ON THE LANDED PROPERTY OF INDIA.

The three persons whose relations to each other, and to the property of the soil in India, have been discussed in former publications, are, the Sovereign, the Zemindar (a proprietor according to some, and an officer of revenue according to others), and the Ryot, or cultivator of the ground: and it has been objected to the whole discussion, that as the relative claims of each of these persons on the produce of the soil, and the extent of certain prescriptive rights which cannot be infringed without the imputation of injustice, are admitted without much variation by all parties; the argument for determining who is the actual proprietor of the soil is rather a dispute about words than a discussion concerning things. This objection would indeed be fatal to any farther agitation of the question, if the premises from which it is derived were fully admitted: it is therefore indispensable to the hope of obtaining a patient perusal of the following observations, that I should protest *in limine* against the definition, in substance as well as in form, of the whole of these claims and rights, regarding which the contending parties are supposed to be agreed.

"Landed property" is a form of speech so familiar to the English ear, that the ideas annexed to it would seem to require but little explanation: and yet the very word *tenure*, by which we express the manner of possessing the right to such property, not only intimates a diversity in the meanings attatched to the term "landed property," but also conveys the direct admission of holding such property from a superior on certain conditions. It is natural that an idea so entirely identified with the received notions of landed possession in England, should introduce itself with facility into all

our discussions on the same subject in other countries; but those authors who have found in the incidents of landed property in India the whole system of the west, to the extent of applying the technical terms of the feudal law indiscriminately to both, appear to me to have made the same approach to correct investigation as the poet, who, in a happy simile, has discovered a fanciful and unexpected resemblance between things really unlike. I refrain for the present from the proof of this position, because I think it will abundantly unfold itself in the course of the investigation. An elaborate comparison of these two systems would lead to discussions of great length, and perhaps of little importance; and I am neither qualified nor disposed to enter the lists with those *learned men* who have investigated the origin of the feodal institutions; who are not agreed whether feod be a stipendiary property, or simply glebe or land; whether the sytem of allotting landed property, in the descending scale of military subordination, as a payment for military service, was imported from the woods of Germany by a people among whom no landed property had previously existed; or whether the highest of authorities has solved the difficulty, by making the feofs of the German chiefs to consist in arms, horses, dinners, or other valuable things, according to which explanation every government on earth is feodal.

These diversities of doctrine seem to shew, that a fixed object of comparison will not easily be discovered in the feodal system; but in the investigation of the state of landed property in India, I object to the employment of feodal terms, because they beg the question, by implying a chain of facts which, at least, remain to be proved: and I shall avoid the comparison altogether, because I should only expect to be led by it to the discovery, not of what that property is, but of what it is like: a mode of reasoning which has, perhaps, been the source of most of the errors on this subject which have hitherto been promulgated.

The explanation of the origin of landed property which is delivered by Menu is not exceeded in correctness by any of the writers of the west. "Cultivated land is the property of him who cut

away the wood, or who first cleared and tilled it;" and the exact coincidence of this doctrine with that of the early Mohammedans is worthy of particular remark. "Whosoever cultivates waste lands does thereby acquire the property of them; a Zimme (infidel) becomes proprietor of them in the same manner as a Mussulman." The general idea of property, delivered by the Roman lawyers, and adopted into all the codes of Europe, is that of simple, uniform, and *absolute* dominion; but it is manifest that the notion of absolute dominion is to be understood with considerable limitations. The idea of *absolute* dominion over any thing which we possess, is altogether incompatible with the existence of society which necessarily renders all our possessions *conditional:* property, whether moveable or immoveable, even the disposal of our time, and of our personal labour, the most valuable of our property, and the most unquestionably our own, are all of them liable to the conditions and restrictions prescribed by the community to which we belong, or by the person or persons representing or governing that community. At the very period when Justinian was employed in the compilation of the laws to which we have adverted, many of these persons described as possessing immoveable property in absolute dominion were compelled to relinquish their lands, because they were insufficient to satisfy the demands of the treasury. The government must not only have absorbed the share of the produce belonging to the proprietor, but the profit derivable by a tenant before the proprietors could have been driven to relinquish their lands. This case of extreme oppression more than extinguished the property: but if we deny the existence of property merely because it is subject to contributions for the service of the state, we shall search in vain for its existence in any age or nation. In England a proprietor of land who farms it out to another, is generally supposed to receive as rent a value equal to about one third of the gross produce; this proportion will vary in different countries according to circumstances; but whatever it may be, the portion of it which remains, after the payment of the demands of the public, may safely be described as the proprietor's share of the produce of his own land: that which remains

to him, after defraying all public taxes, and all charges of management. Wherever we can find this share, and the person entitled to receive it, him we may, without the risk of error, consider as the proprietor; and if this right has descended to him by fixed rules from his ancestors, as the hereditary proprietor. Property may be limited by many other conditions; but "dominion so far absolute as to exclude all claims, excepting those of the community which protects it," conveys a general idea of the most perfect kind of property that is consistent with the restrictions incident to a regulated society: always supposing, in the case of land, the existence of the proprietor's share which has been described. There is perhaps no single criterion by which the existence of such share is so distinctly ascertained as by the fact of land being saleable. ..When unoccupied land is abundant (as it is in most parts of India), and all lands are taxed in proportion to their value, we do not hear of men purchasing the privilege to become tenants; to obtain that which is open to all, and even courts the acceptance of all: men do not give a valuable consideration for a thing of no value; the fact of purchase shews that there is something to sell, that there is a proprietor's share. If the demands of the government become so heavy as to leave no such share, the sovereign may then be named the proprietor, or the usurper, or any other more imposing or more gentle term which eastern courtesy shall invent: it is plain that the former proprietor is reduced to the condition of a tenant; he may cling for a time to the possession of his fathers, and this attachment may survive the existence of that which created it; but he is in effect no longer a proprietor of land, it is no longer saleable; there is no proprietor's share, the value and the property have ceased together; and there is no longer a question about exclusive dominion, because no person will contend for that to which no value is attached.

Before dismissing this branch of the subject it is worthy of remark, that according to the Roman lawyers the power of alienating land was the criterion of property; possession without such power being described as merely the usufruct. The inference appears to be irresistible, that the fact of land being saleable

ascertains the existence of property, and that the right to sell identifies the proprietor. The reader is requested to bear in mind the definition which has been offered of property, and of the circumstances which ascertain its existence or extinction in the case of land; because, without aspiring to deliver abstract definitions not liable to objection, these are the meanings which will be uniformly attached to the term whenever it shall be found in the course of this discussion. It is hoped that these preliminary explanations will enable us to enter with some advantage into the nature of landed property in India.

The earliest opinions on this subject received by the western world may chiefly, if not wholly, be traced to the narratives of those persons who accompanied the expedition of Alexander, and of the embassy of Megasthenes, who shortly afterwards penetrated still farther into India as the ambassador of Seleucus; the substance of their information, as well as of all that had been obtained in the intermediate periods, has been collected in the works of Diodorus, a native of Sicily, who flourished at Rome about 44 years before the christian era, and of Strabo, an Asiatic Greek, who lived in the subsequent century: both of them authors of deserved celebrity, who are said to have visited most of the countries which they described, with the exception, however, of India, as is evident from their works. Strabo complains that the modern voyagers whom he had consulted, who sailed from the Red Sea to India (some few of them even to the Ganges,) were so rude and ignorant as to be incapable of making or communicating useful observations. The companions of Alexander are stated by the same author to have given different and opposite accounts of what they had seen; "and if (adds he) they differ thus regarding what they saw, what opinion shall we form of what they only heard?" The means of communication which were possessed by the philosophers who accompanied Alexander are happily described in the quaint but acute answer of Mandanis the sophist, to Onesicritus, when sent by the conqueror to be instructed in the philosophy of India: "I may well be excused (said Mandanis,) if conversing with you through the medium of *three*

interpretors, ignorant of every language but that of the vulgar, I should find it impossible to unfold the principles of our philosophy. To form such an expectation would be as unreasonable as to demand that I should transmit water in a limpid state through a medium of mud." The imposing reputation of antiquity has, however, given great weight to the information derived from these sources. It seems to have been scarcely noticed, that Strabo, on the authority of Nearchus, assures us, that the husbandman of India carried home just as much of his crop as was sufficient for the subsistance of the year, and burned *all the rest*, in order that he might have an incentive to labour in the succeeding year; that Diodorus affirms famine to be unknown in India; that Arian and Strabo affirm slavery, which is universal in every part of India, to have no existence there; and, finally, that Strabo himself stigmatizes as retailers of fables Nearchus, Onesicritus, and Megasthenes, whom in other places he cites as his authorities: while Diodorus and Strabo are carefully quoted to shew that the whole property of the soil was vested in the king, who received as proprietor a fourth part of the produce. With the aid of more direct and perfect modes of interpreting the pompous phraseology of the east, which styles its monarchs the lords, and its priests the gods of the earth, the inference of these authors, whether strictly correct or otherwise, was very fairly deducible from the translations which they would probably receive of these terms; and a stranger who should receive from an English lawyer an explanation of the king's fictitious rights under the feudal system, without enquiry into the substantial fact, would probably receive a similar impression regarding the property of land in England. It will be seen hereafter, that in conformity to what is stated by Strabo and Diodorus, the king was really entitled to exact one fourth of the crop in times of public distress. The voyagers and travellers of later times, without any exception, that have fallen within the scope of my limited reading, and the authors (when they have condescended to notice temporal affairs) of that very strange collection the "Lettres Edifiantes," have all echoed the same doctrine: and the European travellers who visited the court of Aurungzebe in the latter

part of the 17th century, are unanimous in denying the existence of private landed property in India. The whole of Asia, indeed, seems to be condemned to the same interdict: and a late author broadly pronounces that in Syria there is no property, real or personal; an assertion which he might at any time have discovered to be erroneous, by the purchase of a farthings worth of greens in the bazaar. It is thus that men of genius confound the real with the imaginary consequences of despotism; and because there is no efficient and equal protection for property, conclude at once on its absolute extinction.

When the English government became the sovereign of a vast territory in India, the question of landed property was investigated with warmth, and two opposite parties arose, respectively affirming the right of the Sovereign and of the Zemindar, to the property of the soil. The reasonings on this subject were not only recorded on the official proceedings of the company's government, but were submitted to the judgment of the public by men of respectability and talent, personally conversant with the department of Indian revenue: and a decision on the whole case has been pronounced by the high authority of a lawyer, a statesman, and a minister; and generally confirmed in an anonymous work of merit on the husbandry of Bengal, attributed to an author of still greater authority on subjects of this nature. As this decision appears at present to govern the public opinion, I shall quote it at length.

"On the subject of the rights of zemindars the reasonings continued for years in extremes. On one land it was asserted that the zemindar had been merely an officer or collector of revenue; on the other, that he had been a feudatory prince of the empire. It has required the most laborious investigation to discover the fact, viz. that the Mogul was the lord superior or proprietor (terms equivalent in their meaning) of the soil; that the zemindars were officers of revenue, justice and police in their districts, where they also commanded a kind of irregular body of militia; that this office was frequently hereditary, but not necessarily so; that on the failure of payment of the rents, or of fulfilling the other duties of his office, he could be

suspended or removed from his situation at the pleasure of the prince; that the rents to be paid to him were not fixed, but assessed, at the will of the Sovereign: and that the Ryot or cultivator of the soil, though attached to his possession, and with the right to cultivate it, yet was subjected to payments, varying according to particular agreements and local customs; that, in general, he continued on the spot on which his labours were directed to raise the means for his own subsistence, but that the proportion to be paid to the state was to be judged of by the Zemindar; that the rights of the Ryot had been gradually abridged, and the proportions he paid increased, during the successive revolutions through which his country had to pass before and after the fall of the Mogul empire."

I shall close this formidable list of authorities in favour of the proprietory right of the Sovereign, with a reference to a *Digest of Hindu Law*. The ingenious author Jagganatha, with a courtesy and consideration for opinions established by authority which is peculiar to the natives of India, has, in his Commentary, pronounced the earth to be the "protective property of powerful conquerors, and not of subjects, cultivating the soil:" they are, however, admitted to acquire an *annual property*, on payment of annual revenue, until a greater revenue be offered by another person! The general object of a commentary is supposed to be the elucidation of the text; and as a curious and instructive example of inference, the reader is here presented with the text from which this conclusion is drawn.

"Thrice seven times exterminating the military tribe, *Parasu Rama* gave the earth to *Casyapa* as a gratuity for the sacrifice of a horse." I feel it necessary to assure the reader that this is a serious quotation of the whole text: to which is prefixed a short introduction by the commentator, intimating, not inelegantly, if fable alone were intended, that "this earth, created by God, became the wife of *Prithu* (the Cecrops of India, who first invented agriculture,) and by *marriage* and otherwise became the property of several princes." The learned and highly enlightened translator of this work truly informs us, "that much of the commentary might have been omitted without injury to the context," but that he undertook a

verbal translation as a public duty, and could take no freedoms with either: a restriction which probably many readers will regret, when apprized on the same respectable authority that the work is intended to serve "as a standard for the administration of justice among the Hindu subjects of great Britain."

I have endeavoured to marshal, without any disguise, the mighty phalanx of opinion which is concentrated against me, and I shall now proceed to examine the authorities which have led me to a different conclusion.

Every Indian village is, and appears always to have been, in fact, a separate community or republic; and exhibits a living picture of that state of things which theorists have imagined in the earlier stages of civilization, when men have assembled in communities for the purpose of reciprocally administering to each other's wants: 1. the Goud, Potail, Muccuddim, or Mundil, (as he is named in different languages,) is the judge and magistrate; 2. the Curnum, Shanbogue, or Putwaree, is the register; 3. the Taliary or Tulwár, and, 4. the Totie, are severally the watchman of the village and of the crops: 5. the Neerguntee distributes the water of the streams or reservoirs in just proportion to the several fields; 6. the Jotishee, or Joshee, or astrologer, performs the essential service of announcing the seasons of seed time and harvest, and the imaginary benefit of unfolding the lucky or unlucky days and hours for all the operations of farming: 7. the Smith, and 8. Carpenter, frame the rude instruments of husbandry, and the ruder dwelling of the farmer; 9. the potter fabricates the only utensils of the village; 10 the washerman keeps clean the few garments which are spun, and sometimes woven, in the family of the farmer, or purchased at the nearest market; 11 the Barber contributes to the cleanliness, and assists in the toilet of the villagers; 12. the silversmith, marking approach of luxury, manufactures the simple ornaments with which they delight to bedeck their wives and their daughters: and these twelve officers (Barra bullowuttee, or Ayangadee,) or requisite members of the community, receive the compensation of their labour, either in allotments of land from the corporate stock, or in fees, consisting of fixed proportions of the

crop of every farmer in the village. In some instances the lands of a village are cultivated in common, and the crop divided in the proportions of the labour contributed, but generally each occupant tills his own field; the waste land is a common pasture for the cattle of the village; its external boundaries are as carefully marked as those of the richest field, and they are maintained as a common right of the village, or rather the *township* (a term which more correctly describes the thing in our contemplation,) to the exclusion of others, with as much jealousy and rancour as the frontiers of the most potent kingdoms. Such are the primitive component parts of all the kingdoms of India. Their technical combination to compose districts, provinces, or principalities, of from ten to a hundred thousand villages, has been infinitely diversified at different periods by the wisdom or caprice of the chief ruler, or by the vigour and resistance of those who, in every age, country, and condition, have coveted independence for themselves, and the power to govern the greatest possible number of their fellow creatures. Menu's arrangement places a lord over one town with its district (which is precisely the township above described;) a lord of ten, of twenty, of a hundred, of a thousand, in a scale of regular subordination, reporting and receiving commands successively from the next in gradation; and fixes with precision the salaries and perquisites of each. His scheme of government recognizes none of those persons who, in these days, are known by the several designations of Wadeyars, Poligars, Zemindars, Deshayes, &c. (all in their respective jurisdictions assuming, when they dare, the title of Raja or King: all the officers enumerated by Menu have, in their several scales, at different periods, simply acted as agents of the sovereign; as farmers of revenue contracting with the sovereign for a certain sum, and levying what they can, as partisans or chiefs of troops, receiving an assignment on revenues managed by another, or the direct management themselves, for the purpose of defraying the pay of the troops. In these several capacities they may have continued obedient to the sovereign who deputed them; they may have obtained from his favour, or from his fears, a remis-

sion of a part of the sum to be accounted for; they may have rebelled and usurped the whole government, or have established a small independent principality, or a larger: but with regard to the villages or townships of which the principality is composed they have appeared but in one character, viz. the government, the sovereign: a person exercising the sovereign authority on his own account, or by delegation on account of another. The interior constitution and condition of each separate township remains unchanged; no revolutions affect it; no conquest reaches it. It is not intended to assert that the village in our contemplation may not have produced the Cæsar of his little world; the rights of the inhabitants may have been invaded by the Potail, by the Poligar ruling over twenty, by the Wardeyar ruling over thirty-three, by the collector over two hundred, or by the sovereign of twenty thousand townships: each or either of these persons may have attempted, or have succeeded, or have failed, in persuading or forcing an augmentation of the proportion of money or of grain paid by the township to the state; but conquests, usurpations, or revolutions, considered us such, have absolutely no influence on its condition. The conqueror, or usurper, directly or through his agents, addresses himself as sovereign or representative of the sovereign to the head of the township; its officers, its boundaries, and the whole frame of its interior management remain unalterably the same; and it is of importance to remember that every state in India is a congeries of these little republics.

The most ancient and authentic authorities accessible to the English reader are the institutes of Menu translated by Sir W. Jones; and the texts from a great variety of books of sacred law, which are collected and arranged in the digest of Hindu law already mentioned. The author of that work informs us in his Commentary, that *Chandeswara and others* explain the word *husbandman* as *owner of the field*, and endeavours to remove the difficulty of reconciling these authorities with his own courtly opinion, already mentioned, by a series of quibbles which I will not attempt to discuss, because I profess myself unable distinctly to comprehend them. This author has not thought proper to quote a text of which he could scarcely

be ignorant, viz. "Cultivated land is the property of him who cut away the wood, or who first cleared and tilled it;" a passage which distinctly establishes the existence of private property in land in the days of Menu. It may possibly be objected that this passage occurs not in a disquisition concerning land, but for the purpose of illustrating a question of filiation, by comparing the respective claims of the owner of seed, and the owner of the land in which it is sown: but this apparent objection, as I conceive, materially strengthens the authority: we illustrate facts which are obscure, by reference to facts of general notoriety; and it is manifest that this origin of landed property, so consonant to the dictates of reason, and to the general opinion of mankind, must have been familiarly known and acknowledged as a practical rule of society at the period when the code of Menu was compiled (for it professes to be a compilation,) viz. about 880 years before the Christian era, and 553 before the expedition of Alexander.

The passages *from the Digest itself*, which prove beyond the possibility of cavil the existence of private property in land, crowd upon me in such numbers that I am only at a loss which of them to select; but in order that we may not be disturbed by the claims of the fabulous husband of the earth, in the form of Raja or Zemindar, it may be proper to commence with shewing that the laws of Menu, and of the Digest, with regard to the sale, the gift, the hereditary descent, and other incidents of land, can by no possibility be forced to apply to either Raja or Zemindar, or any other person than the individual occupant and proprietor. Six formalities for the conveyance of land are enumerated in the Digest, viz. 1. the assent of townsmen; 2. of kindred; 3. of neighbours; 4. of heirs; 5. the delivery of gold; and 6. of water: to which six formalities the commentator is pleased to add a seventh, not mentioned in the text, the assent of the king, or the officer of the king residing in the town. I shall, however, be satisfied with his own explanation of this very passage in another place, when he had probably suffered his recollection and his courtesy to be off their guard. "The assent of townsmen; of heirs, and of kindred, is there

required for the publicity of the gift; the assent of neighbours for the sake of preventing disputes concerning the boundaries. Publicity is required that the townsmen and the giver's own kinsmen may be witnesses." The land which is here given or conveyed as private property is a portion, and apparently a small portion, of one of the townships, which we have described; townsmen, neighbours, and kindred, assemble not only on account of the publicity of the gift, but to ascertain *how much* is given. Menu prescribes the mode of adjusting disputes concerning boundaries, not only between two villages, but between two fields, and determines that in the latter case the testimony of next neighbours on every side must be considered as the best means of decision. "Let the *owner* of a field inclose it with a hedge. Whatever man *owns* a field, if seed conveyed into it should germinate," &c., &c. These are but a few of very many texts which might, if necessary, be adduced to prove a fact no longer to be deemed doubtful; namely, that the land intended is neither a province, nor a kingdom, nor an empire; but simply a field, or an estate, a portion of the lands of a township. This fact will be farther illustrated in treating of the restrictions under which the land was possessed; first with regard to hereditary descent, and secondly with regard to taxes or public contributions, or, in other words to the claims of the king.

A distinction is made between the title to land which a man has acquired himself, and that which has descended to him from an ancestor. A man may give or sell at his pleasure what himself has acquired, even though he should leave his family destitute: "A man's own gift is valid, because he has property which is the established cause of validity, but it is not admitted that the religious purposes attained," &c., &c. "*Property is equally divested by the voluntary act of the owner in sale as in gift, and it occurs a hundred times in practice;*" but what has descended from an ancestor cannot be alienated without the consent of the heir, or heirs (that is, all the sons equally,) who have a lien equally in the immovable heritage whether they be divided or undivided," i. e. whether they live under the paternal roof, or have removed to other habitations. "Land, or

other immoveable property, and slaves employed in the cultivation of it, a man shall neither give away nor sell, even though he has acquired them himself, unless he convene all his sons." The authorities are not agreed with regard to independent power over what he has acquired himself. "The validity (says Jaggannatha) of a gift of land, whether inherited from ancestors, or acquired by the donor himself, being admitted, because the incumbent has ownership, the same would be established in regard even to the whole of a man's estate, for the ownership is not different:" and again, "Be it any how in regard to the whole of a man's estate acquired by himself, the gift of what has descended from an ancestor, by a man who has a son living, is void, because he has not independent power over that property." Such are the commentaries of a man who has pronounced in another place that subjects have no landed property at all: the reader will, however, unquestionably have observed, that we have here not only every requisite character of hereditary landed property, but the actual recognition of *entailed* landed property as an universal principle of Hindu law. Without farther waste of time in accumulating the volume of authorities which remain, we pass to the rights of the King.

The author of the Digest cites an authority for the succession to kingdoms in favor of *one* son, who must be "consecrated to the empire," in opposition to the rule of equal division to all the sons, as in the case of private landed property; but he affirms the text to relate to the rule in a particular family. The commentator is of opinion that kingdoms may be divided; because they have not been pronounced indivisible by direct sacred authority. It is of little importance to examine the force of this negative argument, because he admits the *king* "may give *the whole to one*, and that this is in conformity with the practice of former kings." This fact alone, which is of too much notoriety to require illustration, as it regards Rajas and Zemindars equally would be sufficient, if others were wanting, to prove that the king, although the "Regent of the waters, and the lord of the firmament," and "a powerful divinity who appears in a human shape," never was, in the contemplation of Hindu

law, the proprietor, whose land *must* be divided equally among all the sons. In the former case it *may* be given to one, in the latter it *must* descend in equal shares to all.

The taxes of various kinds which may be levied by the king are detailed by Menu with great minuteness. Of the produce of land a sixth is the largest share which can be taken in ordinary circumstances, and a fourth in times of urgent distress; but the whole tenor of the institutes and the digest shew that the sixth part of the crop is the king's share, which is constantly in the contemplation of all Hindu lawyers. This share is confirmed by the elegant Hindu drama of *Sacontala* written, probably, two centuries after the expedition of Alexander; it is universally recognized in all writings, and of general notoriety among Hindus of every description: in one word, I have never met with a Hindu farmer of ordinary capacity that was ignorant of the fact; and we shall hereafter find that it was promulgated as the law of the south of India in the sixteenth century.

The public officer who, in a luminous and most able report, has assured us that "the lands of Canara have for ages been private property, and that the landed property of that province is both more ancient and more perfect than that of England, has stated with equal confidence that "private property *has never* existed in India, excepting on the Malabar coast." The reasons applying to ancient authorities on which this opinion is founded appear to be, 1st. that if only a sixth were taken as the share of the government, the property would be so perfect that the fine prescribed by Menu for a proprietor neglecting to cultivate his land would be unnecessary and absurd, and that therefore the sixth was the nominal and not the real share; 2nd. that in ancient royal grants of land in Canara and Malabar, the revenue, or King's share, is specified to be the thing given; in other parts of India *the land itself* is given.

I am perfectly aware how great an authority I have here to encounter; and the objections which he has urged shall be discussed with every consideration of personal respect and public deference to his eminent talents and extensive knowledge.

1st. It is necessary to adduce the whole text to which this objection refers.

"If land be injured by the fault of the farmer himself, *as if he fails to sow it in due time,* he shall be fined ten times as much as the *Kings* share *of the crop that might otherwise have been raised;* but only five times as much if it was the fault of his servants without his knowledge."

The owner of the field, who is enjoined six verses before to enclose it, would appear from the translation to be a distinct person from the *farmer* mentioned in this text. The report admits that Ryots, according to Menu, rented their lands to under-tenants; and I will observe in passing, that this very admission necessarily involves the existence of a proprietors share, and consequently of private property. I notice this distinction, however, of *owner* and *farmer,* more on account of a difficulty which will presently be noticed in comprehending the text, than of any real importance which I ascribe to any interpretation of which it is susceptible.

The words printed in Italics are the gloss of *Culluca,* a commentator comparatively Modern, whose exact era is unknown; and according to the text (including that gloss,) the fine paid to the king for neglecting to sow, is ten times the kings share; or, as the reader will perceive by the most simple calculation, 66⅔ per cent. *more than the whole crop* which could have been produced on the field. The text without the gloss merely states that he shall be fined ten times as much as *the share,* without specifying whose or what share, and is absolutely silent with regard to the condition on which the whole objection is founded, namely, that he is fined for "failing to sow it in due time." The naked text, however, merely states, that "if land be injured by the fault of the farmer, he shall pay ten times as much as *the share*:" what this share may be I do not pretend to decide; and will only venture to conclude, that the commentator must necessarily have erred in explaining it to be the *King's* share: for it is manifestly absurd to have recourse to the monstrous supposition of a tenant's being fined for any neglect whatever, 66⅔ per-cent. more than the possible gross produce of his farm. However

this may be, the naked text of the passage does not justify the assertion that a Ryot is fined for neglecting to sow: but admitting the whole gloss and translation, we proceed to examine whether the fact of being so fined disproves the existence of private property in the land.

The existence of private landed property under the government of Rome, from the earliest periods of its history, will scarcely be questioned; and yet "Numa Pompilius appointed magistrates over the pagi, or villages, whose business it was to inspect the lands, and to take an account of those which were well or ill cultivated, and the king reprimanded and FINED the slothful, and excited them to cultivate their lands."—The lands in question were not the public domains cultivated by captives, in which case we should not have heard of the mild punishment by fine; but are distinctly stated to have been the allotment of land made to the people by tribes and curiæ as private property. From this apparent reluctance to cultivate, and the punishment which it incurred, I perceive no grounds for denying the existence of private property, but abundant ground to conclude that a proportion of the crop was paid to the king as a branch of public revenue; and this fact we shall afterwards find confirmed. This mode of raising a revenue for the service of the state, would most obviously present itself to all nations in the early stages of civilization: in a small and simple society it is apparently the most equitable rule of public contribution: and some progress must have been made in the study of Government before its gross injustice, as a tax on industry, should be ascertained and admitted. When the amount of the sovereign's revenue depends on the amount of the lands which shall be cultivated, he will unquestionably exert all the powers which he possesses to compel the extension of culture; but if his revenue is not to be increased by such extension, his fines and punishments are without an object. We shall probably find no one instance in history, of a government punishing or reprimanding husbandmen for neglecting to cultivate, without finding a revenue raised from a share of the crop; nor any instance of a revenue so raised without finding the husbandman goaded to extend his cultivation. It is not my intention to affirm; that in the age of Menu,

under a government uniformly despotic, the proprietor of the land never suffered oppression. Menu himself decides this question in a remarkable injunction. "Since the servants of the king, whom he has appointed guardians of districts, are generally knaves, who seize what belongs to other men: from such knaves let him defend his people:" and an author cited in the Digest, classes very quaintly together, as objects of a similar nature, the danger to be apprehended from *fire* from *robbers*, and from the *king*: but I infer on the ground of the authorities which I have quoted, that the sixth part of the crop was the regulated share payable to the sovereign; and that the property expressly implied by the right to the remaining five sixth's is not invalidated by the existence of a fine for neglecting to cultivate, even if the existence of such a fine had been more clearly made out.

2nd, In the royal grants of Canara the revenue is given: in all others *the land itself*.

An examination, more or less close or cursory as the subject attracted my attention, of nearly seventeen hundred grants of land in the Mackenzie collection, enabled me to observe that their forms differ very materially, in various parts of the country: those in the central parts of the peninsula correspond pretty exactly with those found in Hindoostan probably because both countries were subjected to the same conquerors from the north before the Mohammedan invasion, and at periods antecedent to the conquest of the eastern and western tracts. Throughout Drauveda, or the eastern country below the Ghauts, now erroneously named the carnatic, abundance of ancient inscriptions exist, in which revenue is bestowed by the King; and very many, indeed, in which land is bestowed on a temple by the *individual proprietor*. In several remarkable documents, which will hereafter be particularly described, the whole detail is related of the purchase of land at a public auction from a proprietor who is named; and according to the exact injunction of the institutes and digest, of assembling the whole of the township to recognize the validity of the Sale, and the amount of the thing sold. I shall be ready to admit that the royal grants in Hindoostan and the centre of the southern

peninsula confer the land, whenever the advocates of regal proprietary right shall be prepared to concede that they confer the *sky* also, for both are specially given in a hundred instances; to one of which, as being open to public reference I shall confine my observations. "I give the earth and the *sky* as long as the sun and the moon shall last:" but the very same grant, in the preceding part of that paragraph, details the things given to be, as I conceive, the rights which the king derives from the village or township described; closing the enumeration with the words, and "*all that has been possessed by the servants of the Raja.*" In a succeeding paragraph the thing given is placed beyond all doubt. "Let all his neighbours, and all who till the land, be obedient to my commands. What you have formerly been accustomed to perform and pay, do it unto him in all things." The thing alienated was the revenue, or the royalties; nothing else could be alienated by the king. In the grant which we have noticed, he alienates the revenues of a township; and I have never seen an ancient royal grant (which are always for religious purposes), excepting of one or more townships, or of a portion of a township, whose limits on every side are exactly described in short, of land already in culture, and paying revenue. The Bramin grantee would reject as a meagre compliment the gift of waste land, destitute of inhabitants to till it, of which abundance may be procured without obligation: he would accept what we see given in this instrument, the right to a revenue already existing, payable by the inhabitants of a township or part of a township; and indeed, on a close examination of all the possible beginnings of regal proprietary right, we shall find it not only difficult to prove but equally perplexing distinctly to imagine, the existence of landed property in a king, that had not previously been the landed property of a subject. I shall conclude this branch of the subject with an extract from a Mohammedan law authority, which shall be hereafter quoted at greater length. "Inheritance is annexed to property; and he who has the tribute from the land has no property in the land: hence it is known that the king has no right to grant the land which pays tribute, but that he may grant the tribute arising from it."

Before proceeding to trace what can yet be discovered of the history of the landed property in India from the age of Menu to the present day, in which the invalidity of these two objections will be farther illustrated, it may be useful in a rapid sketch to examine whether any thing exists relative to the condition of the occupants of land, in the early history of other countries, so materially differing from that described in the institutes and the digest, as to justify the conclusions which have been drawn, indicating the nature of landed property in India to be distinct from that of all other regions of the earth.

In the most ancient and authentic of all histories, although we find distinct records of the sale and purchase of the land of individuals in Judea, and of the partition of the lands of a conquered people of the private property of the victors, I have not been able to trace with any certainty the nature and amount of the contributions which were paid for the service of the state, unless we are to consider the interests of the priesthood and of the sovereign to be united, and a portion of the tithes in peace, and of the slaves and cattle taken in war, which was paid to the Levites, as intended to be applied to the public expences of the state. The tithe itself is of the exact nature of the Indian contribution; and the inference that this or some separate portion of the crop was payable in kind to the sovereign, appears to be supported by the existence of a special officer for superintending the tribute, and another for "the storehouses in the fields, in the cities, in the villages, and in the castles;" an enumeration which seems to shew that a portion of the crop was laid up for the sovereign in every field, village, and city.

In Egypt we have the most distinct evidence that one fifth was the land tax, or the sovereign's share of the crop. Pharaoh took up "the fifth part of the land of Egypt in the seven plenteous years." The fifth must consequently have been his established share: and after the supposed purchase by Pharaoh of all the lands and all the people of Egypt, in return for food during the famine, the fifth only was the share which he continued to exact. I hope

to be pardoned by biblical critics for the presumption of offering a short observation on this transaction. The learned Blackstone is of opinion that Pharaoh in this instance, like the feudal sovereigns of later days, acquired the *allodial* rights and granted back the land as a *beneficium* or *feud:* and the very acute investigator of the principles of Asiatic monarchies thinks, that by the latter part of the transaction, Joseph had only bound the husbandmen more strongly to the obligation of paying the established tax to the sovereign. If the passage is to be literally interpreted, the people of Egypt were free men and proprietors of the land: by this transaction they divested themselves of their property and became *slaves* to the king. Can any man seriously believe, that so fatal a resolution had taken place in the personal liberty and fixed property of a whole people, and yet that their relation towards the sovereign remained unaltered in all its essential characters? They paid the same taxes as before; and as far as the sacred text informs us, possessed their land virtually on the same conditions as before. Sovereigns do not usually enslave their subjects, and acquire their property, without a more substantial object in view than to restore their liberty and property. The chief difficulty appears to me to be solved, by adverting to the figurative language in which the most familiar, as well as the most important, ideas are conveyed in holy writ, and in all the dialects of the eastern world. "You have purchased me as a slave," is the most common form of speech throughout the peninsula of India at this day, to express permanent gratitude for an important favour: "you have purchased my house, my family, my lands, my flesh," is a form of speech which I have recently heard applied with great warmth, and I believe with perfect sincerity, by a man who meant exactly to say, "I am for ever obliged and devoted to you;" and however strong the expressions may appear in the biblical history of this transaction, all difficulty vanishes if we may be permitted to suppose that Joseph only inculcates, and the people only admit, in figurative language, the important benefits conferred by Pharaoh, and the consequent gratitude due by his subjects. It must how-

ever be admitted that the fact of the fifth having been the previous land tax, as stated by Blackstone, is only inferred from the context, and not positively asserted in the biblical history. At that period the lands of the priests were alone exempted, but in the time of Herodotus and Diodorus the allotments to the military were also free lands: and many other changes had taken place, which forbid any inference being drawn from their works regarding the actual state of more ancient institutions. Egypt was subjugated by the Romans about the time that their own republican government was finally extinguished; and we find the emperors retaining the direct management of Egypt as one of their own provinces, and restraining the access of their subjects: the former circumstance indicating a prosperous revenue, and the latter, that there was something to conceal. It is certain, that in the other portions of the Roman Empire, one tenth of the crop of corn was the usual tax, and that one fifth was absolutely unknown *in any other province*. A tax is seldom lowered under a despotism, and not very often under any government; and all these circumstances combined give some colour to the hypothesis, that the fifth may have been exacted for the first time under the plea of an expected famine, and that Joseph, like a skilful financier, availed himself of the means which afterwards occurred to perpetuate the tax.

In attempting to trace the state of landed property in Greece, a ground to which I return as a stranger, after a long and unbroken absence, I can discover nothing but the features of splendid fable in many of those institutions which historians and philosophers have held up as sober truths to the admiration of posterity. That the lands of Sparta were equally divided among the citizens, and were free from all public impositions, is the only law of Lycurgus which seems to have a direct relation to the state of landed property in that republic; and it will be necessary, however adventurous the attempt, to offer a few short remarks on the general nature of these institutions, for the purpose of shewing that this representation of the fact is absolutely incredible. The Spartan legislator himself never permitted his laws to be committed to writing: and it cannot be sur-

prising if nothing distinct or certain has descended to posterity regarding that which never had a distinct or fixed existence. Subsequent writers seem to have been chiefly guided by the authority of Xenophon; but whether his treatise on the Lacedemonian Republic (a work which I have only seen in quotation) ought, like the Cyropædia, simply to be considered as an eloquent political romance, is a question which I only venture to suggest on account of the insurmountable contradictions to be found in those authors who appear to have followed its authority.

The state of Sparta had no treasure; the lands as well as the other property of the Spartans being free from all impositions. One of the means of occasional contribution evinced their extreme poverty; A general fast of all the citizens saved a small sum, which the state conferred on an ally in distress: yet the ingenious and learned author who assures us of this fact, and everywhere cites his authorities, informs us that the king or general appeared in the army with great splendour: that the state provided for his maintenance, and that of his household, consisting besides his usual guard, of one hundred select men, of the two pythians or augurs, the polemarchs or principal officers, and three inferior officers who attended on his person (not a very mean staff in those days of simplicity, equality, and poverty.) The state, it seems, provided for all these expences, and necessarily for very much more, without taxes, without revenues and without treasure. If the land allotted to the king during peace could by any violence of construction be forced to signify the fund provided by the state for the exigencies of war; if the state might be said to have no treasure, although it existed in the hands of their principal officer; and if we should consent to pass, without observation, the express evidence of public revenue involved in the demand of tribute from *Helos*; and, without comment, the brutal and unmanly conduct of these admired republicans towards its unhappy citizens, and to the slaves who, in aftertimes, were named *Helots* as a term of ignominy; still it will be altogether impossible to reconcile to the supposed prohibition of money, and equal division of land, a few facts incidentally related by Herodotus,

who wrote nearly a century before Xenephon, and was not composing a political romance. In speaking of a female infant of plain and disagreeable features, he simply narrates that it was a source of great affliction to her parents, who were people of great affluence in Sparta. A Milesian deposited a large sum of money with a Spartan, exacting an oath for its restitution when demanded: the Spartan, it appears, found that that the precious metals were more valuable than the iron currency of Lacedæmon in a state of perfect equality; and refused to return it, until he should consult the oracle whether he might avail himself of a quibble of the law to cheat the man who had reposed confidence in him. The king, on a march might take for his own use as many sheep as he thought proper. Notwithstanding the celebrated obligation of dining at the frugal table, to which every citizen subscribed his twelve medimni, private entertainments did exist; and persons were found sufficiently affluent to invite the king to partake of them. Themistocles paid a visit to Sparta, where he was splendidly entertained; on his departure they gave him the handsomest chariot in Sparta (is it possible that there were handsome chariots in this land of poverty?) and three hundred knights escorted him to the frontier, regarding whose particular quality the annotators seem only to be so far agreed, that *but those who were wealthy possessed horses.* The very fact, indeed, which has been so often adduced to illustrate the perfect equality of the citizens of Sparta; namely, that those who had no chariots or horses were entitled to demand the use of these conveniences from such of their neighbours as possessed them; is in itself an incontrovertable proof of open and distinguished inequality. That Lycurgus, like other enthusiasts, may have indulged in the dream of perfect and permanent equality; that, aided by a faction of armed adherents, he accomplished the forcible plunder of his respectable fellow citizens for the purpose of dividing the spoil among the needy; and even that all this may have been honestly intended, is not absolutely incredible; but those who believe in the reality and the permanence of institutions so evidently contrary to the nature of things, and, as I think, to a fair examination of historical facts,

must possess either a grasp of comprehension, or an extent of credulity, which I am altogether unable to reach.

The unsatisfactory result of our enquiries regarding the state of landed property in Sparta is not much relieved by a superior degree of information with respect to Athens. Solon found it necessary by sundry edicts to force the people to till and cultivate their lands which lay neglected. For the reasons which have formerly been assigned, it is probable that the state received a proportion of the crop; but the fact is not positively confirmed by any thing which I have been able to discover in the subsequent plan of taxation, which, as Athens became a commercial and maritime state, would chiefly depend upon its duties and excise, and latterly upon a sort of property tax for the construction of ships of war, levied on the possessors of land and other property indiscriminately. We pass to more distinct information in Italy.

Under the Roman Empire, through every change of government a portion of the produce of the lands was paid in kind. The fines imposed by Numa Pompilius for neglecting to cultivate are the earliest evidence of this fact: by subsequent regulations, whoever neglected to till the ground was liable to the animadversion of the censors; and the imperial magazines for the reception of a portion of the produce in the various articles of wine or oil, wheat or barley, wood or iron, continued to the latest periods of the empire to be the deposit of this branch of the public taxation.

In the history of a people who rose from the condition of a band of robbers without territory to be the conquerors of the world, the incidents of landed property must be traced in that branch of the ancient international law of Greece and Italy, by which the vanquished people not only forfeited their territory and personal property, but became the predial or domestic slaves of the conquerors. Under this principle the conquered lands were, of course, disposed of as appeared to be most for the interest of the conquerors. Whilst the territory was very limited, the lands reserved for the state admitted of the same management as the lands of an individual, and would probably be cultivated by public slaves: but as the state

extended its bounds, this mode would become extravagant or impracticable. The whole conquered territory was sometimes confiscated, as in the case of *Campania*, which was reserved exclusively for the exigencies of the state, and became the great granary of the city during a considerable period of its history.

Sometimes the conquered people submitted under a sort of capitulation to pay an aggregate fixed tribute (stipendium or tributum); and others, as in the case of Sicily, were confirmed in their ancient privileges, or were fined in a certain portion of their land. As the Roman territory farther enlarged, colonies were frequently sent out, as well to provide for distinguished soldiers, as to form a sort of garrison to keep the vanquished in subjection. The conditions of these establishments necessarily varied with circumstances; but the lands allotted to the *coloni* generally paid as a tax a certain portion of the produce, which never exceeded one tenth of the crop of grain, and one fifth of the produce of trees. The conquered people were usually admitted to rent the lands rejected by the *coloni*; and the remainder of the land fit for cultivation, which was left unoccupied (probably by the slain and by the slaves carried off to the old territory, or appropriated by the coloni on the spot) was either rented for a share of the crop, or converted into public pasture (scriptura), which formed a separate branch of revenue. In many cases these lands were sold (redeemable by the state) for a period of one hundred years; a practice which was supposed to have produced many irregular and corrupt alienations.

The farmers of revenue, generally of the equestrian order, formed a very remarkable corporation, governed by particular laws; and, as far as regarded their influence in the state, may in many respects be compared to the monied interest of England. In the collection of the revenue, it must be concluded, that exclusively of the important difference of proprietor and tenant, (which however seems to have been obliterated in Italy when the cities were admitted to the privileges of Roman citizens) a distinction was made between the coloni and common husbandmen (aratores) in the amount of their payments. One material preference consisted in the selection of

the best lands. One tenth of the crop was the tax usually exacted from both; a proportion which is obviously a much heavier tax on poor than on rich land. The farmers of revenue (publicani or socii) divided the business of their department into three branches, corresponding with the three principal heads of Roman revenue; the customs (portorium) the public pastures (scriptura), and the landed revenue; and the very name *decumani*, by which the persons employed in this latter department were universally distinguished (the two others being called portitores and pecuarii), furnished abundant evidence that one tenth part was the most common portion of the crop exacted as a tax. Spain paid one twentieth only of corn, and one tenth of the produce of trees; whether by compact or in consideration of its inferior fertility, does not seem to be entirely certain. But the distinction between the coloni and aratores, so strongly marked in their first establishment, evidently varied in subsequent periods; and we even find the whole of the public lands of Italy not only confirmed to their actual possessors, as good policy most strongly demanded, but altogether exempted from taxes by the law of the tribune Thorius, so justly reprobated by Cicero. Previously to that period, it seems probable that a distinction existed similar to that of the fixed rent which is noticed by Cicero in his account of the Sicilian revenue, where he attributes to Verres, as an iniquitous innovation, the decree by which he required each farmer to register the number of acres which he annually cultivated; a decree which was obviously no otherwise iniquitous than as it was contrary to the laws of Hiero, the preservation of which, constituted the main condition of the compact by which the Sicilians submittted to the government of Rome, and these laws exacted not the actual tenth, but a fixed land-tax estimated to be one tenth; thus we find, that some of the cities which had been disfranchised as the punishment of revolt were subject to other conditions. The publicani, who rented the revenues of a province by Public auction at the spear of the censor for a fixed sum (merces), were, in ordinary cases, at perfect liberty to make their own bargains with the husbandmen, subject only to the

conditions and restrictions previously promulgated in the tabulæ, or leges censoriæ, public advertisements of the censor; and the decumani made their annual settlements with the husbandmen for a certain quantity of grain, or of money, *on each acre* to be cultivated; calculating in the the former case the amount of the produce and agreeing for the estimated tenth, generally at the rate of one medimnus for an acre of good land, which was supposed to produce ten medimni. The coloni, if this explanation be correct, held their lands at a fixed estimate of the probable tenth, and the aratores were subject, like the Ryots of India, to an annual settlement, increasing with the augmentation of their industry. The coloni (or decumani, from whatever cause), were the proprietors at a fixed land-tax; the aratores were (where the distinction continued) the tenants of lands which were the property of the state, paying in proportion to the quantity of land which was annually tilled. The object of the Agrarian laws, which so much agitated the public mind at different periods of the republic, was not a general division of all the lands, but of those confiscated (publicati) which in Italy were afterwards, by the conflicting meanness and ambition of plebeian and imperial demagogues, not only rendered private property, but with the whole territory of that country exempted from all taxes whatever; leaving to the unfortunate provinces the whole burden of the requisite expenses of the state, and of an institution which is entitled to hold a more distinguished place than has usually been assigned to it among the causes of the decline of the Roman empire, namely, the gratuitous distribution, first of corn, and afterwards of pork, bread, and oil, to the licentious and depraved populace of the city. After the impolitic and unjust exemption which has been noticed, the means of making these distributions were, necessarily, drawn from the provinces; and the idleness and poverty which so high a premium encouraged and ensured, naturally augmented the evil; until, after the lapse of a century and a half from the period of the exemption, Augustus and his successors were obliged to restore the revenues of Italy, through the medium of a complex system of customs, excise, and income-tax;

and to revive neglected agriculture by restricting the culture of the vine.

The history of the details of revenue under the emperors cannot be easily traced. The canon Frumentarius, which is ascribed to Augustus, seems to have fixed the proportions of corn and other supplies in kind to be furnished by the several provinces; and the mode in which these proportions and other payments were distributed into *capita* is amply and clearly described by Mr. Gibbon, without enabling us to judge by farther detail whether any material changes were introduced in the later periods of the Roman empire with regard to the proportions of the crop paid by the individual husbandman. It is not credible that the payment of so small a portion as one tenth of the crop could have excited the grievous complaints of oppression which were re-echoed from all the provinces: the right of inspection and interference to ascertain the extent of cultivation which the decumanus unquestionably possessed, involved under the loose government of the Roman provinces, the power to do more; and the direct interest of the farmer or officer of the revenue to use compulsory means for the extension of culture, is a source of oppression which, exclusively of other exactions, must everywhere produce similar effects. The husbandman of Italy or India, whether proprietor or farmer, whether, like the Roman, paying a tenth, or, like the Indian, a sixth, would be incessantly goaded to cultivate, so long as the power and the interest were united which we have described to exist. We find the English husbandman, whether proprietor or farmer frequently declining to raise corn on his tytheable land: he would be compelled to do this if the person intitled to receive the tythe possessed the power and influence of the decumanus. Fines for neglecting to cultivate can only illustrate the ruinous principle of the tax, without furnishing any conclusive inference for or against the existence of private property in the land.

The barbarous principle of international law, which has been above described, seems to have continued during every period of the Roman history; and a remarkable example occurs under the eastern empire so late as A. D. 536, when the soldiers of Africa,

under Solomon the general of Justinian, having married the wives and daughters of the vanquished Vandals, claimed the lands also which formerly belonged to their new spouses, and mutinied to obtain them. Solomon replied, "that he did not refuse slaves and moveables as spoils to the soldier; but the lands he alleged to belong to the emperor and the state which fed them, and gave them the quality of soldiers; not to conquer for themselves the lands taken by barbarians from the empire but to recover them for the treasury from which they were paid."

It may hence be fairly risked, as an apology for the errors of those ancient authors who affirm all land in India to be the property of the state, that they came to the consideration of the subject with minds familiarized and predisposed to the doctrine, and only found in the supposed institutions of that country an extension of the principle long established in their own. A conjecture may be supported by some traditionary traces, that it was an ancient practice of India to reduce the vanquished to the condition of slaves, and to confiscate their lands; but without discussing the wild chronology of that country, we have abundant evidence that the principle, as well as the practice, if they ever did exist, had ceased many centuries before the expedition of Alexander; that private property in land was then distinctly recognized by law, and that the conqueror was enjoined to respect and maintain the rights and customs of the vanquished. In other respects we find the ancient principle of taxation, namely the payment of a portion of the crop, to have been the same in every country upon earth; and we may now proceed to examine the few faint traces of its history which exist in India from that period to the present day.

Hindoo conquerors are enjoined to confirm the established laws and customs of the conquered nation; but they are too good casuists not to discover that any additional Tax, however recently imposed by the former sovereign, is relatively to the period of conquest, an established thing; and consequently to be confirmed. The more northern barbarians, under the designation of Huns, Toorks, Afghans, or Patans, who followed in the same career,

were in this single respect certainly more unmerciful than their Hindoo predecessors. In India, as in Europe the conquerors and the conquered, successively impelling and impelled, rolled forward, wave after wave in a southern direction; and whoever will attentively examine the structure and the geography of that portion of India usually called the Southern Peninsula may infer, a priori, that the countries below the Ghauts, separated by a barrier scarcely penetrable from the central regions, and forbidding approach by a burning climate, always formidable to the natives of the north, will have been the last visited by those invaders, and will have retained a larger portion of their primitive institutions. We shall accordingly find, that in the central regions the existence, and with it the remembrance, of private property in land has been nearly obliterated; while throughout the lower countries it can everywhere be distinctly proved, and in many places in as perfect a state and as fondly cherished as in any part of Europe. I shall confine my observations on this subject to the tract which, commencing near to Madras in the latitude of about thirteen and a half north, comprises the extent between the sea and the hills from thence to Cape Comorin, and round that promontory, extending north to the latitude of nearly fifteen N. a belt of various breadth, or from sixty to an hundred and sixty miles, and in length near nine hundred English miles.

From the causes which have been noticed, and from circumstances which the limits of this discussion do not permit us to examine, the country known in our maps by the name of Canara has preserved a larger portion of its ancient institutions and historical records than any other region of India. An early event recorded in poetic numbers may in India well be classed as a traditionary tale; and I only advert to the conquest of this country by one of a dynasty of seventy-seven kings who ruled at Banawassee about 1450 years before Christ, for the purpose of observing, that according to the tradition, he reduced *Hoobasica, a Hullia Pariar* king, and all his subjects, to a state of slavery, in which their descendants continue to this day. The fact is worthy of note from the ground which it affords for a conjecture which many circumstances will

support, that these unhappy outcasts were the aborigines of India; and that the establishment of casts was not the effort of a single mind, but the result of successive expedients for retaining in subjection the conquests of the northern Hindoos; for they, also, are confessedly from the north. Among the various lists of dynasties and kings, real or imaginary, which I have examined in the Mackenzie collection, is one which records the names of the monarchs who successively established the distinctions of the priesthood, the military, the agricultural, and servile classes.

Without further noticing events which have no immediate relation to our subject, it is only necessary to state, that one sixth of the crop is the share which is said to have been exacted by the government from time immemorial until A. D. 1252, when a nephew of the Pandian, taking advantage of a civil war, invaded the country in ships, and conquered it. Before his time the sixth had been received in the rough grain; but he imposed on his subjects the task of delivering it deprived of its husks in a state fit for food, thereby increasing the revenue about ten per cent which is the estimated expense of this operation. This mode of payment continued until the establishment of a new government at Videyannuggur or Vijeyannuggur, founded by fugitives from the subverted government of Warangul when the Pandyan dynasty of Canara, having already reached the period of its decline, readily yielded to the rising state in 1336. The minister and spiritual preceptor *Vedyaranya*, under whose auspices the new dynasty was erected, composed a work on law and government, which is still extant in many hands, and easily procurable: it was intended as a manual for the officers of state; is founded on the text of Parasara, with a copious commentary by Videyaranya, assigning as usual to the king one-sixth, as the royal share of the crop, and very rudely pronouncing the king who takes more to be infamous in this world, and consigned to (Nareka) the infernal regions in the next. This share he was desirous of converting from a grain to a money payment, and established fixed rules for the conversion, founded on the quantity of land, the requisite seed, the average increase, and the

value of grain. The result literally conforms to the law of the Digest; viz. one-sixth to the king, one-thirtieth to the bramins, one-twentieth to the gods, the rest to the proprietor. It is unnecessary to enter farther into this detail, than to state that thirty is the whole number on which the distribution is made: of which it is calculated that fifteen, or one half, is consumed in the expenses of agriculture, and the maintenance of the farmer's family. The distribution of the remaining fifteen stands thus.

To the sovereign one-sixth of the gross produce,	5
To the bramins one-twentieth, ...	1½
To the gods one-thirtieth, ...	1
Remains proprietor's share, which is exactly one-fourth, ...	7½
	15

The share payable to the bramins and the gods was received by the sovereign, and by him distributed; so that the sum actually received by the sovereign and by the proprietor were equal. Instead of satisfying himself with leaving things as they were, and taking from this province a smaller revenue on account of its remote situation, as suggested in the report (it is, in fact, not remote compared with many other parts of the dominion), it is evident that Harryhar Roy called in the aid of the Shasters for the purpose of raising the revenue; and did actually raise it exactly twenty per cent, by his skill in applying that authority to his calculation; the result of the whole detail being that he received one ghetti pagoda for two kauties and a half of land, the same sum only having formerly been paid for three kauties. From 1336 until 1618, when the hereditary governors of the province began to aim at independence, this rate continued unaltered, but soon after this latter period an additional assessment of fifty per cent, was levied on the whole revenue, with some exceptions, in which the usurper was opposed by minor usurpations; but even at this period lands were saleable at ten years purchase, and, in some instances, so high as twenty-five and thirty. The hereditary right to landed property in Canara and

Malabar was, and continues to be, indefeasible, even by the longest prescriptive occupancy; the heir may at any distance of time reclaim his patrimony, on paying the expense of such permanent improvements as may have been made in the estate. It is unnecessary to go through the detail of the subsequent assessments on the revenue of this province up to the period of its conquest by Hyder in 1763: they were chiefly in the nature of temporary aids, which the exigencies of the times rendered it necessary to continue from year to year: the public contributions were still comparatively moderate, and the condition of the people comfortable and affluent. "The whole course of Hyder's administration was (in the forcible language of the report already alluded to) nothing but a series of experiments for the purpose of discovering the utmost extent to which landrent could be carried, or how much it was possible to extort from the farmer without diminishing cultivation. The increase of assessment of Hyder and Tippoo Sultan has, in some places, annihilated the old proprietors, and it has everywhere diminished the quantity, but not altered the nature, of the property. If, after paying the Sircar rent, and what is due to himself for his labour, there remain the most trifling surplus, he will almost as soon part with his life as with his estate." A subsequent collector informs us, that under Tippoo's government the proprietors had actually began to disavow their property; but in the very second year of English management, they claimed as their own, what the year before had been held in the names of their tenants. The demands of the government had, from their excessive amount, in some cases annihilated the property, in others it was on the very verge of extinction: and there can be no question that another century of similar exaction would have extinguished private property in land altogether: and, in conformity to the fact stated by the collector, by being constantly denied, it would soon have been forgotten. The whole system has been revised by the judicious and able hand which has described it: property has been restored by diminishing the exactions of the government, and *leaving a proprietor's share;* and the reporter observes, that "in reforming the revenue system of that

province, government has no new rights to private property in land to create; they may augment the value of the property by diminishing the assessment, but the right itself is already as strong as purchase or prescription can make it, and is as well understood as it is in Great Britain." We pass to Malabar.

According to a tradition common to Canara and Malabar, but more anxiously preserved in the latter, the royalties of both countries were formerly vested in the priesthood; but I am disposed to consider the historical conqueror and the fabulous Parasa Rama, who created and gave them to the bramins, as one and the same person. If it might be permitted to risk a conjectural statement of the facts on which these extravagant fables are founded, I should consider Parasa Rama as a mighty conqueror, who, struck with remorse for the injuries which he had inflicted on mankind, endeavoured to expiate his offences by resigning the greater part of his revenues to the priesthood. The insatiable bramins thus became possessed of all that he had the power to bestow, began artfully and incessantly to urge the best possible reasons for new conquests, in order that they might have new grants: and the sovereign, disgusted at their unfeeling rapacity, undertook the conquest of Kerala and Concan for the express purpose of getting for ever rid of them, prohibiting any Bramin on pain of death from following him into those countries. His new dominions being provided with no separate order of priesthood, Parasa Rama founded the cast of the *Concan Bramins*, who are to this day disclaimed as such by those of the rest of India. They compose a large portion of the ruling characters in the Mahratta state, and in their various predatory incursions into other countries are stated to seek with avidity for the copies of a work containing the history of their origin for the purpose of destroying it: and the eastern Bramins affirm that the orders for this purpose given to their illiterate troops have produced a large and indiscriminate destruction of Manuscripts. In the decline of life Parasama was visited by renewed compunctions, and again sought for expiation in a complete surrender of his new kingdom to his new priesthood. Under this hierarchy, the prescribed portion of one-sixth of the produce

was allotted for the support of the government. No distinct means appear at present to exist of tracing the history of this country from this period until the year 970, when a sovereign of the country embraced the Mohammedan faith, and retiring to Mecca, divided his dominions among his officers or subordinate chiefs.

The whole country now distinguished in our maps by the names of Malabar and Travancore was thus subdivided into a number of petty clans, perpetually at war with each other, and paying little or no tax to their respective chieftains, but that of constant military service. The Raja of Travancore was one of these insignificant chiefs, and the ancestor of the Indian hero of Camoens then possessed no inheritance but his sword. With the variations arising from the increase of some little states by the subjugation of others, Malabar was found nearly in the state which has been lightly sketched, when subdued by Hyder. Under that dynasty the efforts of the government were constantly directed to the forcible reduction of these chiefs, and to the introduction of the same system of revenue which prevailed in the rest of the dominions of Hyder. The northern and more inaccessable parts of Malabar continued to oppose a successful resistance; but the more open southern districts, where armies could act with effect, would (in the opinion of a member of the board of revenue, who has lately visited the province) "in a few years have paid the whole rent to the Circar; they would have lost their property in the land, and have virtually become farmers like the Rayets in the ceded districts; but Cotiote and the northern districts of Malabar were never thoroughly subdued by the Mysore government, and it is only now that we are beginning to establish our authority there. The strength of the country has enabled the people to defend their rent and remain landlords. Perhaps the strength of the country along the ghauts is the true cause of the existence of private property in the soil, which the inhabitants of Bednore, Canara, Malabar, and Travancore, not only claim, but have been generally ready to support by force of arms. It would most likely have existed everywhere, but in other parts of India armies of horse could carry into execution the immediate orders of

a despot, who never admitted of private property, because his wants incited, and his power enabled, him to draw the whole landlord's rent."

Private property in Malabar and Travancore is distinguished by the emphatical word *Janmum* "a term bearing the express signification of *birthright*." The various gradations of mortgage, temporary transfer, and conditional possession (as described in the several official reports from Malabar) which are all requisite, before a deed of complete and final sale can be effected, mark a stronger reluctance to alienation, and a more anxious attachment to landed property than can be found in the institutions of any other people ancient or modern: and the high selling price of twenty years' purchase, reckoning on the clear rent or proprietor's share, in a country where the legal interest of money is more than double that of Britain, testifies the undiminished preservation of this sentiment to the present day.

The chief of a clan, whose military excursions seldom carry his followers above a day's march from their homes, has little need of revenue; and the landed property which in arriving at power, by whatever means, he will not fail to have acquired, furnished in Malabar the principal fund for his requisite disbursements. The Raja of Travancore was one of the most successful of these chiefs in the subjugation of his neighbours. "The forfeiture of the estates of fugitives from the country, and the assumption of the estates of Rajas or principal Nayrs, who were forcibly dispossessed, transferred into his possession extensive lands, of which he became the immediate proprietor." These circumstances, and the profitable law of confiscation for alleged crimes, have vested in this Raja a large extent of direct landed property or royal domain. From the previous state of anarchy and intestine war, his own old subjects, as well as those of his successive conquests, had paid but slender taxes beyond military service; serious difficulties would accordingly have arisen in levying any considerable tax on the land; and without the tradition of an ancient institution of that nature, it would perhaps have been impracticable. It will be difficult to discover in the history of any

nation, a more absolute and ample dominion than that which is left to the proprietor by the land tax of Travancore, which, in proportion to the fertility of the soil, amounts at the highest to five per cent. of the gross produce, and at the lowest to one half of that estimate; the proprietor's share of the crop, to a person who superintends his own estate, being estimated so high as forty or forty-five per cent. leaving fifty per cent at the least for the expenses of cultivation, conformably to the estimate of similar husbandry in Canara.

The favourable condition of the landed proprietors is, however, lamentably contrasted, not only by the predial slavery of the lower orders, which is general in the whole of this western tract, and too common in all parts of India; but by the most impolitic capitation taxes on inferior casts, by heavy duties on particular articles, and by engrossing the produce of the domain lands, thus merging the features of sovereignty in the more profitable character of farmer, merchant, and monopolist.

In passing to the eastern coast we shall commence with the northern part of the tract which has been described; that being the point at which it first sustained the impure contact of the northern invaders. The territories of the three contemporary dynasties of the Chola, the Chara, and the Pandian, which contended with various success for the northern, the south western (including Malabar), and the south eastern portions of this extensive region, under its general name of Drauveda, met near to Caroor, a town situated about thirty miles west of Trichinopoly, which appears to have passed alternately into the possession of each of the opponents: they were all conquered by Narsing Raja and Krishna Raja of Vijeyanuggur in the period between 1490 and 1515. Over the whole extent of this country, as in every other in which the authority of the Shasters was acknowledged, one-sixth was the legitimate share of the crop payable to the sovereign. Before and after the period at which we are arrived, the evidence of private property in land is so abundant, that I will spare the reader the ample detail which might easily be presented to him of public recorded gifts of land from individuals to the temples, and of the constant transfer

of lands by sale and mortgage, in spite of all the oppressions which the proprietors had sustained, even after that period when the pestilent doctrine of the sovereign being the actual, instead of the figurative proprietor of the soil, began to be promulgated by the British government. The historical documents of the Mackenzie collection are not yet so numerous as to afford the means of following with precision the effect of successive revolutions on the state of property in this part of India. Nearly eighty years after the subversion of the Hindoo government at Vijeyanuggur, seven years after the grant of territory by the descendant of that house reigning at Chandergherry for the erection of the first English fort at Madras, the dissentions of the Hindoos had brought down two distinct armies from the Mussulman states of Golconda and Vijeyapoor, which respectively possessed themselves of the strong posts of Chandergherry and Vellore in 1646. Having determined by an amicable convention the lines within which they should respectively limit their incursions, so as not to interfere with each other. Meerjumla, the general of Golconda, invaded the lower country about ten years afterwards, and retained a precarious hold on some of the northern districts of Coromandel. In the next year an army from Vijeyapoor, a division of which was commanded by Shahjee, father to Sevajee the founder of the Mahratta empire, extended his conquests as far as Tanjore, and probably farther south, plundering or assessing these countries in several periodical visits until 1669, when Ginjee fell into their hands, and gave them a more firm possession of the country. This fort was afterwards seized by the wonderful Sevajee, who, encouraged by the establishment of different branches of his own family at Bangalore, and recently at Tanjore, made in the year 1677 his astonishing irruption into the lower country; but the commencement of the first fixed Mohammedan government may be dated about the year 1691, when Zulficar Khan, the imperial general, entered on a systematic plan for the conquest and fixed occupation of the country, and obtained possession of its last strong hold, Ginjee, in 1698. The whole financial plan of a Mohammedan government exercised over infidels, is comprised in the following short extract from their

most celebrated law tract. "*The learned in the law* allege, that the utmost extent of tribute is one half of the actual product, nor is it allowable to exact more: but the taking of a half is no more than strict justice, and is not tyrannical, because as it is lawful to take the whole of the persons and property of infidels, and to distribute them among the Mussulmans, it follows that taking half their incomes is lawful *a fortiori*."

We are informed on the authority of the same tract, that one half was the share of the crop which the original Mohammedan *proprietors* received from Mohammedan farmers or tenants cultivating their lands, and defraying the expenses of agriculture; and if this fifty per cent. remaining to the farmer or tenant for defraying the charges of agriculture and maintaining his family be taken, as I believe it may, as the most general average in those parts of India which have been conquered by strangers, it is obvious, and the first Mussulman invaders must have known it, that the owner of land from whom the remaining fifty is exacted is at once reduced to the actual condition of a tenant; and that instead of one half, they were taking the whole income of the ancient *proprietors*. Those who contend for the proprietary right of the sovereign, will, at this stage of oppression, certainly find him to possess one half of the produce, as a barbarous remuneration for not having murdered the original proprietor; but I will not insult my countrymen by supposing that an individual can be found among them, who knowing the nature of the right (if right it may be called), would desire to succeed to it. These Mohammedan rulers combining, in a character full of extravagant contradiction, the worst extremes of the savage, with some prominent features of civilized man, did not effect at one blow the extinction of the ancient proprietors; these unfortunate persons resisted, in their way, the successive exactions which were imposed, by flying to the woods, from whence they were recalled by persuasion, by false promises, by hunger, or by force, to renew the culture of their lands; but the plain and undeviating principle of the government was to extort the utmost sum that could be levied without the certainty of thereby diminishing the revenue of the suc-

ceeding year. These polished barbarians, bringing along with them a compound of the system of revenue established by Tooril Mul under the emperor Akber, and of that introduced by the independent Mohammedan princes of the Deckan, applied the technical language of these systems to the actual state of Arcot; but they found a sort of occupant who had either *been forgotten or purposely passed over* in those systems. *Cawney Atchey*, in Tamul, the vernacular language of the country, is a compound term, each member of which signifies "*independent hereditary property*," according to the genius of the language, which joins two words of similar import to render the meaning more positive and absolute; or *Cawney* may be taken in its other alleged signification of *land*, and the compound word, according to that interpretation, will signify *independent hereditary landed property:* there is no third meaning of which the words are susceptible. This word even these unfeeling barbarians translated in their records of revenue by the Arabic word *Meerass, inheritance;* and its possessor by the Persian inflection *Meerassdar, hereditary proprietor* (or possessor of inheritance). The terms Meerass and Meerassdar have since been continued under the British administration, but for the purpose of assimilating every thing to the system of Bengal, where a proprietor, unknown to the history of India, had for some years been created under the modern name of Zemindar; these occupants of *absolute dominion in landed property* were declared to possess merely the "hereditary right of cultivation."

The first discussions of importance on this subject that I have been able to trace on the records of Madras, occurred in the year 1795-6, when the inhabitants of Trimashy, a village in the district of Poonamalee, firmly refused to accede to the terms demanded by the collector; and that officer, considering the refusal to proceed from a refractory disposition incited by the intrigues of the *dubashes* of Madras (viz. native interpreters and agents to gentlemen in office, who were not conversant with the languages of the country), proposed, that "the *Meerassy* inhabitants of that village should be deprived of their *Meerass*, and that it should be transferred to others who are willing to cultivate on the proposed terms." The Board of

Revenue opposed, and the Governor in Council supported, the expediency of this measure, and the discussions on the subject were protracted to a voluminous length. The Board of Revenue defended the rights of the occupants under the varied designations of "Meerassy right," "which implies inheritance, property;" "proprietary right;" "Meerassy privileges;" "rights of inheritance in regard to the soil," &c.: but, misled by supposed historical facts, which had not then been sufficiently examined, they unadvisedly admitted a position which had been assumed "as a fundamental axiom" by the government, viz. "that the actual property in the soil is vested in government, who alone have the power of making an absolute sale of the land;" and their defence of rights and privileges, incompatible with this admission, sunk before the superior talents of their opponent. It is certain, from the known characters of the men, that each party sincerely believed itself to be defending the cause of justice. Facts appear to have been on the side of the Board of Revenue; mental power and logical skill on the side of the government: and in commenting, among other expressions, on the phrase "certain defined rights and privileges of the Meerassdars," they arrive at the following conclusion. "This definition then of the *original* right of a Meerassdar, which has been adopted and defended by the Board of Revenue, involves a contradiction of terms; for it defines it to be an *indefeasible proprietary right* in the cultivation of the soil, the proprietary right of which soil is, a priori, vested in the Circar alone: and it is further defined to be a definite right under an indefinite system of law, and an independent right dependent upon the will of an arbitrary sovereign." This (it is added) is the abstract state of the question: but if questions of this nature were to be determined by metaphysical abstraction, it might with equal justice be argued, that law is the child of property and not the parent: that property must exist before laws are invented to protect it: that absolute independence being a creature of the imagination, the words "dependent" and "independent," when employed to describe the qualities of property, can in point of fact be considered no otherwise than merely relative terms: and that it is not the abstract right, but the practical protection,

which is wanting under an arbitrary sovereign. We have however shown the existence not only of a definite right, but of a definite law for its protection, which never had been repealed, excepting by the infamous Mohammedan precept of seizing property as a remuneration for sparing life. However this may be, the doctrine defended by the government was decided in the affirmative; viz. that the occupants of land in India "can establish no more right of inheritance in respect to the soil, than tenantry upon an estate in England can establish a right to the land by hereditary residence; and the *Meerass* of a villager, was defined to be "a preference of cultivation derived from hereditary residence."

This decision necessarily became the rule of conduct to all subordinate boards and officers: and in 1799 we find the board of revenue in a report preparatory to the introduction of the system of Bengal, affirming for the government, and denying to the inhabitants, all property in the soil; and unfolding a slight glance at the difficulties with which they were surrounded in the remarkable phraseology of "proprietary indefeasible fees of hereditary cultivators."

Early in 1800 orders were issued to the collectors to make the requisite preparatory arrangements for dividing the country into estates, for the purpose of being *sold* to persons to be denominated Zemindars: and some of these officers had the courage to plead anew the cause of the actual proprietors. The collector of Dindegul observes that the sale will be "generally impracticable from the poverty of the people, who were expected to become the purchasers, as well as from the objection these very people would have to purchase a proprietary right in what prescription had already made their own."

"The Nautumcars," a local name for the same description of persons, "certainly consider the farm they cultivate *as their own property*, and no government, save the Mussulman, appears to have considered the soil as its own. In forming the present benevolent system this solitary precedent surely will not operate as an example to act upon; but where no written document is found, what has been known as usage will be established as law; this would confirm the

prescriptive right of many industrious natives to the lands they have long occupied, and be the certain means of making them comprehend whence their advantages are derived."

The collectors of Tinnevelly, and of Salem and Coimbatoor, suggested objections of a similar tendency; and the very collector of the jageer, who had formerly proposed the disfranchisement of the *Meerassdars* of Trimashy, appears to have been now satisfied "that the *Meerassdar is the actual proprietor,*" and the tenant a very distinct person, the *Pyacaree,* who cultivates the lands of another on condition of receiving a portion of the produce. "If," says the collector, "he *(the Meerassdar)* had only a right to cultivate, or only a preference in the cultivation, it would be equally to him as to the *Pyacaree* a thing of no real value; whereas the Meerassdar sells, mortgages, gives away, or leaves his lands to his posterity, which the other cannot." "Meerass then," he adds in another place, "is the ultimate and the largest interest that they can covet or have in their lands; and if it bears a construction different from that which I have always given it, and which it has in the *acceptation of the natives themselves,* I can only hope to be excused from having mistaken the rights of government by the beneficial effects of the illusion." Under a government certainly of as much purity as ever directed the affairs of any state, it is truly wonderful that no effect whatever should have been produced by these powerful and eloquent appeals. In this latter report, however, and in several others on the condition of the company's jageer, I recognize the state of things which has already been noticed in Canara: the occupants clung to the property as long as any proprietor's share was left; and at length, strange as it may appear, the *Pyacarees* are stated generally to have received a larger share of the crop in return for their labour than the proprietors who cultivated their own lands. The latter were probably capable of bearing large exactions, rather than desert their patrimony: they discovered the distinction, and began to disavow their *Meerass* or *Canyatchee,* and to enter themselves on the books as *Pyacarees* who are free to labour where they please. Property, it would seem, had been absorbed in the exactions of the government:

and under a continuance of the same order of things, there can be no doubt that the rights which were systematically denied would speedily have been forgotten.

The system however proceeded; the lands were sold in several districts; and on the first January 1802, laws and regulations were enacted for protecting the property thus created.

Suspicions however arose, and began to acquire strength, that there had been some error in these proceedings; and in 1805—6, Lord William Bentinck, then governor of Madras, on whose mind these suspicions had made a deep impression, prepared and circulated a set of queries for the purpose of obtaining farther information for his guidance in the settlement of those districts not yet alienated; the result of this investigation, afterwards recorded on the proceedings of the government, strengthened the opinions which he had previously formed, and induced his lordship to make a journey to Calcutta for the express purpose of obtaining the sanction of the Governor General for suspending the farther operation of the Zemindary system. The answers to these queries, and the spontaneous reports of collectors about this period of time, will enable us to discuss the condition of the remaining provinces which we had proposed to examine.

Passing south to regions somewhat more remote from the first impressions of the northern conquerors, we arrive at Trichinopoly and Tanjore, sometimes united and sometimes separate: the latter principality containing the town of Combaconum, the ancient capital of the *Chola* race, one of the oldest Hindoo dynasties of which any traces have hitherto been discovered in these lower regions, and from which the whole coast in later times has taken its name. Tanjore in 1675 fell into the hands of Eccojee, the brother of the celebrated founder of the Mahratta empire. Throughout all its revolutions this country had remained under a Hindoo government, with the exception of the very short period that it was possessed by Mohammed Aly; and it is of no material importance to our present purpose to trace the ancient history of its private landed proprietors, since the whole province continues at this

day to exhibit every character that constitutes a highly respectable proprietary right. I cannot describe the state of landed property in this part of India more forcibly than by adopting the very words of a late report. "Without entering on the question of who is proprietor of the soil, I will content myself with stating that immemorial usage has established both in Tanjore and Trichinopoly, that the occupants, whether distinguished by the names of Meerassdar or Mahajanums, have the right of selling, bestowing, devising and bequeathing their lands in the manner which to them is most agreeable. Whether this right was granted originally by the ancient constitution of the country, appears to me not worth considering at the present day. I think it a fortunate circumstance that the right does at present exist, whether it originated in encroachment on the sovereign's right, in a wise and formal abrogation of those rights, or in institutions coeval with the remotest antiquity. It is fortunate that at a moment when we are consulting on the means of establishing the property and welfare of the numerous people of these provinces, we find the lands of the country in the hands of men who feel and understand the full rights and advantages of possession, who have enjoyed them in a degree more or less secure before the British name was known in India, and who, in consequence of them, have rendered populous and fertile the extensive provinces of Tanjore and Trichinopoly.

The class of proprietors to whom I allude are not to be considered as the actual cultivators of the soil; the far greater mass of them till their lands by the means of hired labourers, or by a class of people termed *Pullers*, who are of the lowest cast, and who may be considered as the slaves of the soil. The landed property of these provinces is divided and subdivided in every possible degree; there are proprietors of four thousand acres, of four hundred acres, of forty acres, and of one acre.

The occupants and Meerassdars above described are far from being mere nominal proprietors; they have a clear, ample, and unquestioned proprietor's share, amounting, according to the same authority, to the respectable proportion of twenty-seven per cent. of the gross produce, a larger rent than remained to an English

proprietor of land who had tithes and land-tax to pay, even before the establishment of the income-tax. The report of a most respectable committee on the affairs of Tanjore in 1807, gives a very clear detail of the distribution of property over the whole province, which consists of five thousand eight hundred and seventy-three townships: of this number there are one thousand eight hundred and seven townships, in which one individual holds the whole undivided lands: there are two thousand two hundred and two, of which the property in each is held by several persons having their distinct and separate estates: and one thousand seven hundred and seventy-four, the landed property in which is held in common by all the *Meerassdars* or proprietors of village, who contribute labour and receive a share of the crop in the proportion of their respective properties. The same report states that the number of Meerassdars who are

Bramins is computed to be	17,149
Of Soodras, including natives Christians, ...	42,442
Mohammedans, ...	1,457
	62,048

The fact of the existence of so considerable a number of Mohammedan proprietors is a curious and conclusive proof of the unrestrained facility of alienating landed property in Tanjore; but I do not observe the rate or number of years' purchase at which land is usually sold, to be stated in any of the reports which I have perused.

Passing south to the provinces of Madura and Tinnevelly, portions of the ancient Pandyan region; the collector of the former, with an able and honest simplicty which is altogether admirable, enumerates among the impediments to the free sale of landed property "the regulations of government declaring the property of the soil to be vested solely in them:" previously to that regulation, he intimates that "this was not the case, the inhabitants considering the ground attached to their villages, their own property, and the Circar entitled to receive the tax, should it be brought under cultivation." Land however continues to be sold and mortgaged in

that province, but I cannot extract the number of years purchase from the rates described by the collector, from not being sufficiently acquainted with the local coins and standards of measure which are peculiar to that province.

The report to which I have before adverted, of a respectable member of the Board of Revenue of Madras, who made a personal inspection of Tinnevelly in 1807, informs us, that *Cawnee Autchee* or Meerass (the thing as well as the word), is familiarly known throughout the province: and discusses with great ability the question of the property in uncultivated land, which he determines to be the right of the Meerassdars of the village, or, in other words, the corporate property of the township, to the exclusion of the claim of the newly invented personage named Zemindar or Mootadar, already introduced into some provinces under the government of Fort St. George. With regard to the actual limits of the individual Meerass, "each Meerassdar considers himself proprietor (I here, says the reporter, use the word proprietor in a limited sense to describe the Meerassee property) of all the land of his Meerass, whether it be cultivated or not." If from misfortune or other circumstances another person cultivates any part of his land, he is entitled to receive a share of the gross produce, amounting to about 13½ per cent. which in that province is called *Swamy bhogum*, literally lord's (landlord's) share. On the banks of the never-failing Tumbrapurny river, a former Hindoo prince, in the excess of his piety, dispossessed and expatriated the former proprietors, to make way for a colony of northern Bramins, whose posterity, or that of subsequent purchasers, hold these lands, on more favourable terms, but to what extent we are not exactly informed. These lands, as well as the others, are every where throughout the province a transferable and saleable property: the lowest commutation for a proprietor's share, as may be observed, being only about one half the value of similar property in Tanjore, and of course when managed by the proprietor himself it is considerably greater. But Madura and Tinnevelly, exclusively of numerous revolutions under the Hindoo government, had been subjected to a scourge which Tanjore had escaped during a tedious tyranny of

upwards of sixty years of direct Mohammedan rule; in which it can only be attributed to the plain fact of their never having been completely subdued, that the existence of a landlord's share has survived to the present time.

For the satisfaction of those who may desire to inspect the forms of alienation, an abstract is subjoined (preserving the verbal translation of what may be considered as the enacting clauses) of two documents from the Mackenzie collection, one of them dated before, and the other after the conquest of the lower countries by the Rajas of Vijeyanuggur, for the purpose of exhibiting the practice which prevailed in the sale of private landed property north of the Coleroon at those respective periods; and a translation is added of a bill of sale for the alienation of landed property, according to the forms of the present day to the south of that river. Specimens are not offered of similar instruments in Canara and Malabar, because their existence is notorious and acknowledged.

We have now passed over the tract in which I had proposed to trace, and, as I hope, have proved to the satisfaction of every impartial mind, the positive and unquestionable existence of private landed property in India. After proving its distinct recognition in the ancient Sasters or sacred laws of the Hindoos, we have clearly deduced its derivation from that source, and its present existence in a perfect form in the provinces of Canara and Malabar, and the principalities of Coorg and Travancore, which had longest evaded the sword of the northern barbarians: we have found it preserved in considerable purity under Hindoo dynasties, and comparatively few revolutions in Tanjore until the present day: we have traced its existence entire, but its value diminished, in Madura and Tinnevelly, which had experienced numerous revolutions, and had long groaned under the Mohammedan yoke. In the provinces adjacent and west of Madras, which had sustained the close and immediate gripe of these invaders, we have shown by ancient documents its immemorial existence in former times, and even at the present day the right, in quality, clear and distinct, but in value approaching to extinction: and we have observed in the latter years of the dynasty of Hyder,

the perfect landed property of Canara approaching the same unhappy state in which the proprietor from fear disowned his property, and a small interval remained before its very existence would be buried in oblivion. The enquiry has led us over a large portion of the provinces subject to the government of Fort St. George, and a necessity has occurred for touching lightly on its territorial policy. Before this branch of the subject be dismissed, it may be useful to take a rapid glance, imperfect from the nature of my materials, over the provinces subject to Bengal, whence this policy has been received.

It is to be regretted that the long and uninterrupted subjugation of Hindoostan by Mohammedan princes, had so far obliterated the best characters of the ancient Hindoo constitution, as to present to the first English observers nothing but Mohammedan institutions and edicts, as the earliest documents which it was necessary to consider. Institutions derived from the best practices of a code which inculcates war against infidels as a religious duty, condemns the women and children of the vanquished to slavery, and the men to death, and condescends to accept submission and the highest possible tribute as a merciful commutation for liberty and life, do not seem to be very proper objects of imitation for an English government.

But the examples already presented to the reader, of the circumstances which have accelerated the decay of landed property in the south, afford sufficient ground to conjecture that the same causes may have effected its entire extinction in many parts of Bengal. The political and official relations of the English Government were long and generally confined to intercourse with Mohammedan authorities; the few Hindoos of consequence with whom they communicated, were either usurpers or official servants brought up in the trammels of Mohammedan principles and forms, which had long superseded the ancient constitution of the country. Our first impressions and prejudices were received from these impure sources, and the ancient Hindoo law was concealed by an impenetrable veil which has not yet been entirely removed.

The perplexity (and, without meaning disrespect, it is not of small amount) which pervades the official discussions of those great

personages who established what is called the permanent settlement of Bengal, seems chiefly to have arisen from viewing the condition of the people through the medium of Mohammedan institutions. Although the royalties of the very ground on which these eminent men conducted this important controversy were granted by a Mohammedan prince, on the express condition that the English company should purchase the thirty eight villages of which the grant was composed, from the *owners* (not the owner), neither of these personages could perceive any claim to the property of the soil, excepting in the sovereign or the Zemindar; and both were agreed in recognizing the rights of the latter. It is really curious to observe the inextricable puzzle in which they are reciprocally involved by this admission. Sir John Shore observes that "it is equally a contradiction in terms to say that the property of the soil is vested in the Zemindar, and that we have a right to regulate the terms by which he is to let his lands to the Ryots, as it is to connect that avowal with discretionary and arbitrary claims." They had here discovered a proprietor, whom it was found necessary to deprive of the first characteristic of property, the right to manage it in his own way (a ward of chancery, or a proprietor under a statute of lunacy). Lord Cornwallis had observed that "the numerous prohibitory orders against the levying new taxes, accompanied with threats of fine and imprisonment for the disobedience of them, have proved ineffectual," but nevertheless thinks that the Zemindars must and can in future be restrained. His lordship, however, comforts himself by reflecting, that if they do levy new impositions, the rents will, in the end, thereby be lowered; because, "when the rent becomes so high as to be oppressive and intolerable to the Ryot (what inference does the reader expect?) he must at length desert the land!" the very land, the rents, taxes, or impositions on which the Zemindar ought to be punished for attempting to raise; and yet in a document selected, strangely enough, as an Appendix to such a minute, a collector, after giving an account of certain *Baboos* who had obtained by fraud and misrepresentation a grant of some villages, and now, in the expectation of the proprietary right in land being

vested in Zemindars, claimed to be considered in that capacity, goes on to state that this property was in the same expectation claimed by the heads of villages as *Mâlicks* or *proprietors*. These unfortunate men are described to have arrived at a state nearly resembling that which has already been noticed in Canara and Arcot; they had been compelled to disavow their property, and had placed their villages under the protection of a Zemindar, as being more able to screen them from the vexatious interference of the provincial officer Hâkim, "These persons (continues the collector) have occasionally disposed of the whole or a part of such villages, and the *purchasers* claim to be *Mâlicks* or *proprietors*. Some of these purchasers of land have sold their land to others, and it is possible that such sales may have been variously multiplied. The *old proprietors* again represent, that the sale was made to answer oppressive exactions, and ought to be declared void." The collector concludes with the following remarkable words; "In truth, gentlemen, these old *Mâlicks* have urged their claims with much anxiety and importunity; they absolutely refused to enter into any engagements but as Mâlicks (proprietors), declaring they would rather lose their lives than acquiesce in a relinquishment of their hereditary rights." I have said that the perplexity observable on this controversy is curious; and I will now add that it is astonishing, because the simple recognition of private property in land, so broadly announced and so unquestionably proved by this contest of the new and the old proprietors, who reciprocally admitted the fact of repeated sale, would have solved every difficulty, and served as a guide through the mighty maze in which these noble personages continued to involve themselves and their readers to the end of the controversy.

In the appendix to a minute by Sir John Shore, the date of which I cannot recover, two very singular documents are exhibited: one, the extract of a report (apparently from the Board of Revenue), which, after conclusively proving that the Zemindar is a mere official servant, states that "the Utlumgha Sunnud is all sufficient to establish, beyond controversy, that the property of land in these countries is exclusively vested in the crown;" and the other, a

Mohammedan law authority which establishes, beyond controversy, that the fact is not so. The distinction has already been noticed between the practice of Mohammedan rulers towards conquered infidels, and a country inhabited by the faithful: and the document which I now submit to the reader is a curious and important refutation of the doctrine of European travellers already alluded to, which denies the existence of private property in land, in the Mohammedan countries of the east. It is entitled, Extract from the Mohammedan Law on Landed Property. Verbal translation from the Arabic.

"In the book *Khazanatul Rewayah* it is written," "Tributary land is held in full property by its owner; and so is tithed (or decimated) land: a sale, a gift, or a charitable devise of it is lawful, and it will be inherited like other property. Thus *in the Book Mohodeyah*, in a passage quoted from *Almohit* (a work of the lawyer Mohammed), lands are held in full property by them, they shall inherit those lands, and shall pay the tribute out of them;" and in the book *Alkhanujah* it is written, "The sovereign has a right of property in the tribute or rent;" so in the book *Modena Sharhi Baaz* it is written, "A town and the district annexed to it shall not be sold by the sovereign, if it pay tribute or rent to the crown, nor shall it be given nor inherited, nor shall it belong to the royal domains; for inheritance is annexed to property, and he who has the tribute from the land has no property in the land: hence it is known that *the king has no right to grant the land which pays tribute, but that he may grant the tribute arising from it.*"

Under the only doctrine which was recognized in this discussion, the proof, and it is abundantly satisfactory, that the land is not the king's, leaves no alternative but to consign it to the Zemindar. The author of "The principles of Asiatic Monarchies," argues with great force, that the claim of the Zemindar being limited to one tenth of the sum collected for the king, it is absurd to distinguish as proprietor the person entitled to one tenth, while the remaining nine-tenths are called a duty, a tax, a quit rent. The argument is conclusive: but the ingenious author has not unfolded the whole of the absurdity. Under the utmost limit of exaction recorded in

the modern history of India, the sovereign has received one half of the crop. The real share of the crop, which, even under such exaction, would go to this redoubtable proprietor, would be one twentieth, or five per cent.; according to the laws of Menu and the other Sasters, his share would be one sixtieth, or one and two thirds per cent.; and this is the thing which a British government has named *proprietor of the land.* In the controversy to determine whether the sovereign or the Zemindar were the proprietor, each party appears to me to have reciprocally refuted the proposition of his adversary, without establishing his own: they have severally proved that neither the king nor the Zemindar is the proprietor.

At a very early period of the company's government in Bengal, Mr. Verelst, when charged with the collections of the province of Chittagong, looking at the condition of the people, with that sound plain common sense which distinguished his character, and not through the medium of Mohammedan institutions, confirmed the rights which he found the people actually to possess, of transmitting and alienating their landed property by inheritance, mortgage, sale, or gift. The recognition of that right (in the words of the judge and magistrate of that province in 1801) "has fixed a value on real property here which is not attached to it in other parts of Bengal, and has given existence to a numerous body of land-holders unknown elsewhere," who are afterwards stated to consider themselves, and to be recognized by the court, as "*the actual proprietors of the soil.*" In a subsequent passage we find these remarkable words: "If comfortable habitations and a numerous and healthy progeny be proofs of a happy condition, the Ryots in this province enjoy it in a high degree; and the small estates in this division have contributed to increase population, and to rear a temperate and robust species of man fit for every sort of labour." The opinions received on the same occasion from other provinces are uniform in stating that the condition of the cultivators has been meliorated (slender melioration if they ought to be the proprietors:) by the establishment of courts to which they can apply for redress against great oppressions: but I find nothing from the Zemindaries resembling

or approaching the delightful picture which has been drawn of the condition of these *rightful proprietors* confirmed in the possession of their estates.

About the same time that Mr. Verelst confirmed in Chittagong the rights which he found established, Bulwunt Sing, the Zemindar of Benares, then subject to the Vizier of Oude, found the same rights in that province; but instead of confirming, he invaded and usurped them: forcibly subverting the rights of the landholders, he reduced them from the condition of proprietors to that of mere tenants. This usurpation continued until the system of considering the Zemindar as the proprietor of the soil had been for some time established, and the courts of the English government had been erected at Benares. The usurpation had not been of sufficient standing to obliterate the knowledge and the remembrance of the ancient proprietary rights; and, after due investigation, the present Zemindar was prevailed on by the British government formally to recognize these rights, and they have accordingly been restored.

I observe that a similar question was depending before the provincial court 1801, between the Zemindars and Muckuddums (heads of villages), in Bhaugulpore; but I am not informed whether any other attempts have been made by the inhabitants of Bengal for the recovery of their ancient rights. The reader will probably be of opinion that enough has been adduced to establish the existence in that country of the same rights, and the traces of a gradation similar to that of the south, by which they have been partially obliterated, or entirely destroyed. Happily, in a large portion of the territory subject to the government of Fort St. George, the question is still open to consideration: the rights which still exist are ripe for confirmation; and those which have been partially or wholly usurped or destroyed may yet be restored. Instead of creating, by the most absurd of all misnomers, a few nominal proprietors, who, without farther usurpation, can by no possible exertion of power be rendered either more or less than farmers or contractors of revenue; the British government may still restore property and its concomitant blessings to the great mass of its subjects. In this portion of

India its ancient constitution may yet be revived. A company of merchants may confer a more solid benefit than was announced in the splendid proclamation of the Roman consul to the cities of Greece; freedom, in its most rational, safe, and acceptable form, may be proclaimed to the little republics of India, by declaring the fixed and moderate revenue that each shall pay, and leaving the interior distribution to themselves, interfering only on appeal from their own little magistrate, either in matters of revenue, or of landed, or of personal property. Under such a system, varying only from their ancient constitution, in substituting for the tax on industry, involved in the exaction of a proportion of the crop, a fixed money payment, which is also of great antiquity in India; the waste would quickly be covered with luxuriant crops, because every extension of culture would be a clear profit to the proprietor; and without running into the wild fancies of a golden age, the mass of the people would be interested in the permanency of a government which had essentially improved their condition, and, with the religion and laws of their fathers, had revived their long forgotten proprietary rights. But the British government will only deceive itself, and harass the people, in the vain attempt to improve their condition by mere theories and innovations, while they continue to exact the whole landlord's rent, as is done in some districts, and the greater part of it as in others: they must not expect to create property in land by a certain number of magical words inscribed on paper or parchment: the only operation by which property in land can be restored is simply to leave to the former that which constitutes property, a rent, a proprietors share; and this may be effected without any material diminution of that revenue which the exigencies of the time so imperiously demand, by conceding to the proprietor the abatement which has, in all cases, been made to the newly-invented Zemindar.

In adverting, however, to a *fixed* revenue, I bend to received opinions without absolutely acquiescing in them. With the most unfeigned deference for the superior talents and knowledge of some of those great men who applaud the *permanent* and *unalterable landed assessment* of Bengal, I must still be permitted to doubt the

expediency of the irrevocable pledge which has been given. It is not intended here to examine whether those provinces have flourished in consequence of the present system, or in spite of it. I admit, without reserve, that almost anything was better than the incessant fluctuation of our former plans; but there is an infinite distance between condemning capricious innovation, and approving that political nullity, an irrevocable law. To terminate abuses by shutting out improvement; to render it impossible for the land tax to increase, and probable, nay certain, that it will diminish; is the system of revenue which has succeeded to our former errors. An English chancellor of the exchequer who should propose to pledge the national faith to an unalterable tax, might captivate the multitude, but would be smiled at by the financiers of Europe: and yet principles do not alter in traversing the ocean. If the facility so confidently alleged by the authors of this plan, of raising in India the requisite revenue from other sources, had any real foundation, we should not now hear of the deficit of Indian revenue: and it may be permitted more than to doubt whether we should not at this day have witnessed lighter taxes and more ample revenue, if a less rash and ambitious haste for unattainable perfection had left improvement to be the offspring of knowledge, and the landlord's rent to have enriched the real proprietor of the soil, instead of pampering the hereditary farmer of revenue.

THE END.