh Settled Estates Act, to add to his settled estate the immovable property specified in the first statement hereto attached, and that such additional immovable property may, in future, be held subject to the provisions of the last mentioned Act in the same manner as your petitioner's settled estate is already held.

And your petitioner will ever pray, &c.

Dated the _____ day of _____ in the year 19 _____

• (Signature.)

[ENDORSEMENT.]

Signature verified at _____ on the _____ before me.

(Sd.) A. B.,

Magistrate.

* NOTE.—If it be desired that permission may be granted with reference only to a portion of the property, such portion should be specified.

FORM VI.*

Form of Application for permission to revoke a declaration under section 8, Act II of 1900, and Rule 6.

To the Hon'ble the Lieutenant-Governor, North-Western Provinces and Chief Commissioner of Oudh.

The humble petition of

son of

residing at

HUMBLY SHEWETH—

1. That on the _____ permission was granted to your petitioner, under section 6 (or section 7, as the case may be) of the Oudh Settled Estates Act (II of 1900), to declare that the whole of his estate (or, as the case may be, the portion of his estate therein specified) should, in future, be held subject to the provisions of the said Act.

2. That your petitioner accordingly executed a declaration with reference to such estate which was duly registered by the registering officer under section 11 of the Act on the _____ day of _____, and that such declaration is still in force, and that your petitioner is in possession of the settled estate referred to therein.

3. That your petitioner has not, in such declaration or by any subsequent instrument, executed in accordance with section 12 of the Act, provided that such declaration should be irrevocable.

4. That your petitioner is desirous that permission should be granted to him, in accordance with section 8 of the said Act, to wholly revoke such declaration (or, as the case may be, to revoke such declaration with reference to

*Note.—This form will require modification, according to circumstances, where the applicant is not the person who made the declaration, but is a successor in interest of that person.

the immovable property specified on the statement* hereto annexed), and that your petitioner therefore prays that such permission may be granted to him.

And your petitioner will ever pray, etc.

Dated the _____ day of _____ in the year 19 _____

(Signature.)

{ENDORSEMENT.]

Signature verified at _____ on the _____ before me.

(Sd.) A. B.

FORM VII-A.

Grant of permission under sections 6 and 9, Act II of 1900, and Rule 7.

No. _____

NOTIFICATION.

Dated _____ 19 _____

WHEREAS

son of

of

has applied to the Local Government, under section 3, Act II of 1900, for permission to declare that his estate (or, as the case may be, a certain portion of his estate) should, in future, be held subject to the provisions of the said Act:

And whereas the Local Government has, after considering the application and the cause shown against it, and the results of the inquiry made by it or under its orders, decided that such application should be (or should be in part) granted:

* NOTE.—The statement referred to in paragraph 4 of this Form should be prepared in Form II attached to the Rules.

It is hereby notified that permission is granted, under section 6 of the said Act, with reference to so much of the estate of the applicant as is specified in the schedule annexed hereto. This permission shall remain in force until the expiry of three months from the date of its publication in English in the Gazette or until the death of the applicant, whichever shall first happen.

Secy. to Govt, N-W. P. and Oudh.

[The Schedule above referred to.]

District.	Name of estate.	Mauza.	Extent of the interest of the applicant.

FORM VII-B.

Grant of permission under sections 7 and 9, Act II of 1900, and Rule 7.

No.

NOTIFICATION

Dated

19 .

WHEREAS , son of

of
was, by Government Notification No. , dated the
permitted, under section 6 of the Oudh Settled Estates Act, 1900, to make a declaration that his estate (or "the portion of his estate therein specified," as the case may be) should, in future, be held subject to the provisions of the said Act:

And whereas the said _____ accordingly executed a declaration with reference to such estate, which was duly registered by the registering officer under section 11 of the Act on the _____ day of _____ and published in the Gazette in English on the _____ and in Vernacular on the _____, and such declaration is still in force:

And whereas the said _____ has applied to the Local Government, under section 7 of the said Act, for permission to add other immovable property to such settled estate:

And whereas the Local Government has, after considering such application and the results of the inquiry made by it, or under its orders, decided that such application should be (or should in part be) granted.

It is hereby notified that permission is granted under section 7 of the said Act with reference to so much of the immovable property of the applicant as is specified in the schedule annexed hereto. This permission shall remain in force until the expiry of three months from the date of its publication in English in the Gazette or until the death of the applicant, whichever shall first happen.

Secy. to Govt., N. W. P. and Oudh.

[The Schedule above referred to.]

District.	Name of estate.	Mauza	Extent of the interest of the applicant.

ADD. TANDON RD.
ALLAHABAD

APPENDIX J.

FORM VII-C.*

Under sections 8 and 9, Act II of 1900,
and Rule 7.

No.

NOTIFICATION.

Dated

19

WHEREAS

, son of

of

was, by Government Notification No. , dated the
permitted, under section 6 of the Oudh Settled Estates
Act of 1900, to make a declaration, that his estate (or "the
portion of his estate therein specified," as the case may be)
should, in future, be held subject to the provisions of the
said Act:

And whereas the said accordingly executed a
declaration with reference to such estate, which was duly
registered by the registering officer under section 11 of the
Act on the day of
and was published in the Gazette in English on the
and in the Vernacular on the and such declara-
tion is still in force:

And whereas no provision was made in such declara-
tion or by any subsequent instrument executed, in accord-
ance with section 12 of the Act, by the declarant or by any
of his successors in interest that the declaration should as
regards the whole or any specified portion of the settled
estate be irrevocable;

And whereas the said (or, as
the case may be, " , son of

*NOTE.—Where permission has been granted under section
7 to add to the settled estate, this Form will require modification
accordingly.

, residing at
 the successor in interest of the said
 has applied, under section 8 of the said Act, for permission,
 to (wholly or in part) revoke such declaration :

And whereas the Local Government, after considering
 such application and the results of the inquiry made by
 it or under its orders, has decided that such permission
 should be (or should in part be) granted :

It is hereby notified that permission is granted, under
 section 8 of the Act, to the applicant to revoke the declara-
 tion that the property shall be held subject to the provision
 of the Act (or as the case may be, "to the extent specified
 in the schedule annexed hereto").

Secy. to Govt., N.-W.P. and Oudh.

[The Schedule above referred to.]

District.	Name of estate.	Mauza.	Extent of the interest of the applicant.

FORM VIII.

Declaration under section 10, Act II of 1900, and Rule 8.

[No stamp is required under the General Stamp Act.]

WHEREAS I, _____, son of
 caste _____, residing at _____
 am possessed of the permanent, heritable, and transferable

interests in immovable property in the Province of Oudh, specified in the schedule annexed hereto:

And, whereas permission was under section 6 (or 7, as the case may be), Act II of 1900, granted by the Local Government to me by Government Notification No. _____ of the _____, which Notification is hereto annexed, to declare that the immovable property specified in the schedule hereto should be held, in future, subject to the provisions of the Oudh Settled Estates Act (II of 1900):

I hereby declare that such immovable property shall hereafter be held subject to the provisions of the said Act (and under section 12 of the said Act I make this declaration irrevocable).

Signed by me in the presence of the witnesses whose names are attached hereto at _____ on the _____ day of _____ 19 _____

(Signatures)

Witnesses:

A B, son of _____, of _____
C D, son of _____, of _____

[The Schedule above referred to.]

District.	Name of estate.	Mauza.	Extent of interest of declarant.

FORM IX.

Declaration under section 10, Act II of 1900, revoking a previous Declaration, and Rule 8.

[No stamp is required under the General Stamp Act.]

WHEREAS I, _____, son of _____, caste _____, residing at _____, and possessed of the permanent, heritable, and transferable interests in immovable property in the Province of Oudh, specified in the schedule annexed hereto :

And whereas permission was granted to me under section 6 (or 7) of the Oudh Settled Estates Act (II of 1900) by Government Notification No. _____, of the _____, to declare that such immovable property should be held, in future, subject to the provisions of the said Act :

And whereas, in accordance with such permission, a declaration was made by me, under section 10 of the said Act, on the _____ and registered on the _____, which declaration is still in force :

And whereas I have applied to the Local Government, under section 8 of the said Act, for permission to (wholly or in part) revoke such declaration :

And whereas permission so to revoke such declaration was granted to me by Government Notification No. _____ of the _____, which is hereto annexed :

I hereby revoke such declaration with reference to the immovable property specified in the schedule annexed hereto, and I hereby declare that from the date of the registration hereof such immovable property shall be exempted from the provisions of the said Act.

Signed by me in the presence of the witnesses whose names are attached hereto at _____, on the _____ day of _____, 19 _____.

(Signature.)

Witnesses:

A B, son of _____, of _____,

C D, son of _____, of _____.

[The Schedule above referred to]

District.	Name of estate.	Mauza.	Extent of interest of declarant.

FORM X.

Register to be maintained by Collector under section 13, Act II of 1900, and Rule 9.
 [Register of Declarations and Instruments under sections 10, 11, and 12, Act II of 1900.]

1	Name of declarant.
2	Name of mauza.
3	Specification of interest of declarant.
4	Number and date of notification of Government granting permission under section 9, Act II of 1900.
5	Date of declaration under section 10.
6	Date of registration.
7	Date of receipt of copy of declaration under section 13.
8	Date of publication of declaration in Gazette in English and Vernacular, under section 13.
9	Whether declaration has been made irrevocable under section 12.
10	Signature of Collector and date.
11	Date of subsequent instrument, if any, making such declaration irrevocable under section 12.
12	Date of revocation of declaration.
13	Date of receipt from registering officer of revocation of declaration.
14	Date of publication in Gazette in English and Vernacular of revocation of declaration.
15	Signature of Collector and date.

SCHEDULE OF FEES.

(Rule 10.)

	Rs.	a.	p.
Every notice served under section 5, Act II of 1900	0	12	0
Every other notice or summons under the Act or Rules	0	12	0
Every commission under the Act or Rules	5	0	0

CHECKED
2003-04

CHECKED
2003-04