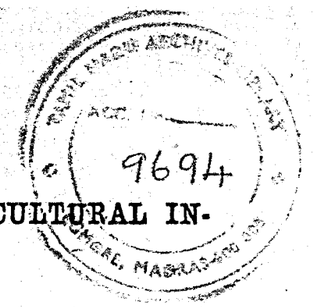
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# NOTE ON LAND TRANSFER AND AGRICULTURAL INDEBTEDNESS IN INDIA.

(Note.—The references to *Sel.* in the margin below are references to the 'Selections from Papers on Indebtedness and Land Transfer" printed for the Government of India Secretariat in 1894.)

1. The indebtedness of the land-holders in India and the consequent loss by them of their land have been frequently before the notice of the Government from early times. Proposals were made as early as 1820 under the auspices of Sir Thomas Munro and Mr David Hill for the protection of the Madras zamindars from the Civil Courts, and in 1843-44 the oppressions of the Bombay money-lenders formed the subject of a special correspondence. Omitting, however, all allusion to the discussions of the earlier period of our rule, to the special proposals made from time to time for the protection of limited classes of involved land-owners, and to the general schemes occasionally put forward for improving the material position of the people, reference may be made to the following occasions on which proposals for the protection of the landed classes from the effects of debt have been brought under the notice of the Government of India :—

Page 118, Vol. III, Arbuthnot's Life of Munro.

Page 280, Vol. III, Report of Deccan Riots Commission, 1876.

Page 63, Vol. II, ditto.

In 1859, Lord Stanley as Secretary of State made certain suggestions for protecting land in execution of Civil Courts' decrees, and these suggestions were discussed by the authorities in the North-Western Provinces.

Despatch No. 4 of 25th January 1859. (Home Department Selections CLV, 1879, page 1.)

In 1870, the Punjab Government forwarded certain correspondence relating to the sale of hereditary or joint acquired property in execution of decrees of Civil Courts, and the opportunity was taken by the Government of India to call for opinion from all Provinces as regards the working of the "mitigating" sections of the Code of Civil Procedure then in force.

Ditto, page 85.

In 1872-73, the Government of the North-Western Provinces undertook and subsequently abandoned the preparation of a bill for the relief of indebted landed estates in those provinces.

Deccan Riots Commission Report, Vol. II, page 217.

In 1872, Mr. Justice West, of the Bombay High Court, published a pamphlet entitled 'The Land and the Law in India' which attracted much attention. In 1874, Sir John Morris, the Chief Commissioner of the Central Provinces, submitted proposals by himself and other officers, in connection with Mr. West's pamphlet, for the restriction of the liability of land for debt.

Home Department Selections, CLV, page 327.

In 1875, agrarian riots in the Bombay Deccan led to the appointment of a Commission, on receipt of whose report a special Act was passed in 1879, by which the ordinary civil law in the Deccan Districts was in many respects amended in favour of the debtors.

II, Section 22.

In 1879-80, the Famine Commission, in addition to their other enquir investigated and reported on the desirability of protecting debtors by rest ing land transfer or other means.

Govern- tter No. 563, 5th August , Dec. 1891, and 11.) e 59.

In 1886, Mr. Thorburn, a Deputy Commissioner in the Punjab, wrote a bo on the indebtedness of the Mahomedans of the Province, and the Punj Government, taking up the subject at the instance of the Secretary of Sta reported in 1891 in favour of a Punjab Relief Act on the lines of the Decca measure.

r No. 915 S., 25th July 1888. Pros., Dec. , Nos. 1 to 24.)

In 1888, Sir A. Mackenzie, as Chief Commissioner of the Central Provinc commented on the increasing indebtedness of land-owners and tenants those Provinces, and pressed for changes in the civil law. The subje attracted attention in Parliament, and in a further report in 1892 the Ch Commissioner, Sir A. MacDonnell, declared himself ready to make propos for the protection of the tenant class. Definite proposals have since be received from Mr. Woodburn, the present Chief Commissioner.

ter No 17c, dated th September 92. (A, May 1893, os. 18 and 19.) l. page 105.

May 1891, Nos. 8 0.) A, June 1892, No. 14.) (B, Dec. 1892, Nos. 21 to 23.) (A, March 1894. No. 3.) A, June 1894, Nos. 25 and 26.) (A, April 1894, Nos. 6 to 16.) (A, Nov. 1893, Nos. 38 to 40.)

Since 1890 the matter has attracted notice in more than one Province. Burma, Agricultural Relief and Tenancy Bills were drafted in 1891, which la some restrictions on land transfer. In Ajmere the grain riots of 1891 elicit remarks from the local officers. In Bengal the transfers of tenant right we specially discussed between 1892 and 1894. In Assam the re-issue of Settlem Rules led to a re-opening of the subject of free transfer. In Coorg the Ch Commissioner lately suggested a modification of the prohibition of transfer a taching to certain lands. Proposed Tenancy legislation in Madras led in 1893 a discussion of the right of occupancy-tenants to transfer, and the possibil of restricting transfer was a point recently raised in connection with Reven Legislation in Berar.

2. Meantime local enquiries into the working of the Deccan Act of 187 having failed to elicit unanimous opinions, the Government of India in Decem ber 1891 had appointed a Commission to report on the working of that Act on the possibility of extending a similar measure to other Provinces. Th Government of India in the Home Department have now (*i*) incorporate (with modifications) in an amending Bill still before Council the change in the Deccan Act proposed by this Commission, and (*ii*) consulted Loc Governments as regards certain suggested alterations in the Usury ar Contract laws. The Secretary of State has also been addressed as fo lows :—

Despatch No. 21, ated 2nd May 1894. A, Dec. 1894, Nos. 43 to 46.) *Sel.* page 148.

> " Such legislation, however, will, in our opinion, only partially meet the difficulties co nected with the general problem of agricultural indebtedness for which remedies of an entire different kind seem to be indispensable. Among these we are disposed to include measu for further restricting the right of land transfer. But this part of the subject will be carefu considered in our Revenue and Agricultural Department, and we will address you separate concerning it when we have fuller information before us."

It is mainly to supply the information above alluded to that the followin note has, under the instructions of the Honourable Sir A. MacDonnell, beer written.

The note, while mentioning, and to some extent detailing, the other reme dies proposed, deals mainly with the suggested restrictions on the transfer o land, and with this object special sections have been devoted to the investiga



tion of the present law and custom of land transfer, and to a review of the information available as to the extent and results of the transfers effected in each semi-i nce. The main part of the note relates to the transfers of proprietary or holde roprietary right, including that of the rights of occupants and land- the tr s in ryotwari areas, but a further section has been added which treats of The n ansfer of tenant right, a subject of much importance in certain Provinces. Gove ote has been compiled entirely from information already available in the has nment of India records and without reference to Local Governments. It defic moreover been written more or less against time, and it is hoped that the exce encies and inaccuracies which occur in it may on this account be

# I.—LAW AND CUSTOM OF LAND-TRANSFER.

## Land Transfer in the period preceding British rule.

3. Transfers of landed property in India are either (1) voluntary, compulsory at the instance of a private creditor, or (3) compulsory at the instance of the Government.

### *Private Transfer.*

As regards the right of the proprietor or of the occupant holding d from Government to sell or mortgage land at his own instance and for his convenience, the principles prevalent under Native rule differed largely those now in force. It is no doubt a mistake to suppose that in the p immediately preceding the establishment of British authority there was generally-accepted rule against the voluntary transfer of immovable prop The Native law on the subject was investigated, and a précis of the approp Hindu and Mahomedan texts was compiled by the Deccan Riots Commi of 1876, from which it was concluded that sales and mortgage of land familiar to both Hindu and Mahomedan law. And there is at the same sufficient evidence to show that such transfers were practised and recogn in various parts of the country. The Government of Madras, for instance, w examining in 1882 the extent of proprietary right enjoyed by the occupant land in that Presidency, found cause to adopt the conclusion that such oc pants had from time immemorial been "able to mortgage, sell, devise or oth wise alienate the land." So also as regards the large zamindars of Bengal, John Shore in 1789 recorded that "the privilege of disposing of the land sale or mortgage was exercised by the zamindars before we acquired the Div ny." In Ajmere too, and apparently also in North Berar and parts of the Cent Provinces, the right of transfer was held by cultivators who sank wells or c structed embankments.* With reference to the more recently acquired Punj we find cases such as those of the well-lands of the Dera Ismail Khan Distr where the mortgages are reported to "date back to pre-annexation days," and have the authority of the late Lieutenant-Governor, Sir J. Lyall, for the st ment that "full individual proprietary right with power to sell or mortg was well established in many parts of the Punjab before the advent of Brit rule." There can be little doubt, therefore, that voluntary transfers are altogether the product of British rule.

Report, Vol. III, pages 67-75.

Report, Vol. I, para. 106, page 92.

Government Order No. 1008 (Revenue), dated the 21st September 1882. (Misc. Pros., May 1883, Nos. 1 to 3.)

Mr. LaTouche's Gazetteer of Ajmere, 1875, p. 19, and Lyall's Gazetteer of Berar, p. 93.

Para. 370 of minute of June 1789, page 159, Vol. I, Fifth Report (Madras edition, 1883).

Settlement Report of Dera Ismail Khan District, 1872—9, by Mr. St. G. Tucker, para. 704. See also Captain Wace's Hazara Settlement Report, para. 40 (page 227, Vol. I, Punjab Customary Law.)

Para. 5 of Punjab letter to Government of India No. 231 of 7th November 1888. (A, May 1891, Nos. 1-8.) *Sel.* page 43.

4. At the same time the exercise of the right to transfer was under Nati rule exceedingly restricted, and in the main from one or both of two causes.

In the first place, the system of joint ownership was in the pre-annex tion period far more powerful than it has since become, and so long as proper is owned in common by groups of individuals, either as a family or as a villa community, the difficulty of effecting a transfer of the property is mu

* See, in addition to the papers mentioned on the margin, the quotation from Mr. Fuller given in para. 4 *infra*.



enhanced. The free transfers in the Punjab above referred to are stated by Sir James Lyall to have been more especially prevalent in the south-west of the Province, "where the village-proprietary form of property which was the great bar to alienation by individuals in the past did not exist," and they were much less common in the tracts where village property was the rule. In other parts of India where the village form of property was unknown, the influence of the system of joint family property frequently took its place, and, as remarked by Mr. W. G. Pedder, C. S., in a pamphlet quoted by the Deccan Riots Commission of 1876, the practice of the country achieved the reconciliation of the two conflicting Hindu principles of "family or hereditary responsibility for debt" and "the inalienability of family property, especially of land." Even at the present day the alienation of ancestral property, whether still jointly held or not, is opposed to the feelings of the people in most parts of India, and the sentiment was naturally far more pronounced in the period of Native rule.

Report, Vol. II, p. 139.

See *e.g.*, page 38 of Rattigan's Digest of Civil Law for the Punjab (1893).

A second and still more potent impediment in the way of free transfer in pre-British days was the practical absence of any valuable estate to transfer. All or nearly all the profits of immovable property went to the State; the ownership of land was a burden which few would voluntarily undertake, and under the circumstances it is not surprising that there was no competition for the possession of landed property. In 1818 the Board of Revenue in Madras concluded an enquiry into the status of the occupants of the land in that Presidency by holding that "the value of the ryot's right varies with the weight of the public assessment of the land," and that while on the West Coast, and to a less degree in the Tamil country, the right had some value, the ryots in those large areas which had been long under Mahomedan rule did not "appear to possess any saleable right in the soil." Under Mahratta rule in Jhansi, "land," wrote the Government of the North-Western Provinces in 1887, "was not a marketable commodity and sales were unknown." "The State," as was noted by the Financial Commissioner of the Punjab in 1869, "absorbed the proprietors' rental, and the great object was to retain hands to cultivate the land, which, under such conditions, was not a commodity that the possessors of capital desired to purchase." "Under Sikh rule," says Mr. Purser in his report on the Jullunder settlement, "the agriculturist had to pay away all the produce of his land that remained after defraying the cost of cultivation. It was therefore practically impossible for him to borrow on the security of his land." "The right of the husbandman," according to Mr. Gordon Walker, Settlement Officer of Ludhiana, "had certainly no market value, and a transfer by him for consideration was not possible." "It may be wrong," wrote Mr. R. M. Dane, Deputy Commissioner of Hoshiarpur, in 1889, "to say that the Government has conferred on landed proprietors in the Punjab the right of alienation. It cannot be wrong to say that Government has made the land a thing of value and an object of desire to capitalists, and has thereby created the agrarian question." We might in fact conclude with Mr. Justice Baden-Powell, in respect not only of the Punjab but also of the greater part of the rest of India, that "it is perfectly true, as pointed out by Sir James Lyall, that it is an error to attribute the existence of alienability to our Government or our law; but it is nevertheless true that it has arisen under our law, because until land is rendered a secure property and valuable in proportion, its theoretical alienability does not render it sought after by the 'buniya' as an investment."

Progress of the Madras Presidency by S. Srinivasa Raghavaiyangar, C.I.E. (1893), page 223.

N.-W. P. letter No. 1385, dated 11th October 1887.

Letter No. 874 of 4th November 1869 from Secretary to Fincl. Commr. to Govt., Punjab, (Selections from Records, Home Dept, No. CLV, page 104.). Para. 32.

Report, para. 194.

Letter No. 384 of 29th April 1889, encl. in Punjab Govt., No. 563-S., dated 25th Aug. 1891. (A Pros., Dec. 1891, Nos. 10 and 11 *Sel.* page 59.)

See also Wace's Hazara Settlement Report, para. 42, and para. 18 of Mr. Justice Melvill's Memo. of 1872 (page 12. Punjab Government Selections, 1876, No. XIII).

5. The transfer of land, therefore, under previous Native rule was for one reason or the other almost unknown. Even when practised it was subject to

various restrictions and could not be made the subject of speculation like movable property. The ruling power was interested for fiscal reasons in deciding who should be responsible for the land revenue, and in many cases it was also on the look-out to exact a fine on every transfer effected. It was necessary, therefore, in most instances to procure the sanction of the ruling power. Either official permission had to be formally obtained as, for example, is stated to have been the case in Berar and Coorg, or a fresh certificate of title had to be taken out, as in the instance of the Bengal zamindars. Where the Government was strong and exacting, as under the Mahrattas, this formal sanction was indispensable: where it was weak, as under the late Moghals and in outlying tracts, sanction was often dispensed with so long as the ruler had cognizance of the transfer. When an individual engaged for the revenue of a village or tract, he would be allowed, by sanction or sufferance, to alienate his obligations, and as such individuals in times of disturbance gradually assimilated their status to that of the proprietary zamindars, the right to alienate the status would follow on the same terms as before; but, as stated by Mr. Bird in 1832 with reference to the North-Western Provinces, "the hereditary transferable right to engage for the revenue" remained theoretically "unknown to the preceding rulers of India," and this certainly appears to have been the fact in cases of revenue engagements in the Central Provinces. Such transfers as were allowed either in these cases, or in the case of cultivating occupants, were, as a general rule, subject to some kind of sanction on the part of the ruling power.

Lyall's Berar Gazetteer, 1870, page 93. Rice's Coorg and Mysore Gazetteer, Vol. III, page 314. Hunter's Bengal Manuscript Records, 1894, page 36.

Minute, dated 25th Sept. 1832, page 441. N.-W. P. Revenue Selections, 1822-1833 (published 1872).

See pages 33-4 of Mr. Fuller's Review of Progress in the Central Provinces (1892).

6. We may conclude, therefore, that voluntary sale was under Native rule very rare, and that, when permitted, it was subject to restrictions of a more or less discouraging nature. As Mr. Justice Field has said, "before the period of British Government alienability was not an ordinary incident of immoveable property in India," and it may be taken as generally correct to say that the sale or mortgage of such property with the object of raising money was, if not practically unknown, yet exceedingly uncommon under Native rule.

Digest of the Law of Landlord and Tenant in Bengal, 1879, page 146.

*Transfer for debt by order of Court.*

7. If this be the case with voluntary transfer, it may be inferred that involuntary transfer to satisfy the claims of debtors was also in opposition to the feelings and practice of the country.

As regards the written law on the subject, there was in 1873—6 some divergence of opinion; Sir Charles Turner holding that "the sale of land for the satisfaction of debt is not opposed to the spirit of Hindu or Mahomedan law," while Sir R. West upheld that "none of the Native law books contemplate such a mode of redress as available to the creditor." When transfer of all kinds was forbidden as in the case of ancestral family property, there was, as might be expected, no liability for debt; this is expressly presumed by the Court of Directors in a despatch of 4th August 1854, and Sir Donald MacLeod Lieutenant-Governor of the Punjab, went so far as to lay it down as "beyond a doubt that under no Native rule has the forced sale of hereditary land for debt been ever recognized." As regards property of which the transfer in other respects was permitted, we find authorities, such as Mr. J. W. Neill, Commissioner of Jubbulpur, maintaining that such property was also in all cases liable for the discharge of debts, but the right and the liability did not, so far as the evidence before us would show, by any means always go together. In the Saugor and Narbada territories, for instance, we are distinctly informed that "the

See page 256-7, Vol. III, Report of Deccan Riots Commission, 1876.

Quoted on page 174, Vol. II. Report of Deccan Riots Commission, 1876.

Panjab Govt Selns. No. XIII, 1876.

Note dated Febrnary 1889, enclosed in Central Provinces letter No. 1466S.—212, dated 11th November 1889 to the Government of India. Report by Captain Turner, dated 7th October 1854, *Sel.* page 88.



malguzar could not sell the land in liquidation of debt, but he enjoyed otherwise a heritable and transferable right."

15, Central Provinces Settlement Code, 1863.

As regards the Deccan, where the *mirás* or occupancy-lands were sometimes mortgaged so far as the crop was concerned, the Commission of 1876 states, without exception, that "immovable property was not sold for debt;" and Captain Wingate unreservedly declares that in that tract the creditor "had no means of compulsion at command." "Of 'attachment in execution' of a debtor's land," according to Sir Raymond West, under either the Mahratta or the Mysore Government, "there is no trace."

Report, Vol. I, page 2, para. 41. Letter No. 319, dated 24th September 1852, quoted at page 87, Vol. II, Deccan Riots Commission, Report, 1876. Ditto, Vol. III, page 258. See page 169, Vol. II, Report of Deccan Riots Commission, 1876.

Sir Charles Bernard, as Commissioner of Nagpur, writing in 1871, said—"I believe it must be conceded that the law of land sale (I mean the law whereby land can be sold in execution for money debts) is not indigenous to this part of the country": and indeed the same might be said for practically every district in India. Loans were thus rarely, if ever, secured on the land, and as regards other forms of debt, we can have little hesitation in agreeing with the belief expressed in 1852 by Captain Wingate, Revenue Survey Commissioner in Bombay, that "the compulsory sale of land by civil process in payment of debt not secured upon the land by mortgage or otherwise is,"—and we may add "always has been,"—"entirely opposed to Native law and usage throughout India."

Page 80, Vol. II, Report of Deccan Riots Commission, 1876.

*Transfer for arrears of revenue.*

8. Transfers for arrears of revenue have been common at all times, but without raising the whole intricate question of the history of proprietary rights in India, it may be stated as a general rule that, except where the Government of the time was exceptionally strong or the so-called proprietary right represented as yet little more than a right to collect revenue, the arbitrary transfer of land from one hand to another by the State for non-payment of revenue was a process not very largely resorted to.* The right of the State to transfer land in case of non-payment of revenue is still recognized, and though the procedure is now more carefully carried out and in most Provinces regarded as an ultimate resource, the principles followed in this respect are now very much as they were in the days preceding British rule.

9. Speaking, therefore, subject to the correction necessary for detached and purely local circumstances, we may conclude that under the ante-British rulers of India private property in land could at all times be transferred by the ruler for arrears of revenue; that transfers by the owner were very rarely effected, and then only with the consent of higher authority; and that compulsory sales for the satisfaction of creditors were practically unknown.

A similar state of affairs is found, though, as might be expected, in a somewhat modified form, in the territories of feudatory rulers in India at the present day.

* It was regularly practised in Cachar under the name of 'the law of Ghosawat' (Assam Land Revenue Report, 1877-78, para. 16), and was very common in Lower Bengal during the eighteenth century (Hunter's *Bengal Records*, Vol. i, page 34-5.)

## Land Transfer under contemporary Native Rule.

### *Private Transfer.*

10. The development of the right of voluntary transfer, which has taken place so rapidly in British territory, has progressed much more slowly in the area still under Native rule. On the one hand, we find that, while in British territory a fresh impetus is from time to time expressly given by legislation to the practice of free trade in land, in Native States the view that the land is the property of the ruler, which underlay much of the procedure of the last century, has as a rule been to some degree maintained, partly as a result of a more personal and conservative form of government, and partly in consequence of the sharp distinction usually drawn in Native territory between the land of which the revenue is alienated to subordinate Barons, and the land which is retained under the title of *khalsa* by the Chief of the State himself—a distinction which greatly strengthens the connection of the Chief with, and his power over, the land which he thus specifically retains. Moreover, while in most British provinces the percentage of the net assets taken as land revenue has been gradually reduced from the 90 per cent. commonly exacted at the end of the last century to some 50 per cent. or less, the proportion taken by Native Governments still frequently amounts to 90 per cent. and over, and very seldom falls to as low a figure as 50 per cent., so that the land in many States has no selling value and in practice cannot become the subject of transfer.

11. The information available in official documents regarding the present practice in respect of transfer is somewhat incomplete and indefinite, and we have in the main to rely on the data incidentally supplied by the reports on land revenue settlements, such as those recently carried out in Hyderabad, Rewa, Tonk, Meywar, Kot Patli, Dholpur, Bikanir, and Kashmir.

Famine Commission Report Appendix III, page 323.

From these and other sources it is evident that in many States rule and practice alike are specifically opposed to voluntary alienations of landed property. Mahadeo Wasadeo Barve, one of the members of the Famine Commission of 1879, after a tour in Central India, recorded a note, in which he commented on "the absence of anything like alienable interest in land." In reply to the same Commission Mr. Wingate stated that "sale of land was unknown in the Central India States." The little State of Narukot in Bombay has been cited by the Collector of Hyderabad (Sind) in recent correspondence as an instance of a State where "transferable occupancy rights have never been granted." Similarly, in parts of Tonk transfer is forbidden, and in Banswara "immemorial custom has refused its sanction to the sale of land by the cultivator, though there is no actual rule on the subject." As regards Indore, Colonel Malleson writes—"It has been stated, and I believe truly, that throughout Holkar's dominions no private individual possesses permanent heritable or alienable interests in land." And the same rule probably holds good in many other territories regarding which we have no complete information.

Famine Commission's Report, App. III, page 417. Para. 7, letter No. 4094 of 6th October 1892 to Commissioner in Sind. (*Sel.* page 143)

Tonk Settlement Report (1893), page 152.

Native States of India, page 197, note —quoted on page 232, Vol. I, Baden-Powell's Land Revenue Systems.

Report, App. III, page 348; see also Rajputana Gazetteer, page 283.

Rajputana Gazetteer, page 281.

Rajputana Gazetteer, page 116.

In some States the prohibition extends to sales only. Major Powlett, for instance, reported to the Famine Commission that in Bundi (Rajputana), though mortgage was allowed, sale was prohibited, and the same rule prevails in Dungapur (Rajputana).



12. Some States, without absolutely prohibiting transfer, maintain the old principle of confining the right to certain classes of land or of occupiers. In parts of Tonk, for instance, the *barani* lands alone are non-transferable. Similarly, in Rewa the existing custom, confirmed at the recent settlement, admitted of transfer in the case of those cultivators only who had effected improvements on the land, and from the practice prevalent in Ajmere in the early days of British occupation a similar custom is probably established in parts of Rajputana.

Tonk Settlement Report (1893), page 178.

Appendices A and B of Colonel Robertson's Note on the Rewa Settlement, dated 31st March 1890.

Mr. La Touche's Gazetteer of Ajmere, 1875, para. 77, page 27.

13. In most of the Feudatory States, however, it appears that transfer of land does to some degree take place, though either without full recognition on the part of the central authority, or subject to its express sanction. In some cases the exercise of the right is all but non-existent, as, for instance, in Bikanir, regarding which Mr. Fagan, C.S., the late Settlement Officer, writes—"As far as my experience goes, alienations, with the exception of the transfer of a field for temporary cultivation, are very rare, if not altogether unknown." So in Kotah "the cultivator cannot sell his land or mortgage it, though practically such transactions occasionally take place"; and in Bhartpur, where mortgages of land are said to be allowed, but "comparatively rare."

Rep. 1893, para. 57.

Fam. Commn.'s Rep., Appx. III, page 343. Raj. Gaz. (1879), page 156.

As to Kashmir, Mr. Lawrence, the Settlement Officer, reports that—

"Although many cases have come to light where land has been sold, the right to sell has never been recognized by the State or claimed by the cultivator."

Enclosures to Resident's letter No. 3568, dated 1st August 1894, to Government of India.

In Chamba and the Simla Hill States, the Punjab, again, where the right of the State to the ownership of the land is most strongly felt, the rulers "do not allow of alienation without permission and payment of a fee or *nazrana* to the Chief." and in Maler-Kotla the landholders had until recently no power to transfer without sanction.

Baden-Powell's Land Revenue Systems, Vol. I, page 232.

Then there are tracts, like the Kalsia State in the Punjab, the Kot Patli Pargana of Jeypur and parts of the Nizam's dominions, where the right of transfer seems to have been freely used, but not to have been expressly recognized by the State until very recently. This was the state of affairs in Mysore in 1878, when Mr. C. A. Elliott reported: "a custom has grown up (not, as far as I could learn, supported by legal authority) by which the ryot possesses a transferable interest in the land he cultivates." And finally there are some States, such as Dholpur, where the transfer of zemindaries is permitted on the payment of a small fee.*

Rep. by Mr. Tucker, C.S., on Kot Patli Sett., 1889, para. 37. Rules for Medak and Indore Dists., enc. in Redt.'s letter No. 183, 4th Sept. 1891. Mysore Fam. Rep., para 13. Dholpur Set. Rep. (1894), para. 20; see also page 260, Raj. Gaz. (1879), where it is said that mortgages in Dholpur are common, but sales almost unknown.

14. We discover, therefore, in contemporary Native rule every gradation in the exercise of the power of transfer by the holders of land. The innate tendency of a State is to restrict voluntary transfers to its smallest dimensions. "The customs and Native revenue systems of India," as Capt. Wingate, the Survey Commissioner of Bombay, stated some fifty years ago, "are averse to such transfers." But in proportion as the State develops its resources, lowers its assessments, or in other ways is influenced by British example, the power of transfer becomes gradually more and more pronounced, and the effect of a revenue settlement is often, as in the case of Kot Patli or Hyderabad, to stereotype the right which previously existed in a more or less indefinite or

Memo. dated 13th December 1888, Proceedings A Revenue, December 1891, Nos. 10 and 11.

Page 8 of Sir E. Buck's Note on the Bombay Settlement System, 1882. (Sir E. Buck's notes on Elasticity in Land Revenue Administration, page 10.)

*As regards the Punjab Plains States, Sirdar Gurdyal Singh, Deputy Commissioner, a relation of the Raja of Nabha, goes so far as to state that interest is not so high there as in British territory because of our "protectionist policy" (see enclosure to Punjab Government letter No. 563 of 25th August 1891, A Pros., December (1891, Nos, 10 and 11:) but it can scarcely be true that land in such States is more freely transferable than in British territory.

unrecognized form. It may be noted, however, that in very recent years the example of British India has led in some cases to greater caution in dealing with the powers of alienation. In Hyderabad, for instance, the Government of India took occasion to bring to the notice of the Nizam's Government the evils that had attended the exercise of such powers in British territory; in Bikanir, where the Settlement Officer suggested a very moderate scheme for granting in certain areas a right to alienate within the village, the Government of India expressed its aversion to the proposal; and in Kashmir, where a similar suggestion was made by the original Settlement Officer, Mr. Wingate, the scheme was upset by the Durbar at the instance of his successor, Mr. Lawrence.

Govt. of India, For. Dept., to the Res., Hyderabad, letter No. 4363 I., 27th October 1891, para. 5. (A Pros., Nov. 1891, No. 13.)

Govt. of India, For. Dept., to Agent, Rajputana, No. 2333 I., dated 4th August 1894, (B Pros., Aug. 1894, No. 11.)

From Res., Kashmir, to Gov. of India, For. Dept., No. 3568, dated 1st Aug. 1894.

*Transfer for debt by order of Court.*

15. With the development of the power of voluntary transfer has, as a general rule, developed also the liability of the land to be sold in satisfaction of debt, but the development of the liability has not usually kept pace with that of the right, and there are doubtless many cases, such as those quoted by Sir T. Hope in 1879 of Bhavnagar and Morvi, where land, though apparently transferable in other respects, was not liable for debt; or Hyderabad, where sale for debt was exceedingly rare; or Baroda, where the area necessary for subsistence was exempt from compulsory sale. We have unfortunately no very definite information on this point, but a knowledge of the old Native system and the experience of British India itself would lead us to suppose that where voluntary sales are not common sales at the instance of creditors must be exceedingly rare.

Speech in Legislative Council, 17th July 1879, page 158, Bombay Government Selections, New Series, CLVII (1882).

16. The arrangements for recovery of debt in Northern India are thus described in a communication of 1879 from Sirdar Amin Chand, a member of the Anjuman-i-Punjab:—

Home Department Proceedings Nos. 332—573, August 1882.

"In the dominions of Native Chiefs, those suits to which zemindars are a party go before special officers entrusted with the management of this department of the administration, who have the interest of the zemindar in view, at the same time taking care that the mahajan should have his due. After a full enquiry into the state of the defendant's household, the surplus assets are attached and assigned to the plaintiff at high prices: the disagreeable system of auction-sale is not resorted to, nor are costs of the repeated processes of execution incurred. The mahajans, in their turn, are shown the favour that, on the zemindar leaving his former mahajan and going to a new one, the latter is made to pay the former's dues."

And Sir A. Lyall wrote on the same subject in 1880:—

Despatch No. 38 Public, dated 8th June 1880, to Secretary of State on Mr. Caird's proposals. (Home Dept. Public Pros., June 1880, Nos. 43 to 45.)

"It is one of those popular mistakes which nothing but close enquiry will refute, to assume that in Native States the cultivator is independent of the money-lender, and that the latter infinitely prefers our system. The main cause of this mistake is that the latter does not acquire, or care to acquire, land in the States; but he is otherwise a very powerful and indispensable personage, the whole population, from prince to peasant, being in some States in his debt. When a tenant in a Native State gets into difficulties, a money-lender is not put to the trouble of a resort to the Civil Court, where he may be required to prove his claim. The usual practice is for the revenue collectors and the private creditor to take his case jointly in hand, and to settle in consultation how much each is to take of the crop, and how little can be safely left for the subsistence of the debtor, who is thus at any rate saved the charges and troubles of legal process."

*Transfer for arrears of revenue.*

17. With respect to transfers for arrears of revenue, though the right of the State to effect such transfers is apparently pretty generally acknowledged, it is very seldom put into practice. Mr. Cust, Financial Commissioner of the Punjab, went so far in 1866 as to declare it to be "a process unknown to Native States,"

Rev. Manual, page 62.



and as a matter of fact, though known, it is exceedingly rare. In Banswara, for instance, in Rajputana, "rare instances of dispossession by the State have occurred, but are always excused by the allegation of some gross misconduct on the part of the ryot." In Dungapur "the ruler may deprive a cultivator of his land for misconduct, although it is considered a very severe punishment, and instances of its infliction rarely occur." There are in Native States, besides the old feeling against disturbing the cultivator, several practical reasons which militate against revenue sales. One which was more powerful in old days than now, is that there are innumerable methods of recovering revenue from ryots—by torture, imprisonment, etc.,—which were invariably, and to a certain extent still are, resorted to before sale. Then, as the land is generally by no means fully cultivated, it is the object of the State to retain the ryot rather than dispossess him. And lastly, owing to the high revenue demand, the holding has often little saleable value, so that a resort to sale would simply mean leaving the land uncultivated. Arrears of revenue are therefore not generally recovered by sale or transfer, but are allowed to run on and either kept on the books or exacted during an ensuing year of prosperity. Much of the confusion in Native States' revenue accounts, which disgusts British Settlement Officers, is apparently due to this cause.

Rajputana Gazetteer, page 116.

Ditto, page 231.



### 1.—The law relating to Private Transfer.

18. There was for a long time no general substantive law on the subject of voluntary land transfer in British India, and the subject was taken up by the Indian Law Commission in 1870, at whose instance the preparation of a Transfer Code was undertaken. This Code now appears in the Statute Book as the Transfer of Property Act (IV of 1882), and its provisions govern the transfer of immovable property in all Provinces, except Burma and the Punjab. Subject to certain equitable conditions laid down in its second chapter, the Act presupposes absolutely free to trade in land and lays down no arbitrary restrictions.

Section 2 of Act; also *Bombay Government Gazette* 1892, Part I, page 1071; also section 1, Act XX, 1886.

The Act recognizes one form of sale and specifies four forms of mortgage, but of the forms of mortgage specified in the Act and the numberless varieties sanctioned by custom, it will suffice for the present purpose to mention three as in common use, *viz.*,—(*i*) the simple mortgage or hypothic which gives the mortgagee a right of sale on failure of payment; (*ii*) the usufructuary mortgage, which gives the mortgagee a right of possession together with a right to receive the rents and profits either subject to account, or absolutely as interest, or for a fixed time in full liquidation of both interest and principal; and (*iii*) the

Section 54. Section 58.

mortgage by conditional sale, which, on failure of payment, gives the mortgagee a right of foreclosure. The Act also provides certain equitable rules for the enforcement of sale or foreclosure, which will be noticed in due course below.

Section 2. Section 2(*a*).

19. Act IV of 1882, however, is in its nature a supplementary measure destined in the main to provide a normal procedure in cases where other means are wanting. In two important Provinces it is not in force. The equitable conditions laid down in its second chapter may be overridden by Hindu or Mahomedan law. It does not affect the provisions of any other enactment in force.

Section 98.

And, in the matter of mortgages other than those specified by it, it leaves custom and the contract to their operation. To understand the existing law of transfer, therefore, in connection with our present subject, it is advisable to trace the circumstances of each Province separately, and to notice the character of the chief forms of property which are dealt with.

*Bengal.*

20. In Bengal there are two classes of persons who, for the purposes of this review, may be looked on as holding proprietary rights in lands, *viz.*, (*i*) the proprietors proper, and (*ii*) the persons known as tenure-holders.

See Hunter's Bengal Records, Vol. I, page 36, also preamble to Reg. II, 1793; also Harington quoted on page 519, Baden-Powell's Land Rev. Syst., Vol I. But *per contra* see para. 370 of Sir J. Shore's minute of June 1879, page 159, 5th Report. See Baden-Powell's Land Rev. Systems, Vol. I, page 513. Cotton's Revenue History of Chittagong, Appendix F.

21. The proprietors who pay revenue direct to the Government are in the greater part of Bengal the owners of large estates, which now pay a permanently fixed assessment. The rights possessed by these proprietors before the assumption of the Dewani by the English in 1765 were neither uniform nor definitely recognized, but we find the greater number of authorities stating that transfers of such properties before British rule were not valid without the sanction of the Government. The tendency of our rule at first was to disallow any form of transfer, and the strictness of the prohibition is illustrated by a proclamation of the 1st August 1786, in which "the illegal practice of alienating revenue lands" is complained of; the "gentlemen appointed to superintend" the various districts are invited zealously to prevent "the commission of this offence"; and the zamindar, chowdhari, talukdar or other landholder who disobeys is threatened with "dispossession from his lands." Subsequent regulations, while permitting transfer subject to the sanction of the Board of Revenue (whose duty it was to see that the transfer did not impair the fiscal value of the estate), still distinctly discouraged the exercise of the power of alienation; but on the introduction of a permanent settlement fiscal precautions became less necessary and were expressly thrown aside with the object of conferring full proprietary rights on the landholders. Section 9 of Regulation I of 1793 accordingly runs as follows :—

Regulations of 25th April 1788 and 23rd November 1791, pages 386-7. Philip's Tagore Lectures, 1874-75.

"That no doubt may be entertained whether proprietors of land are entitled, under the existing regulations, to dispose of their estates without the previous sanction of Government, the Governor General in Council notifies to the zamindars, independent talukdars and other actual proprietors of land that they are privileged to transfer, to whomsoever they may think proper, by sale, gift or otherwise, their proprietary rights in the whole or any portion of their respective estates without applying to Government for its sanction to the transfer, and that all such transfers will be held valid.

Provided that they be conformable to the Mahomedan or the Hindu laws (according as the religious persuasions of the parties to each transaction may render the validity of it determinable by the former or latter Code); and that they be not repugnant to any regulations now in force which have been passed by the British Administration, or to any regulations that they may hereafter enact."



The powers of transfer enjoyed by the Bengal zamindars for over a century are, therefore, practically unrestricted.

22. In those portions of the present Province of Bengal, such as the greater part of Orissa and parts of Chota Nagpur and the Sonthal Parganas, to which the permanent settlement and Regulation I of 1793 do not apply, the right of transfer enjoyed by proprietors does not differ materially from that just described, although it does not appear to have been laid down in the same way by express legislation. In Orissa a proprietary right was practically recognized in the proclamation of 1804 which followed annexation, and the Orissa landholders' right is now "perfectly transferable by sale or gift so far as the State is concerned." The same rule holds good as regards voluntary transfers in Chota Nagpur and the Sonthal Parganas.

Reg. XII, 1805; see also para. 163, Resn. of Gov. of India, 1st August 1822, page 39, N. W. P. Rev. Sels. (1872). Hunter's Orissa, II, page 261.

23. Turning now to the 'tenure-holder' we find him defined in the Bengal Tenancy Act as "primarily a person who has acquired from a proprietor, or from another tenure-holder, a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes also the successors in interest of persons who have acquired such a right." The chief of these subordinate tenures have been created since the permanent settlement, under the name of 'patnis,' by landlords desirous of relieving themselves of management in return for a permanently fixed payment; and in legalizing such 'patnis' in 1819 the Goverment took occasion to declare them "capable of being transferred by sale, gift, or otherwise, at the discretion of the holder," the only condition being that the transfer should be registered and a fee and security tendered to the landlord. In 1879 it was held that under the decisions then in force all tenures were not transferable, but that contract or custom could be called on to prove transferability. The Bengal Rent Commission, however, in their report of 1880 stated their belief that the general transferability of all permanent tenures was "in accordance with the accepted usage of the country," and the Bengal Tenancy Bill accordingly declared such tenures to be transferable. When in the Legislative Council of the 4th March 1885 the Honourable the Maharaja of Durbhanga suggested that the transferability of tenures should be left by the Act to be determined by custom, the Honourable Mr. Reynolds pointed out that the only case known of a non-transferable permanent tenure was the ghatwali tenure which was provided for in section 181 of the Bill, and the suggestion of the Maharaja of Durbhanga was negatived. With the exception of ghatwali or other service tenures, therefore, the present Act declares all permanent tenures to be, "subject to the provisions of the Act, capable of being transferred or bequeathed in the same manner and to the same extent as other immovable property." The "provisions of the Act" referred to are, however, apparently those of section 183, which reserve the power of custom, and the effect of the above declaration would seem to be mainly to shift the burden of proving custom. The Act, moreover, requires registry of all transfers and the tender of a landlord's fee in all cases of transfer by sale, gift, or usufructuary mortgage; and it is stated that the landlords, by way of protest against the tenure-holders' exercise of the power of transfer, often refuse to receive the fees thus tendered. In Chota Nagpur the law recognizes the existence of permanent transferable interests held by persons intermediate between the proprietor and the raiyat, but there appears to be some doubt as to the classes entitled to possess such interests.

Section 3, Regulation VIII, 1819. Section 5, ditto.

Section 5 (1), Act VIII, 1885.

Article 18, Field's Digest, 1879, page 25. Report, para. 26, page 15.

Section 181, Act VIII, 1885.

Section 11, Act VIII, 1885.

Finucane and Rampini's edition, 1886, pages 32-33.

Section 12, Act VIII, 1885.

Bengal Admin. Rept., 1892-93. Bengal Act I of 1879, section 18. Para. 9 of letter No. 639 of 14th November 1890, from Commr., Chota Nagpur, to Govt., Bengal. (A. Pros., Oct. 1891, Nos. 24 to 26.)

*North-Western Provinces and Oudh.*

24. The land tenures of the North-Western Provinces may be considered under two main heads according to the character of the revenue settlement.

25. (1) In the greater part of the Benares Division which was ceded to British rule in 1775, the proprietors possess a status very similar to that of the zamindars in the adjoining Province of Bengal. Their revenue is fixed in perpetuity, and they were expressly granted a right of transfer in terms almost identical with those of the Regulation of 1793 above quoted. The words used in the Benares Regulation of 1795 are—

Section 6, Reg. XXVII, 1795.

"That no doubt may be entertained whether proprietors of land are entitled under the existing regulations to dispose of their estates without the previous sanction of Government, the Governor General in Council notifies to the taluqdars, zamindars, and other actual proprietors of land that they are privileged to transfer, to whomsoever they may think proper, by sale, gift, or otherwise, their proprietary right in the whole or any portion of their respective estates, without applying to Government for its sanction to the transfer; and that all such transfers will be held valid, provided that they be conformable to the Mahomedan or Hindu laws (according as the religious persuasions of the party or parties making such transfer may render the validity of it determinable by the former or latter Code); and that they be not repugnant to any regulations now in force, which have been passed by the British Administration, or to any regulations that they may hereafter enact."

Section 4, Act XII, 1884.

There are also in the permanently-settled districts cases in which, to use the words of the Rent Act of 1881, a "permanent and transferable interest in land" is "held otherwise than under a terminable lease by any person intermediate between the proprietor of the mahal and its occupants."

North-Western Provinces Administration Report, 1892-93, page 32.

26. (2) Outside the Benares Division the settlement of revenue in the North-Western Provinces is for periods of years only. The estates are held for the most part either by village communities or by individuals and families who have, as a rule, obtained a separate interest by partition, and even when the responsibility for revenue may still remain joint, the disposal of individual holdings by their owners is often unfettered. The average size of the properties is small compared with Bengal though large compared with the Panjab, and some 22 per cent. of the land is cultivated by the land-owners themselves or their private servants. The profits of the land after payment of revenue are, as a rule, received by one class of proprietors only, but whether there be one or two grades of proprietary interest they each enjoy a right of transfer, and whether the superior proprietor (in the comparatively rare cases where he is found) receives his allowance from the sub-proprietor direct or through the Government, the right to transfer the actual land rests with the sub-proprietors alone. It does not appear that the transferable nature of the proprietary rights recorded in the village papers has ever been expressly recognised by legislation, but since the bulk of the provinces were taken over in 1803-5, or at least since the new settlement arrangements of 1822, the transferability of such rights has been regularly assumed.

North-Western Provinces Administration Report, 1892-93, page. 37. See sections 9 and 10, Reg. VII of 1822, and Thomason's Directions to Sett. Officers (1850), pages 7-8. N.-W. P. Adm. Rep., 1892-93, page 33.

Para. 103, Kalpi Sett Rep. by Mr. White.

27. The right of pre-emption by co-sharers, etc., though not recognized by the law, appears to be established in some parts of the North-Western Provinces as a custom (in regard both to sales and to mortgages) and is as such recorded in the Administration Paper of the villages.

N.-W. P. Adm. Rep., 1892-93, pages 32-33. Famine Commission Report, App. III, page 332.

28. In *Oudh*, which was annexed in 1856, the rights of the owners of the larger estates were stronger than those of the corresponding class in the North-Western Provinces fifty years before, and three-fifths of the villages are now



settled with the superior land-owners or talukdars, the zemindari being held, as in the North-Western Provinces, for the most part by village communities or individuals who have separated their interest by partition. We have thus three main classes of proprietors, *viz.*, (*i*) the talukdar, (*ii*) the sub-proprietor, whether of a whole village or of a particular area therein, and (*iii*) the zamindar-proprietor outside the taluks.

See Mr. Strachey's speech in Leg. Council, 6th Sep. 1870. Letter No. 6268 of 10th Oct. 1859 to Ch. Commr., Oudh. See First Schedule to Act I of 1869. Letter No. 23 of 19th Oct. 1859 to Ch. Comm., Oudh. See Second Schedule to Act I of 1869. Act I of 1869, sections 12, 13, 17, 18.

29. The talukdars in spite of the strong protests of Sir Chas. Wingfield, the Chief Commissioner, were expressly granted a "permanent, hereditary and transferable proprietary right" by the Government of India in 1859, and the sanads granted to them conferred the proprietary right "subject to certain conditions of loyalty and good service." This right, it is true, so far as concerns the power of transfer, is subject to various special conditions legalized by the Oudh Estates Act of 1869, but the conditions are in the main directed against oral transfers and death-bed gifts to outsiders or religious establishments, and do not for our present purpose materially affect the talukdars' free power of alienation.

Act XXVI, 1866, sections 8, 10, 11.

30. The under-proprietor in Oudh, where he is entitled to a sub-settlement (*i.e.*, a right to pay revenue in place of rent), is assumed to be in possession of full rights of transfer; and these rights are expressly conferred by the Oudh Sub-Settlement Act of 1866 on under-proprietors who are debarred from sub-settlement.

See section 26, Act XVII of 1876.

31. As regards the zamindars or village communities which possess neither talukdari nor sub-proprietary rights, their power of transfer appears to be the same as that of the corresponding class in the North-Western Provinces.

Act XVIII of 1876, sections 6-15.

32-33. Moreover, in all village communities the preferential right to buy or redeem in cases of sale or foreclosure is, in the absence of a custom to the contrary, vested by the Oudh Laws Act in the relations, the co-sharers, the members of the community, and (in the case of under-proprietary tenures) in the proprietor. The same Act gives also validity to local customs, a validity maintained by the provisions of section 2 (*a*) of the Transfer of Property Act.

Act IV of 1882.

*The Punjab.*

34. The Punjab proprietary tenures may for our purpose be treated as belonging to a single type. The village community is, as a rule, jointly responsible for the revenue, and in a large part of the province this reflects a previous joint ownership of the land. But at the present day, though the owners in a village remain in theory jointly responsible for the revenue, they have in most cases divided off either the whole area or the cultivated area only into holdings occupied by individuals or families. The holdings are smaller than those of the North-Western Provinces, and the proportion of the land cultivated by the owners themselves is 56 per cent. against 22 per cent. in the adjoining province.

35. As has already been noticed, the mortgage and sale of land during the pre-annexation period was not unknown, at least in the outlying parts of the province where the village system did not prevail, but the actual practice of the right was very rare. When the bulk of the country was taken over in 1846 and 1849, the abstract right of the transfer was tacitly recognized, but for some time the exercise of the right, rare

Board's Cir. 28 of 1852 alluded to on page 591. Rev. Rep., 1859-60, and Mr. Forsyth's remarks in Rev. Rep., 1866-67. Section IX. 2-4.

as it was, remained under a certain amount of official discouragement. In order to protect the village from down-country speculators it was ordered in 1852 that all transfers to persons outside the village should be invalid without official sanction. The "Civil Code" of 1854 pointed out the necessity of following custom in dealing with transfers. Mahomedan law, it was said, did not restrict transfer, but custom would probably forbid capricious alienations. Under Hindu Law, again, it was questionable, *e. g.*, whether an owner had power to dispose at will of ancestral property, and these restrictions were to be borne in mind. As late as 1866, Mr. Cust in his Revenue Manual wrote :—

P. 31.

> To a certain extent voluntary alienations have been discouraged until such time as the landowners became aware of their newly acquired rights, nor do we allow the hypothecation of land as security for contracts to Government Departments." *

Section 7, Act IV, 1872, Punjab Laws Act.

The Legislature in 1872 stepped in only to rule (as in Oudh) that "all local customs shall be regarded as valid unless they are contrary to justice, equity or good conscience, or have, before the passing of this Act, been declared to be void by competent authority."

The Transfer of Property Act, 1882, is not in force in the Punjab, so that the law of transfer is to be found mainly in recorded custom and the judgments of the Courts.

Page 8, Vol. I., Tupper's Customary Law in the Punjab,

36. The custom in force on the subject of transfer used during the earlier settlements to be recorded in the "Administration" Paper, and during the settlements of 1860—65 in the Tribal or Local Records then compiled. When the compilation of customary law was systematically taken up in 1873—77, this subject (except so far as it concerned gifts) ceased to form one of the prescribed entries in the Tribal Records, and the main authority now available on the point is that of judicial decisions. The customary law of mortgage will be found detailed in Mr. Tupper's Customary Law of the Punjab" (1881) and the law of alienation generally in Sir William Rattigan's "Digest of Civil Law for the Punjab" (1893). "The prevailing sentiment in this province among agriculturists in regard to these matters," says the latter authority, "is that in respect of ancestral immovable property in the hands of any individual there exists some sort of residuary interest in all the descendants of the first owner or body of owners, however remote and contingent may be the probability of some among such descendants ever having the enjoyment of the property." It would appear, however, that the discharge of "ancestral debts or debts incurred for family expenses or just personal debts" justifies alienation even of ancestral land on the plea of "necessity"; and in practice it is believed that the alienation of land by individuals is not very extensively contested by the heirs and others entitled to contest transfers.

Vol. III, pages 217--244.

Pages 38—53.

II of 1874. XII of 1878.

Section 9, Act IV, 1872. See also Section 2, Act XII, 1878.

37. There remains, as in Oudh, the right of pre-emption, which was permitted by the Civil Code of 1854, and placed on a legal footing by the Punjab Laws Act of 1874 and the amending Act of 1878. The right, so far as authorized by statute, extends to all sales of immovable property and the foreclosure of rights to redeem such property, and it may be exercised by various grades of persons extending from the co-sharers in the land

* It is understood, moreover, that until some twenty years ago mutation of names in the Government land registers in favour of a non-agriculturist was not allowed without special sanction.



to the occupancy tenants in the same village. There is, however, also a considerable body of customary law on the subject, and it is open, among other things, for parties to prove the existence (believed not to be uncommon) of a right of pre-emption in the case of mortgages.

Tupper's Customary Law, Vol. III, pp. 195—217. Rattigan's Digest of Civil Law, pp. 68—89.

*Ajmere.*

38. The land in Ajmere-Merwara is divided broadly into two classes, *viz.*, (*i*) the Government land or *khalsa*, and (*ii*) the Chief's baronies or *istimrari*. The former occupies about one-third and the latter about two-thirds of the Chief Commissionership.

39. (*i*) The pre-British rule in the *khalsa* allowed to "those who had permanently improved land by sinking wells and constructing embankments for the storage of water right to sell mortgage or make gift of the well or the embankment." The transfer of the well or the embankment carried with it the transfer of the improved land; and the same rights were recognized in the case of settlers established by the early British administrators. On the introduction in 1850, under Mr. Thomason's orders, of a "village settlement" the waste and unimproved lands were made over to the villagers, who thus acquired a proprietary right in them also, but the individuals of the community did not gain any right of transfer or property in such lands unless they improved them with the consent of the majority of the proprietary body, and the fact was indicated by the Legislature in 1877 in the following terms :—

Mr. La Touche's Ajmere Gazetteer, page 19.

Ajmere Land and Revenue Regulation, II of 1877, section 7.

> "Any one of the proprietary body of any village, who, with the consent of a majority of such body, permanently improves any common land in such village by sinking a well, constructing an embankment, planting, draining, or otherwise, shall become the owner of such land.
>
> "Unimproved common land shall be deemed to be held on a tenure-at-will from the proprietary body, unless there is a written agreement to the contrary between such body and the holder."

The right of pre-emption on the model of the Punjab and Oudh was recognized in cases of sale or foreclosure by the Laws Regulation of 1877.

Chapter II, Ajmere Laws Regulation, III of 1877.

40. (*ii*) The Chief's 'baronies' or istimrari lands which are held on a permanent quit-payment were originally liable to partition, but having been at first mere life-grants seem from the beginning to have been considered inalienable by private transfer. By the middle of this century they had come to be looked on as both indivisible and inalienable, and the law at present declares (see 22 of the Land and Revenue Regulation of 1877)—

> "No Istimrardar shall—
>
> (*a*) permanently alienate his istimrari estate or any portion thereof by sale, gift, or otherwise, except under the law for the time being in force relative to the acquisition of land for public purposes; or
>
> (*b*) alienate or charge such estate or any portion thereof by lease, mortgage or otherwise, for any term extenting beyond his own life, except by way of giving security for an advance under the Land Improvement Loans Act (1883), or other law for the time being in force relative to advances of money by Government for the improvement of land.
>
> Any alienation made or charge created in contravention of the prohibitions herein contained shall be void."

As the law recognizes no rights under the istimrardar other than those of tenants-at-will, he appears to stand in the position of a direct proprietor of the soil.

### *Central Provinces.*

Central Provinces Administration Report, 1892-93, p. 20.

41. The proprietors in the Central Provinces may be divided into two main groups, *viz.*, (*i*) the zemindars, and (*ii*) the malguzars, of whom the former hold some two-fifths, and the latter some three-fifths, of the country. The former for the most part represent classes or races which held ruling power in the past; they are largely of aboriginal descent and are in possession of considerable estates situated, as a rule, in the wilder and less accessible parts of the provinces. The latter are the representatives of the headmen or contractors who formerly held farms of the village land revenue from Government.

42. The question of proprietary right was first taken up in 1854 with respect to the Saugor and Narbudda territories which were then under the Government of the North-Western Provinces, and had been under British rule since 1818. The revenue farmers, now called malguzars, had, as a rule, no saleable rights under Native rule and our Government had previously abstained from recognizing any proprietary right among them, but in 1854 the Government determined to declare their status to be a proprietary one and in its proclamation of 24th June 1854, expressly 'conferred' this right on the malguzars, stating at the same time that each proprietor would 'enjoy free right of transfer.' When it was proposed to grant similar rights in the Nagpore Province which escheated to us from the Bhonsla family in 1854, the Commissioner proposed to allow the holder of land in that part of the country "to mortgage his property for a term of years under restriction and to sublet it, but not to sell it, at least for the present," but the Government of Lord Canning in 1860 expressed its desire to confer the proprietary right in fee simple without any such restrictions, and these orders were carried out in the course of the next few years. In 1864 similar rights were granted in the Nimar territory. In Sambalpur, however, where the intention to confer the right had been announced in 1863, it was determined in 1870—72, to grant the headmen (known as "gaontias") a transferable right in their home-farms only.

Central Provinces Settlement Code, 1864, pp. 11-12.

*See* Baden-Powell's Revenue Systems, Vol. II, p. 457.

Letter No. 2279, dated 28th June 1860, to the Commissioner, Nagpore.

*See* Settlement Report (1891), pp. 37 and 38.

43. This proprietary right was by proclamation or other executive arrangement conferred during the settlements of 1863 and the following years both on the 'zemindars' who previously possessed a practically proprietary status and on the 'malguzars,' whose claims to such a status were much more shadowy. In one class of cases, however, the right was not accompanied by the power of transfer. Certain of the large zemindaris had passed unchanged for generations from father to son, and in these estates, situated mainly in Chanda, Raipur and Bilaspur, the tenure has been declared in the adminstration papers to be heritable by primogeniture, indivisible and inalienable. So far as the entries in the administration papers may be allowed to be of weight, this inalienable tenure now exists in 82 out of the total number of 125 'zemindari' estates, and out of 65,000 square miles held by private persons in the Central Provinces 14,000 are subject to this tenure.

Pp 447 to 448, Baden-Powell's Land Rev. Systems, vol. II. Also p. 29, Review of Progress in the Cent. Prov., (1892), by Mr. Fuller.

Admin. Rep. of the Central Prov. 1892-3, p. 24.

44. It remains to notice shortly four smaller classes of landholders who have proprietary or *quasi*-proprietary rights, *viz.*:—

*See* 50, Act XVIII, 1881. Baden-Powell's Land Rev. Systems, Vol. II, p. 485. Section 65 A, Act XVIII, 1881. *See* p. 90, Sambalpur Sett. Rep. (1891), p. 160, Bilaspur Sett. Rep. (1892), p. 183, Raipur Sett. (Rep. 1891).

(*i*) the inferior proprietors found in estates when two grades of proprietary rights are recognized. Their rights appear to be transferable, though not expressly so declared by law.

(*ii*) the lessees found mainly in zemindari and large malguzar estates. The older and better established of these lessees are protected by special clauses in the administration paper which formulates the conditions of settlement. In most cases (if not all) the status given by the administration paper is "heritable, but not transferable by sale, gift, mortgage or dowry."



(*iii*) the plot proprietors (malikan maqbuza), who are mostly relatives of the proprietor or representatives of occupants who at the time of settlement possessed a strong position, not as entitled to any share in the management or profits of the village, but as full proprietors of their own holdings. These plot proprietors are not expressly given any rights of transfer by law, but in practice enjoy "complete rights of transfer unfettered by a right of pre-emption on the part of the malguzar."

Central Provinces Administration Report, 1892-93, p. 25.

(*iv*) the raiyats who hold direct from Government, mostly in tracts newly brought under cultivation from Government waste. The right of a raiyat is by law heritable but "is not transferable, except to a person who, if he survived the raiyat, would inherit his right, or to a co-sharer in such right, or, with the permission of the Deputy Commissioner, by a lease to a sub-tenant cultivating under the raiyat." These restricting provisions were introduced advisedly, "inasmuch as experience has shown that the conferring of a transferable right on a raiyat proves too often a curse instead of a blessing."

Section 67 A *et seq.* Act XVIII, 1881. (Act XVI, 1889.) Section 67E, ditto.

Speech in Legislative Council of 27th June 1889 by the Honourable Mr. Crosthwaite.

### *Berar.*

45. In Berar, which was assigned to the British Government in 1853, the rights of the cultivators were found at first to be somewhat undefined. After some hesitation it was determined to introduce a ryotwari assessment on the Bombay model, and this entailed the bestowal on the occupants of a transferable title similar to that conferred in Bombay. The settlement rules of 1865 declare as follows:—"The occupant of a survey field, or recognized share of a field, or number, shall not be deprived of his right of occupancy in the said field or recognised share of a field by any Revenue Officer so long as he continues to pay the assessment due thereon. This right of conditional occupancy is declared to be a transferable and heritable property." Responsibility for the Government revenue cannot be shifted without registration in the Revenue records, but apart from this the occupant has full power to alienate without reference to Government and can give possession of the whole or any part of his holding to another. In practice therefore his rights so far as concerns transfer are similar to those enjoyed by proprietors in zamindari provinces.

Pp. 90—96, Lyall's Berar Gazetteer (1870.)

Pp. 55 and 100, List of British Enactments in force in Hyderabad.

Under the sub-tenancy rules of 1866 co-sharers in an occupant's tenure "have the right of pre-emption as regards co-shares.

Page 99, List of Enactments in force in Hyderabad.

### *Bombay.*

46. When the bulk of the Bombay Presidency Proper was taken over from the Peshwa in 1818 the occupants, of land were found to be mainly of two classes: one of which, under the name of mirasdars had a transferable right in land (limited in some parts to a right of mortgage), and the other no such right. Even as late as 1840, however, the land had little marketable value, and sales were few: and when the improvement of the survey and settlement system came under consideration in 1847 the officers appointed to report on the matter proposed the free conferment of an unrestricted power of transfer on "occupants of all classes." The reason given by one of these officers, Captain, afterwards Sir George, Wingate, was that it was necessary to provide a means of getting rid of impoverished cultivators and substituting for them "traders, pensioners and other

Elphinstone, quoted on page 12, Nairne's Revenue Hand-book, 1884. Bombay Adm. Rep., 1892-93, page 82. Deccan Riots Commission Rep., 1876, Vol, I, p. 27. Para. 28, Report of 17th October 1840 by Messrs. Goldsmid and Wingate. See pages 7—8 of Sir E. Buck's note of 1882 on the Bombay Rev. and Sett. System. (Sir E. Buck's note on Elasticity in Land Revenue Adm., p. 10.

Joint Rules of 1847. P 743, Nairne's Revenue Hand-book (1884). Bombay Act I, 1865, Section 36. Bombay Act V, 1879, Section 73.

parties having capital." The rule adopted for observance was—"Whoever has a field or a portion of one entered in his name in the Government accounts may have the said field or portion transferred to the name of any other person agreeing to cultivate the same on his making a written application to that effect in the usual 'razinama' or petition to resign." This right of transfer was re-affirmed by legislation in 1865, and again in the Revenue Code of 1879, when it was laid down that the "right of occupancy shall be deemed a heritable and transferable property subject to the provisions contained in Section 56" (payment of land revenue), "or otherwise prescribed by law, and shall immediately pass to the person whose agreement to become occupant shall have been accepted by the Collector." This form of tenure, known as the survey tenure of Bombay, is therefore practically unfettered in the matter of transfer.

47. In addition to the survey tenure which is enjoyed by a large number of small holders over by far the greater part of the Presidency, we may note two of the more common forms of landlord tenure, the "talukdari," which prevails over some 1½ million acres (mostly in Gujarat) and the "Khoti" which is found in some 2 million acres in the Southern Konkan.. Under an Act of 1888 (which will be further noticed below) the talukdar of Gujarat may mortgage his estates for life, but a mortgage to be valid beyond life requires the sanction of the special officer in charge of the talukdari estates, and an alienation of proprietary right requires the approval of the Governor in Council. The Khoti tenure of the Konkan, on the other hand, is recognized by Bombay Act I of 1880 to be heritable and transferable.

Bombay Act VI of 1888, Section 31, *see* also Bombay Act XX, of 1881, Section 28.

See Section 9.

48. The land in *Sind* was originally to a large extent in the hands of large landlords as regards whose rights our information appears to be somewhat vague: but in any case soon after the annexation in 1843 the larger landholders began to disappear, and, on the introduction of the settlement system and the Bombay Survey Act of 1865, the status of the larger and smaller occupants was assimilated. The province of Sind now contains a greater proportion of large occupants than the Presidency Proper, but in other respects the ordinary tenure of the country corresponds with the 'survey tenure' of Bombay and is like it freely transferable.

Hughes' Sind Gazetteer (1876), page 81. Bombay Adm. Rep., 1892-93, page 90.

Bombay Act I of 1865.

*Coorg.*

49. The land in Coorg is held partly by occupants, known as *Jama* ryots, who hold at a privileged assessment in lieu of a liability to service, and partly by occupants, known as *Sagu* ryots, who are not similarly privileged.

The service for which the jama ryot is nominally liable being personal, his right to alienate by sale or mortgage has never been recognized. In 1865 he was allowed by the Government of India to sublet, with permission, a limited portion of his holding, but in 1873 the Chief Commissioner, Sir R. Meade, expressly notified that sales or mortgages of jama land (except, it is presumed, when made with the sanction of Government) still remained invalid. Some two or three years ago the Chief Commissioner finding the order neglected reaffirmed it, and the Government of India expressly recognized that "the alienation of such lands is contrary to the conditions of tenure on which they are held." The rule as it stands applies both to the original holding of the jama ryot known as his "warg" and also to the "bané" or attached forest area, out of which ten acres may be cultivated with coffee free of assessment. The Chief Commissioner in April 1894, drew attention to the injustice caused in some cases by the absolute restriction imposed on the alienation of the banes, and suggested that cultivated

Para. 32, Adm. Rep., 1892-93, also para. 2 of Chief Commr.'s letter No. 335—23-92 of 29th February, 1892. (A. June 1892, Nos. 21—23.) Notification 10 of 2nd October 1873. Page 365, Rice's Mysore and Coorg Gazetteer, Vol. III, and para. 31, Adm. Rep., 1892-93.

Letter 1225-10 of 20th June 1892 to Ch. Commr., Coorg.

A. June 1894, Nos. 25 and 26.



bané land in excess of the ten acres and all uncultivated bané land in excess of double the warg area should be rendered alienable—a suggestion that has been accepted by the Government of India subject to the condition that (1) no form of alienation short of an outright sale shall be permitted, and (2) that it shall not be alienable again, except on the same conditions and with the Commissioner's consent.

Letter No. 1628—134 of 12th June 1894.

The sagu tenure was looked on apparently at first as little more than a tenancy from Government, and sales were forbidden. No action having been taken on the prohibition, the Chief Commissioner, while expressly reserving the proprietary claims of the Government in 1865, declared the sagu lands to be transferable at the pleasure of the holder.

Standing order No. 26-27. Richter's Coorg Manual (1870), page 407.

*Madras.*

50. In Madras we have, generally speaking, only two classes to consider, *viz.*, the zemindars, and the occupants of ryotwari areas. The former pay a permanently fixed revenue, hold the land, as a rule, in large estates, and occupy altogether nearly a third of the province. The latter, occupying about two-thirds, cultivate small holdings and pay a revenue which is not permanent.

51. The proprietary rights of the zemindars were recognized at an early date, and in Madras Regulation XXV of 1802 it was declared that:—

Section 8.

"Proprietors of land shall be at free liberty to transfer, without the previous consent of the Government or of any other authority, to whomever they may think proper, by sale, gift or otherwise, their proprietary right in the whole or in any part of their zemindaris; such transfers of land shall be valid, and shall be respected by the Courts of Judicature and by the officers of Government, provided they shall not be repugnant to the Muhammadan or to the Hindu law or to the regulations of the British Government."

There was also a proviso in the same regulation that the transfer should be "of no legal force or effect" unless duly registered at the Collector's office; and in Regulation XXVI of the same year it was laid down that unregistered transfers should "not be valid in the Courts of Adalat"; but this has been held to make unregistered transfers invalid "only as against the Government and with reference to the Government dues."

Manual of standing information (1890) and page 71.

Certain of the older zemindaris are, by the terms of the sanads under which they are held, impartible, untransferable, and subject to the rule of primogeniture. The course of the law on the subject of these estates is thus described in a recent report:—

Progress of the Madras Presidency by S. Srinavasa Raghavaigangar, page 244, paragraph 89. See also Resolution of Board of Revenue, No. 459, dated 23rd August 1892. (A Pros., March 1894, Nos. 43 to 45.)

"Some years ago," it is said, "it was believed *that the holders of these estates had only a life interest in them, and that they could not alienate or encumber the properties so as to have effect beyond their own lifetime. Subsequently the Courts discovered that the powers of a zemindar were the same as those of a manager of a Hindu family holding property in co-parcenary under the ordinary law, with the exception that partition could not be claimed by the junior members of the family who were only entitled to maintenance out of the income of the estate. The zemindars, it was declared, could, like the manager of an ordinary Hindu family, alienate the property in satisfaction of debts incurred for necessary family purposes, and that where there were no junior members, the powers of alienation of the zemindar were unrestricted. Next, the Courts ruled that where the junior members of the co-parcenary family were sons, the latter were bound by the alienations made by the father even for debts not incurred for family purposes, it being the pious duty of sons under the Hindu law to pay

*See Famine Commission Report; volume II, page 346.

the debts of the father, provided they were not incurred for immoral or illegal purposes. The rule of primogeniture and impartibility was also declared not to attach necessarily to the property on grounds of public policy, but was to be treated as a family custom liable to be annulled with the mutual consent of the members of the family. The question whether an estate was governed by the law of primogeniture or the ordinary law of equal division was thus made to depend upon the facts of each case and the conduct of the parties, there being no certain criterion laid down to determine the point in any particular case without resort to protracted litigation. Lastly, in a recent decision the Privy Council has ruled that the zemindar of an ancient and impartible estate is absolute owner and can dispose of it as he pleases, the property being impartible only in the sense that it is not divisible among the members of the family: there is thus nothing to prevent the zemindar cutting it up into any number of portions and alienating them at his will and pleasure to the prejudice of the rights of succession of the junior members of his family."

52. In the ryotwari areas the system of administration during the early period of our rule appears in practice to have put a fairly complete check on land transfers. For some time it was doubtful whether the ryots—the actual cultivators—should be made separately responsible for the revenue or not, but in working out the system of separate responsibility now adopted the advocates of the system seem to have considered it essential that the ryot should be allowed to resign his holding, and as a consequence that he should be allowed to resign it in favour of another. Sir Thomas Munro, at least, submitting his proposals in 1807, laid it down as a principle that "every ryot, as long as he pays the rent," *i.e.*, the Government assessment "of his land, shall be considered as the complete owner of the soil, and shall be at liberty to let it to a tenant without any limitation as to rent; and to sell it as he pleases." This principle, though never apparently enunciated by legislation, has been uniformly adopted by the Madras Government. "The Government," it is officially stated, "concedes to the ryot complete power to alienate the land by lease, mortgage, or sale, and only stipulates that unless he formally registers such alienation with the Collector he will remain liable for all Government dues on the land however accruing."

Letter of 15th August 1807, page 651, Fifth Report, Volume II, Madras edition.

See Manual of standing information, 1892-93, page 70, paragraph 65. See also Settlement Manual.

53. In South Kanara and Malabar there are landholders (known as mulavargdars and janmis) whose status differs in some respects from both those above described: they have, however, for a long time enjoyed the free right of transfer.

Manual of standing information (1892-93), page 77.

*Assam.*

54. The power of transfer possessed by the cultivators of Assam has a somewhat different history in the different portions of the province, and may be considered separately for (1) the Assam Valley, (2) the Surma Valley.*

55. (*i*) As regards the Assam Valley, whether we hold or not that the conquest extinguished existing rights, it appears probable that at the time of annexation the right to transfer agricultural land was neither generally recognized nor practised.

Para 40, Mr. Ward's note of 15th Dec. 1879; see however para. 55, ditto.

With the introduction of British rule, however, the transfer of land by ryots began to be practically, though not expressly, permitted, so much so that in 1849 General Jenkins, the Commissioner of Revenue, Assam, declared that the

Letter No. 192 of 13th Nov. 1849. See Ben. Sel., 1853 (No. XI), page 69.

* This account of the growth of transfer in Assam is based largely on a note written by Mr. Ward, the Judge of the Assam Valley Districts, on 15th January 1880, and a letter from the same officer as Chief Commissioner written on 15th February 1894 (A Pros., March 1894, No. 6).



ryots were "now considered to have full proprietary right in their lands of all descriptions." When however the question of enhancing the revenue came up for discussion in 1867, the Bengal Government (to whom Assam then belonged) was not prepared to endorse General Jenkins' declaration as to the existence of rights of transfer, and in 1870 the Commissioner of Assam under the instructions of Government issued rules which recognized a transferable right in land as belonging (subject to registration of transfer) to ryots who consented to take out ten years' leases of their land, but conferred no such rights on ryots who took out annual leases or leases for tenures of less than ten years. The distinction thus made between decennial and short-term holders was however little appreciated in practice, and on further enquiries being made in 1871 by the Bengal Government the local officers reported that "the rights and interests of the annually settled ryots in their lands were in practice heritable and transferable as between man and man, although no such right had been conferred by the settlement rules." The distinction made in 1870 was however maintained in the Assam Land and Revenue Regulation of 1886, with the exception that the annual settlement holder by ten years' continuous occupation now acquires the same rights as a decennial settlement-holder. The Regulation distinguishes between "landholders" and "settlement-holders," and declares the rights of the former only to be transferable. Its provisions run as follows:—

Mr. Ward's note of 15th December 1879, paragraphs 56 and 57.

Mr. Ward's note of 15th December 1879, paragraph 70.

Regulation I of 1886, sec. 8 (1) and 9.

8 (1) (*a*) "Any person who has before the commencement of this Regulation held immediately under the Government for ten years continuously any land not included either in a permanently-settled estate or in a revenue-free estate, and who has during that period paid to the Government the revenue due thereon or held the same under an express exemption from revenue, and

(*b*) Except as provided by Section 5, any person who has, whether before or after the commencement of this Regulation, acquired any such land under a lease granted by or on behalf of the Government, the term of which is not less than ten years

shall be deemed to have acquired the status of a landholder in respect of the land.

9. A landholder shall have a permanent, heritable and transferable right of use and occupancy in his land, subject to—

(*a*) the payment of all revenue, taxes, cesses, and rates from time to time legally assessed or imposed in respect of the land;

(*b*) the reservation in favour of the Government of all quarries and all mines, minerals and mineral oils, and of all buried treasure, with full liberty to search for and work the same, paying to the landholder only compensation for the surface damage as estimated by the Deputy Commissioner; and

(*c*) the special conditions of any engagement into which the landholder may have entered with the Government."

56. It is not known over what proportion of the area rights of transfer have been extended by the above provisions: but the question is of less practical importance in consequence of the actual free, though not legally recognized, transfer of all kinds of leases: the position is described by the Chief Commissioner in 1894 as follows:—

Para. 3 of letter No. 153 of 15th February 1894, to Government of India. (Pros. A, March 1894, No. 6.) *Sel.* page 157.

It must be borne in mind that, although the Land and Revenue Regulation does not confer transferable rights on the annual settlement-holder, annual *pattas* continue to be transferred as they have been transferred for the past fifty years, without any interference on the part of Government. It has often been argued that this non-interference with transfer on the part of Government for so many years has conferred a right of transfer on the annual settlement-holder which he can assert against Government. This view, however, has never been accepted either by the Chief Commissioner or the Government of India, and when applications for mutation

of names are preferred by annual settlement-holders, who are not 'land-holders' under the Regulation they are now invariably rejected, as chapter IV of the Regulation does not authorise the entertainment of such applications. It is useless, however, to attempt to stop transfers in such cases. A sells his annual *patta* to B this year, and leaves the land altogether after paying the year's revenue, or coming to some arrangement with B for its payment. When the land comes to be resettled next year, A cannot be found, and B is found in possession. The result is that B gets the next *patta* made out in his name as a matter of course, and in this way the transfer is effected. There is, however, nothing to prevent the Deputy Commissioner from refusing to settle with B if he chooses, but in practice he never does refuse.

Replies to Famine Commission, page 10. Government of India letter No. 73, dated 3rd February 1879. (Pro. A, February 79, Nos. 1 to 4.)

57. Tea-planters and others holding under the various systems of waste land grants are in all cases, it is understood, possessed of transferable rights, and such rights were in 1879 conferred by the Government of India on the semi-revenue-free estates (*nisf-khiraj*) of the Assam Valley.

Paragraph 138, Ward's note of December 1879.

58. (*ii*) Turning now to the Surma Valley, we find part of the area permanently settled, and in this the proprietors have full rights of transfer under Section 9 of the Bengal Regulation No. I of 1793 apparently, as well as under the Assam Regulation of 1886. In the temporarily-settled area different rules exist for (*a*) Sylhet Proper, (*b*) the Jaintia Parganas, and (*c*) the tenures of Cachar. In (*a*) Sylhet Proper, the temporary settlement-holder appears to have had no clearly defined rights till under rules issued in 1876 he was granted the right of transfer subject to the veto of the Deputy Commissioner. In (*b*) the Jaintia Parganas the settlement-holder is declared by Mr. Ward, the present Chief Commissioner, to have had no rights whatever under the Jaintia *raj* and to have had no defined rights till 1877, when the Government of India conferred on him the right of transfer subject to the veto of the Deputy Commissioner. As regards (*c*) the district of Cachar, Mr. Mills, C. S., reported in 1853 as follows:— "As far as I can learn, the right of property in the soil appears to have existed in the rules alone. The cultivators succeeded to the hereditary occupancy of their holdings and were even permitted to alienate them: but it was only by sufferance they acquired and exercised these rights." The sufferance went still further under British rule; and both these older cultivators and the newer men who had received leases for jungle reclamation from the British Government were in time recognized as entitled to an unrestricted right of transfer. They have now had the same rights specifically conferred on them by the Land and Revenue Regulation of 1886, as have been granted to settlement-holders of the same class in the Assam Valley: in certain Surma Valley settlement rules sanctioned by the Government of India in December 1893, the right of the Deputy Commissioner to veto transfers (which formed no part of the previous conditions of tenure) was at the request of the Government of India expressly reserved, but this condition has since been cancelled in consolidating the rules.

Paragraph 4 of the Chief Commissioner's letter No. 153, dated 18th February 1894, to Government of India (*Sel.* p. 158.)

Ditto, and paragraph 160 of note of December 1879.

Paragraph 116 of Mr. Ward's note of December 1879.

Letter No. 3088, dated 26th December 1893, to Chief Commissioner, Assam. (Pro., December 1893, Nos. 26 to 30.)

*Burma.*

59. When the Districts of Lower Burma came under British rule partly in 1824 and partly in 1852, we found that a transferable status was to a certain extent recognized in the case of persons who had occupied land for a reasonable time; and when the Government legalized the conditions of occupancy in 1876 it bestowed transferable rights on such persons as could be classed as landholders, and decided that persons could be so classed either by virtue of twelve years' possession of culturable land, or by virtue of special grant. The grants are situated mainly in outlying or uncultivated area and the vast bulk of the cultivated land was occupied by persons who obtained the landholder's status by virtue of long possession. The landholder, according to the Act of 1876, has a "permanent, heritable and transferable right of use and occupancy in his land" subject only to usual conditions, *viz.*, the payment of Government revenue and the recognition of the Government's property in minerals.

See paragraph 10 of Government of India Despatch No. 23, dated 15th September 1874. (A Pros., September 1874, Nos. 3 to 6.) See Burma Adm. Rep., 1892-93, page 13, para. 25, and Directions to Settlement Officers, 1880, No. 42.



60. The Burma forest areas exhibit a form of fluctuating cultivation, by annual forest clearances, known as "tounga" cultivation. The right of the cultivator in such clearings is usually non-transferable, but in the Karen sub-division of the Toungoo district, where the method of cultivation is more systematic, a transfer to a member of the same tribe is admissible.

Baden-Powell's Land Revenue Systems, vol. iii, page 506. Rule 72, Rules under the Burma Land and Revenue Act, 1876.

61. In Upper Burma, which came into our possession in 1886, a distinction is drawn between the old royal demesne, now entitled "State land," and the area known as "non-State land," in which private rights of various kinds had been allowed to accrue. As regards the latter, proprietary right seems to have been in most cases acknowledged under native rule, and as the existing law is silent, it may be inferred that no restriction on the transfer of non-State lands exists. In the case of State lands however where the occupant holds the status primarily of a tenant rather than a land-holder, the Land and Revenue Regulation of 1889 expressly lays down that an occupier of State land can have no heritable or transferable right of use or occupancy therein, nor can any rights adverse to the Government exist in such land unless they have been created or continued by a grant made by or on behalf of the British Government. The Financial Commissioner in a Circular No. 30, dated 28th August 1893, has interpreted this provision as merely reserving to Government a right of veto on transfers: his explanation runs as follows:

Directions to Settlement Officers (1894), No. 75.

Regulation III of 1889, Section 25(*a*).

Burma Gazette, September 16, 1893, Part IV, page 585.

"I take the meaning of clause (*a*), section 25 of the Regulation, to be that a lessee of State land has no heritable or transferable right of use or occupancy therein *against the Government*, that is to say, the lessee has no right (subject to the rules made under the Regulation) to transfer the land, and his heir has no right to occupy the land after his death, if the Government forbids the transfer or the succession, as the case may be, or desires to make other disposal of the land. There is nothing either in the Regulation or in the rules which prohibits transfer by a lessee of such interest as he has in his holding. The Government has the power to hold a lessee to the terms of his lease, to compel payment by him of the stipulated rent, to evict him on failure to pay, and thereafter to dispose of the land as it thinks fit. It may decline to recognize any transfer and may deliver the land to any third person notwithstanding that a transferee of the original lessee is in occupation. But if the Government does not forbid transfer by a lessee of the interest or does not desire to make other disposal of the land, there seems to be no reason, either in law or equity, why the lessee should not make such transfer of his interest in the land as he pleases."

*Record and registration of transfers.*

62. A survey of the present law regarding transfers of immovable property would not be complete without a reference to the degree of facility with which transfers of proprietary right in this country can be effected. As in most European countries a public record of transfers is maintained, but in India there are two concurrent systems of public record in force: one by which copies of assurances are preserved in public offices, and another by which changes in the actual or presumed rights of parties to land are recorded in documents con-

nected with the administration of the land revenue. The former entails registration of documents under the Registration Act of 1877, and the other the report of transfers to the revenue authorities.

Sections 54 and 59, Act IV of 1882.

63. Under the Transfer of Property Act, 1882, a transfer is absolutely invalid unless made by a registered instrument in the following cases, *viz.*, (*a*) the sale of a reversion or other intangible thing, (*b*) the sale of tangible immovable property of the value of Rs. 100 and upwards, (*c*) a simple mortgage, and (*d*) a mortgage in which the principal money secured is Rs. 100 or upwards. In the case of other transfer by sale or mortgage a written assurance is not required: but, if a written assurance is executed, it must be registered.

Act III, 1877.

Section 49.

Where the Transfer of Property Act is not in force (as in the Punjab and Burma) a documentary assurance is not necessary for the valid transfer of land, but where a documentary assurance is executed and the interest as defined in Section 17 (*b*) of the Registration Act amounts to Rs. 100 and upwards, the assurance cannot affect the property or be received as evidence of any transaction affecting it until duly registered. Where the value is under Rs. 100 a duly registered assurance takes effect "as regards the property comprised therein against every unregistered document relating to the same property."

Section 50.

Regulation I of 1887.

There is a special registration law for Upper Burma which has as yet not been extended beyond the town of Mandalay.

Registration of the nature above indicated is effected by the parties before a Registrar or Sub-Registrar. The offices of these persons are scattered at intervals through the districts, and are on the average at a moderate but not very great distance from the persons who wish to make use of them.

64. In addition to registration under the Act of 1877, there is the registration in the revenue records. In cases of permanent transfer this is nearly always indispensable. The revenue record serves in the first place as a fiscal record, and it is generally in the vendor's interest to relieve himself of the responsibility for the revenue. The record is also (except in Bombay and Berar) to a greater or less extent a record of landed rights, parties are generally bound under legal penalties to have transfers recorded, and the record when made serves as valuable evidence of title. The record of temporary transfers is often dispensed with or less stringently insisted upon, but in the greater part of Northern and Central India the record of at least mortgages with possession is now necessary.

See *e.g.*, Act XVII, 1887, Section 44 (Punjab Land Revenue).

Act XVIII, 1881, Section 126. Act XIX, 1873, Section 97.

Ben. Act VII, 1876, Secs. 42 and 44. Madras Reg. XXV, 1802, Section 8, and Reg. XXVI, 1802.

In some provinces, as in the Central Provinces and North-Western Provinces, there are two records, one kept at the tahsil and one in or near the village; in others, as in Bengal and in the case of the Madras zemindaris, there appears to be a head-quarters record only, while in others again, as in the Punjab, the only record is that kept by the *patwari* in or near the village. The amount of travelling to be done therefore for effecting a transfer differs considerably in different provinces.

Section 78.

65. So also does the amount of the fees to be paid. A different scale of fees is fixed by each local Government for registration under Act III of 1877, and the fees (if any) charged for mutation in the revenue register also vary. The total amount claimable appears however to be as a rule trifling.



## 2.—The Law of Compulsory transfer in execution of decrees of Civil Courts.

### *Provisions of the Code of Civil Procedure affecting the alienation of land in execution of decrees.**

*The mitigating sections of the Civil Procedure Code.*

66. It has been already noted that at the commencement of British rule the sale of landed property, whether specifically pledged or not, in execution of decrees for debt was almost unknown. When however the power of free voluntary transfer began to be more fully recognized and exercised, the liability of the land for debt began to be looked on as a necessary corollary to this power, and public sale of land for debt began to be recognized by legislation. The execution of decrees which in Northern India was previously confined to the superior Courts was in 1831 permitted in the case of Munsiffs, and those officers were then allowed to try suits relating to land. Land sales had not yet become frequent enough to attract much notice, and as a general rule the Courts appear to have been unfettered in their power of sale. In one or two cases only, as in Chota Nagpore and the Punjab, do we find any early restrictions on sales for debt; for the former area orders were passed in 1833 substituting temporary sequestration in all cases for sale, and for the latter an injunction was issued in 1858 forbidding the sale of hereditary or joint acquired landed property in liquidation of money debts without the sanction of the Judicial Commissioner.

*E.g.*, in Bombay Regulation IV of 1827, and Bengal Regulation XXIII, 1814, Section 51.

Para. 6, Desp. No. 4, dated 25th January 1859, from Secy. of State.

13th October 1833. See pages 175 and 195, Selns. from Govt. of India Records, Home Dept., CLV (1879).

Cir. Order 103, dated 30th October 1858. *See* page 88, Home Dept. Selns. CLV (1879).

67. The events of the mutiny in the North-Western Provinces, where the discontent of proprietors who had been dispossessed by Revenue and Civil Court sales had added considerably to the seriousness of the disturbances, drew the attention of the home authorities to the desirability of protecting the hereditary proprietors from arbitrary sales, and while the suggestions of the India Office were still under discussion in the North-Western Provinces the first Civil Procedure Act for India was passed as Act VIII of 1859. In Section 205 of the Act the general principle was laid down that lands are "liable to attachment and sale in execution of a decree," but the Civil Courts were under Sections 243 and 244 permitted to postpone the sale if the money decreed could be obtained in another way or to permit temporary alienation in certain cases at the instance of the Collector.

Despatch from Court of Directors, No. 113, dated 4th August 1858.

Despatch from Lord Stanley, Secretary of State, No. 4, dated 25th January 1859.

68. For some eighteen years this remained the general rule of law throughout India. In Chota Nagpore however the sale of land without the sanction of the Commissioner remained illegal. In the Punjab, where the order of 1858 had acquired the force of law by the India Councils Act of 1861, the extension of the Civil Procedure Code to the Provinces in 1866 was accompanied by a notification providing "that no immovable property shall be sold without the previous sanction of the Commissioner of the Division," and in the case of hereditary or joint acquired property in land, "without the previous sanction of the Chief Court." When the Act was extended to Oudh in 1861 a similar notification was issued to the effect that "no ancestral property in land should be sold in satisfaction of a decree without the sanction of the Judicial Commissioner, and before acquired property in land shall be sold, the permission of the Divisional

Colonel Dalton's letter No. 205, dated 10th Feb. 1871, page 195. Home Department Selns., CLV (1879). Pages 87-89, ditto. Notification dated 29th September 1866.

Foreign Department Notification 4325, dated 6th August 1861, page 159. Home Department Selns., CLV.

* In dealing with this subject reference may be made to the extracts quoted in appendix No. I of this Note.

Government of India Notification No. 447, dated 28th October 1862, page 131. Home Department Selns., CLV. See Mysore Gazette, 1879, Part I, page 200.

Commissioner shall be obtained." A notification in identical terms was also issued when the Act was extended to the Central Provinces, and in Coorg there was a rule exempting from sale in execution all immovable property not specifically pledged. The general law of sale was mitigated therefore (*a*) by the special provisions of Sections 243 and 244, and (*b*) by the local exemptions above described.

Pages 86 and 112, Home Department Selns., CLV. Page 114 ditto. Paragraph 6, Government of India Resolution 9—608—618, dated 27th May 1879.

69. The subject came again under discussion in several ways from 1871 onwards. In that year the Punjab Chief Court suggested that the local rule against sales of land in execution of decrees should be made either absolute or more stringent, and the Government of India instituted general enquiries as to the working of the special provisions contained in Sections 243 and 244 of the Act, with the result that these sections were shown to have been "practically inoperative." In the meantime the Governor General had received in February 1872 a petition from the zemindars of Allahabad on the severity of the civil decrees, and the subject was further handled by Sir John Morris and others in connection with the proposed Tenancy Legislation in the Central Provinces. The law of civil debt was still further examined by the Deccan Riots Commission in 1877, and on receipt of the views of the Commission the opportunity was taken to insert fresh provisions on the subject in a revised issue of the Civil Procedure Code.

See paragraph 8 of Government of India Resolution 9—608—618 of 22nd May 1879.

70. The revised Code (Act X of 1877) contained the following provisions for restriction of the sale of land in execution of decrees:—

*Section 266*—exempting from attachment in execution of decree—

(*a*) The implements of husbandry and cattle of agriculturists.

(*b*) The materials of an agriculturist's house or farm-building.

*Section 291*—permitting the officer holding a sale in execution of decree to postpone such sale, if he see fit, provided that he records his reasons for such suspension.

*Section 305*—empowering the Court to postpone sale of land to enable the judgment debtor to raise the amount of the decree against him.

*Section 320*—empowering the Local Government to prescribe rules for transferring to the Collector the duty of executing decrees in which land or interest in land is to be sold.

*Sections 321-22*—empowering the Collector, when execution of such decrees has been transferred, to put a reserved price on the property, and to take certain other steps in the interest of the judgment-debtor, to save the whole or part of the property from permanent alienation.

*Section 326*—empowering the Collector to intervene and the Court to authorize the Collector to stay public sale of attached land.

*Section 327*—empowering the Local Government to make special rules for any local area imposing conditions (or restrictions) in respect of the sale of any class of interest in land in execution of money decrees where such interests are so uncertain and undetermined as to make it impossible to fix the value, and for continuing and modifying special rules in force in local areas.

Act XIV of 1882. Act VII of 1888

78. The law of 1877 has been only slightly modified by changes introduced in the new Code of 1882, and in an amending Act of 1888, which relate to the powers of a Collector to whom a decree has been transferred for execution. Moreover, under Section 3 of the Code of 1882 all references in previous Acts or Notifications to the 'Code of Civil Procedure' or Act X of 1877 are "as far as practicable to be read as applying this to Code." So that although the



present law is to be found in Act XIV of 1882 as amended by Act VII of 1888, it has for most purposes been in force since 1877.

It will be noticed that certain important matters can be provided for under Sections 320 and 327.

71. Under Section 320 the Local Government may (*a*) issue a declaration that certain cases be transferred to the Collector for execution, and (*b*) prescribe rules in connection with the transmission and disposal of such cases.

Declarations under Section 320 appear to have been issued in the following cases only:—

(*a*) *The North-West Provinces and Oudh.*—In respect of decrees ordering the sale of ancestral land in the United Provinces. Government of India letter of 17th September 1878.

(*b*) *The Central Provinces.*—In respect of decrees ordering the sale of any interest in agricultural land in the Central Provinces. Notification No. 4577 of 26th November 1877.

(*c*) *Berar.*—In respect of decrees ordering the sale of any interest in agricultural land in Berar. Lists of Enactments, pages 235-6.

(*d*) *Bombay.*—In respect of decrees ordering the sale of land belonging to an agriculturist in (*i*) the Deccan districts of Poona, Ahmednagar, Sholapur and Satara, (*ii*) Nasik, Khandesh, Bijapur, Ahmadabad, Kaira and Broach, and (*iii*) Thana and Panch Mahals,—that is, practically in all the north and centre of the Presidency proper. Also in respect of decrees ordering the sale of land belonging to a Talukdar, Thakur, Jaghirdar or Kasbati in the Ahmadabad, Kaira and Broach districts. Notifications of December 1878, January 1880, May 1880 and July 1882. Notification of July 1882. Government of India letter of 22nd December 1891. Notification of 1881. See page 453, General Rules of the Revenue Department.

(*e*) *Burma.*—In respect of decrees ordering sale of land belonging to a Karen in parts of the Bassein district. Government of India letter dated 17th February 1883.

Rules under the same section have been issued in the provinces for which the above declarations have been made, for the disposal and transmission of the cases affected.

72. More important are the notifications issued under Section 327 for the continuance or modification of special local rules in force previous to the passing of the Code. It has already been noticed that such rules were in force in Chota Nagpore, Oudh, the Punjab, the Central Provinces and Coorg. Opportunity has accordingly been taken in all these provinces (except Oudh) to preserve the principle of the previous rules by notifications under Section 327.

(*a*) In Chota Nagpore the notification runs:—

"No sale of lands in execution of the decree of any Civil Court shall be made without the sanction of the Commissioner of Chota Nagpore, where such lands lie in the districts of Hazaribagh or Lohardagga or any part of the district of Manbhoom other than in the pargana of Ambikanagar, Raipur, Simlapal, Syansundarpur and Soopore." "No sale of lands in execution of the decree of any Civil Court shall be made without the sanction of the Commissioner of Chota Nagpore when such lands lie in Pargana Dhalbhoom in the district of Singhbhoom." Calcutta Gazette, 10th July 1878, Part I, page 736. Calcutta Gazette, 7th January 1880, Part I, page 3.

In 1882, however, it was thought that in view of the working of the Chota Nagpore Encumbered Estates Act these provisions were no longer necessary, and it was arranged under Section 327, Civil Procedure Code, that the Commissioner should in future merely have a general power to stay a sale and, if necessary, to veto it. Government of India letter No. 238, dated 23rd May 1882 (Pros. A, May 1882, 158—16.)

(*b*) In the Punjab the old rule was continued in force by a notification of 1877 which was superseded in 1885 by the following:— Notifications No. 1297-S., dated 10th September 1885, pages 76 and 77, vol. I, Punjab Rev. Circulars.

1. No land which is applied to agricultural or pastoral purposes, and no interest in such land, shall be sold in execution of a decree of a Civil Court without the previous sanction of

the Commissioner of the Division, and where the land, or interest in land, proposed to be sold, is hereditary or joint acquired property, without the previous sanction of the Financial Commissioner.

2. Sale of such land, or of any interest in such land, in satisfaction of a decree of a Court of Civil Judicature, shall be made by the Deputy Commissioner upon the requisition of the Court executing the decree.

Notification 2283, dated 18th June 1878.

(*c*) In the Central Provinces the old rule requiring the Commissioner's sanction for the sale of self-acquired, and the Chief Commissioner's sanction for the sale of ancestral land was continued in force by a notification of 1878.

Notification 10, dated 11th June 1879, page 200, Mysore Gazette, 1879, Part I.

(*d*) In Coorg the old rule exempting land not specifically pledged was re-enacted by a notification of June 1879.

In Oudh the old rule had been embodied in the Laws Act of 1876, Section 20 of which ran :—

Act XVIII, 1876.

"So much of Section 266 of the Code of Civil Procedure as renders land liable to sale in execution of a decree shall be subject to the following restriction :—

No ancestral property in land shall be sold in satisfaction of a decree without the permission of the Chief Commissioner; no self-acquired property in land shall be so sold without the permission of the Commissioner.

*Explanation.*—In the section the words "ancestral property" include the immovable property of persons admitted to engagement for the land-revenue at the summary settlement of 1858-59."

Government of India notification 1099 I, dated 3rd May 1883; page 47, Lists of British Enactments in force in Hyderabad.

Similarly in Berar, where no previous rule appears to have been in force, the Governor-General has power in extending an Act to modify its provisions in that province. Accordingly, instead of issuing rules under Section 327, the following proviso was added to the general intimation (Section 266), that lands are liable to attachment and sale in execution of decree :—

"Provided that no ancestral property in land shall be sold in execution of a decree without the sanction of the President, and that no self-acquired property in land shall be so sold without the sanction of the Commissioner."

Act XXXVII, 1855, Section 2.

In the greater part of the Sonthal Parganas, the Civil Procedure Code does not apply except to suits above Rs. 1,000 in value. It appears that

Page 288, vol. III, Deccan Commissioner's Report (1879).

after the riots of 1855 the sanction of the Commissioner was required for all sales in execution, but it is not known what the present law or practice in this respect may be.

73. The effect of Sections 320 and 327 is therefore, roughly speaking, (*a*) that ancestral lands in the North-West Provinces and Oudh, lands belonging to agriculturists in Bombay, and agricultural land in the Central Provinces and Berar, can only be sold in execution through the Collector, and (*b*) that the sale of land for debt in Chota Nagpore, the Punjab and the Central Provinces requires special sanction, and also in Coorg where the land is not specifically pledged.

Section 30, Regulation I, 1877.

In addition to these provisions should be noticed the section of the Ajmere Court Regulation, 1877, which in that Chief Commissionership exempts agricultural land absolutely from attachment and sale in execution of decrees of Civil Courts.



*Abstract of law of execution in cases where the land is ultimately liable.*

74. The above paragraphs deal only with the provisions of the Civil Procedure Code which aim at mitigating the alienation of land in execution of decrees. In view, however, of the fact that proposals for the alteration of the general provisions of the law for the execution of decrees will come under more detailed notice below, the following attempt has been made to indicate briefly the various methods of procedure allowed to Courts in executing decrees regarding liabilities for which the land is ultimately responsible.

The transfer of land may be ordered by the Civil Court in execution of several kinds of decrees. For the present purpose it will be perhaps sufficient to consider three classes of decrees only, *viz.* :—

(i) Decrees for money due on debts secured by simple mortgage :
(ii) Decrees for foreclosure on debts secured by mortgage on conditional sale;
(iii) Decrees for money due on unsecured debts.

The two first classes of decrees can be executed under the provisions (where in force) of the Transfer of Property Act, but a decree for sale of property under simple mortgage is governed by the rules for sales in the Civil Procedure Code. The execution of decrees of the third class again is governed entirely by the Civil Procedure Code.

75. A mortgagee has ordinarily no power to sell except through the Court, and a Court decreeing the enforcement of a simple mortgage must, under section 88 of the Transfer of Property Act, allow the mortgagor six months within which he is at liberty to redeem. Section 69.

76. Similarly a Court decreeing foreclosure of a mortgage by conditional sale must, under section 86 of the Transfer of Property Act, allow the mortgagor six months' grace before making the transfer absolute. In the Punjab, where the Transfer of Property Act is not in force, the period of grace is, under Bengal Regulations, I of 1798 and XVII of 1806, one year.

77. Decrees for money can be enforced (*a*) by imprisonment, or (*b*) by attachment and sale of movables, or (*c*) by attachment and sale of land. Section 254, Civil Procedure Code.

As regards imprisonment, a recent amendment of the Code forbids the use of this process against females and permits the Court to issue a notice to show cause before actually arresting. Imprisonment is (it is understood) comparatively little resorted to, and except in the Deccan (where it has been abolished in the case of agriculturists) it has been considered useful to retain it as an ultimate resort. Section 245A and B and section 337A. introduced by Act VI of 1888. Section 25, Act XVII of 1879.

As regards attachment and sale of movables, the Code provides not only the safeguards laid down in sections 210, 239 and 248, which apply in all cases of execution of money decrees (*viz.*, the power to fix instalments, to stay execution and to call on the judgment-debtor to show cause against execution), but also certain special precautions for the protection of the agriculturist, such as section 266, which exempts from attachment the materials of houses, etc., of agriculturists and such implements, cattle and seed grain as are necessary for his livelihood : (also in the case of land revenue payers all movable property which is exempt from sale for arrears of revenue), and section 269, which allows the Local Government to make special rules for the maintenance of attached live-stock, and section 291, which allows the Court if necessary to adjourn a sale.

Para. 70.

78. When decrees are executed by attachment and sale of *land*, the Code (as has already been to some extent noticed) provides, in addition to the general safeguards above mentioned, the following special assistance to the judgment-debtor :—

Under section 305 the Court may adjourn a sale in order to allow the judgment-debtor to raise the sum due by mortgage, lease, private sale, etc.

Under section 310A (a section only quite recently introduced) the judgment-debtor has power under certain circumstances to have a sale set aside by payment after its completion.

Under section 320 orders for sale can, under a declaration of the Local Government, be transferred for disposal to the Collector, who—

(*a*) may either give time for the raising of the sum due out of Court, or let or mortgage the land, or sell it, and

(*b*) if the sale is for an unsecured money debt, may also propose a scheme for liquidation of all outstanding decrees by sale of the land, or by letting or mortgaging, or managing, or farming the land.

Where no declaration under section 320 is in force, the Court may, if the Collector intervenes, deliver over to him the property to be dealt with as above.

And under section 327 the Local Government may re-issue any special rules in force at the time of the passing of the Civil Procedure Code, under which restrictions are placed on the sale of land in execution.

In addition to the above, it may be noticed that under Chapter XX a judgment-debtor who has been arrested or whose property has been attached may himself apply to the District Court to be declared an insolvent, and a decree-holder may apply to have his judgment-debtor declared an insolvent : and on the acceptance of the application debts are scheduled and paid off under theprovisions of the Act and the debtor thereon discharged.

### 3.—The Law of Compulsory transfer in satisfaction of arrears of Revenue.

79. Although there has been, as a rule, little complaint regarding the effect in recent years of the powers of compulsory transfer which the legislature has conferred on Government for the recovery of arrears of revenue, yet it may be well to notice shortly the main features of the existing laws on the subject. These may be considered under three heads, *viz.*, (*a*) the law of Bengal, (*b*) that of the other so-called 'zamindari' provinces, and (*c*) of the ryotwari areas.

Bengal Act XI, 1859.

Do., Sections, 18, 26, etc.

Bengal Act VII of 1880.

80. The Bengal law is peculiar in this respect that an arrear of land revenue can only be recovered by the sale of the estate, and although there are provisions for the due suspension or annulment of a sale in cases of hardship, yet the Sale Law of Bengal is necessarily stringent. Arrears of public demands other than revenue are recovered by what is known as the 'Certificate process,' under which the Collector has the power of recovering the arrear in the same manner as a debt decreed under the Civil Procedure Code. This includes the attachment of property and the sale of movable as well as immovable property.

Regulation II, 1877.

See Secs. 156, 157, 159 and 166, Act XIX, 1873 (N.-W. P.).

Secs. 119, 121, 124 and 132, Act XVIII, 1876 (Oudh).

Secs. 71, 72, 73 and 75, Act XVII, 1887 (Punjab).

81. In the zamindari provinces—the North-West, Oudh, Punjab, Central Provinces and Ajmere—the procedure as regards the collection of arrears of land revenue and other specified Government demands is practically uniform, with one important exception, *viz.*, that sale of land is in no case allowed in Ajmere. The general rule is that after a writ of demand has been served, or without that formality, an arrear should be recovered by process either against the person, or against the movables or against the land of the defaulter. The last class of process is not as a rule undertaken, and in some instances cannot by law be undertaken, till the others have failed. There are moreover four methods of proceeding



against the land of which sale is only one. In the first place the land may be temporarily attached for management by the Collector or an agent ; this process in the Central Provinces requires the Chief Commissioner's sanction and in the Punjab, North-Western Provinces and Central Provinces cannot be maintained for more than five years. Or the land may be transferred to a neighbour for occupation, the transferee being responsible for the revenue : this process requires the sanction of the Board of Revenue in the North-Western Provinces, the Financial Commissioner in the Punjab and the Chief Commissioner in the Central Provinces; and though in Oudh the transfer may be indefinitely prolonged or made absolute, in the other provinces it can only last for 15 years. A third alternative is to annul the assessment and place the land under management or farm : this is a process which (except in Oudh) cannot be prolonged over 15 years and which in all provinces requires the sanction of superior authority—in the Punjab of the Financial Commissioner, in the North-Western Provinces of the Board, in Oudh of the Board, or, in the case of a Taluk, of the Chief Commissioner, and in the Central Provinces and Ajmere of the Chief Commissioner. Finally, there is (except in Ajmere) the process of sale, which in all cases requires the same sanction as the annulment of settlement, and which is subject to various mitigatory provisions and to the right of pre-emption by the co-sharers or the inhabitants of the same village as the defaulter.

Secs. 101, 102, 103 and 109, Act XVIII, 1881 (C. P.).

Secs. 83, 86 and 92, Reg. II, 1877 (Ajmere).

82. The procedure for the recovery of land revenue and other analogous Government demands in the ryotwari areas varies somewhat from province to province. In Bombay, for instance, there is, in addition to processes against the person or the movables of the defaulter, only one form of process applicable (except in whole villages which, as a rule, are alienated or partly revenue-free), *viz.*, the forfeiture and sale of the holding. In Madras the land may be either attached or sold, and in Coorg also either attachment or sale may, with the Commissioner's sanction, be resorted to. In Assam the Deputy Commissioner may sell the land if the sale of movables is considered inadequate, and in the case of temporarily settled areas especially notified by the Chief Commissioner may annul the assessment. Sales in this province moreover are subject to a right of pre-emption on the part of co-sharers and settlement-holders of the same village. In Lower Burma the authorities can either follow a procedure similar to that of the Bengal certificate system above noticed or, in the case of land revenue arrears, and with the Chief Commissioner's sanction, proceed at once against the land ; while in the Upper Province the Deputy Commissioner can attach and sell the land of the defaulter in all cases of arrears either of land revenue or of the other specified Government demands.

Section 153, Bombay Act V, 1879.

Sections 5 and 27, Madras Act II, 1864; Regulation I, 1889, Sections 3, 40.

Regulation I, 1886, Sections 70-86.

Ditto, Sections 76 and 89.

Act II, 1876, Sections 45, 46.

Regulation III, 1889, Section 41.

83. It will be seen that while the law recognizes the liability of the land for the payment of revenue in all provinces except Ajmere, the conditions under which it can be temporarily or permanently transferred are in most parts of the country subjected to a number of provisos which tend to ensure the proper protection of the defaulter from haste or injustice.

## II.—EXTENT AND CHARACTER OF TRANSFERS OF LAND ALREADY EFFECTED.

### (*i*) Private Transfers.

84. As has been already noted, the transfer of land is recorded either by Registration or by Revenue Officers, and our statistics are based on the returns furnished by one or other of these classes of officers.

The Registration figures do not, for the reasons recorded in paragraph 62 above, cover the whole field and are useful rather as a general guide as to the increase of transfers than as an indication of their actual extent.

The more recent figures may be summarized as follows:—

(*i*) *Average annual number of registered sales of immovable property.*

| Provinces. | Compulsory. | | | Optional. | | | Total, Compulsory, and Optional. | | |
|---|---|---|---|---|---|---|---|---|---|
| | 1878-83. | 1883-88. | 1888-93. | 1878-83. | 1883-88. | 1888-93. | 1878-83. | 1883-88. | 1888-93. |
| Bengal | 39,519 | 69,863 | 222,799 | 84,355 | 89,237 | 936 | 123,874 | 159,100 | 223,735 |
| North-Western Provinces | 21,163 | 22,022 | 35,928 | 11,025 | 10,339 | ... | 32,188 | 32,361 | 35,928 |
| Oudh | 3,223 | 3,916 | 7,078 | 3,034 | 2,756 | ... | 6,257 | 6,672 | 7,078 |
| Punjab | 13,661 | 15,017 | 20,156 | 5,096 | 3,413 | 4,112 | 18,757 | 18,430 | 24,268 |
| Ajmere | 506 | 618 | 408 | 74 | 48 | 29 | 580 | 666 | 437 |
| Central Provinces | 2,249 | 3,667 | 7,262 | 2,090 | 1,848 | ... | 4,339 | 5,515 | 7,262 |
| Berar | 4,517 | 6,450 | 7,989 | 2,746 | 3,719 | 3,477 | 7,263 | 10,169 | 11,466 |
| Bombay | 20,031 | 26,610 | 36,677 | 7,282 | 9,719 | 11,618 | 27,313 | 36,329 | 48,295 |
| Sind | 2,836 | 3,287 | 3,823 | 798 | 810 | 590 | 3,634 | 4,097 | 4,413 |
| Coorg | 200 | 229 | 578 | 18 | 28 | ... | 218 | 257 | 578 |
| Madras | 60,130 | 94,154 | 228,999 | 50,259 | 84,186 | ... | 110,389 | 178,340 | 228,999 |
| Assam | 4,644 | 6,674 | 17,701 | 2,378 | 5,621 | .. | 7,022 | 12,295 | 17,701 |
| Lower Burma | 2,145 | 2,913 | 4,255 | 159 | 265 | 261 | 2,304 | 3,178 | 4,516 |

(*ii*) *Average annual number of registered mortgages of immovable property.*

| Provinces. | Compulsory. | | | Optional. | | | Total, Compulsory, and Optional. | | |
|---|---|---|---|---|---|---|---|---|---|
| | 1878-83. | 1883-88. | 1888-93. | 1878-83. | 1883-88. | 1888-93. | 1878-83. | 1883-88. | 1888-93. |
| Bengal | 44,852 | 56,728 | 85,542 | 45,554 | 70,036 | 139,895 | 90,406 | 126,764 | 225,437 |
| North-Western Provinces | 35,612 | 34,319 | 37,621 | 20,828 | 17,474 | 18,602 | 56,440 | 51,793 | 56,223 |
| Oudh | 9,870 | 11,476 | 13,157 | 8,413 | 7,062 | 7,731 | 18,283 | 18,538 | 20,888 |
| Punjab | 26,405 | 30,060 | 43,196 | 10,242 | 7,120 | 10,127 | 36,647 | 37,180 | 53,323 |
| Ajmere | 198 | 277 | 639 | 46 | 22 | 49 | 244 | 299 | 738 |
| Central Provinces | 6,198 | 7,784 | 9,256 | 2,351 | 2,022 | 2,347 | 8,549 | 9,806 | 11,603 |
| Berar | 5,831 | 6,812 | 8,707 | 1,521 | 1,828 | 1,574 | 7,352 | 8,640 | 10,281 |
| Bombay | 27,749 | 33,102 | 50,339 | 5,495 | 7,060 | 8,188 | 33,244 | 40,162 | 58,527 |
| Sind | 3,670 | 4,247 | 6,412 | 409 | 443 | 414 | 4,079 | 4,690 | 6,826 |
| Coorg | 210 | 233 | 574 | 9 | 26 | 92 | 219 | 259 | 666 |
| Madras | 103,987 | 123,516 | 171,074 | 74,808 | 119,603 | 170,948 | 178,795 | 243,119 | 342,022 |
| Assam | 1,289 | 1,601 | 1,740 | 317 | 630 | 1,003 | 1,606 | 2,231 | 2,743 |
| Lower Burma | 2,183 | 2,953 | 4,808 | 58 | 118 | 114 | *2,241 | 3,071 | 4,922 |

(*iii*) *Average annual value of immovable property transferred.*

| Provinces. | 1878-83. | 1883-88. | 1888-93. |
|---|---|---|---|
| | Rs. (lakhs). | Rs. (lakhs). | Rs. (lakhs). |
| Bengal | 1,098 | 1,140 | 1,480 |
| North-Western Provinces | 479 | 491 | 561 |
| Oudh | 141 | 154 | 184 |
| Punjab | 215 | 260 | 390 |
| Ajmere | 5 | 6 | 8 |
| Central Provinces | 65 | 81 | 105 |
| Berar | 39 | 54 | 75 |
| Bombay | 430 | 544 | 726 |
| Sind | 35 | 44 | 63 |
| Coorg | 9 | 9 | 16 |
| Madras | 1,007 | 1,089 | 1,399 |
| Assam | 34 | 34 | 40 |
| Lower Burma | 63 | 111 | 136 |

With reference to these registration figures it must be remembered that—

(1) they apparently include land other than agricultural land;

(2) the Transfer of Property Act, introduced in 1882 everywhere except in Bombay, the Punjab and Burma, extended largely the range of compulsory registration, and in 1887 the Government of India ordered that all registration rendered compulsory by that Act should be classed in the returns as registration rendered compulsory under the Registration Act.

Home Department Resolution No. 40—2054-70, dated 12th September 1887.

Agricultural Statistics Returns.

85. It is to the Revenue records that we must look mainly for our information, and the only uniform shape in which this can be supplied for the country at large is the following:—

(*i*) *Number of private transfers.*

| Year. | Bengal. | North-Western Provinces. | Oudh. | Punjab. | Ajmere. | Central Provinces. | Berar. | Bombay. | Coorg. | Madras. | Assam. | Lower Burma. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1884-85 | Not available. | Not available | 21,158 | Not available | Not available. | 2,189 | 4,685 | Not available. | 688 | 80,781 | 11,773 | 8,484 |
| 1885-86 | | 13,602 | 10,379 | 113,406 | | 2,329 | 4,947 | | 588 | 96,155 | 14,827 | 15,917 |
| 1886-87 | | 13,203 | 8,869 | 215,914 | | 3,487 | 6,131 | | 572 | 99,849 | 17,016 | 15,166 |
| 1887-88 | | 13,941 | 13,525 | 271,202 | | 2,749 | 7,082 | | 559 | 110,550 | 24,797 | 15,546 |
| 1888-89 | | 15,523 | 11,494 | 296,576 | 2 | 3,297 | 6,676 | | 632 | 116,797 | 23,076 | 20,450 |
| 1889-90 | | 16,267 | 14,259 | 280,529 | 7,969 | 2,789 | 7,840 | | 409 | 112,656 | 27,246 | 19,419 |
| 1890-91 | | 16,729 | 14,488 | 215,640 | 5,880 | 1,824 | 6,242 | | 615 | 115,654 | 24,413 | 18,965 |
| 1891-92 | | 22,022 | 94,88 | 371,806 | 3,694 | 1,837 | 3,411 | | 559 | 104,283 | 22,311 | 32,882 |
| 1892-93 | | 25,066 | 10,395 | 324,575 | 17,837 | 1,896 | 5,783 | | 653 | 104,277 | 22,385 | 28,301 |
| Average | | 17,046 | 12,672 | 261,206 | 8,845 | 2,488 | 5,866 | | 586 | 104,555 | 20,871 | 19,458 |

(*ii*) *Area privately transferred.*

| Year. | Bengal. | North-Western Provinces. | Oudh. | Punjab. | Ajmere. | Central Provinces. | Berar. | Bombay. | Coorg. | Madras. | Assam. | Lower Burma. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Acres. | Acres. | Acres. | Acres. | Acres. | Acres. | Acres. | Acres. | Acres. | Acres. | Acres. | Acres. |
| 1884-85 | Not available. | Not available. | 828,419 | Not available | Not available. | 848,600 | 97,358 | Not available | 3,894 | 323,808 | 38,590 | 113,029 |
| 1885-86 | | 331,315 | 958,358 | 636,398 | | 1,119,875 | 101,569 | | 3,263 | 397,261 | 72,953 | 159,802 |
| 1886-87 | | 356,561 | 2?8,812 | 1,730,620 | | 1,279,864 | 135,926 | | 3,529 | 555,096 | 145,592 | 164,709 |
| 1887-88 | | 316,855 | 675,812 | 1,857,234 | | 1,126,042 | 117,172 | | 3,679 | 455,258 | 60,006 | 155,053 |
| 1888-89 | | 364 221 | 640,185 | 1,660,627 | 12 | 968,008 | 140,442 | | 5,594 | 428,449 | 62,237 | 202,633 |
| 1889-90 | | 408,906 | 691,960 | 1,421,853 | 13,068 | 660,662 | 151,807 | | 2,078 | 455,047 | 63,781 | 211,747 |
| 1890-91 | | 383,911 | 693,189 | 961,402 | 10,048 | 469,328 | 107,952 | | 3,574 | 664,673 | 52,975 | 239,475 |
| 1891-92 | | 384,522 | 580,370 | 1,731,161 | 8,399 | 427,807 | 59,375 | | 3,224 | 419,277 | 34,912 | 317,398 |
| 1892-93 | | 399,898 | 211,124 | 1,944,907 | 42,098 | 456,772 | 115,988 | | 3,935 | 491,078 | 36,568 | 323,696 |
| Average | | 368,273 | 619,805 | 1,499,275 | 14,725 | 817,433 | 114,165 | | 3,641 | 465,549 | 61,957 | 209,726 |



Even these figures, however, cannot be accepted without further information.

(*i*) They do not include transfers by inheritance, but it is believed that they include all other forms of permanent transfer, *viz.*, gifts and exchanges, sales, etc.

(*ii*) They are believed not to include mortgages and temporary transfers, except (*a*) in the Punjab, where both usufructuary mortgages and redemptions of mortgage are shown; and (*b*) the Central Provinces where usufructuary mortgages have been shown (and that imperfectly) in the last year or two only; (*c*) to a certain extent in Madras, where the record of mortgages is optional.

(*iii*) They include in the Punjab transfers by occupancy tenants. To arrive at proprietary transfers only in that province, some 10 per cent. should be deducted from the figures shown.

Enquiries have recently been instituted, which will, it is hoped, have the effect of clearing up to some extent the meaning of the above figures.

*Bengal.*

86. The Bengal proprietors have ever since the permanent settlement of 1793 been engaged in transferring their rights either by the creation of subtenures or by the sale and mortgage of the property itself, and, as the free use of these rights has over the greater part of the province occasioned no serious complaint hitherto, it will be unnecessary to illustrate in any detail the extent to which the rights have been exercised. The following figures from the Registration reports give the main outlines for recent years:—

| Year. | Average annual number of sales of immovable property. | | Average annual number of mortgages of immovable property. | | Average value of immovable property annually transferred. |
|---|---|---|---|---|---|
| | Compulsory. | Optional. | Compulsory. | Optional. | Rs. (lakhs). |
| 1878—83 | 39,519 | 84,355 | 44,852 | 45,554 | 1,098 |
| 1883—88 | 69,863 | 89,237 | 56,728 | 70,036 | 1,140 |
| 1888—93 | 222,799 | 936 | 85,542 | 139,895 | 1,480 |

But the statistics are vitiated by the facts, among others, (*a*) that they contain figures for transferable tenancies, as well as for proprietary right and tenures, (*b*) that the introduction of the Transfer of Property Act in 1882 and of the Bengal Tenancy Act in 1885 has tended largely to increase compulsory registration. On the whole, the comparative slowness of the rise in money value, as compared with that of the number of transactions, may perhaps be taken to show that transfers of proprietary right are not increasing rapidly.

87. In certain areas the transfers are apparently to be traced to indebtedness of a more or less serious kind. This would seem to be the case in parts of Behar, and also in Orissa. In Chota Nagpur the subject attracted atten- Report on Moral and Material Progress of India (1891-92), p. 456.

Report on the Agriculture of Cuttack by Mr. N. N. Banerji (1893), page 38.
Report on the Agriculture of Lohardagga by Mr. Basu (1890), p. 22.

tion some 20 years ago, and led to the passing of the Chota Nagpur Encumbered Estates Act; but the present condition of the landed gentry in that part of the province still apparently leaves something to be desired. No separate information has been traced in respect of the progress or otherwise of the transfer of land in the Sonthal Parganas.

Report on the Moral and Material Progress of India (1891-92), p. 456.
Report on the Agriculture of Lohardagga by Mr. Basu (1890), p. 22.

A certain, though apparently not a very considerable, proportion of the area transferred falls into the hands of the money-lending classes. It is said that in parts of Behar they form the bulk of the purchasers of landed property, and in Lohardagga a "considerable portion of the landed property" is reported to have "passed into the hands of speculative money-lenders." There is unfortunately no specific information with the Government of India as to the extent of this class of transfer in particular tracts, and the only definite indication we have as to the proportion of the proprietary area that passes into the hands of money-lenders is given in the following figures for the year 1892–1893, supplied in a recent letter by the Board of Revenue:—

Letter No. 800 A., dated 20th June 1894, to the Government of Bengal. (A Pros., Oct. 1894, Nos. 1 and 2.) Sel., p. 37.

| | Number of transactions. | Sales to Mahajans. | Percentage of column 3 on column 2. |
|---|---|---|---|
| 1 | 2 | 3 | 4 |
| Entire estates . . . . | 1,622 | 184 | 11·3 |
| Shares in estates . . . | 13,762 | 2,021 | 14·7 |
| Revenue-free properties . . | 17,415 | 2,473 | 14·2 |

Board of Revenue Annual Report, Appendix XV.

88. The transfers of tenure-holders are registered under the provisions of the Bengal Tenancy Act, 1885, and the available figures indicate an apparent decrease in the number of such transfers:—

*Number of transfers of tenures.*

| Year. | Voluntary Section 12, (3). | By decree-sale. Sections 13 (2) and 14. | Total. |
|---|---|---|---|
| 1886-87 . . . . | 67,565 | 3,400 | 70,965 |
| 1887-88 . . . . | 89,564 | 4,991 | 94,555 |
| 1888-89 . . . . | 63,372 | 4,756 | 68,128 |
| 1889-90 . . . . | 29,898 | 4,315 | 34,213 |
| 1890-91 . . . . | 27,636 | 2,956 | 30,592 |
| 1891-92 . . . . | 25,104 | 2,451 | 27,555 |
| 1892-93 . . . . | 21,739 | 2,115 | 23,854 |

Letter No. 800 A, dated 20th June 1894, from Board of Revenue to Government of Bengal. (A Pros., Oct. 1894, Nos. 1 and 2.) Sel., p. 37.

The proportion that fell to money-lenders can only be estimated from the following figures for 1892-93:—

| Description of holdings. | Number of transactions. | Sales to Mahajans. | Percentage of column 3 on column 2. |
|---|---|---|---|
| 1 | 2 | 3 | 4 |
| Intermediate tenures . . . | 44,012 | 4,239 | 9·6 |
| Others* . . . . . | 21,109 | 3,133 | 14·8 |

* It is not clear to what this refers. These headings in the original follow those quoted above for proprietors.



*North-Western Provinces and Oudh.*

89. In the United Provinces we have two main classes of landlords, *viz.*, the large owners and the proprietary communities, and also two distinct forms of revenue assessment, *viz.*, the permanent settlement in the Benares division and a temporary settlement elsewhere: but such statistics as are available do not, as a rule, give us separate results under these different heads.

90. For the North-Western Provinces we have (*a*) figures showing the number of mortgages, and of sales and their value from 1847-48 onwards, (*b*) figures showing the revenue of the property sold from 1868 onwards, (*c*) figures showing the number of redemptions from 1886 onwards. The details are given in Appendix II below, but the results may be abstracted as follows:— In Revenue Administration Reports.

| Period. | By Private Transfer. | | | | |
|---|---|---|---|---|---|
| | Average number of sales. | Average Revenue of property sold in lakhs. | Average price in lakhs. | Average number of mortgages. | Average number of redemptions. |
| 1847–52 . . . . . | 2,503 | § | 18·67 | 3,188 | § |
| 1852–57 . . . . . | 3,000 | § | 21·37† | 4,937 | § |
| 1857–62 . . . . . | 3,502* | 7·38* | § | 4,685* | § |
| 1862–67 . . . . . | 5,617† | 6·40‡ | § | 7,917† | § |
| 1868–73 . . . . . | 7,613 | 4·66 | 40·89 | 8,155 | § |
| 1873–78 . . . . . | 11,616 | 4·70 | 67·14 | 8,340 | § |
| 1878–83 . . . . . | 14,910 | 4·90 | 86·12 | 9,379 | § |
| 1883–88 . . . . . | 13,393 | 3·98 | 81·17 | 7,779 | 2,713† |
| 1888–93 . . . . . | 17,884 | 4·84 | 107·61 | 8,013 | 3,372 |

* Average for four years. † Average for three years. ‡ Average for two years. § Statistics not given.

The total revenue represented by the sales since 1868 is according to the above figures Rs. 115·37 lakhs, so that (not allowing for re-sales) land representing 25 per cent. of the present revenue has been transferred by sale in the last 25 years. If we follow the system adopted by Mr. Buck for the Famine Commission in 1879 of ascertaining the area sold by assuming a revenue of Rs. 2 per area we find that the average area sold in the same period at each transaction was .18 acres, and applying this to the mortgages since 1868 we should find that (after deducting two-fifths for redemptions) 2,250,000 acres or 4·3 per cent. on the total, and 8·9 on the cultivated area, was now under mortgage.

Agricultural Statistics Returns.

91. With the above, may be compared the statistics recently made available for "transfer by private contract or gift."

| Year. | Number of transfers. | Area transferred. |
|---|---|---|
| | | Acres. |
| 1885-86 | 12,602 | 331,315 |
| 1886-87 | 13,209 | 356,561 |
| 1887-88 | 13,941 | 316,855 |
| 1888-89 | 15,533 | 364,221 |
| 1889-90 | 16,267 | 408,906 |
| 1890-91 | 16,729 | 382,911 |
| 1891-92 | 22,022 | 384,522 |
| 1892-93 | 25,066 | 399,898 |

The following are the corresponding figures for Oudh:—

| Year. | Number of transfers. | Area transferred. |
|---|---|---|
| 1884-85 | 21,158 | 828,419 |
| 1885-86 | 10,379 | 958,358 |
| 1886-87 | 8,869 | 298,812 |
| 1887-88 | 13,525 | 675,182 |
| 1888-89 | 11,494 | 640,185 |
| 1889-90 | 14,259 | 691,960 |
| 1890-91 | 14,488 | 693,189 |
| 1891-92 | 9,488 | 580,370 |
| 1892-93 | 10,395 | 211,124 |

92. In addition to these there are the Registration returns:—

(1) *North-Western Provinces.*

| Year. | Average annual number of sales of immovable property. | | Average annual number of mortgages of immovable property. | | Average value of immovable property annually transferred. |
|---|---|---|---|---|---|
| | Compulsory. | Optional. | Compulsory. | Optional. | Rs. (lakhs). |
| 1878—83 | 21,163 | 11,025 | 35,612 | 20,828 | 429 |
| 1883—88 | 22,022 | 10,389* | 34,319 | 17,474 | 491 |
| 1888—93 | 35,928 | ... | 37,621 | 18,602 | 561 |

* Average for 3 years.

(2) *Oudh.*

| Year. | Average annual number of sales of immovable property. | | Average annual number of mortgages of immovable property. | | Average value of immovable property annually transferred. |
|---|---|---|---|---|---|
| | Compulsory. | Optional. | Compulsory. | Optional. | Rs. (lakhs). |
| 1878—83 | 3,223 | 3,034 | 9,870 | 8,413 | 141 |
| 1883—88 | 3,916 | 2,756* | 11,476 | 7,062 | 154 |
| 1888—93 | 7,078 | ... | 13,157 | 7,731 | 184 |

* Average for 3 years.



Taking all the statistics together, we may perhaps conclude the transfers are probably stationary in Oudh, but steadily increasing in number and area in the North-Western Provinces.

93. There are no general statistics as to the class to which the transferees in cases of transfer belong. A special enquiry was, however, made on this subject in 1873 with respect to ten districts, which were then under settlement in the North-Western Provinces, and the result as regards these districts was as follows:— See Note dated 25th September 1873, quoted in Vol. II, Deccan Riots Commission's Report, p. 53, and Appendix III, Famine Commission Report, p. 408.

Percentage of area held by agriculturists at former settlement (generally 30 years before) . . . . . 90 per cent.
Percentage of area held by agriculturists in 1873 . . . 73 „

The term "agriculturist" in this return included persons connected with land by long association, such as talukdars, as well as those who followed agriculture as a profession. "Under the head of non-agricultural," according to the instructions, "would come classes holding landed-property as a source of income, but not the main source of income, whose connection with the land was an accident, not a custom, such as professional money-lenders, Government servants, etc." The Board of Revenue made the following comments on the return:—

"These statements show the extent to which land has actually been *transferred*. They do not show the extent to which it is *encumbered*. They give an index to the losses of the old agricultural proprietors during the last 30 years, but they do not give any clue to the obligations of present proprietors." "According to these returns the agricultural proprietors in the area given here held 18 per cent. less than at the commencement of last settlement. Non-agricultural proprietors, instead of 10 per cent., now hold 27 per cent. of the revenue-paying area. The figures, as above stated, do not show how much is held by conditional mortgages, or how much is hypothecated."

"The figures, though perhaps not in all cases absolutely correct, are quite sufficiently so for the purpose of the Board. The records from which they were drawn are reliable; and such inaccuracy as there is will arise from the partial absence of records, or from haste in drawing up the statement."

"The conclusion to be drawn from the figures seems to be that, though transfers may have been on a smaller scale than was supposed, they have nevertheless been considerable; that the land is beyond doubt passing into new hands; and that, at the ratio of the last 30 years, the whole of the country would be in the hands of non-agricultural classes in 150 years, if the causes which led to transfer continue to operate. But during the last 10 years (in most districts, years of settlement) the ratio of transfer has decreased; and if we are to judge by returns, the agricultural classes are growing more secure in their property. On the other hand, it is probable that obligations, not now insisted on, will be pressed as soon as the new settlements are concluded. Again the recent revision of settlement, which has led to a large increase of assessment, will probably lead to an increase in the rate of transfer. Against this may be set the probability that improvidence will grow less as time goes on. The village communities, it may be noted, have suffered more than the talukdars, who have themselves in many cases acquired large properties at the expense of the village communities. This pressure of existing embarassments, combined with an enhanced demand, will, probably, rather accelerate the rate of transfer among the communities during the next 10 or 12 years."

94. In replying to the Famine Commission, the provincial authorities merely referred to these statistics, and no more recent figures appear to be available for the Provinces at large. The following opinion was, however, given in 1892 by Mr. Miller, Director of Land Records and Agriculture, in reporting on the material Progress of the United Provinces:— Famine Commission's Report, Appendix III, p. 408 Report on Material Progress of North-Western Provinces and Oudh, 1892.

"The indebtedness of proprietors becomes a serious political question when it is found that their insolvency means dispossession, and that the soil is passing into the hands of classes

who have the ability neither to cultivate nor to rule. It would not appear, however, that this dispossession of the landed classes is increasing to an alarming extent at present. It is by no means so bad as in earlier days, when the detested name of "auction-purchaser" or *mushtari* was more frequently heard, and when lands were rapidly passing into the hands of men who dared not visit their estates unless surrounded by a "rabble of cudgellers." The transfer of land is still sufficiently common, but the land-owning and cultivating classes compete with the money-lender for the possession of it, and there is little indication in the recent economic history of the provinces of any reason for apprehending the wholesale dispossession of any class that it is desirable to retain on the soil."

In respect of special districts the following information may be quoted:—

Resolution No. 898 A-1-710½, dated 15th June 1889, on Settlement Reports of permanently settled districts. Letter No. 447, dated 16th July 1892, on Gorakhpur Settlement Report. Settlement Report, paras. 347-49.

As regards the permanently settled districts, the Government in 1889 observed that "the proprietary classes are still in the main the same as they were when the country was first annexed." In 1892 the Board stated as regards Gorakpur that "transfers have generally been from the poorer to the richer co-sharers in coparcenary villages rather than transfers to outsiders."

In 1874 Mr. Markham, Settlement Officer of Bijnor, produced figures to show that as prices had risen, the progress of the acquisition of land by money-lenders had been checked.

Settlement Report, para. 135.

In 1878 figures were quoted in the Cawnpore Settlement Report which showed that at annexation the Thakurs, the indigenous gentry of the district, had already lost a considerable amount of their landed property, which had passed "probably into the hands of Kayesths, Mussulmans and money-lenders," and by the date of the settlement they had lost more and were dying out. The Settlement Officer, Mr. Wright, reported:—"We found the hereditary proprietors still in possession of 60 per cent. of the cultivated area at last settlement: at the present revision they only own 37·5 per cent."

Settlement Report, para. 18, page 55.

In the same year Mr. Porter, Settlement Officer of Allahabad, quoted figures which showed that the banias of the district had in 40 years doubled their landed property.

Settlement Report, para. 565, p. 113.

In 1880 Mr. W. E. Neale, the Settlement Officer of the Hamirpur district, in speaking of the Marwaris remarked:—"They own now rather more than one-seventh of the district, and number about 750 souls, of whom about half are resident."

Settlement Report, page 75.

Writing of Moradabad in 1881 the Settlement Officer, Mr. Alexander, noted "the large extent of transfers," during the thirty years of the previous settlement. "Setting aside revenue-free land," he said, "the proportion transferred in the different parganas since settlement seems as follows:—Thakurdwara $\frac{2}{3}$, Moradabad $\frac{2}{5}$, Bilari rather over $\frac{1}{2}$, Sambhal about $\frac{1}{2}$, Amroha not known accurately but about $\frac{1}{3}$, Hasanpur $\frac{2}{5}$." He implies that the monied classes sought the land, but does not estimate the amount gained by them.

Settlement Report, para. 340.

In 1882 Mr. Smith noticed the loss of land by the hereditary biswadars in Aligarh. "They have been losers to the extent of nearly half their property in $22\frac{1}{2}$ per cent. of the villages, paying 24 per cent. of the demand, to that of more than half in $32\frac{1}{2}$ per cent. of the villages with 34 per cent. of the demand, and have lost their all in 36 per cent. of the villages, paying the same percentage of jama."

Settlement Report, para. 50, p. 29.

In 1891 Mr. Hooper, Settlement Officer of Basti, wrote as regards that district:—"As yet, landed property is mainly in the hands of its natural owners. A great many transfers have taken place: old families have decayed and new ones have risen; but the new men belong, for the most part, to the same castes and classes as the original proprietors. So far, the bania has not obtained any great hold on the land of the district."



Letter No. 168—1-263, dated 25th April 1893, on Settlement Report.

In 1893 the reassessment of Bulandshahr was reviewed by the Board of Revenue, who after quoting figures wrote: "It would thus appear that only a third of the land in the district has changed owners by means of sale since last settlement. The castes which have gained most largely are the Saiyads and Banias, the latter now ranking fourth among the landowners of the district as regards the area of their possessions. While transfers have been numerous, many of them have been between co-sharers and members of the same caste, so that the former land-owning classes have not lost ground to the extent that the mere statistics of transfers would indicate."

Letter No. 2975 of 24th July 1889.

In Jalaun, the Settlement Report of which district has just been received, the Commissioner notes: "The area affected by transfer during the last 20 years is very large, ranging from 10 per cent. in Orai to over 24 per cent. in Kalpi. This is exclusive of mortgages. The principal losers have been the agricultural classes, *viz.*, Thakurs, Lodhis, Ahirs, Kurmis, and Gujars; probably from want of capital, their land having fallen into the hands of capitalists."

*The Punjab.*

95. In the Punjab, where the question of the alienation of land has received attention since 1872 and where there has been of late years a considerable amount of special investigation by settlement officers, we find a quantity of statistics which, though still imperfect, are of more value for our purposes than those available in any other Province in India.

Moga Assessment Report, para. 29. Hafizabad Assessment Report, para. 145.

As has already been noted, the custom of transferring land is of comparatively recent origin in the Punjab: in some parts it had not gained a footing in 1860, and in others it was practically not in use as late as 1868. In the main portion of the province, however, it was being established during the decade following the mutiny and in 1872 the extent of the alienations first attracted the attention of Government. The matter has been officially examined on three or four different occasions since that time.

Punjab Selections, New Series, XIII (1876), page 23.

96. The enquiries of 1872-73 led to the examination of the existing statistics, from which Mr. Justice Melville, noting on 1st April 1879, quotes the following as "the most prominent instances" of transfer:—

| District. | Alienations 1867—1872. |
|---|---|
| Ferozepore | About one-fourteenth part of the revenue-paying land. |
| Gurdaspur | Sales 464 cases; mortgages 2,612 cases. |
| Jhansi | 37,565 acres. |
| Peshawar | 12,000 acres. |
| Multan | 74, 697 acres. |
| Jhelum | 2,104 cases. |
| Kangra | 6,553 acres sold; 34,251 acres mortgaged. |
| Rawalpindi | 27,485 acres. |
| Jullundur | 46,856 acres sold; 31,895 acres mortgaged. |
| Gujranwalla | 20,788 ghumaos sold; 24,760 ghumaos mortgaged. |
| Hoshiarpur | 6,909 acres sold; 85,290 acres mortgaged. |

Ditto, pages 33-40.

Mr. Melville's view was that "it was clear that every extensive alienations had occurred in different parts of the Punjab"; but the Financial Commissioner in the Revenue Reports of 1873 and 1874 held that "the area sold was not

Ditto, page 5. Resolution, 4609 of 23rd December 1874.

increasing in any startling proportion," and the Local Government in 1874 drew the following conclusion as regards the proceedings of the last five years:—

(1) Sales of land for debt in execution of decrees of Court were almost unknown; only one sale of ancestral land was sanctioned in 1873.

(2) That the number of voluntary sales of land averaged less than 6,000 per annum, so that as the proprietors of land, according to the Financial Commissioner's returns, number 2,006,670, only one proprietor out of 334 parts with land in the year.

(3) That the number of mortgages averages less than 15,000 in the year, being at the rate of 1 mortgage to 133 proprietors:

(4) That the aggregate area of assessed land annually transferred by sale amounted on an average to less than 1 acre per square mile; that during the past year there were only 6 districts in which more than 1 acre per square mile was transferred, and in only a single district more than 2 acres per square mile:

(5) That on an average, not more than 2 acres per square mile were annually mortgaged; that last year in only 7 districts did the number of acres exceed three per square mile, and of these districts 5 are amongst the most prosperous and wealthy in the Province:

(6) That the value of land is steadily rising in the market, and last year averaged 28½ years' purchase of the Government assessment.

Report of Famine Commission, Appendix III, page 401.

97. Again in 1877-8 statistics were furnished to the Famine Commission on which Major Wace commented as follows:—

"According to the return these total lands encumbered with mortgages amount to only 7 per cent * of the province, and the average annual sales and mortgages together amount to only 1 per cent. The conclusion indicated is, I think, that taking the province as a whole neither sales nor mortgages occur in such numbers as to give ground for anxiety concerning the general prosperity of the agricultural classes."

Letter No. 231 of 7th November 1888, from Government of Punjab to Government of India. (A Pros., May 1891, Nos. 1 to 8.) Sel., p. 49.

98. The matter was again examined by the Government of Sir James Lyall in 1888, and elaborate statistics of past alienations were then compiled, in reviewing which Sir James Lyall expressed his opinion that "after allowing for the greater accuracy of the statistics of later years ... the statements of sales and mortgages from 1865-66 to 1885-86 show a large gradual increase in the area sold and mortgaged in the Punjab." In view, moreover, of Mr. Thorburn's recent representations regarding the indebtedness of the Western Punjab, separate results were worked out for the eastern and western divisions of the Punjab, and the view expressed by the Lieutenant-Governor on consideration of these results was that "the mere figures for the west" were not "more alarming than for the east, as might appear, but rather the contrary."

This led to a further examination of statistics, after which the Financial Commissioners, Messrs. Elsmie and Young, recorded further opinions in 1889. Mr. Elsmie, in reviewing the reports of the District Officers, stated that "in answer to the enquiry whether alienations are proceeding in an increasing ratio the replies are for the most part decidedly in the affirmative," and after quoting some expressions of this view, stated his opinion that this view "must be fully accepted." Mr. Mackworth Young agreed in the following terms:—

Memorandum of 15th August 1889. (A Pros., Dec. 1891, Nos. 10 and 11.)

Memorandum of 1st October 1889.

"The only safe conclusion is ... that there is year by year a gradually increasing amount of land being sold and mortgaged ... It would appear that about 5 per cent. of the total area and 8 per cent. of the cultivated area of the Province was under mortgage."

99. The figures for the decade ending September 1891 were subsequently quoted by Mr. Robertson, Director of Land Records and Agriculture, in

* Estimated not on the acreage but on the land revenue demand, which is a truer valuation for such a calculation than the acreage would be. E. G. W.



a memorandum on the Material Progress of the Punjab, in the following words:—

"During the ten years which expired on the 30th September 1891, 5,256,238 acres of land were mortgaged in the Punjab for a sum of Rs. 10,68,08,720. Of this 3,469,117 acres or 66 per cent. were cultivated and 1,787,121 or 34 per cent. uncultivated. This gives an average of 525,623 acres mortgaged each year and an average rate of mortgage money per acre of Rs. 20.

"During the same period 2,025,355 acres were redeemed from mortgage, of which 1,336,734 acres were cultivated and 688,621 acres uncultivated. The total amount of redemption money paid was Rs. 33,479,214, the average rate per acre being Rs. 16½.

"On 30th September 1891, which is the close of the agricultural year, the total area of land under mortgage in the Punjab was 3,918,873 acres, and the total amount of mortgage money due was Rs. 78,377,000, giving an average of Rs. 20 per acre. Of this area 2,586,456 acres were cultivated and 1,238,417, acres uncultivated.

"During the same period 2,914,241 acres of land have changed hands by sale, the amount of purchase money being Rs. 57,487,632, giving an average of Rs. 20 per acre. Of this 1,477,197 acres were cultivated and 1,437,044 acres uncultivated."

100. The chief of the available figures have now been compiled in this office and will be found in Appendix III of this note. As regards transfers of proprietary and occupancy right the results when reduced to percentages are as follows:—

| Period. | Percentage of total area. | | | Percentage of total revenue represented by land. | | Percentage of cultivated area. | | |
|---|---|---|---|---|---|---|---|---|
| | Sold during period. | Mortgaged during period. | Under mortgage at end of period. | Sold during period. | Mortgaged during period. | Sold during period. | Mortgaged during period. | Under mortgage at end of period. |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 1866—1874 | 1·3 | 2·1 | * | 2·1 | 5·6 | * | * | * |
| 1874—1878 | ·7 | 1·5 | 1·2 | 1·2 | 3·3 | * | * | * |
| 1878—1883 | 1·4 | 2·7 | 3·2 | 2·0 | 4·8 | * | * | * |
| 1883—1888 | 2·8 | 5·4 | 6·7 | 3·1 | 8·1 | (a) 3·0 | (a) 7·3 | (a |
| 1888—1893 | 3·1 | 5·0 | 9·0 | 3·2 | 8·5 | (b) 3·0 | (b) 7·3 | (b) 14·7 |

* Statistics not given.

(a) Cultivated area taken as 23 million acres—see Revenue Report Statement III, 1887—1888.
(b) Ditto ditto, 26 ditto ditto, 1892—1893.
The total area for the purposes of this table has been taken as 55 million acres (the present malguzari area) throughout.

According to column B of Revenue Report, Statement XI, the percentage of the total area of which the *ownership* was encumbered by usufructuary mortgage was—

| | Per cent. |
|---|---|
| In 1886 | 5·4 |
| In 1890 | 6·4 |
| In 1893 | 7·7 |

The figures taken as they stand would lead one to conclude that the area sold each year was increasing, that 10 per cent. of the total area and land representing 11·6 per cent. of the revenue had been sold in the last 25 years, that mortgages became rapidly more common until the last quinquennium but now have received a slight check, and that the area under mortgage

represents now at least 9 per cent. of the total, and at least 15 per cent. of the cultivated, area.

101. In dealing with the above statistics, however, the following cautions must be observed:—

(i) The figures include information regarding transfer of occupancy rights* and of over-proprietorship. The occupancy tenants however possess only 10 per cent. of the area of the Province, and superior owners probably a still smaller proportion: and although cases may occur in which transfer of superior ownership gives a wrong complexion to local results, the provincial figures are not greatly effected.

See, *e.g.*, para. 8 of Mr. Young's memorandum of 1st October 1889.

(ii) The return includes compulsory transfers.

(iii) The areas under mortgage at a particular time, as ascertained by the addition of the "net" mortgages up to date, are slightly exaggerated from the fact that some lands are mortgaged twice over without any redemption being recorded.

Ditto.

(iv) In the return on which these figures are based collateral mortgages need not be entered, and as a rule are not entered. As regards the extent of this unrecorded mortgage, Captain Montgomery, Settlement Officer of Hoshiarpur, has estimated it at a figure equal to that of the recorded usufructuary mortgage: figures given by Mr. Francis, Settlement Officer, Muktsar, would put it at some two-thirds that amount, and Mr. Walker, Settlement Officer, Lahore, speaks of "an immense amount of collateral mortgage and unsecured debt which does not appear on the records." "We see the unrecorded debt," writes Mr. Kensington, Settlement Officer, North Umballa, "everywhere mounting up under our present system, and sooner or later the money-lender will be able to utilize it as a means of obtaining possession of the land." And in addition to the unrecorded mortgages we must, in estimating the temptations to transfer the land, take also into consideration the unsecured debt, which is large.

Settlement Report, para. 75.

Assessment Report, para. 10.

Paragraph 9, Memo. dated 25th January 1889, on Punjab Government letter No. 232, dated 7th November 1888. (A Pros., Dec. 1891, Nos. 10 and 11.)

See, *e.g.*, Zaffarwal Assessment Report, page 30.

(v) Lastly (and this is a matter of great importance) the figures recorded against any year in the returns do not represent the number of sales or mortgages effected during that year, but the number duly brought to record by the revenue authorites during the year. Up till about 1884 the record of transfers was, as a rule, very laxly supervised, and when the matter was taken up zealously after that date, it was found that a very large number of sales and existing mortgages had never been brought on to the record at all. In 1885, for instance, when commencing the re-assessment of the Moga tahsil in Ferozepur, the Settlement Officer found 34,000 cases of transfer awaiting record in that tahsil, or more than sixteen times as many as had been attested in the previous 31 years; and, although the procedure may not have been as lax elsewhere, the record was certainly everywhere inadequate. In 1884-85 new rules were introduced, the revenue establishment

Assessment Report (1887), para. 28.

* It has not been thought worth while to separate here the figures for occupancy tenants, as this could not be done in the return of transfers to money-lenders. The Punjab return of transfers to money-lenders does not distinguish transfers of occupancy rights from proprietary transfers.



was strengthened, and the improvement of the village papers was urged on with great zeal under the orders of the Settlement Commissioner, Colonel Wace. During the next ten years fifteen out of the thirty-one districts of the province came under settlement and in each of these the records were thoroughly overhauled, and as far as possible brought up to date by a special officer: while in the other districts also a similar, though less sweeping, improvement was initiated. An attempt was made by the Settlement Officer of Amritsar to compare the number of transfers recorded during 1885-86 with those which actually took place in that year, with the result that the former were estimated at six times the latter, but this proportion cannot be accepted as a guide elsewhere, or at other times, nor could we accept generally the ratio of the transfers recorded in the recently-settled districts during the years immediately following the settlement to those recorded immediately before or during the settlement. We must for the present be content with our ignorance as to the extent of exaggeration in the recent figures. In future the figures for transfers recorded during the year will tally more closely with those of the transfers actually effected, and in addition to this a change has recently been prescribed in the form of the returns under which the transfers effected during the current and the preceding year will be separated from the older cases.

Note by Mr. Young, dated 1st October 1889, para. 10.

Government Reviews of Revenue Administration Reports for 1891-92 and 1892-93.

102. Making allowance for the above considerations, we may perhaps still admit a certain steady increase in sales and mortgages; roughly speaking, we might perhaps guess that proprietary land representing some 10 per cent. of the revenue had been sold in the last 25 years.

103. These conclusions are to some extent borne out by the registration figures for the Punjab, where the Transfer of Property Act is not in force and where the law of registration is practically the same now as in 1877:—

| Year. | Average annual number of sales of immoveable property. | | Average annual number of mortgages of immovable property. | | Average value of immoveable property annually transferred. |
|---|---|---|---|---|---|
| | Compulsory. | Optional. | Compulsory. | Optional. | Rs. (lakhs). |
| 1878—83 . . | 13,661 | 5,096 | 26,405 | 10,242 | 215 |
| 1883—88 . . | 15,017 | 3,413 | 30,060 | 7,120 | 260 |
| 1888—93 . . | 20,156 | 4,112 | 43,196 | 10,127 | 390 |

104. Turning now to the investigation of the classes to whom these transfers are made, it may be observed that previous to 1874 there were no general statistics bearing on this point. In one district only (Hoshiarpur) was a return compiled in 1872 from which it appeared that the money-lenders and agriculturists obtained the transferred land in the proportion of 218 to 220. The figures from 1874 onwards were reviewed by the Punjab Government in 1888 and by the Financial Commissioner in 1889, but without the indication of any important conclusions other than that the increase in transfers had brought with

it an increase in transfers to money-lenders. The figures, as brought up to date, may be abstracted as follows :—

| Period. | To non- or new agriculturists. | | | | | | | Percentage transferred to non- or new agriculturists. | | | | | | Percentage to total area. | | Percentage to total revenue. | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Percentage of total area. | | | Percentage of cultivated area. | | Percentage of total revenue. | | | | | | | | | | | |
| | Sold during the period. | Mortgaged during the period. | Net mortgages during period. | Sold during period. | Mortgaged during period. | Represented by sales during period. | Represented by mortgages (net) during period. | Of total area sold during period. | Of total area mortgaged during period. | Of cultivated area sold during period. | Of cultivated area mortgaged during period. | Of total revenue represented by sales during period. | Of total revenue represented by mortgages (net) during period. | Of total area sold to non-or new agriculturists to end of period. | Of net area held in mortgage by non-or new agriculturists at end of period. | Of total revenue represented by sales to non-or new agriculturists to end of period. | Of revenue of net area held in mortgage by non or new agriculturists at end of period. |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 |
| 1866–74 . | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * | * |
| 1875–78 . | ·3 | ·9 | ·7 | * | * | ·5 | 1·7 | 38·2 | 60·4 | * | * | 40·0 | 63·7 | ·3 | ·7 | ·5 | 1·7 |
| 1879–83 . | ·5 | 1·2 | ·9 | * | * | ·7 | 2·1 | 31·5 | 42·9 | * | * | 36·8 | 58·0 | ·7 | 1·6 | 1·2 | 3·8 |
| 1884–88 . | ·6 | 1·7 | * | * | * | * | * | 30·6 | 39·0 | * | * | 35·0 | 59·7 | 1·5 | * | * | * |
| 1889–93 . | ·6 | 1·6 | * | (*a*) ·7 | (*a*) 2·1 | ·8 | * | 20·5 | 32·3 | 23·6 | 33·1 | 26·0 | * | 2·1 | * | * | * |

* Statistics not given.

The total area for the purposes of this table has been taken as 55 million acres (the malguzari area) in calculating the percentages given in columns 2, 3, 4, 15 and 16.

(*a*) Total cultivated area taken as 26 million acres : see Revenue Report, Statement No. III.

Total revenue in Columns 7 and 8 includes assigned revenue ; figures taken as follows :—

1875—78 From Statements I and XII, 1877-78, *viz.*, Rs. 193·27 + 29·39 lakhs = 222·66 lakhs.
1879—83 „ I and XII, 1882-83, „ 192·85 + 29·51 „ = 222·36 „
1889—93 „ III 1892-93, „ 263·90 lakhs.

105. In dealing with these figures there is a difficulty to be encountered in addition to those above described in paragraph 101 and that lies in the definition of a "non-agriculturist" or "new agriculturist." From 1874 to 1887 the term used was "non-agriculturist," but it was several times pointed out that the term might exclude money-lenders who held some land and also landholders who lent some money. In 1887 a more careful distinction was aimed at, and the "new agriculturists," according to the present official definition, include "all persons who neither in their own names nor in the names of their agnate ancestors were recorded as owners of land or as hereditary tenants in any estate at the time of the first regular settlement," *i.e.* (except in Simla), at least 20 years ago. The "new agriculturist" of our returns will therefore exclude money-lenders who obtained proprietary rights in the estate during the earlier period of our rule, and will include the village menials, many of whom are now rising in importance and obtaining property in land for the first time. Taken on the whole, however, the value of the figures is probably not very much affected by these considerations.

See, *e.g.*, remarks in Land Revenue Reports for 1874-75 and 1875-76.

Rules under the Land Revenue Act, 1887.

106. The conclusions above suggested concern the province at large, and it has been several times pointed out that statistics regarding so large an area are of less importance than information of a more localized character. Major Wace in his replies to the Famine Commission, while attaching little importance to the transfers of the Province at large, acknowledged that "we here and there find tribes and tracts in which the indebtedness and mortgaging is undoubtedly of a very serious character," and the examination of local figures is still more neces-

See, *e.g.*, Gurgaon Assessment Report, paragraph 11, and Financial Commissioner's review of Gurdaspur Tahsil Assessment Report, paragraph 5.

See, *e.g.*, Review of Revenue Administration Report, 1892.

Report of Famine Commission, Appendix, III, p. 402.



sary when the provincial returns themselves give ground for discontent. The extent of the mortgage debt both by tahsils and by tribes within those tahsils has been the subject of much careful consideration during the recent settlements. So far as the tribal differentiation goes, the larger number of transfers appears as a rule to be found among tribes such as the Rajputs, who are generally lacking in industry, or among tribes such as the Arains, whose holdings are excessively small, or among semi-commercial communities, such as the Khatris and Aroras, who are inclined to look on the land less as a heritage than as a marketable commodity : but we have no general figures for alienations by tribes for considerable areas. As regards particular districts or tahsils there is a large amount of information available in the recent assessment and settlement reports, and while in some districts, such as Ferozepore, Gurdaspur, and Amritsar, the amount of transfer has not been considered serious, in others, such as Gujranwala and Umballa, the extent and increase of alienation has been specially noticed. The figures have not been uniformly prepared, and it would be impossible to classify the districts according to their indebtedness : it will perhaps therefore suffice if the figures for Umballa and Gujranwala alone are quoted to exemplify the extent and progress of alienations in particular areas. The one district is in the east, the other in the west-centre of the province : the one is inhabited mainly by Hindus of a character similar to those of the North-Western Provinces Doab, the other by Mahomedans of a true Punjab type : so that they may be taken as fair specimens of the more deeply involved areas of the province.

See Naraingarh Assessment Report, paragraph 17. Gurdaspur Assessment Report, paragraph 42. Bhiwani Assessment Report, paragraph 9.

107. The returns for the transfers made between 1851 and 1886 in the Umballa tahsils have been worked out as follows:—

| Tahsil. | Percentage of area*sold. | Percentage of area* sold to non-agriculturists. | Percentage of area* mortgaged. | Percentage of area* mortgaged to non-agriculturists. | Percentage sold in the last decade. | Percentage mortgaged in the last decade. |
|---|---|---|---|---|---|---|
| Pipli . . . . . | 7½ | 46 | 6 | 61 | 45 | 65 |
| Jagadhri . . . . | 13 | 75 | 11 | 80 | 47 | 70 |
| Naraingarh . . . . | 8 | 68 | 14 | 81 | 36 | 74 |
| Ambala . . . . . | 4 | 53 | 16 | 66 | 68 | 84 |
| Kharar . . . . . | 4 | 51 | 8 | 60 | 46 | 87 |
| Rupar . . . . . | 2 | 33 | 8 | 43 | 72 | 83 |

* Except in Pipli and Jagadhri this percentage is calculated on the cultivated areas.

The following are the remarks made by the Settlement Officers on the figures for the first four tahsils :—

*Pipli.*—"Briefly since settlement one-fourteenth of the whole area paying nearly one-tenth of the total revenue has been sold for Rs. 6,65,081, or at an average price of Rs. 18 per acre, while one-sixteenth paying above one-eighth of the revenue has been mortgaged for Rs. 9,48,256 or on an average of Rs. 30 per acre. The debt secured by usufructuary mortgages exceeds three and a half times the annual revenue of the tahsil." Assessment Report, paragraph 34

*Jagadhri.*—"The full extent of the evil is laid bare, when we see that the revenue of the land sold and that of the land mortgaged each amount to nearly one-sixth of the whole revenue of the tahsil, or, in other words, that one-third of the land has been transferred. As a matter of fact fully one-third of the cultivated land has been sold or mortgaged. The mortgage-debt Assessment Report, paragraph 36.

amounts to above seven lakhs or three and a half times the revenue of the tahsil, and the unsecured debt due by the landowners is estimated at 5½ lakhs—the ugliest feature of all in the proportion which the sales bear to the mortgages. Unhappily mortgages are now very common even in prosperous tracts. But a large amount of sale is a sure sign of an embarrassed peasantry." . . . "In Pipli half the sales and two-fifths of the mortgages are to zemindars; in Jagadhri three-fourths of the sales and four-fifths of the mortgages are to money-lenders; about half the sales and above one-fourth of the mortgages are in favour of the bankers of the town of Jagadhri. The only circle in which the agricultural class has secured any large amount of the land sold is the Southern Jumna Khadir, and even there above one-half has gone to money-lenders."

Assessment Report, paragraph 17.

*Naraingarh.*—"In Jagadhri Mr. Douie finds that vendees and mortgagees pay nearly a third of the tahsil revenue. In Naraingarh and Umballa the proportion is nearly a fourth, but the process of transfer is going on very rapidly, and in Naraingarh at any rate nothing but the most active interference on the part of Government will arrest it.

Assessment Report, paragraph 19.

"A more important point is the very large percentage of mortgages to money-lenders as opposed to agriculturists. In Rupar and Kharar nearly half the land mortgaged remained in the hands of the agriculturists, and even in Umballa a third, but in Naraingarh less than a fifth."

Assessment Report, paragraph 25.

*Umballa.*—"The figures are slightly more favourable than for the Naraingarh and Pipli tahsils, and much more so than for Jagadhri, so that for the Umballa district, as a whole, they are not specially remarkable. At the same time the debt is mounting up with great rapidity, and I myself look on the future of the tahsil with great apprehension, unless it is found possible to do something more than suspend revenue in assisting the zemindars to hold their own against the money-lender. The sales are comparatively unimportant. The total area is small, and as nearly as I can make out, upwards of half the transfers are nominal transactions, principally where the purchaser is son-in-law of a widow or childless proprietor. The mortgages are, however, almost exclusively real transfers. One-fourth only are to other agriculturists of the village, and the total mortgage-debt is already five and a half times the yearly revenue."

And the Settlement Report of the District contains the following:—

Settlement Report, paragraph 4.

"The result is that in spite of a moderate revenue assessment there are few really prosperous tracts of any size in the district outside the Rupar and Kharar tahsils. From a fifth to a fourth of the land has already changed hands since last settlement on sale or mortgage in Umballa, Pipli and Naraingarh tahsils, and about one-third in Jagadhri. These transactions include the transfers among agriculturists themselves, which for all practical purposes may be left out of account, but even with all due deductions the inference that the country is gradually and in recent years rapidly passing into the hands of money-lenders and speculators is substantially correct."

108. Similarly for the Gujranwala tahsils the returns for the years 1868 to 1891 have been reduced to the following percentages:—

| Tahsil. | Percentage of cultivated area sold. | Percentage of cultivated area sold to non-agriculturists. | Percentage of cultivated area mortgaged. | Percentage of cultivated area mortgaged to non-agriculturists. | Percentage of sales occurring in last six or seven years. | Percentage of mortgages occurring in last six or seven years. |
|---|---|---|---|---|---|---|
| Gujranwala . . . . | 14* | 60 | 13* | 75 | 26 | 39 |
| Wazirabad . . . . | 12 | 53 | 15 | 75 | 42 | 56 |
| Hafizabad . . . . | 10·5 | 50 | 6·5 | 60 | 40 | 59 |

* Includes certain small areas sold and mortgaged before 1868.

The Settlement Officer, Mr. O'Dwyer, has recorded the following comments:—

Assessment Report, paragraphs 35, 36, 38 and 39.

*Gujranwala.*—"First, as regards sales, it appears that 10 per cent. of the total and 14 per cent. of the cultivated area paying 15 per cent. of the land revenue had been sold within 22 years The total sale money amounts to nearly 8 lakhs of rupees, or three years' land revenue. The



average selling price is Rs. 16 per acre or Rs. 20 per cultivated acre, representing 20 years purchase of the land revenue, which is a low figure compared with other districts. Of the area sold, 60 per cent. has been purchased by money-lenders and 40 per cent. by agriculturists, *viz.*—

(1) By agriculturists of the village 27 per cent.
(2) By agriculturists of other villages 13 per cent.

"The proportion of sales is greatest in the Charkhari circle, where 16 per cent. of the cultivated area has been sold, and least in the Bar, where it is only 9 per cent., while in the Bangar it is 14 per cent. of the whole. In all three circles the proportion sold to money-lenders is about the same.

"*Mortgages.*—*** The result is that we now find 8 per cent. of the total and 13 per cent. of the cultivated area, paying 15 per cent. of the land revenue, is under mortgage, and the mortgage money, 6¾ lakhs, represents two and a half years' land revenue of the whole tahsil and 18 years' revenue of the land under mortgage. The worst feature of the figures is that three-fourths of this area has passed into the hands of professional money-lenders, who have invested 5¼ lakhs of capital in this form of security, while three-sixteenths has gone to agriculturists of the village and one-sixteenth to those of other villages. With regard to mortgages, it has to be noticed that, like sales, the proportion is greatest in the most highly developed tract, *viz.*, the Charkhari circle, where 16 per cent. of the cultivated area is under mortgage."

"Taking the figures for sales and mortgages together, the gravity of extent of alienations in this tahsil will be self-evident, for they show that 26 per cent. of the total cultivated area, paying 30 per cent. of the land revenue, or three-tenths of the whole, has changed hands since settlement, and that 20 per cent. of the cultivated area, or one-fifth of the whole, and that, as a rule, the very best land, has passed into the hands of professional money-lenders within 22 years. I doubt if any other tract in the whole province can show so high a proportion and so rapid a rate of alienations in an equal period. . . . . .

"If the present rate of alienation is maintained, unchecked by any remedial measures, another 20 years will see at least half the tahsil in the hands of money-lenders or capitalist landlords, and a community of independent, contented, and fairly prosperous yeomen, which now contributes some of the finest troops in our Native Army, degenerate into needy, spiritless and rack-rented tenants."

*Wazirabad.*—"The result may be thus summed up. Up to last settlement sales and mortgages were practically unknown, and the amount of money that could be raised on land was insignificant; only 3 per cent. of the cultivated area had been sold at a price of about Rs. 7 per cultivated acre, while less than 1 per cent. had been mortgaged, the mortgage money not exceeding Rs. 6 per acre." Assessment Report, paras. 32-35.

"The present statistics show that 8·5 per cent. of the total and 12 per cent. of the cultivated area, paying 13 per cent. of the land revenue, has been sold within the last 24 years for a sum of over six lakhs, or about three and a half times the annual land revenue, the price per cultivated acre being Rs. 31, or 26 times the land revenue of the area sold. Of the sales 47 per cent. have been to agriculturists, 53 per cent. or over half to money-lenders and capitalists. The proportion sold is nearly the same in all circles, *viz.*, 13 per cent. in the Charkhari or richest circle, 11 per cent. in the Bangar or poorest, 12 per cent. in the Chenab.

"The statistics of mortgages are even more unsatisfactory. Since settlement 15 per cent. of the cultivated area, *viz.*, Charkhari 18 per cent., Bangar 13 per cent., Chenab 13 per cent., paying 17·5 per cent. of the revenue, has been mortgaged with possession for a sum of over 7¼ lakhs, or four times the land revenue of the tahsil, the average mortgage money per acre being about Rs. 30 or 23 times the revenue demand of the area transferred. Only 25 per cent. of the mortgages have been to agriculturists, 75 per cent., or exactly three-fourths, have gone to the non-agricultural classes.

"Taking sales and mortgages together and including the transfers which occurred before last settlement, we find that 18·5 per cent. of the total and 28 per cent. of the cultivated area, paying 31 per cent. of the land revenue, has been alienated for nearly 13½ lakhs of rupees or 7½ times the total land revenue, and 18 per cent. of the cultivation is now in the hands of money-lenders who have put over 9 lakhs in this form of investment.

"Accordingly, ever since 1868 the transfer of property has increased by leaps and bounds, and with it the selling and mortgage price. In the first period taken, *viz.*, 1868—73, only 2 per cent. of the cultivated area was transferred by sale or mortgage, the selling price being only Rs. 16, and the mortgage price Rs. 21 per acre; while in the period 1884—1891 the proportion transferred has risen to 10 per cent., the mortgage price per acre to Rs. 30, and the sale price to Rs. 41."

Assessment Report, para. 145.

*Hafizabad.*—"From these figures, combined with those in Statements VII and VIII, it appears that 15 per cent. of the total and 17 per cent. of the cultivated area has changed hands by sales or mortgages since last settlement (previously sales and mortgages were practically unknown), *viz.*, (1) 9·5 per cent. of the total area and 10·5 per cent. of the cultivation, paying 12·5 per cent. of the assessment, has been sold for 5½ lakhs, which represents three times the annual demand for the whole tahsil and 23 years' purchase of the assessment of the land sold, and (2) 5·5 per cent. of the total and 6·5 per cent. of the cultivated area, paying 7 per cent. of the assessment has been mortgaged for Rs. 2,70,000 or nearly one and a half times the annual land revenue demand, and 20 times the land revenue of the land mortgaged. The alienations are least in the Bár circle, where only 10 per cent. of the area has been transferred, *viz.*, 7 per cent. sold and 3 per cent. mortgaged; greatest in the Bangar, where 26 per cent. of the cultivation, *viz.*, 14 per cent. sold and 12 per cent. mortgaged, has changed hands; while the figures for the Chenab, 9 per cent. sold and 7 per cent. mortgaged, and the adjoining Bár, 13 per cent. sold and 5 per cent. mortgaged, are intermediate between the two extremes. About half the sales and three-fifths of the mortgages have been to money-lenders, which is not so high a proportion as in the other tahsils, and money-lenders now have acquired 9 per cent. of the cultivation by sale or mortgage. This is much more satisfactory than the state of things in the other tahsils, where the proportion held by money-lenders is 18 per cent.

109. It is generally stated that the best land as a rule falls to the non-agriculturist, and the following figures would seem to bear out the assertion:—

AVERAGE PER ACRE.

| Year. | Sale-money. | | Mortgage-money. | |
|---|---|---|---|---|
| | Agriculturists. | Non and new agriculturists. | Agriculturists. | Non and new agriculturists. |
| 1874-75 | 19 | 20 | 17 | 14 |
| 1875-76 | 18 | 22 | 18 | 15 |
| 1876-77 | 18 | 18 | 20 | 14 |
| 1877-78 | 18 | 20 | 17 | 17 |
| *Average* | *18* | *20* | *18* | *15* |
| 1878-79 | 18 | 18 | 16 | 15 |
| 1879-80 | 17 | 20 | 10 | 18 |
| 1880-81 | 16 | 23 | 17 | 19 |
| 1881-82 | 14 | 23 | 12 | 20 |
| 1882-83 | 15 | 28 | 18 | 22 |
| *Average* | *16* | *22* | *15* | *19* |
| 1883-84 | 15 | 25 | 16 | 23 |
| 1884-85 | 16 | 21 | 22 | 19 |
| 1885-86 | 19 | 21 | 26 | 18 |
| 1886-87 | * | * | * | * |
| 1887-88 | * | 18 | * | 16 |
| *Average* | †17 | ‡21 | †21 | ‡19 |
| 1888-89 | * | 29 | * | 22 |
| 1889-90 | * | 28 | * | 28 |
| 1890-91 | * | 33 | * | 34 |
| 1891-92 | * | 33 | * | 32 |
| 1892-93 | * | 39 | * | 35 |
| *Average* | ... | *32* | ... | *30* |

* Figures not given. † Average for three years. ‡ Average for four years.

So far as regards the prices quoted, however, it must be remembered that in sales to outsiders a fictitious price is often recorded to defeat the claims of pre-emptors.



*Ajmere.*

110. Mr. LaTouche, writing in his Gazetteer of 1875, notes "the entire absence of the custom of sale, whether voluntary or enforced," in Ajmere-Merwara. "Private sales of land," he adds, "appear to have been practically unknown till about a generation ago." Page 26.

It may be presumed therefore that very little land was sold before 1873. In the 13 years, however, between the settlement of 1873 and that of 1886, 6,750 acres were sold, and in the six years between 1887 and 1893, 75,785 acres were permanently transferred by sale or gift. The large increase of such transfer of late years is due not a little to the scarcity which commenced in 1887 and culminated in 1892. The following are the yearly fluctuations recorded:— Mr. Whiteaway's Settlement Report (1887), paragraph 82, page 30. Table E.—Agricultural Statistics and Statement 39. Administration Report.

| Year. | Acres. | Year. | Acres. |
|---|---|---|---|
| 1887-88 | 520 | 1890-91 | 10,048 |
| 1888-89 | 720 | 1891-92 | 8,399 |
| 1889-90 | 14,000 | 1892-93 | 42,098 |

These figures are understood to refer to the khalsa area only, and if so, it would appear that (neglecting cases of double sale) 82,535 acres out of the 734,601 acres recorded as khalsa, or say 11 per cent. of the gross area, have been permanently alienated up to date.

111. Mortgages were known before sales began to get common, and Mr. LaTouche in 1875 describes them as only too common and as differing often in no respect from sales. The area mortgaged by 1873 was 25,363 acres, and up to 1886 the area under mortgage does not appear to have exceeded 30,319 acres: but during the years of scarcity which followed the area under mortgage seems to have largely increased. We have unfortunately no statistics except for the district of Ajmere, which is probably the less indebted of the two districts in the Commissionership: the Ajmere figures however are quoted by Captain DeLæssöe, Assistant Commissioner, as follows:— Gazetteer, page 26. Mr. Whiteaway's Settlement Report (1887), page 30, paragraph 82. Letter No. 2192, dated 22nd November 1891, para. 7.

| Year. | Acres mortgaged in the year. |
|---|---|
| 1887-88 | 1,200 |
| 1888-89 | 2,000 |
| 1889-90 | 3,400 |
| 1890-91 | 3,100 |

And the area under mortgage at various dates was, according to the same authority:—

| Year. | Acres. |
|---|---|
| In 1873 | 12,600 |
| „ 1886 | 15,700 |
| „ 1891 | 20,000 |

The total khalsa area of the district appears to be 358,819, so that some 6 per cent. of the gross area would seem to be under mortgage. This, however, is—like most calculations based on the gross area only— a misleading estimate. "The land mortgaged," says Captain DeLæssöe, "is invariably the best 'wet' land" in the village, and as the khalsa wet land is only 30,000 acres and mortgages almost always are usufructuary, it is apparent that about 70 per cent. of the cultivators have been dispossessed of the only land giving any produce in years with deficient or badly distributed rainfall." "In Merwara," he adds, "more than 90 per cent. of the irrigable land is mortgaged." Agricultural Statistics.—Table C. Letter No. 2120, dated 22nd November 1891, para. 7.

112. The following are the Registration Department returns :—

| | Average annual number of sales of immovable property. | | Average annual number of mortgages of immovable property. | | Value of immovable property annually transferred (so far as figures are available). |
|---|---|---|---|---|---|
| | Compulsory. | Optional. | Compulsory. | Optional. | Rs (lakhs). |
| 1878-83 . . . . | 506 | 74 | 198 | 46 | 5 |
| 1883-88 . . . . | 618 | 48 | 277 | 22 | 6 |
| 1888-93 . . . . | 408 | 29 | 689 | 49 | 8 |

The large rise in the number of mortgages begins from 1887-88, the year of the famine; the number was highest in 1888 (789) and in 1891-92 was 606.

Report on Moral and Material Progress of India, p. 480 (1891-92).

Gazetteer, p. 95.

113. Though there are no statistics on the subject, there is little doubt as to the hands into which most of the transferred area falls. In the early days of our administration money-lenders were encouraged to come and settle in Ajmere, and the proportion they bear to the total population is large. In 1875 the Settlement Officer, Mr. La Touche, wrote :—

Owing to the fact that sales of land in execution of decrees are forbidden, and to the peculiarity of the tenures of the district, the money-lending classes have never become actual owners of the soil as they have in other parts of the Bengal Presidency. It is calculated by the Settlement Officer, however, that a sum equal to more than the revised Government demand annually passes into their pockets as interest on mortgages, so that in reality they draw more than the landlord's share from the produce of the soil. The policy of our rule has been everywhere favourable to the monied class, and this is especially true of Ajmere and Merwara. Mr. Wilder encouraged by every means in his power the settling of Seths in Ajmere, and in Chapter X of his "Sketch of Merwara," Colonel Dixon writes: "After water the desideratum next in importance to ensure the prosperity of Merwara was the location of people of the Mahajan class. It is an established fact that agriculture cannot prosper without the intervention of Mahajans." The presence of a monied class has no doubt alleviated the scarcity of many unpropitious seasons, but the fatal facility of borrowing has plunged all classes into debt.

"In the famine of 1868," writes the Assistant Commissioner in 1891, "the banians secured many of their debts by mortgage, and they have since taken advantage of every year of scarcity to obtain more land." The fact that the land is to a large extent passing into the power of money-lenders appears accepted on all hands, and in the absence of figures this conclusion may be adopted as correct.*

See *e.g.*, para. 5, Chief Commissioner's letter No. 1178-735 II, dated 7th November 1892, to Government of India, General Proceedings A, April 1891, Nos. 1 to 23.

### *The Central Provinces.*

114. The greater part of the Central Provinces was brought under settlement between 1862 and 1867, and although the intention of Government to confer proprietary right on the land-holders had been previously announced, this right including that of transfer was not actually conferred in any district until that district came under settlement. The bulk of the settlements were scarcely completed when the extent of indebtedness and transfer began to attract attention, and in 1873 or 1874 were compiled the first rough statistics which we have on the subject. The following is the scope of these figures as regards the province at large :—

Letter No. 3463-167, dated 7th October 1874, from Chief Commissioner, Central Provinces, to Government of India (B. May 1878, Nos. 51—55).

| | |
|---|---|
| Percentage of proprietary heads of ancestral estates who are in debt . | 34·2 |
| In sums not more than one year's revenue . . . . . | 6·1 |
| „ „ not more than five years' revenue . . . . . | 15·3 |
| „ „ more than five years' revenue . . . . . | 12·8 |
| Percentage of estates transferred since settlement to new proprietors | 9·1 |

Commenting on the figures, the Chief Commissioner, Sir J. Morris, remarked that the statement had been "prepared in the several districts after careful local enquiry." "Information of the kind," he added, "can never be obtained with absolute accuracy, but the figures may be relied on as being in close accordance with facts. Already about 10 per cent. of entire estates have been actually transferred, although in some of the districts where the proprietors are heavily involved, such transfers are as yet strikingly few. This is explained by the circumstance that in such districts landed property is valuable, and the limit of credit which finally results in transfer has not yet been reached." Mr. Jones, the Nagpore Commissioner, believed he would "be within the mark in asserting that at the present moment 15 per cent. of the entire landed property of the country would be lost to its owners within the space of three or four years"—a conclusion in which Mr. Low, the Narbada Commissioner, concurred.

Enclosures to above.

115. From 1874 onwards, the transfer of proprietary rights was made the subject of a special statement in the Annual Revenue Administration Reports, and in 1879 in the answers supplied to the Famine Commission's enquiries a more hopeful view was taken. The 'plunging' which had followed the grant of proprietary right was held to have subsided, and though there was still 'much room for disappointment' the solvency of the proprietary body was found to be better than had been expected.

The figures recorded for 1871 to 1885 give the following results :—

| Year. | Estates transferred by voluntary sale and temporary alienation. | | | Plots transferred by voluntary sale and temporary alienation. | | | Total. | |
|---|---|---|---|---|---|---|---|---|
| | Number. | Area. | Revenue. | Number. | Area. | Revenue. | Area. | Revenue. |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| | | Acres. | R | | Acres. | R | Acres. | R |
| 1871-72 . . . | 589 | 393,248 | 1,25,027 | 484 | 6,910 | 5,783 | 400,158 | 1,30,180 |
| 1872-73 . . . | 734 | 418,882 | 1,12,914 | 342 | 6,203 | 5,026 | 425,085 | 1,17,940 |
| *Average* . . | *661* | *406,065* | *1,18,970* | *413* | *6,556* | *5,404* | *412,621* | *1,24,735* |
| 1873-74 . . . | 665 | 352,046 | 90,548 | 342 | 7,109 | 6,494 | 359,155 | 97,042 |
| 1874-75 . . . | *661 | *361,098 | *97,778 | *330 | *4,538 | *4,514 | 365,636 | 1,02,292 |
| 1875-76 . . . | 758 | 422,537 | 88,686 | 222 | 4,020 | 4,291 | 426,557 | 92,977 |
| 1876-77 . . . | 829 | 441,119 | 1,05,248 | 319 | 6,095 | 4,812 | 447,214 | 1,10,060 |
| 1877-78 . . . | 721 | 348,725 | 91,338 | 308 | 5,532 | 4,739 | 354,257 | 96,077 |
| *Average* . . | *727* | *385,105* | *94,720* | *304* | *5,459* | *4,970* | *390,564* | *99,690* |
| 1878-79 . . . | 617 | 296,249 | 74,096 | 235 | 368 | 3,188 | 300,017 | 77,284 |
| 1879-80 . . . | 703 | 300,291 | 84,730 | 295 | 5,874 | 3,863 | 306,165 | 88,593 |
| 1880-81 . . . | 591 | 307,970 | 71,636 | 237 | 4,015 | 4,064 | 311,985 | 75,700 |
| 1881-82 . . . | 704 | 310,345 | 1,68,18 | 339 | 7,923 | 6,235 | 318,268 | 1,14,417 |
| 1882-83 . . . | 658 | 370,345 | 76,169 | 280 | 4,961 | 3.942 | 375,306 | 80,111 |
| *Average* . . | *655* | *317,040* | *82,963* | *277* | *5,308* | *4,258* | *322,348* | *87,221* |
| 1883-84 . . . | 648 | 343,242 | 67,417 | 413 | 5,978 | 5,465 | 349,220 | 72,882 |
| 1884-85 . . . | 694 | 335,240 | 76,414 | 395 | 6,087 | 5,175 | 341,327 | 81,589 |
| *Average* . . | *671* | *339,241* | *71,915* | *404* | *6,032* | *5,320* | *345,273* | *77,235* |

NOTE.—The figures for 1871-72 and 1872-73 have been taken from Statement XI, and those for 1873-74 from Statement No. X of Revenue Administration Report of the Central Provinces. The figures for 1874-75 to 1882-83 have been taken out of Statement No. VII and those for 1883-84 and 1884-85 out of Statement No. VI of Revenue Administration Report of Central Provinces.

* Revised figures taken from the report for 1875-76.

* Mr. Martindale, the present Commissioner, writing demi-officially on 20th January 1895, says :—"We are very much interested here in the measures under consideration to prevent the land passing from the agricultural classes into the hands of the banniahs. This is happening in Ajmere-Merwara to a large extent."

From 1885 to 1890 the details for estates and plots are not shown separately:—

*Transfers by sale or mortgage.*

| Year. | Number of mahals or shares in mahals. | Number of plots. | Area. | Revenue.* | Consideration money. |
|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 |
| | | | Acres. | ₹ | ₹ |
| 1885-86 | 755 | 427 | 337,746 | 83,431 | 10,74,889 |
| 1886-87 | 957 | 533 | 482,414 | 88,142 | 12,56,860 |
| 1887-88 | 1,029 | 644 | 507,659 | 87,782 | 16,35,248 |
| 1888-89 | 1,058 | 709 | 429,748 | 1,08,179 | 15,00,889 |
| 1889-90 | 1,145 | 983 | 471,649 | 1,13,080 | 18,39,145 |
| Average | 989 | 659 | 445,843. | 96,123 | 14,61,406 |

Note.—The figures have been taken from statement No. V of Revenue Administration Report.
* Assessed on area paying revenue and assessable on area revenue-free.

From 1890-91 information for mortgages with possession is also given:—

| Year. | Private sales. | | | | | Mortgage with possession. | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Number of mahals or shares in mahals. | Number of plots. | Area. | Land revenue assessed or assessable. | Consideration money. | Number of mahals or shares in mahals. | Number of plots. | Area. | Land revenue assessed or assessable. | Consideration money. |
| | | | Acres. | ₹ | ₹ | | | Acres. | ₹ | ₹ |
| 1890-91 | 758 | 547 | 270,955 | 72,920 | 10,10,307 | 109 | 24 | 55,117 | 18,349 | 2,58,154 |
| 1891-92 | 855 | 602 | 262,599 | 76,894 | 10 60,384 | 152 | 86 | 85,606 | 18,017 | 2,50,118 |
| 1892-93 | 931 | 662 | 336,835 | 67,580 | 12,21,236 | 130 | 40 | 73,686 | 15,471 | 171,907 |
| Average | 848 | 604 | 290,130 | 72,465 | 11,07,309 | 130 | 50 | 71,470 | 17,589 | 2,26,726 |

Rev. Adm. Rep. 1891-92, para 58. Ditto, 1892-93, para. 58.
See also Book Circular, VI: 45 dated 18th Sept. 1890.
See note by Mr. J. W. Neill, dated February 1889, in Chief Commissioner's letter No. 1466 S.—212, dated 11th November 1889 (A May 1891, Nos. 9 to 14). See p. 87.
*See* para. 47, Rev. Adm. Rep., 1889-90. Para. 58, Rev. Adm. Rep. 1890-91.

116. Although voluntary temporary alienations are mentioned in the returns, the figures previous to 1890 were generally confined to sales, but since that date mortgages with possession have been entered. The proportion of mortgages with possesssion appears from the figures to be small, for in 1890-93 an average of only 71,470 acres was recorded to have been mortgaged with possession, but the record in the proprietary register of mortgages with possession is still very incomplete.

It must be remembered also in calculating the total area sold to date that estates are sometimes sold two or three times over.

Also that, as in the Punjab, registrations do not always represent the transactions of the year, and that increased care in registration in any district means the discovery of transfers which should have been registered before.

117. The Registration Statistics give the following results:—

| Year. | Average annual No. of sales of immoveable property. | | Average annual No. of mortgages of immoveable property. | | Average value of immoveable property annually transferred. |
|---|---|---|---|---|---|
| | Compulsory. | Optional. | Compulsory. | Optional. | ₹ (lakhs.) |
| 1878—83 | 2,249 | 2,090 | 6,198 | 2,351 | 65 |
| 1883—88 | 3,667 | 1,848* | 7,784 | 2,022 | 81 |
| 1888—93 | 7,262 | ... | 9,256 | 2,347 | 105 |

* Average for four years.



118. The progress of transfer since settlement was made the subject of special investigation in 1888 with the result that malguzari land paying Rs. 19·4 per cent. of the land revenue was found to have been permanently transferred. "The results of the enquiry," wrote Mr. Fuller, Commissioner of Settlements and Agriculture, "indicate that one-fifth of the area in which proprietary rights were granted at last settlement has been sold." "Most of the alienations," noted the Chief Commissioner, "have taken place in the last 15 years"; and Mr. Fuller added: "At the present rate at which transfers are being effected, the whole area of the province will have changed hands in another 70 or 80 years."

The district figures showed cases such as Damoh, where land paying 26·9 per cent., and Nagpur, where land paying Rs. 24·1 per cent., of the land revenue had been sold: and the tahsil figures were still more remarkable.

"In some" it was noted "the area which has changed hands is exceedingly large. In the Banda and Hatta tahsils of the Saugor and Damoh districts it amounts (on area) to over 27 per cent. In the Merwara tahsil of the Jabalpur district it is over 30 per cent., and in the Ramgarh tahsil of the Mundla district it is close upon 27 per cent." * * * *

See Mr. Fuller's note of 15th January 1889, para. 9. Sel., p. 84.

"A quarter of the Narsinghpur tahsil has changed hands, and nearly a quarter* of the Seoni tahsil of the Hoshangabad district. The area transferred in three tahsils of the Nagpur district is over 26 per cent. It is, moreover, to be borne in mind that these figures only show part of the evil. Behind them is a mass of indebtedness with ruin in its train which will be rapidly accelerated by any enhancement of the Government revenue at revision of settlement. The Deputy Commissioner of Narsinghpur shows that, apart from the fifth of the area of his district which has been actually transferred, another fifth is either mortgaged or has been saved by being taken under the management of Government, and he thinks that by the time the new settlement comes round (in 1894-95) at least half the area of the district will have changed hands."

119. As regards the proportion of these transfers effected in favour of the money-lending classes, detailed statistics were from time to time given by Deputy Commissioners in reporting on the district transfer figures of the Annual Revenue Administration Report, but no general return was available till the special investigations of 1888 were undertaken. It then became known that of the revenue paid on land sold since settlement, 47 per cent. was paid on land sold to money-lenders.

In view of the fact that during the later days of native rule, and the earlier days of our administration, many villages had been made over to men of the money-lending class, the kanungos, who prepared the returns of 1888, were instructed to class as money-lenders all persons "whose main occupation is money-lending or trade as distinguished from land-holding, although previously to the transfers in question they may have been in possession of a good deal of land." The census statistics show that half the money-lenders in the province have interests in land, and that half the persons who own land in addition to other occupations are money-lenders.

See, *e.g.*, Bilaspur Sett. Report, page 25. Damoh Sett. Report, page 21. Chief Commr. to Commrs., No. 491-8 of 14th April 1888. See however page 48 of the Raipur Sett. Rep., from which it appears that the money-lenders were sometimes wrongly classed in the returns as non-money-lenders. Census Report, 1891, para. 322.

In default of annual statistics on the point there seems no means of ascertaining (*a*) the proportion of land in the province mortgaged per annum, or (*b*) the annual variations in the proportion of the sales which are made to money-lenders.

* Later statistics have, it is understood, shown this to be an exaggeration.

120. The district figures regarding the alienations to money-lenders since settlement are, however, worth noticing:—

| Division. | District. | Percentage of land revenue alienated. | | |
|---|---|---|---|---|
| | | To money-lenders. | To non-money-lenders. | Total. |
| Jabalpur Division | Saugor | 7·8 | 12·2 | 20·0 |
| | Damoh | 13·7 | 13·2 | 26·9 |
| | Jabalpur | 8·6 | 11·1 | 19·7 |
| | Mandla | 5·8 | 10·5 | 16·3 |
| | Seoni | 4·2 | 7·8 | 12·0 |
| | Total | 8·7 | 11·4 | 20·1 |
| Narbada Division | Narsinghpur | 13·4 | 5·4 | 18·8 |
| | Hoshangabad | 12·2 | 4·7 | 18·9 |
| | Nimar | 10·6 | 8·8 | 19·4 |
| | Betul | 13·1 | 3·9 | 17·0 |
| | Chhindwara | 7·9 | 6·1 | 14·0 |
| | Total | 12·4 | 5·5 | 17·9 |
| Nagpur Division | Wardha | 12·4 | 7·3 | 19·7 |
| | Nagpur | 13·0 | 11·1 | 24·1 |
| | Chanda | 9·8 | 8·0 | 17·8 |
| | Bhandara | 7·7 | 10·5 | 18·2 |
| | Balaghat | 5·8 | 16·0 | 21·8 |
| | Total | 11·1 | 9·9 | 21·0 |
| Chhattisgarh Division | Raipur | 9·0 | 8·1 | 17·1 |
| | Bilaspur | 4·6 | 14·5 | 19·1 |
| | Sambalpur | 7·8 | 9·3 | 17·1 |
| | Total | 10·3 | 9·1 | 19·4 |
| | Grand Total for the Provinces | 10·3 | 9·1 | 19·4 |

The tahsil figures indicate that in some tahsils the area transferred to money-lenders is very large, *e.g.*, in Damoh, where it represents 23 per cent. of the revenue, and Ramtek (Nagpur), where it represents Rs. 20·1 per cent. Moreover, the proportions borne in these tahsils by this class of alienations to the total transfers are as high as 90 and 84 per cent. respectively. The matter is not very specifically dealt with in the recent Damoh Settlement Report, nor do the recent Chhattisgarh reports, except that for Raipur, notice the matter in any detail.

Raipur Settlement Report, page 46. Damoh Settlement Report, page 20.

121. Detailed statistics of the area or revenue alienated by the different tribes and castes are wanting, but from the information available regarding the sales of entire villages, it appears that the Gond tribe has suffered severely from the loss of land: and it is believed that the aboriginal tribes generally are those that suffer most. The case of the Mandla district may be quoted:—

Mr. Fuller's letter No. 135 C, dated 8th February 1893.

"The proprietary right in 270 villages were transferred during the 20 years following the Settlement of 1868. This is perhaps not a very large number. But in some parts of the district transfers have been strikingly numerous. This is specially the case in tracts where proprietary rights were confined on men of aboriginal descent. Thus in the Shahpura group 30 out of 101 villages have changed hands, in the Partabgarh group 39 out of 92, and in the Rampur group 36 out of 110. In most cases debt has resulted from drink and improvidence; and, as might be expected, the kallars (liquor-sellers) have been large purchasers."

*Berar.*

122. It appears that enquiry was made in 1872-74 as to the degree in



which land was passing from the hands of the original occupants in Berar: of this enquiry no record seems to be available in the Government of India records, but Sir D. Fitzpatrick, as Resident in 1891, stated that the result of the enquiry was to show that "there was not the slightest ground for alarm."

Para. 3, Review of Berar Civil Justice Report, 1890. Para. 34, Memorandum on Material condition of the Hyderabad Assigned District (1892).

Again, in writing, in 1892, on the Progress of the Provinces since 1881, the Deputy Commissioner of Wun, Mr. Elliott, observed "agricultural indebtedness exists in Berar, but not to such an extent as to require legislative interference on behalf of debtors."

123. The following is a summary of the recent Registration figures:—

| Year. | Average annual No. of sales of immovable property. | | Average Annual No. of mortgages of immovable property. | | Average value of immovable property annually transferred. |
|---|---|---|---|---|---|
| | Compulsory. | Optional. | Compulsory. | Optional. | R (lakhs). |
| 1878-83 | 4,517 | 2,746 | 5,831 | 1,521 | 39 |
| 1883-88 | 6,450 | 3,719 | 6,812 | 1,828 | 54 |
| 1888-93 | 7,980 | 3,477 | 8,707 | 1,574 | 75 |

124. The only other actual statistics available are the returns of voluntary sales given annually in the Revenue Administration Reports. The figures are:—

| Year. | No. of cases. | Assessment. | Year. | No. of cases. | Assessment. |
|---|---|---|---|---|---|
| | | R | | | R |
| 1878-79 | 812 | 35,584 | 1886-87 | 6,131 | 1,24,734 |
| 1879-80 | 1,111 | 51,770 | 1887-88 | 7,082 | 1,24,433 |
| 1880-81 | 3,287 | 73,261 | *Average* | *5,284* | *1,33,381* |
| 1881-82 | 4,611 | 95,826 | 1888-89 | 6,676 | Not given. |
| 1882-83 | 4,052 | 89,628 | 1889-90 | 7,840 | |
| *Average* | *2,895* | *69,214* | 1890-91 | 6,354 | |
| 1883-84 | 3,575 | 73,894 | 1891-92 | 5,486 | |
| 1884-85 | 4,685 | 2,28,524 | 1892-93 | 5,801 | |
| 1885-86 | 4,947 | 1,15,323 | *Average* | *6,431* | |

These figures are however of course quite inadequate for our purpose. In the first place, they do not show what proportion of the land has been sold to professional money-lenders. Mr. Dunlop in 1878-79 told the Famine Commission: "We have no reliable statistics as to the transfer of lands to non-agricultural and absentee landlords, and it would be very difficult to obtain them." And further, they give us no information about mortgages though the mortgage-system bears an especially important rôle in Berar. "The bulk of the money-lenders," it is said, "are foreigners from Rajputana and North Gujarat, who are adverse from incurring the responsibilities of landlordship, so do not try to get the cultivator off his holding, but squeeze him in his possession." When, therefore, the Census Superintendent points out that the small number of non-cultivating occupants recorded at the enumeration of 1891 is "a satisfactory indication that the land is not passing into the hands of money-lenders to any great extent," the solution of the question has not been reached.

Famine Commission's Report, Appx. III, page 412.

Report on Moral and Material Progress of India, 1890-91, page 471.

Census Report, 1891, page cxxxv.

We are accordingly at the mercy of guess-work. On the one hand Mr. Dunlop, before the Famine Commission of 1879, stated: "There is no doubt, I think, that the money-lenders are gradually acquiring a considerable quantity of land which they sublet to agriculturists:" and in 1890 the Commissioner reported that it was "supposed by those best informed that quite one-third of the land in Berar has passed to the money-lender." On the other hand, we have the undoubted fact, insisted on by the Resident in 1891, that "statements of this kind, unless supported by facts and figures, should be received with caution."

Gazetteer, page 98.

Sir Alfred Lyall in 1870 explained the gradual substitution of money for produce rents in Berar as due to the fact that "land now occasionally falls into the hands of classes who do not cultivate and who are thus obliged to let to others." The same reason is given in the last General Administration Report, but in stronger terms: "land," it is there said, "has fallen into the hands of classes who do not cultivate and who are thus obliged to let to others."

General Administration Report, 1892-93, page 16.

*Bombay.*

125. The extreme rarity of transfers in Bombay, even as late as the days of the Joint Report of 1847, has already been alluded to, and we have no indication of the early progress of the custom of transferring land.

Report, Appendix C., pages 180-202, 315-324.

The Deccan Riots' Commission of 1875 made no general compilation of statistics, and the conclusions were based in the main on a number of instances selected at random in the affected districts. The registration returns of certain talukas were also examined: but the information given was naturally somewhat incomplete. The general opinion of the Commission as regards the Deccan districts was thus expressed:—

Para. 70, Report.

Para. 76, Report.

"In the villages scrutinised by the Commission in the Ahmednagar district, it was found that about one-eighth of the occupancies had on an average been transferred to sowkars, *viz.*, that the direct assessment payable by sowkars for land was about one-eighth of the whole demand on the village, but this only represents the amount of land in their occupancy as Government tenants. The increasing extent to which land is passing from the kunbi to the sowkar has been illustrated above by the growth of the money-lenders' khatas. The statements in the appendix show that these properties have been acquired within the last 20 years, and for the most part within the last 10 years."

Report, vol. ii, pages 412-413.

126. To the Famine Commission of 1879 the Bombay authorities were only able to supply 'most imperfect' information regarding the transfer of land. The following is the gist of it:—

| Districts. | How much land transferred to non-agricultural and non-resident landlords. |
|---|---|
| Kaira . . . . | Said to be 10,000 acres. |
| Thana . . . . | 1,526 acres. |
| Colaba . . . . | 220,413 acres. |
| Nasik . . . . | Much land. Quantity unknown. |
| Kaladgi . . . . | Most of the sahukars hold some land. Quantity unknown. |
| Dharwar . . . . | 25 per cent. of the land. |
| Ratnagiri . . . . | No land has been transferred to non-resident non-agricultural landlords. |
| Satara . . . . | About 1,300 acres. |



127. Even at the present day, too, the statistics in Bombay as in Berar are very incomplete. The only transfers which must by law be recorded are the transfers of occupancy rights, that is, of the responsibility for revenue, and the figures even for these do not appear to be abstracted by districts or for the Province.

See Manual of Revenue Accounts, Bombay.

The record of recognized occupancy transfers does not however by any means cover the whole of the transfers of occupancy right.

Letter No. 1928, dated 21st September 1892, to Government of Bombay. (B Pros., Aug. 1893, No. 5.)

It was stated by the Acting Survey and Settlement Commissioner in September 1892 that "as there was no provision which bound the Civil Courts to recognize the 'occupant' as owner of the occupancy right, new owners have neglected to register whenever this suited their purpose," and in May 1892 the Director of Land Records and Agriculture reported:—

Letter No. 1277, dated 28th May 1892, to Government of Bombay. (A Statistics, December 1892, Nos. 2 and 3.)

"The only transfers which are *regularly* recorded are transfers to heirs by succession and transfers by decree of Court (sections 70 and 71, Land Revenue Code). The record of other transfers (as under sections 74 and 79) is permissive: generally speaking, the registration of private transfers is not obligatory, and is in most cases not carried out. The khata entries are in fact worth very little, and they are especially valueless for the purpose which the Government of India has in view, the ascertainment of transfers of land from the cultivating to the money-lending classes. So completely is this the case that in some districts a practice has grown up of specially reserving the right of registration as occupant when a transfer takes place, and this right is occasionally made the subject of a separate sale transaction."

Proposals for initiating a correct record of actual changes in ownership are now under the consideration of the Local Government.

So entire is the want of information at present that the Deccan Agriculturists Commission of 1891-92 declined to make any serious recommendations on the general issues before them in the absence of a "complete and correct record of proprietary rights and encumbrances on the land," which alone would supply "the materials required for the complete understanding and final settlement of this vexed question."

See para. 76, Report, page 76.

Some of the Bombay officers are however averse to deferring action till such a record is prepared, and there are some not-unimportant indications from other sources of the extent to which and the manner in which land is being transferred in Bombay.

*e. g.* Mr. James, Commissioner in Sind, para. 11, letter No. 4274, dated 22nd October 1892, to Governor and President in Council, Bombay. (B Pros., Aug. 1893, No. 5.) Sel., p. 135.

128. In the first place, there are the statistics of the Registration Department. These do not even now touch the case of oral sales and usufructuary mortgages below rupees 100 in value, and before January 1893 (when the Transfer of Property Act was extended to Bombay) did not touch the case of oral contracts of any value. They reflect however the general condition of the transfer question in Bombay:—

| | Average annual number of sales of immovable property. | | Average annual number of mortgages of immovable property. | | Average value of immovable property annually transferred. |
|---|---|---|---|---|---|
| | Compulsory. | Optional. | Compulsory. | Optional. | R (lakhs.) |
| | | | (*i*) *Bombay excluding Sind.* | | |
| 1878-83 . . . | 20,031 | 7,282 | 27,749 | 5,495 | 430 |
| 1883-88 . . . | 26,610 | 9,719 | 33,102 | 7,060 | 544 |
| 1888-93 . . . | 36,677 | 11,618 | 50,339 | 8,188 | 726 |
| | | | (*ii*) *Sind.* | | |
| 1878-83 . . . | 2,836 | 798 | 3,670 | 409 | 35 |
| 1883-88 . . . | 3,287 | 810 | 4,247 | 443 | 44 |
| 1888-93 . . . | 3,823 | 590 | 6,412 | 414 | 63 |

Chapter VIII, Act XVII, 1879.

The figures indicate a considerable and continuous increase in registered transfers, both optional and compulsory.

Report, page 71.

129. Again, in the Deccan Districts, where under special legislation all instruments of sale and mortgage require to be registered, we have a class of information which, though it was considered by the late Commission to be wanting in sufficient completeness and detail for an adequate examination of the subject, is by no means to be despised, not only as a demonstration of the state of things in the Deccan, but also as an indication of what we may look for in other parts of the country where popular rumour points to an increasing load of debt. The figures recorded by the Commission may be summarized as follows:—

Report, pages 7-22. Letter from Commissioner in Sind, No. 4274, dated 22nd October 1892, para. 10. (B Pros., Aug. 1893, No, 5.) Sel., p 134.

| From 1883 to 1891. | To non-agriculturists. | | | | To agriculturists. | | | |
|---|---|---|---|---|---|---|---|---|
| | Number. | Area. | Assessment. | Price. | Number. | Area. | Assessment. | Price. |
| | | Acres. | R | R | | Acres. | R | R |
| Sales . . . | 25,891 | 296,766 | 2,19,789 | 41,14,439 | 49,223 | 531,295 | 3,61,924 | 73,59,323 |
| Mortgages with possession . . | 68,380 | 607,428 | 6,01,997 | 84,23,014 | 84,986 | 474,519 | 4,24,226 | 83,88,267 |
| Mortgages without possession . . | 33,537 | 367,235 | 3,03,728 | 34,99,258 | 31,406 | 159,711 | 1,59,160 | 21,76,121 |
| Total . | 127,808 | 1,271,429 | 11,25,505 | 1,60,36,711 | 165,615 | 1,165,525 | 9,45,310 | 1,79,23,711 |

Agricultural statistics return, 1892-93, Statement C.

The revenue of the four districts is recorded as 57·71 lakhs of rupees, so that, neglecting resales, it would appear that in these four districts, enjoying special legislation, land representing 6·2 per cent. of the revenue has in eight years been sold to agriculturists,* and land representing 3·8 per cent. to non-agriculturists.

The area mortgaged with possession during the same period represents 17·5 per cent. of the revenue, of which no less than 10 per cent. was mortgaged to non-agriculturists: and, though unfortunately we have not the figures for previous mortgages or for redemptions, it is obvious that a considerable area is under mortgage to money-lenders. The Commission of 1891-92 comment as follows on the district figures:—

"*Sales.*—It will be seen from this statement that in all four districts the number of sales shows a marked, but irregular tendency to increase. In Ahmednagar and Sholapur there is the same tendency observable in the areas sold; but in Poona and Satara there is considerable fluctuation from year to year. In all four districts, but especially in Poona, Sholapur and Satara, the majority of the transfers were to agriculturists; and in all the bulk of the transactions related to the smaller areas.

"These statistics—valuable as they undoubtedly are—do not give complete information as to the transfer of proprietary rights. It has been alleged that transfers are frequently effected, without execution of any document by mere mutation of names in the Collector's register. The Commission have been unable to find any evidence in support of this allegation, and all the mamlatdars consulted were of opinion that no such practice prevails. It will be seen, however, from the evidence recorded in Appendix I, that land is sometimes sold by non-agriculturists to agriculturists; also that some of the formal sales by agriculturists to money-lenders are in reality regarded by the parties as mortgages, and the land so transferred is sometimes redeemed. Apparently these re-transfers are effected by simple restoration of the land and return of the sale deed, and it follows that the net areas actually transferred to the non-agricultural classes are probably somewhat less than those shown in the statement.

* The agriculturist was defined in section 2 of Act XVII, 1879, as "a person who earns his livelihood wholly or principally by agriculture carried on within the limits of the said districts."



* * * * * * *

"After full allowance is made for these considerations, however, and for those sales which are purely voluntary, the fact remains that a large and increasing area is still being annually transferred from the cultivating to the trading and other classes.

"*Mortgages with possession.*—As in the case of sales, the numbers show a marked though irregular tendency to increase. In all four districts the bulk of the mortgages are of the smaller areas, and in the case of those areas the mortgages to agriculturists are proportionately more numerous.

"*Simple Mortgages.*—As in the case of sales and of mortgages with possession, the increase, though irregular, has been marked. As might naturally be expected, the bulk of the mortgagees are non-agriculturists."

130. A third and more scattered source of information is to be found in the enquiries made during the recent re-surveys and re-settlements: reasons and opinions such as those given in the reports on the Halol, Dohad, and Jhalod talukas of the Panch Mehals are valuable as indicating the general existence of debt and transfer, though accompanied by no statistics. In some of the reports, moreover, we have figures as to the area sublet (*e.g.*, 30 per cent. in Bágalkot taluka of Bijapur) which give a clue to the extent of transfer. But this information has never apparently been brought together.

Supdt.'s 193, dated 15th March 1880, para. 23 (Halol). Supdt.'s Memo. of 16th February 1878 (Dohad). A. S. O.'s 75 of 19th February 1882, para. 44 (Jhalod). Bombay Government Resolution No. 290 of 6th January 1884, para. 5.

*Coorg.*

131. The registration returns are summarised as follows:—

| Year. | Average annual number of sales of immovable property. | | Average annual number of mortgages of immovable property. | | Average value of immovable property annually transferred. |
|---|---|---|---|---|---|
| | Compulsory. | Optional. | Compulsory. | Optional. | R (lakhs). |
| 1878-83 . . | 200 | 18 | 210 | 6 | 9 |
| 1883-88 . . | 229 | 28* | 233 | 26 | 9 |
| 1888-93 . . | 578 | ... | 574 | 92 | 16 |

Agricultural Statistics, Table E.

The following are the only other figures available in respect of voluntary transfers in Coorg:—

| Year. | Acres permanently transferred by contract or gift. |
|---|---|
| 1884-85 . . . . . | 3,894 |
| 1885-86 . . . . . | 3,263 |
| 1886-87 . . . . . | 3,259 |
| 1887-88 . . . . . | 3,679 |
| 1888-89 . . . . . | 5,594 |
| 1889-90 . . . . . | 2,078 |
| 1890-91 . . . . . | 3,574 |
| 1891-92 . . . . . | 3,224 |
| 1892-93 . . . . . | 3,935 |
| Total . | 32,450 |

These figures must relate in the main to Sagu lands, which alone are legally alienable, but there are apparently no statistics with the Government of India as to the total area held under Sagu tenure, so that the proportion alienated is not known, nor is any information forthcoming as to the hands into which the land is passing. The serious indebtedness of the Coorgs, is however, noticed in recent reports.

Memo. on material condition of Coorg (1892), 43. Statement of the moral and material progress of India (1891-2), p. 482.

* Average for four years, 1883-87.

*Madras.*

132. The registration figures from 1878 onwards indicate the following :—

| Year. | Average annual number of sales of immovable property. | | Average annual number of mortgages of immovable property. | | Value of immovable property annually transferred. |
|---|---|---|---|---|---|
| | Compulsory. | Optional. | Compulsory | Optional. | ₹ (lakhs). |
| 1878—83 . . | 60,130 | 50,259 | 103,987 | 74,808 | 1,007 |
| 1883—88 . . | 94,154 | 84,186* | 123,516 | 119,603 | 1,089 |
| 1888—93 . . | 228,999 | ... | 171,074 | 170,948 | 1,399 |

*Average for four years.

See Land Revenue Reports.

133. Returns of the number of applications for transfer of revenue registry appear to have been prepared in 1887 for the first time: the number of applications made since that date is returned as follows :—

| | |
|---|---|
| 1887-88 . . . . . | 126,000 |
| 1888-89 . . . . . | 130,300 |
| 1889-90 . . . . . | 132,000 |
| 1890-91 . . . . . | 132,700 |
| 1891-92 . . . . . | 117,800 |

Agricultural Statistics, Return E.

and the number of transfers (available from the same date) as follows :—

| | |
|---|---|
| 1887-88 . . . . . | 110,550 |
| 1888-89 . . . . . | 116,797 |
| 1889-90 . . . . . | 112,656 |
| 1890-91 . . . . . | 115,654 |
| 1891-92 . . . . . | 104,283 |
| 1892-93 . . . . . | 104,277 |

Board's Standing Orders, Chapter I, No. 20.

The actual transfer is more carefully recorded in Madras than in Bombay, and the register of holdings kept in each village is, as far as possible, a register alike of title and of fiscal responsibility. The above figures may therefore be accepted as accurate so far as they go; but it is not quite clear how far they include temporary alienations (the registry of which is voluntary only), nor have we separate figures for *zemindari* and *ryotwari* areas.

The above figures do not indicate any increase in sales of late years, but they do not appear to have been locally examined, and in view of the uncertainty as to how far they contain statistics for mortgages it may be noted that the custom of usufructuary mortgage in *ryotwari* areas has recently been declared by the Madras Government to be exceedingly common.

Manual of Standing Information, 1892-93 page 77, para. 81.

134. As regards the hands into which the land is falling we have no accurate data, but the general opinion of Madras officers would seem to indicate that the professional money-lender is not gaining so firm a hold on the land in Madras as elsewhere.

Report of Famine Commission, Appx. III, page 416.

An attempt to estimate the proportion of land falling into the power of "non-resident and non-agricultural landlords" was made in 1878-79 in reply to the enquiries of the Famine Commission. The Collectors of Godavari, Nellore, Madras, Bellary, Kurnool, Kistna, South Arcot, Nilgiris and Ganjam reported that no appreciable portion of land in their districts had been alienated into such hands; in Madura the proportion was estimated at 10 per cent., in Tanjore 10 per cent., in South Canara 50 per cent., in Coimbatore 5 per cent., and in Chingleput at least 40 per cent., while in Salem 25 per cent. of the unirrigated and 75 per cent. of the irrigated lands were calculated to be so alienated. The Board concluded that "taking the Presidency as a whole, absenteeism did not prevail to such an extent as to afford any cause for anxiety." It is not clear whether the above estimates included cases of resident non-agricultural landlords, but from the detailed replies they apparently did so. At the same time the class of the transferees was obviously a subject little considered.



135. The registration figures have, however, been recently examined by the Inspector-General, S. Srinavasa Raghavaiyangar, with the object of discovering the class of the mortgagees in the Presidency, and the following is the result of his investigations in respect of ten districts for the three years, 1889 to 1891 :— Report on the Progress of the Madras Presidency Appendix VI, C. 2, page cclxviii.

| Profession of lenders. | Percentage. | | | |
|---|---|---|---|---|
| | Mortgages, ₹100 and above. | Mortgages below ₹100. | Simple bonds. | All transactions. |
| Agriculturists . . . . | 61 | 65 | 64 | 63 |
| Non-agriculturists . . . | 34 | 31 | 32 | 32 |
| Ryots combining other professions with agriculture. | 5 | 4 | 4 | 5 |

The same authority after examining the evidence of past and present officials is of opinion that "if the question be asked whether the agricultural classes generally are more in the hands of sowkars or professional money-lenders than before, the answer must be decidedly in the negative." Ditto, page 258. "So far as land is concerned," he adds, "the tendency has been to transfer it to actual cultivators or to persons who, in addition to capital, have sufficient education and intelligence to adopt improved methods of cultivation when they are found to be profitable." Ditto, page 262. It may be doubted whether the figures bear out this conclusion. Review on Registration Report for the three years ending 1889-90.

136. The Government of India in a recent review drew attention to the fact that the average value of each document relating to immovable property in Madras had fallen from ₹260 in 1880-81—1883-84 to ₹195 in the following triennial period, and though there were other possible explanations it was thought that the fact suggested "that mortgages and sales of lands had been becoming more frequent among the poorer cultivators." But in a more recent review the following remarks were made :— "The variations in the average value of sales and mortgages during the past six years have been comparatively slight, and the Local Government considers that there is nothing to suggest any general or permanent impoverishment of small landholders as a consequence of the continued unfavourable seasons. It is believed also that, at any rate in the more advanced districts, the *ryots* are less dependant than formerly upon professional money-lenders, and that the ownership of land is not passing from the agricultural to the non-agricultural classes to any injurious extent."

*Assam.*

137. For this province we have only the general statistics to fall back upon, *viz.*, (*a*) the registration figures, which are as follows:—

| Year. | Average annual number of sales of immovable property. | | Average annual number of mortgages of immovable property. | | Average value of immovable property annually transferred. |
|---|---|---|---|---|---|
| | Compulsory. | Optional. | Compulsory. | Optional. | R (lakhs). |
| 1878-83 . . | 4,644 | 2,378 | 1,289 | 317 | 34 |
| 1883-88 . . | 6,674 | 5,621* | 1,601 | 630 | 34 |
| 1888-93 . . | 17,701 | ..... | 1,740 | 1,003 | 40 |

* Average for four years, 1883-87.

Form E., Agricultural Statistics.

and (*b*) the transfers reported annually to the Government of India, *viz.*:—

| Year. | Number. | Area. |
|---|---|---|
| 1884-85 . . . . . | 12,761 | 47,547 |
| 1885-86 . . . . . | 16,028 | 84,772 |
| 1886-87 . . . . . | 19,455 | 151,609 |
| 1887-88 . . . . . | 25,979 | 64,357 |
| 1888-89 . . . . . | 24,062 | 70,485 |
| 1889-90 . . . . . | 29,040 | 69,347 |
| 1890-91 . . . . . | 25,743 | 61,618 |
| 1891-92 . . . . . | 23,900 | 40,792 |
| 1892-93 . . . . . | 24,246 | 47,066 |

See Revenue Administration Report.

In addition to these, the returns of "mutation cases" may give some indication of the state of things, though they include cases of succession:—

| Year. | No. of Cases. |
|---|---|
| 1884-85 . . . . . | 8,469 |
| 1885-86 . . . . . | 11,405 |
| 1886-87 . . . . . | 16,920 |
| 1887-88 . . . . . | 22,591 |
| 1888-89 . . . . . | 27,163 |
| 1889-90 . . . . . | 15,053 |
| 1890-91 . . . . . | 11,111 |
| 1891-92 . . . . . | 13,424 |
| 1892-93 . . . . . | 14,603 |



The cultivated area of the province to which these transfers mainly relate is (excluding forests) some 34 lakhs of acres, so that, if we neglect double transfers, a very considerable proportion of transfers appears to be indicated by the figures. Agricultural Statistics, Form A.

138. In dealing with these transfers in connection with indebtedness a distinction must be made between the Assam and Surma valleys, as in the former debt is practically unknown, while in the latter debt is common. Of the 9,801 persons subsisting on money-lending in Assam 7,902 are found in the Surma, and only 1,793 in the Assam valley. Of the latter 1,211 are found in the Kamrup district. Census Report, 1891, para. 605.

The number of money-lenders in either valley is however so small that the land runs little danger of falling into their hands. It is taken up either by the *ryots* themselves or by non-agiculturists of another class. Mr. Darrah, the Director of Land Records and Agriculture, wrote as follows in 1888 on this subject:—

"There are symptoms that the practical recognition of this right of transfer is gradually having its natural effect in some of the more-densely populated areas, and that leases are being accumulated where land is valuable in the hands of men, some of them aliens and the majority not cultivators of the soil. That this process has not gone far would seem to be proved by the fact that when enquiries were made in 1882-83 on the subject of the proposed Rent Law for Assam it was estimated that there were but few under-tenants in the Province except those on *nisf-khiraj* and *lakhiraj* estates. Exact figures as to the numbers of under-tenants and the area held by them on estates assessed at full revenue rates are not available as the *dag chittas* kept by mauzadars outside cadastrally surveyed areas have no column for this class of tenants. The cadastral survey is collecting statistics on the subject, and the figures when complete will be interesting. It may, however, be accepted as a fact, that in places where population is dense and land valuable there is a tendency towards the accumulation of leases in the hands of those who have ready money available, and that many of these are men who from the nature of their employments cannot possibly attend to the cultivation of the land for which they hold leases. Some are clerks in the various district offices. Many are pleaders. It would seem that very few are Kayas or Marwari merchants. It is not quite clear why these latter have not become possessed of more land than they appear to hold. Their opportunities for acquiring leases by fair means or otherwise must be at least as great as those of the clerks in a Deputy Commissioner's office; but they do not seem to have availed themselves of them. Possibly, they do not want to acquire in the country any interest which they cannot bodily remove when they themselves leave Assam." Report on the condition of the people of Assam (1888).

*Lower Burma.*

139. The Registration figures are as follows (it must be remembered that the Transfer of Property Act is not in force):—

| Year. | Average annual number of sales of immoveable property. | | Average annual number of mortgages of immoveable property. | | Average value of immoveable property annually transferred. |
|---|---|---|---|---|---|
| | Compulsory. | Optional. | Compulsory. | Optional. | Rs. (lakhs). |
| 1878—83 . . | 2,145 | 159 | 2,183 | 58 | 63 |
| 1883—88 . . | 2,913 | 265 | 2,953 | 118 | 111 |
| 1888—93 . . | 4,255 | 261 | 4,808 | 114 | 136 |

140. Figures for transfers, compiled from village papers, are available from 1888 onwards in the Revenue Administration Reports and indicate a regular and rapid increase especially in mortgages.

| Year. | Area sold. | Purchase money in lakhs. | Area mortgaged in the year. | Area under mortgage. |
|---|---|---|---|---|
| | Acres. | Rs. | Acres. | Acres. |
| 1888-89 . . . . | 167,044 | 19,69 | 29,888 | 67,277 |
| 1889-90 . . . . | 185,343 | 25,35 | 42,573 | 88,962 |
| 1890-91 . . . . | 318,049 | 22,81 | 55,522 | 109,409 |
| 1891-92 . . . . | 263,686 | 44,57 | 63,326 | 128,682 |
| 1892-93 . . . . | 280,291 | 53,54 | 112,747 | 268,093 |
| TOTAL SOLD . . | 1,214,413 | ..... | ..... | ..... |

141. The figures are not known to be entirely trustworthy except in the "settled" districts, where the improved agency of the "supplementary survey" has been introduced. Out of 19 districts 9 had in 1892-93 been brought under supplementary survey, and the statistics for these districts, which may be looked upon as practically accurate, give the following results (figures for rice land alone are given, but the rice land represents about nine-tenths of the total area):—

| Year. | Area sold. | Area mortgaged during the year. | Area under mortgage. | Percentage of total area sold. | Percentage of total area under mortgage. |
|---|---|---|---|---|---|
| 1890-91 . . | 179,170 | 52,394 | 98,765 | 1·0 | ·5 |
| 1891-92 . . | 223,188 | 60,378 | 117,649 | 1·3 | ·6 |
| 1892-93 . . | 235,834 | 108,792 | 184,206 | 1·1 | ·9 |

The figures for the Pegu district are the most remarkable :—

| Year. | Area sold. | Area mortgaged during the year. | Area under mortgage. | Percentage of total area sold. | Percentage of total area under mortgage. |
|---|---|---|---|---|---|
| 1888-89 . . | 58,855 | 4,495 | 13,419 | 3·8 | ·8 |
| 1889-90 . . | 62,663 | 15,915 | 27,430 | 4·0 | 1·7 |
| 1890-91 . . | 82,947 | 20,836 | 36,922 | 5·3 | 2·3 |
| 1891-92 . . | 99,084 | 18,041 | 34,039 | 6·3 | 2·1 |
| 1892-93 . . | 96,457 | 48,114 | 62,719 | 6·2 | 4·0 |

It will be remembered that the figures include cases of double transfer and that the improved registration of recent years tends to increase the figures in all districts, but with due allowance for the above there seems little doubt as to the rapid increase of transfer in Lower Burma.

Revenue Reports. 142. The only statistical information we have as to the hands into which the transfers are made is to be gleaned from figures showing the proportion of land-



lords who are non-agriculturists. Such figures are only available for the last five years and for rice lands in the settled districts :—

| YEAR. | NUMBER OF LANDLORDS WHO SUB-LET. | | Percentage of money-lenders and traders. |
|---|---|---|---|
| | Total. | Money-lenders and traders. | |
| 1888-89 . . . . | 22,941 | 3,161 | 14 |
| 1889-90 . . . . | 23,410 | 4,708 | 20 |
| 1890-91 . . . . | 25,333 | 4,856 | 19 |
| 1891-92* . . . . | 29,453 | 6,394 | 21 |
| 1892-93* . . . . | 31,521 | 6,989 | 22 |

* Thongwa omitted throughout as a much larger area was under supplementary survey than in years preceding 1891-92.

143. There is also however a considerable quantity of scattered evidence as to the manner in which and the class of persons to whom land is being transferred. The following specimens will perhaps suffice.

As early as 1883, the Commissioner of the Irrawaddy Division reported that "in the circles near Rangoon land has acquired a value which makes it worth the while of the money-lenders to buy up the land as an investment." In the Settlement Report for the Bassein and Henzada districts for the same year, it was noted that about 8 per cent. of the landlords were traders or money-lenders. Page 82, Land Revenue Report, 1882-83. Memo. by Director, Land Records, on material condition of people (1892), para. 35.

In 1884 the transfer of lands in Southern Pegu into the hands of Rangoon money-lenders or their nominees was reported by the Deputy Commissioner to be "progressing steadily and surely." In the area of the Bassein and Henzada districts settled in the same year it was found that 26 per cent of the landlords "belonged to a class which has no interest in common with the cultivators, *viz.*, money-lenders, traders, pleaders, etc." Page 28, Divisional Land Revenue Report (1883-4). Settlement Rep., 1884, para. 46.

In 1888 the Chief Commissioner speaking of the Burmese cultivators generally, wrote that "the number of those who are hopelessly burdened and have to give up their holdings to the money-lenders, is comparatively small." Para. 26, Revenue Report, 1884-5.

In 1888 the Tenasserim Commissioner reported that "a great deal of paddy land was passing into the hands of natives of India, money-lenders in the neighbourhood of Moulmein." Divisional Revenue Report, 1887-8, para. 36.

In 1889 the Deputy Commissioner of Amherst wrote :—"The land is mortgaged to Chetties, to whom it is eventually transferred, and by them either sold outright or rented." Revenue Report, 1888-89, para. 60.

In his review of the Revenue Administration of the following year the Chief Commissioner noted :—"It appears certain that in the neighbourhood of the large trading centres such transfers are frequent. Chittagonians in Akyab, Chetties in the neighbourhood of Rangoon, both Chetties and Chinamen in Moulmein, are displacing the original landholders." The Financial Commissioner at the same time wrote as regards the Akyab district : "More than nine-tenths of the paddy land sold, had been the property of cultivators, but nearly one-fourth of it was purchased by persons other than cultivators, such as traders and money-lenders. There is a tendency for land to pass out of the hands of cultivators in Akyab." It was reported for the same year that in Prome and Tavoy "the transfers were among cultivators mostly :" in Thongwa an increase in mortgages was explained by an increase in debt from losses by floods and cattle-disease. Review of Revenue Report, 1889-90, para. 11.

In 1892 the transfers in Henzada, Tavoy and Akyab were reported to be mainly among cultivators, but in Hanthawaddy the Deputy Commissioner stated that cultivators were "parting with their land with increasing rapidity to persons who assume the position of landlords;" and the Deputy Commissioner of Amherst reported :—"cases of sales of land have been very numerous and, in 90 per cent. of the cases the land is sold at the instance of the native of India and passes from the possession of the native of Burma. The statistics furnished are not reliable, but everywhere it is clear, and especially within 10 miles of the environs of Moulmein, that the expropriation of the cultivating population is going on and the cultivators are alienating their land to money-lenders." "The Chinamen and Zabadis in Mergui," added the Financial Commissioner, "are said to exhibit a tendency to acquire cultivable land from the Burmese and Siamese."

Again in reviewing in 1893 the figures for districts under supplementary survey the Director of Land Records and Agriculture stated that in Akyab "a very large proportion" of the area sold "passed into the hands of cultivators," but in Thongwa 23 per cent. of the area

sold and 60 per cent. of that mortgaged went to money-lenders and other non-agriculturists, while in Pegu the land " was as usual for the most part sold to money-lenders."

*Upper Burma.*

144. Our information regarding the extent of transfer in Upper Burma is naturally very meagre as yet. The figures available in the Return of Agricultural Statistics indicate an increase of the exercise of the power of transfers in recent years, but it is doubtful how far the figures are not explained by improved registration.

| Year. | Transfers by private contract or gift. |
|---|---|
| 1888-89 | 240 |
| 1889-90 | 500 |
| 1890-91 | 11,100 |
| 1891-92 | 14,700 |
| 1892-93 | 16,800 |

There is no information as to the proportion of this area which is non-state land or the proportion (if any) which has fallen into the hands of money-lenders. The Census Report indeed notices that while in Lower Burma the proportion among agriculturists of non-cultivating landlords was returned as 1·11 per cent., the proportion in Upper Burma was 1·42 per cent.; but this does not afford any sure basis for inference.

Census Repor 1891, page 258.

## (ii) Transfers in execution of Decrees of Civil Courts.

145. The returns supplied in the Civil Justice reports, showing the number of applications on which immovable property was (*a*) sold or (*b*) treated under the special sections of the Code of Civil Procedure which allow the substitution of temporary transfers, etc., are appended below, but a comparison with returns received from Revenue officers seems to indicate that the judicial returns relate to executions both on town and on country property, and consequently in the absence of figures as to the area dealt with they can scarcely serve as any guide to the extent of the compulsory sale of agricultural land.

*Average annual number of applications for execution of decrees.*

| Provinces. | On which immovable property was sold. | | On which immoveable property was dealt with under sections 305, 322 or 326, Act XIV, 1882. | |
|---|---|---|---|---|
| | 1883–87. | 1888–92. | 1883–87. | 1888–92. |
| Bengal* | 29,919 | 46,511 | 554 | 796 |
| North-Western Provinces | 4,340 | 5,469 | 319 | 182 |
| Oudh | 857 | 860 | 55 | 36 |
| Punjab | 2,116 | 2,412 | 588 | 478 |
| Ajmere | 95 | 117 | 33 | 23 |
| Central Provinces | 3,208 | 3,274 | 127 | 34 |
| Berar | 1,043 | 1,077 | 172 | 9 |
| Bombay | 5,803 | 5,879 | 854 | 918 |
| Coorg | 25 | 26 | 1 | 8 |
| Madras | 8,030 | 8,239 | 299 | 520 |
| Assam | 789 | 1,044 | 43 | 11 |
| Lower Burma | 568 | 642 | 59 | 125 |
| Upper Burma | ... | 136† | ... | 11† |

* Includes revenue executions.
† Average for two years.



146. The other set of general figures available to us are those supplied from revenue sources in the annual Agricultural Statistics Returns. As regards these also it may be noted :— Form E.

(1) they are believed as a rule to refer to permanent transfers only. In the Punjab, where temporary transfers are included in the original return, separate figures taken from the Revenue Reports have been shown below for permanent transfers only;
(2) they probably do not include sales of house property, though of this we have no clear evidence;
(3) in the same way they probably do not include sales for arrears of revenue, though of this we cannot be certain;
(4) in the Punjab they include transactions referring to occupancy tenants.
(5) instructions were issued in 1891 to the Punjab and Central Provinces to the effect that this return should include not only transfers occasioned by debt, but also all kinds of transfers effected by the agency of a Court. It is not known how far this rule has been observed in other provinces. B Pros., Nos. 50 to 52, April 1891, and Nos. 39 and 40, October 1891.

The following are the returns :—

*Transfer of landed property by proprietors, 1884—1893.*

*By order of Court.*

| Years. | Madras. | North-West Provinces. | Oudh. | Punjab. | Punjab (excluding temporary alienations). | Ajmere. | Central Provinces. | Upper Burma. | Lower Burma. | Assam. | Berar. | Coorg. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | (*i*) *Number of transfers.* | | | | | | | |
| 1884-85 | 15,002 | * | 382 | 1,479 | * | * | 278 | * | 676 | 1,541 | 281 | 36 |
| 1885-86 | 10,941 | 3,068 | 254 | 35,757 | * | * | 201 | * | 343 | 914 | 271 | 25 |
| 1886-87 | 8,409 | 3,136 | 330 | 2,574 | * | * | 248 | * | 229 | 1,687 | 211 | 31 |
| 1887-88 | 8,714 | 3,174 | 249 | 2,585 | 1,338 | * | 343 | * | 471 | 1,885 | 293 | 65 |
| 1888-89 | 6,797 | 3,315 | 285 | 2,017 | 717 | 2 | 280 | 162 | 154 | 2,698 | 493 | 40 |
| 1889-90 | 6,519 | 3,416 | 339 | 1,720 | 888 | 15 | 304 | 1 | 289 | 2,856 | 287 | 19 |
| 1890-91 | 5,458 | 3,273 | 345 | 1,717 | 620 | 2 | 321 | 276 | 370 | 2,879 | 248 | 13 |
| 1891-92 | 4,513 | 3,467 | 362 | 2,572 | 721 | 1 | 238 | 533 | 450 | 2,480 | 161 | 13 |
| 1892-93 | 5,534 | 4,395 | 389 | 1,770 | 779 | 4 | 403 | 1,121 | 516 | 2,353 | 164 | 44 |
| | | | | | (*ii*) *Area transferred.* | | | | | | | |
| 1884-85 | 81,448 | * | 27,525 | 24,891 | * | * | 151,383 | * | 6,758 | 4,223 | 5,378 | 771 |
| 1885-86 | 63,406 | 125,851 | 38,408 | 302,997 | * | * | 90,908 | * | 4,728 | 972 | 6,947 | 174 |
| 1886-87 | 66,526 | 123,234 | 3,663 | 24,960 | * | * | 114,353 | * | 3,060 | 14,530 | 6,837 | 220 |
| 1887-88 | 50,413 | 124,737 | 22,062 | 34,207 | 19,627 | * | 193,370 | * | 5,914 | 362 | 6,327 | 561 |
| 1888-89 | 29,466 | 133,188 | 10,261 | 24,484 | 9,513 | 13 | 137,909 | 956 | 2,124 | 1,492 | 9,461 | 665 |
| 1889-90 | 62,475 | 141,979 | 25,814 | 17,308 | 9,095 | 21 | 98,929 | 7 | 9,407 | 1,657 | 6,410 | 169 |
| 1890-91 | 20,296 | 99,277 | 22,018 | 17,046 | 10,801 | 5 | 80,208 | 3,800 | 5,291 | 1,253 | 23,942 | 854 |
| 1891-92 | 26,314 | 126,938 | 23,713 | 43,998 | 35,821 | 5 | 87,191 | 1,720 | 6,756 | 3,262 | 2,903 | 930 |
| 1892-93 | 22,654 | 177,699 | 36,906 | 18,136 | 10,617 | 11 | 129,174 | 2,934 | 7,927 | 1,782 | 15,319 | 2,575 |

* Figures not given.
† Figures for Bengal and Bombay are not available.

147. In considering the extremely scanty information by provinces it will be remembered (*a*) that in some provinces certain executions against land are under section 320 of the Code of Civil Procedure, carried out by Collectors only, and (*b*) that in certain provinces there are special rules existing under section 327 requiring special sanction for sales of certain kinds of land. Reports on the working of section 320 used to be submitted to the Home Department of the Government of India, but were discontinued some years ago.

148. In *Bengal* the Judicial returns include figures for executions of decrees of Revenue Courts and are thence of little value for us. The sale of land in Chota Nagpur is subject to special sanction under section 327, Civil Procedure Code, but no figures to show the result of the procedure seem to be available.

See Civil Justice Reports.

149. In the *North-West Provinces*, where cases of sale of ancestral property have to be transferred to the Collector, the number of applications so transferred has been gradually increasing.

| Year. | | Year. | |
|---|---|---|---|
| 1883 | 4,943 | 1888 | 5,728 |
| 1884 | 5,116 | 1889 | 6,378 |
| 1885 | 5,214 | 1890 | 5,741 |
| 1886 | 4,951 | 1891 | 6,899 |
| 1887 | 5,247 | 1892 | 6,935 |
| *Average* | *5,094* | *Average* | *6,336* |

A comparison of these figures with those quoted above from the Agricultural Statistics returns would seem to show that sale is resorted to in some two-thirds of the cases.

Revenue Reports.

We have for six years special figures showing the class of purchasers at sales of land :—

| Year. | Landowners. | Money-lenders. |
|---|---|---|
| 1884-85 | 1,780 | 1,116 |
| 1885-86 | 1,847 | 915 |
| 1886-87 | 1,763 | 905 |
| 1887-88 | 1,899 | 1,114 |
| 1888-89 | 1,834 | 1,077 |
| 1889-90 | 1,942 | 1,097 |

Revenue Report for 1889-90, page 68. See also Revenue Report for 1882-83, page 57.

But it has been pointed out that the two classes of landowners and money-lenders are not clearly separated and have probably been to some with return confused in the returns.

In *Oudh*, where the same rule under section 320 prevails as in the North-Western Provinces, we have no figures to show the number of applications transferred to the Deputy Commissioner.

150. In the *Punjab* by rule under section 327 sales of hereditary or joint-acquired agricultural property require the sanction of the Financial Commissioner, while those of self-acquired property require the sanction of the Commissioner. The Civil Justice returns indicate the number of applications on which property of either kind was sold.

Statement VI.

| Year. | Number of applications on which | | Year. | Number of applications on which | |
|---|---|---|---|---|---|
| | Hereditary or joint-acquired property was sold. | Other immovable property was sold. | | Hereditary or joint-acquired property was sold. | Other immovable property was sold. |
| 1883 | 8 | 2,197 | 1888 | 38 | 2,203 |
| 1884 | 96 | 2,074 | 1889 | 61 | 2,183 |
| 1885 | 41 | 2,130 | 1890 | 46 | 2,147 |
| 1886 | 40 | 1,858 | 1891 | 30 | 2,611 |
| 1887 | 80 | 2,056 | 1892 | 73 | 2,668 |
| *Average* | *53* | *2,063* | *Average* | *50* | *2,362* |



151. In *Ajmere* agricultural land is exempt from sale in execution, and the figures in the general return above (petty as they are) probably refer to non-agricultural land.

152. In the *Central Provinces* the subject has been more carefully watched. Those provinces enjoy both an order under section 320 requiring transfer to the Collector of cases of sale of agricultural land and a rule under section 327 requiring special sanction for land-sales.

The following general figures regarding compulsory alienations of land (apparently both by Civil and Revenue processes) since 1871 have been extracted from the Revenue Administration Reports :—

| Year. | Area of estates and plots transferred by compulsory sale. | Area of estates and plots transferred by compulsory temporary alienation. | Remarks. |
|---|---|---|---|
| | Acres. | Acres. | |
| 1871-72 | 31,915 | 92,920 | Figures taken from Statement XI of Revenue Administration Reports. |
| 1872-73 | 79,351 | 98,214 | |
| *Average* | *55,633* | *95,567* | |
| 1873-74 | 97,982 | 127,523 | Figures taken from Statement X of Revenue Administration Report for 1874-75. |
| 1874-75 | 69,535* | 58,282* | Figures taken from Statement VII of Revenue Administration Reports. |
| 1875-76 | 128,391 | 19,620 | |
| 1876-77 | 105,934 | 30,995 | |
| 1877-78 | 89,099 | 28,500 | |
| *Average* | *98,188* | *52,984* | |
| 1878-79 | 94,547 | 21,291 | |
| 1879-80 | 96,816 | 40,948 | |
| 1880-81 | 61,335 | 20,871 | |
| 1881-82 | 114,420 | 14,937 | |
| 1882-83 | 45,861 | 8,038 | |
| *Average* | *82,596* | *21,217* | |
| 1883-84 | 77,077 | 23,132 | Figures taken from Statement VI of Revenue Administration Report, 1884-85. |
| 1884-85 | 59,300† | 10,980 | |
| 1885-86 | 90,908 | | Figures taken from the Returns of Agricultural Statistics of British India. |
| 1886-87 | 114,355 | | |
| 1887-88 | 193,370 | | |
| *Average* | *107,002* | Not available | |
| 1888-89 | 137,909 | | |
| 1889-90 | 98,929 | | |
| 1890-91 | 79,064 | | Figures taken from Statement V of Revenue Administration Reports. |
| 1891-92 | 100,857 | Not available | |
| 1892-93 | 121,123 | | |
| *Average* | *107,576* | | |

* These are the revised figures given in the Report for 1875-76.
† Figures given in the Returns of Agricultural Statistics are 151,383 acres.

The annual number in recent years of transfers to Collectors (apparently under section 320) is, according to the Civil Justice Reports :— Appendix VII,

| | | | |
|---|---|---|---|
| 1883 | 542 | 1888 | 1,000 |
| 1884 | 492 | 1889 | 971 |
| 1885 | 577 | 1890 | 1,164 |
| 1886 | 695 | 1891 | 968 |
| 1887 | 857 | 1892 | 1,278 |
| *Average* | *633* | *Average* | *1,076* |

The Revenue Administration Reports, however, give the following figures regarding the outcome of sales ordered by Civil Courts :—

Section VI, Revenue Reports.

| Year. | Number of sales ordered by Civil Courts during the year. | Sale averted by payment of claim. | Sale averted by temporary alienation. | Sold. |
|---|---|---|---|---|
| 1885-86 | 1,047 | 428 | 54 | 149 |
| 1886-87 | 1,208 | 473 | 50 | 175 |
| 1887-88 | 1,438 | 581 | 64 | 274 |
| 1888-89 | 1,053 | 591 | 51 | 276 |
| 1889-90 | 1,108 | 632 | 71 | 276 |
| 1890-91 | 1,256 | 494 | 57 | 271 |
| 1891-92 | 1,306 | 491 | 58 | 312 |
| 1892-93 | 2,270 | 564 | 54 | 440 |

See, *e.g.*, Revenue Report, 1887-88, pages 8-19. Ditto, 1888-89, page 24. Ditto, 1889-90, page 21. Ditto, 1891-92, page 31. Para. 8, letter No. 1466S—212, dated 11th Nov. 1889. (A Pros., May 1891, Nos. 9 to 14.) Sel., p. 76.

The working of section 320 is carefully noted on in the Revenue Reports, and the conclusions arrived at are much the same as those expressed by the Chief Commissioner, Mr. Mackenzie, when he wrote in 1889: "The District Officers take much trouble over these references, but the cases are comparatively few in which they can effectually intervene to prevent sale when the debtor is as deeply involved as he generally is before the creditor puts the Courts in action." The view is based, of course, on the comparison of cases of sale with those in which the Collector has succeeded in temporarily alienating.

We have no information as to the definite effect of the rule under section 327, which requires special sanction for land sales.

153. In *Berar*, as in the Central Provinces, all transfer of agricultural land are dealt with under section 320 of the Civil Procedure Code, and there is besides a special provision for the sanction of the higher Revenue authorities in cases of sales. As usual the Judicial and Revenue returns are difficult, without further information, to reconcile.

The former are to the following effect :—

| Year. | Transferred to Collectors under section 320. | Number of applications for execution of decrees. | |
|---|---|---|---|
| | | On which immovable property was sold. | On which immovable property was dealt with under Sections 305, 322, or 326, Act XIV, 1882. |
| 1883 | 164 | 973 | 245 |
| 1884 | 1,042 | 1,004 | 275 |
| 1885 | 838 | 1,019 | 206 |
| 1886 | 745 | 1,142 | 65 |
| 1887 | 749 | 1,078 | 69 |
| *Average* | *708* | *1,043* | *172* |
| 1888 | 747 | 1,536 | 12 |
| 1889 | 791 | 1,128 | 4 |
| 1890 | 836 | 862 | 9 |
| 1891 | 670 | 859 | 8 |
| 1892 | 717 | 999 | 13 |
| *Average* | *752* | *1,077* | *9* |



The Revenue returns, on the other hand, run as follows :—

Revenue Reports, Statement L.

| Year. | Number of applications for sale made by Civil Courts. | Sanctioned by Resident and Commissioner. | Sales actually effected. | | | |
|---|---|---|---|---|---|---|
| | | | No. | Area. | Assessment. | Price realized. |
| | | | | Acres. | R | R |
| 1883-84 | * | 156 | 94 | 1,507 | 1,847 | 21,625 |
| 1884-85 | 328 | 208 | 128 | 2,267 | 2,603 | 25,747 |
| 1885-86 | 412 | * | 134 | 3,379 | 4,337 | 33,072 |
| 1886-87 | 326 | 113 | 98 | 2,733 | 2,706 | 19,770 |
| 1887-88 | 549 | 120 | 74 | 1,151 | 1,535 | 16,870 |
| *Average* | *404* | *149* | *106* | *2,207* | *2,606* | *23,417* |
| 1888-89 | 423 | 305 | 222 | 3,849 | 7,901 | 55,598 |
| 1889-90 | 392 | 244 | 132 | 3,323 | 3,349 | 44,510 |
| 1890-91 | 488 | 163 | 103 | 4,457 | 2,551 | 41,073 |
| 1891-92 | 441 | 159 | 131 | 2,654 | 3,216 | 44,293 |
| 1892-93 | 495 | 109 | 101 | 1,835 | 2,319 | 36,574 |
| *Average* | *448* | *196* | *138* | *3,224* | *3,867* | *44,410* |

* Figures not given.

The following figures indicate a growing use of the power of sanction enjoyed by the Commissioner and Resident respectively, especially the latter :—

(*i*) *Applications for sale of self-acquired land sanctioned by the Commissioner.*

| Year. | Number of fields. | Acreage. | Assessment. |
|---|---|---|---|
| | | | R |
| 1878-79 | 83 | 1,012 | 1,301 |
| 1879-80 | 2 | 40 | 27 |
| 1880-81 | 43 | 627 | 796 |
| 1881-82 | 126 | 2,470 | 1,814 |
| 1882-83 | 171 | 2,824 | 2,815 |
| *Average* | *85* | *1,395* | *1,351* |
| 1883-84 | 98 | 1,407 | 1,790 |
| 1884-85 | 170 | 2,229 | 2,320 |
| 1885-86 | 140 | 2,169 | 2,184 |
| 1886-87 | 74 | 840 | 1,106 |
| 1887-88 | 81 | 835 | 1,060 |
| *Average* | *113* | *1,496* | *1,692* |
| 1888-89 | 147 | 1,533 | 1,937 |
| 1889-90 | 182 | 2,911 | 3,180 |
| 1890-91 | 84 | 1,068 | 1,082 |
| 1891-92 | 101 | 1,456 | 1,614 |
| 1892-93 | 48 | 519 | 623 |
| *Average* | *113* | *1,497* | *1,687* |

*(ii) Applications for sale of ancestral land sanctioned by the Resident.*

| Year. | Number of fields. | Acreage. | Assessment. |
|---|---|---|---|
| | | | ₹ |
| 1878-79 | 61 | 769 | 1,009 |
| 1879-80 | 5 | 59 | 45 |
| 1880-81 | 13 | 174 | 204 |
| 1881-82 | 155 | 3,153 | 2,197 |
| 1882-83 | 179 | 2,030 | 2,570 |
| *Average* | *83* | *1,237* | *1,205* |
| 1883-84 | 126 | 1,437 | 2,151 |
| 1884-85 | 188 | 2,359 | 2,869 |
| 1885-86 | 198 | 2,554 | 3,431 |
| 1886-87 | 112 | 1,340 | 1,417 |
| 1887-88 | 124 | 1,114 | 1,664 |
| *Average* | *149* | *1,761* | *2,306* |
| 1888-89 | 362 | 4,254 | 5,873 |
| 1889-90 | 252 | 3,281 | 5,571 |
| 1890-91 | 184 | 2,474 | 3,691 |
| 1891-92 | 171 | 1,887 | 2,486 |
| 1892-93 | 133 | 1,638 | 2,233 |
| *Average* | *220* | *2,707* | *3,971* |

154. In *Bombay* there is no rule under section 327 and the declaration under section 320 extends to a part only, though a large part, of the Presidency.

The judicial returns quoted in paragraph 145 above indicate that cases of sale in the Presidency are some six times as numerous as the cases in which sale is averted by special arrangements. It appears that when it is decided under section 320 to place an estate under management in the Ahmedabad, Kaira and Broach districts, the management is entrusted to the Talukdari Settlement Officer, and the following figures apparently relate to such cases :—

Chapter 2, General Administration Report.

| Year. | Number of estates under management. | Revenue for collection in lakhs of Rs. |
|---|---|---|
| 1883-84 | 113 | * |
| 1884-85 | 136 | ·30 |
| 1885-86 | 147 | ·36 |
| 1886-87 | 150 | ·43 |
| 1887-88 | 135 | ·36 |
| 1888-89 | 117 | ·39 |
| 1889-90 | 136 | ·48 |
| 1890-91 | 176 | ·41 |
| 1891-92 | 241 | ·71 |
| 1892-93 | 294 | ·88 |

* Not given.

155. Regarding *Coorg*, in which special sanction is required for sale of land not specifically pledged, we appear to have no information, nor yet regarding Madras and Assam where no special rules are in force.

156. The tract in *Lower Burma* to which the protective action of section 320 has been extended is a very small one, and often no cases are dealt with under this section in the year. The matter is however reported on in the Civil Justice Reports, and the effects of the declaration under section 320 are looked on as deterrent rather than curative.

See, *e. g.*, Civil Justice Report for 1884, p. 15, for 1886, p. 18, for 1887, pp. 14 and ii.



157. In view of the unsatisfactory nature of the figures quoted it is difficult to form any general conclusions regarding the sale of land for debt. What we chiefly wish to know is the area of agricultural land sold yearly in each province (*a*) for secured and unsecured debt respectively, and (*b*) to agriculturists and non-agriculturists respectively; this information we have not got, and pending the improvements to be made in our Agricultural Statistics Return E there is really only little information of any kind on which we can rely.

## (iii) Transfer by sale for arrears of Revenue.

158. Finally, we may notice the extent to which land is sold in execution of revenue decrees.

In *Bengal* the sales are numerous in consequence of the law that prevents any other mode of realizing the land revenue; the following figures show the number of cases in the last few years in which sales have taken place, and the revenue of the areas sold :—

Board of Revenue Reports, Statements VII and VIII.

| Year. | *Sales in Bengal. | | Orissa. | | Chota Nagpur. | | Sonthal Parganas. | |
|---|---|---|---|---|---|---|---|---|
| | Number. | Revenue in thousands of Rs. | Number. | Revenue in Rs. | Number. | Revenue in Rs. | Number. | Revenue in Rs. |
| 1882-83 | 2,148 | 179 | 3 | 96 | ... | ... | 1 | 2 |
| 1883-84 | 2,225 | 175 | 36 | 1,014 | ... | ... | 7 | 18 |
| 1884-85 | 1,836 | 148 | 1 | 196 | ... | ... | ... | ... |
| 1885-86 | 1,770 | 150 | 12 | 609 | 3 | 273 | 7 | 28 |
| 1886-87 | 1,859 | 172 | 7 | 1,351 | ... | ... | 5 | 250 |
| 1887-88 | 1,863 | 222 | 3 | 1,847 | ... | ... | 3 | 11 |
| 1888-89† | 1,142 | 125 | 6 | 2,027 | ... | ... | ... | ... |
| 1889-90 | 1,273 | 158 | 5 | 599 | ... | ... | ... | ... |
| 1890-91 | 1,071 | 161 | 6 | 534 | ... | ... | ... | ... |
| 1891-92 | 1,368 | 152 | 19 | 1,242 | 2 | 90 | 1 | 11 |
| 1892-93 | 1,355 | 139 | 25 | 4,023 | 1 | 36 | ... | ... |
| Average | 1,628 | 162 | 11 | 1,231 | 1 | 36 | 2 | 29 |

* The figures under Bengal include those for Orissa, Chota Nagpur and Sontal Parganas, which are also shown separately.

† Decrease mainly due to change in classification.

The annual report of these sales has as a rule called for no remark from the local authorities. In 1886 a Collector in Southern Behar drew attention to the fact that money-lenders constituted a large proportion of the purchasers at these sales, and proposed that Government should bid at such sales to save the landowning classes; but the suggestion appears to have attracted no especial notice.

Collector, Shahabad, quoted in Board's Revenue Report, 1886-87, p. 164.

A Special Commission was appointed in 1821 to consider the sale laws, but apparently little improvement followed (Baden-Powell's Land Revenue Systems, ii, 124). Settlement Report, page 144, para. 191.

159. In the *North-Western Provinces* the sale laws were in early days worked with considerable severity, and the disloyalty of the landed classes in the Mutiny was largely due to the rigidity with which the wholesale transfer of land was conducted by the revenue authorities. In the Banda District, for instance, the Settlement Officer in 1881 after examining the figures concluded that during the first 40 years of our administration "the total area of transfers cannot have been less than double and more probably amounted to at least three times the area of the district." Similar severity was shown in many other districts and attracted the attention of the authorities. Since the Mutiny however, not only has the demand diminished in its incidence on the assets and been collected with greater ease, but the recourse to sales has been much discouraged. The extreme rarity of such sales in recent years is illustrated by the figures below:—

Board of Revenue's Reports, Statement C. II.

| Year. | North-Western Provinces. | | Oudh. | |
|---|---|---|---|---|
| | Number of sales. | Revenue for which sold. | Number of sales. | Revenue for which sold. |
| | Rs. | Rs. | Rs. | Rs. |
| 1882-83 | 4 | 996 | ... | ... |
| 1883-84 | 2 | 653 | ... | ... |
| 1884-85 | ... | ... | ... | ... |
| 1885-86 | ... | ... | ... | ... |
| 1886-87 | 10 | 991 | ... | ... |
| 1887-88 | 2 | 89 | ... | ... |
| 1888-89 | 1 | 48 | 1 | 73 |
| 1889-90 | 6 | 4,557 | ... | ... |
| 1890-91 | 2 | 2,035 | ... | ... |
| 1891-92 | 11 | 2,054 | ... | ... |
| 1892-93 | 62 | 41,658 | ... | ... |
| Average | 9 | 4,826 | ... | ... |

See, *e.g.*, Gujranwalla Tahsil Assessment Report, para. 10, Part II (1891), and letter No. 1 C. A. of 9th April 1889, from Deputy Commissioner, Karnal, (A Pros., Dec. 1891, Nos. 10 and 11) and Karnal Settlement Report Chap. V. Report, vol. ii, page 401. Statement No. XXVIII B.

160. In the *Punjab*, as in the North-West, the early assessments were often realized by general sales, but not to so large an extent or for so long a period. The practice was commonest in the districts of the South-East, but attracted attention elsewhere also.

It had, however, died out by 1879 when the Famine Commission were informed that "it is and has been for many years past unknown." There appear unfortunately to be no definite statistics on the subject for late years, and the only figures we have to guide us are those given in the Revenue Reports showing the number of "cases relating to collection process by sale of immovables" taken up by the Deputy Commissioners in each year since 1887, *viz.*:—

| Year. | Cases. | Year. | Cases. |
|---|---|---|---|
| 1887-88 | 262 | 1890-91 | 13 |
| 1888-89 | 22 | 1891-92 | 60 |
| 1889-90 | 35 | 1892-93 | 6 |

These figures, small as they are, only indicate the cases taken up by the Deputy Commissioners, and the number of actual sales is probably very much smaller. In a recent report the Director of Land Records and Agriculture assures us that sales for arrears of revenue are "practically unknown."

Report on Material Progress of the Punjab (1892-93) by Mr. Robertson, paragraph 27.

161. In *Ajmere*, as we have seen, no land can be sold for arrears of revenue.



In the *Central Provinces* only one case is recorded in the last ten years. Rev. Adm. Report Statement III.

162. In the ryotwari provinces, where there is no joint responsibility, even in theory, to fall back upon, the sale of land for revenue arrears is naturally somewhat more common. Take for instance *Berar*, *Bombay* and *Sind*, for which the following figures are given:— See Rev. Adm. Report, Berar, Statement G. Rev. Adm. Report Bombay, Statemen XII.

| Year. | Berar. | | Bombay (Presidency Proper). | | Sind. | |
|---|---|---|---|---|---|---|
| | No. of sales. * | Revenue for which sold. | Areas sold. | Revenue for which sold. | Areas sold. | Revenue for which sold. |
| | | R | Acres. | R | Acres. | R |
| 1882-83 | 115 | 1,568 | 5,535 | 5,654 | 10,786 | 3,128 |
| 1883-84 | 137 | 1,749 | 2,947 | 3,560 | 796 | 1,142 |
| 1884-85 | 178 | 2,115 | 3,347 | 3,226 | 1,246 | 1,469 |
| 1885-86 | 171 | 2,162 | 2,846 | 3,091 | 2,269 | 1,733 |
| 1886-87 | 220 | 2,968 | 4,353 | 6,570 | 530 | 500 |
| 1887-88 | 256 | 3,326 | 3,302 | 3,179 | 644 | 557 |
| *Average 1882—88* | *179* | *2,315* | *3,722* | *4,214* | *2,712* | *1,421* |
| 1888-89 | 300 | 3,414 | 2,750 | 4,893 | 181 | 367 |
| 1889-90 | 165 | 1,450 | 2,904 | 6,698 | 488 | 1,055 |
| 1890-91 | 86 | 867 | 1,623 | 2,199 | 584 | 1,486 |
| 1891-92 | 83 | 711 | 1,461 | 1,967 | 476 | 258 |
| 1892-93 | 84 | 743 | Statement not received. | | 354 | 572 |
| *Average 1888—93* | *143* | *1,437* | *2,184* | *3,939* | *417* | *747* |

* The average area sold at each sale appears to be about 20 acres (Chap. VI, Rev. Reports).

There are in Bombay and Sind, in addition to the above, a certain number of cases (not numerous) in which other land than that on which the arrear has occurred has been proceeded against. 19 per annum in Bombay, and 6 per annum in Sind.

163. In *Madras* the sales for revenue arrears are on a larger scale. The following are the recent figures for that Presidency, including the zemindari areas:— Madras Revenue Report statement. See Madras Government Resolution No. 19, dated 7th January 1875, in answer to Famine Commission.

| Year. | Area sold in thousands of acres. | Sale price in lakhs of Rs. |
|---|---|---|
| 1882-83 | 174 | 5·45 |
| 1883-84 | 190 | 4·80 |
| 1884-85 | 71 | 2·41 |
| 1885-86 | 68 | 2·76 |
| 1886-87 | 37 | 2·29 |
| 1887-88 | 31 | 1·88 |
| 1888-89 | 31 | 1·65 |
| 1889-90 | 24 | 1·11 |
| 1890-91 | 21 | 1·19 |
| 1891-92 | 19 | 1·00 |
| *Average* | *66* | *2·45* |

The comparatively large proportion of sales was made the subject of special investigation in 1874, when the sale price had reached 4½ lakhs; the figures above quoted, though indicating a somewhat free use of sale, are reassuring so far as they show a steady tendency to abandon this form of coercion.

164. For sales in the *Assam* Valley we have figures for five years:— Land Revenue Reports, Sec. IV.

| Year. | Number of sales. |
|---|---|
| 1888-89 | 65 |
| 1889-90 | 52 |
| 1890-91 | 72 |
| 1891-92 | 72 |
| 1892-93 | 54 |
| *Average* | *63* |

In Sylhet (permanently settled) the figures for the last 10 years are:—

| Year. | Number of sales. |
|---|---|
| 1883-84 | 717 |
| 1884-85 | 487 |
| 1885-86 | 385 |
| 1886-87 | 117 |
| 1887-88 | 535 |
| 1888-89 | 332 |
| 1889-90 | 484 |
| 1890-91 | 472 |
| 1891-92 | 435 |
| 1892-93 | 490 |
| *Average* | *445* |

Revenue Administration Report, form XXVIII.

The exceeding smallness of the estates in Sylhet renders collection difficult, and the revenue of the estates sold averages some ten rupees only.

165. For *Lower Burma* the sales of immovable are not distinguished in the statistics from those of movable property, but the following figures indicate that land-sales must be comparatively rare:—

| Year. | Number of sales of property. |
|---|---|
| 1886-87 | 402 |
| 1887-88 | 370 |
| 1888-89 | 418 |
| 1889-90 | 668 |
| 1890-91 | 714 |
| 1891-92 | 723 |
| *Average* | *549* |

Revenue Administration Report, form IV.

In Upper Burma sales have as yet been insignificant in number:—

| Year. | Number of sales. |
|---|---|
| 1888-89 | ... |
| 1889-90 | 1 |
| 1890-91 | 10 |
| 1891-92 | 4 |
| *Average* | *4* |

166. The above figures will suffice to show the small extent to which land (outside Bengal) is now permanently transferred by coercive process in the realization of the revenue demand. In Madras alone does there seem to be any tendency to make an excessive use of this form of process, and the figures for that Presidency may possibly be open to some explanation. The subject as regards Madras was brought to the notice of the Secretary of State in 1893, and a report from that Government is still under preparation.

*See* Pros. B 48, April 1893. Madras G. O. on Land Revenue Report, 1893-94, para.

## General conclusions.

Report, Part II, page 126.

167. Regarding the extent of transfer in the country generally, the conclusions arrived at by the Famine Commission on somewhat imperfect evidence 15 years ago were:—

"In the Punjab the sale of landed property is not decreed by the Civil Court as an ordinary process for recovering a debt, and is only sanctioned in special cases, where there is no other possible way of satisfying a creditor. The number of such sales has been insignificant. The transfers of land by private sale and mortgage in the three years, 1874—77, have concerned



850,000 acres, or an eightieth part of the area of the province. The consideration paid has amounted to 145 lakhs of rupees, of which half was contributed by agriculturists and half by non-agriculturists. The amount of land which has passed yearly into the hands of the trading community has therefore been only one five-hundredth part of the area of the province. In the North-Western Provinces the Civil Courts are not governed by the same rules as obtained in the Punjab, and sales of landed property in execution of decrees are comparatively common, so that anxiety has at times been felt as to the extent to which land has changed hands and become the property of traders. In a special inquiry held in 1873 it was ascertained that during the preceding 35 years 17 per cent. of the land had passed from agriculturists to the trading classes, who then held 27 per cent. of the whole, but the rate, of transfer had much decreased in later years, and it may be added that since this time a change has been made in the law of Civil Procedure, under which sales of land have become much less a matter of course than they were. In the Central Provinces no information can be given on this head, but it is known that sales are not numerous, and no fear is at present felt that the money-lending classes are obtaining too large an influence over landed property. The Bombay replies show that in 13 districts the average area of land transferred yearly has been 117,635 acres, but in separate papers regarding the condition of the Deccan ryot there is much information given as to the extent to which the Marwari or money-lender has superseded him in the possession of the soil; and the general conclusion is that the Marwari dislikes assuming the responsibility of landed proprietorship, and prefers to exercise a less direct influence over the indebted ryot by retaining a lien on his crops. In Madras the money-lending classes appear very seldom to aim at occupying the position of Government ryots, but there is a large proportion of landholding Brahmins (and the same is true to some extent of Bombay), who, though non-agriculturists, hold a great deal of land, and always the best land, employing agriculturists to cultivate it on a tenancy, under which, in some cases, the actual cultivator's share of the crop is as small as 25 or 30 per cent. This, however, is no new feature, nor does the practice seem to be extending; it is due to the influence and predominance exercised by Brahmins in Southern India, a fact which has a distinct bearing on many important points connected with the administration of the country."

168. The conclusions, which the information supplied in this note would now justify us in drawing, may perhaps be very briefly summarized as follows:—

that in Assam and Bengal the transfer of land is not a factor of much importance;

that in Berar and Madras the matter requires further investigation;

that in the North-Western Provinces and Oudh, although little complaint has *recently* been made, there are indications that transfers are not unimportant; and

that in the Punjab, Ajmere, the Central Provinces, Sind, Bombay and Lower Burma the evidence before us is quite sufficient to indicate that, in certain areas at least, the transfers to the money-lending and non-cultivating classes are serious and are progressing.

## The evil results of the Transfers.

169. Granted then that transfers of land, both permanent and temporary, have become very common in almost all provinces, and that, while part of these transfers have been made in favour of cultivating agriculturists, a considerable and generally increasing area has in most provinces also fallen into the

hands of non-cultivators and of the money-lending class,—the question remains, what is the harm done?

Treating the question as one of pure science, the answer is, that no harm is done; on the contrary, land is transferred from the hands of men who have proved themselves incapable of using it into the hands of men who have the thrift and the enterprize and the capital required for making the best use of the land. This is the answer that would ordinarily be given in England to a similar question, and the view has naturally had its exponents in India. As we have seen, the power of transfer was conferred on the occupants in Bombay with the express object of "getting land out of the hands of a person unequal to discharge the responsibilities connected with its occupancy, and whenever there happened to be a demand for land secure by the sale of the title to the highest bidder, that it should fall into the possession of a man of means." The transfer of land was sanctioned or encouraged by our early Administrators in most provinces of India more or less avowedly with the same object in view and in accordance with the theories on land which were then unquestioned in Europe. The argument was put forward with great force in 1859 by Sir John Strachey as follows: "There can be little doubt that the new proprietors are generally men of greater wealth and intelligence than their predecessors. The greatest of all possible evils in any country is that the proprietors of land should be unable to undertake any works for its improvement, and the curse of landlords impotent for good is doubly heavy in a country which is almost entirely an agricultural one." And of late years also this view has been ably advocated, as, for instance, by Mr. J. W. Neill, the late Commissioner of Jubbulpore, who holds that it will always be a question "whether it is worse to have a class of impoverished landlords unable to do anything for their estates or assist their ryots, or to let new men take the place of the old landlords."

Captain Wingate's letter of 1847; quoted on page 9 of Sir E. Buck's note of 1882 on the Bombay Revenue System.

Note of February 1889. *See p. 891.* See also Mr. Stewart, Survey and Settlement Commr., Bombay, in para. 14 of letter No. 2530 of 26th November 1883. (Baghalkot Settlement.) Page 186, vol. ii, Report of Deccan Riots Commission, 1876.

### (*a*) Economic Evils.

170. The papers, however, show that of late years, as well as to a certain extent in earlier times, there has been a considerable preponderance of opinion in favour of the view that the transfer of land from the cultivators to non-cultivators and to money-lenders is undesirable.

It is asked in the first place:—Does the new proprietor improve the land? Does he treat his tenants reasonably?

171. As regards land improvement, it must be remembered that over the greater part of India the improvement of the land, though requiring outlay, does not as a rule require the wholesale operations, or the large purchases of machinery, that land improvement in Europe entails. The improvement of the land is therefore in many cases within the competence of the small cultivator, and it is not the habit of the people to look to combinations or to large landlords for effecting improvements. Accordingly, the non-resident or non-cultivating owner of a property does not feel called on to effect improvements, and as a matter of fact seldom does so whether he has been long connected with the land or not. Take, for instance, the testimony of Mr. Fuller, Commissioner of Settlements and Agriculture in the Central Provinces, who, in September 1892, wrote: "During the past five years I have examined the assessment papers of over 9,000 villages, and have seldom come across any mention of improvements by malguzars' agency."

Note of 29th September 1892 forwarded with Chief Commissioner's letter No. 17 C., dated 30th September 1892 (A May 1893, Nos. 18—19). *See p. 107.*



The new proprietors of large and moderate sized estates could not as a rule be worse in this respect than the old: but the hope of the authorities in the early years of our administration was that with their energy, intelligence and capital they would be much better. This hope was not, however, fulfilled. As Mr. C. A. Elliott wrote in 1872: "I appeal to almost universal experience to prove that this is not the case. No case is known to me of a purchasing zemindar laying out capital on the improvement of a village." So also Mr. C. Crosthwaite in 1873:—"I have seen a good many districts in the North-West and it has been my fate to plod labouriously over hundreds of estates. I cannot call to mind a single instance in which one of these capitalist landlords did anything to improve his estate or better his tenantry." What is true, moreover, of the money-lender is also true of the vakils and other non-agriculturists who invest their money in land: "the absentee vakil landlords," writes Sir Charles Pritchard, "take all they can get out of the villages and put little or nothing back into them." The new class of proprietor, therefore, if it does not improve less, seldom improves more, than the old.

Minute of 28th July 1872, page 293, Vol. III, Deccan Riots' Commission Report. Calcutta Rev., 1873, p. 219.

Note of 24th June 1893 (Pros. A, No. 1 April 1894). *See p. 130.*

172. The new class of transferee, moreover, does not personally cultivate the land, and consequently the land transferred is cultivated by his servants or by tenants,—in the great majority of cases by the latter. The result is that the original proprietor is, if non-cultivating, ousted from his rights, and if cultivating, either ousted from his holding or retained as a tenant. In those areas—the large majority—where the original proprietor displaced by the transferee is a cultivator of the soil, he must either be ejected or be retained as a tenant.

173. If he is, as often happens, entirely ejected, he himself becomes a field labourer (for there is no such outlet for labour in towns as we are accustomed to at home), and the condition of a field labourer, though free from the responsibilities and variations of a tenancy,* is acknowledged on all hands to be a more miserable and economically a less desirable status than that of a tenant. At the same time the land, formerly cultivated by the owner, is cultivated by a tenant, generally under an unimproving and unassisting landlord.

* It is on these grounds that Mr. Shambuprasad Laxmilal, of the Commission of 1876, considered ejection a benefit to the occupant (para. 27 of his note in Vol. I of Deccan Riots' Commission Report).

174. But the papers would lead us to suppose that in most cases when a cultivating owner is expropriated he is not ejected. We have unfortunately no statistics as to the extent to which the ex-proprietor is retained on his land, but the custom appears to be common in many provinces, and, as will be seen from the extracts quoted below, it is found at least in Bombay, the Central Provinces, the Punjab and Burma,—the provinces with which this part of this note is mainly concerned. The new owner retains the ex-proprietor partly no doubt as the tenant who will make most of the land, but also largely because, being intensely attached like all Indian cultivators to his land, the old owner will pay any rent rather than be ejected. And it is in the rackrenting of these ex-proprietary tenants that a further and very important economic injury is sustained by the country. The produce remains the same, and the Government revenue remains the same, so that the profits which formerly went to the cultivating owner are now transferred to a middleman. The result is, as stated by the Deputy Superintendent in a recent Bombay settlement, that "one cannot live long in the country without being fully impressed with the fact that of the wealth of the province the saukar has the oyster, and the Government and the ryot each a shell."

Dhalod Settlement Report. Letter No. 79 of 16th February 1891, from N. B. Beyts, Esq., Deputy Superintendent.

175. The evidence under this head, though not of a statistical character, is worth considering. It may be true that throughout large areas the custom

Page 38 of note appended to Report of Deccan Riots' Commission, 1876.

is unknown or uncommon: as to the North-Western Provinces, for instance, Sir Auckland Colvin in 1875 was able to say: "the 'sweating' process does not go on with us. A debtor is forced off his land: he is not kept on it as a tenant-at-will." It is also true that in certain cases the money-lender confines his "squeezing" to the period during which he is only a mortgagee or part owner, and "when once the land is his own he deems it worthy of much more considerate treatment." But the procedure seems to be a very common one and to be often indulged in both during the preliminary period of mortgage, and during the subsequent era of proprietorship.

See Mr. Bulman, Deputy Commissioner, Gujranwala's, remarks in Punjab Land Revenue Report for 1878-79.

In Chota Nagpore, where the properties are often large, the process above described is not as a rule possible, but the new landlord does not apparently treat his tenants better than the old. Mr. Basu, Assistant Director in the Department of Land Records and Agriculture, writes of Lohardagga:—

"Wherever there is a new landlord in a village (and the new landlord is almost invariably a money-lender to begin with) I have found the ryots treated without due consideration, the rates of rent increased, and some of the ryots expelled or forced to part with portions of their holdings in order to enlarge the zemindar's own cultivation."

Revision—of—Assessment Report, para. 11.

For the Punjab an example may be taken from the Gurgaon District regarding which Mr. Wilson, the Settlement Officer, wrote in 1883: "There remains a very large area of land in all parts of the district which the non-agriculturist mortgagee has firmly in his possession, sub-letting it to the peasant mortgagor at a rack-rent or ejecting him and putting in a stranger as his tenant."

Settlement Report, para. 706.

At the other end of the province is the District of Dera Ismail Khan, as to which Mr. Tucker, the Settlement Officer, writing in 1879 says: "Hindus rarely take over the cultivation of mortgaged lands as they find that the old proprietor makes the best tenant and his affection for his old fields makes him submit to harder terms as regards rent than would be accepted by an outsider." The revenue papers often give a wrong impression by classing such cultivators as self-cultivating owners.

Chunian Assessment Report, para. 35.

Letter No. 2129 of 22nd November 1891, para. 7 (A, Pros., June 1892, No. 14.)

The information from Ajmere shows how the procedure affects even unmortgaged land. Captain DeLæssöe, Assistant Commissioner, Ajmere, writes:—

"The common custom is to execute at the same time the mortgage deed is executed a 'kabuliatnamah,' under which the owner of the land continues to cultivate as tenant of the mortgagee, to whom he pays interest in kind. The mortgagee being equally his 'borah,' the final result is that the latter gets the whole crop of his tenant's land both mortgaged and unencumbered, and in return gives him a mere maintenance allowance. The former landowner is thus reduced nominally to the position of a tenant, but in reality to that of a labourer, dependent on his master for maintenance."

Margin of Mr. J. W. Neill's note of February 1889 Forwarded with Central Provinces' letter No. 1466—212-S of 11th November 1889 (A, Pros., May 1891, Nos. 9 to 14). *See* p. 80. Memo. of 29th September 1892 forwarded with Chief Commissioner's No. 17-C. of 30th September 1892 (A Pros., May 1893, Nos. 18 and 19). *See* p. 107.

The size of the properties in the Central Provinces prevents as a rule a precise repetition of the above procedure, but the rack-renting propensities of new proprietors are often noticed. In 1889, for instance, Sir A. Mackenzie, the Chief Commissioner, stated: "The man who buys a village as an investment sets himself as a rule to force up rents. This is coming out clearly in the Jubbulpore Settlements, where many villages have been bought by bankers. They utilize their double capacity of money-lender and landlord to get the ryots under their thumb, and even the Central Provinces Tenancy Act fails to afford protection in such cases." Mr. Fuller in 1892 writes:—"The money-lending and agricultural classes of malguzars are alike in frequently oppressing their tenants—the former by rack-renting, the latter by ejecting, in order to add to



their home farms." "In some places," wrote the Chief Commissioner in 1888, "the competition for produce has led to the exaction by malguzars of a rent so high as to be of itself sufficient to throw the tenant into debt. This state of things is becoming common in the western part of the Hoshungabad District, and in many villages of the Jubbulpore District, which are held by proprietors of the *mahajan* class. The provisions of the Tenancy Act secure against rack-renting any tenant who can avail himself of their protection. But this is not the case with a tenant who is heavily in debt to his landlord."

Letter No. 9153. of 25th July 1888 (Famine, December 1888, Nos. 1 to 24.)

The economic disadvantages attending the transformation of the Bombay peasant proprietor into a tenant were forcibly pointed out in the report of the Deccan Riots' Commission, 1876, in the following words:—

Vol. I, para. 100, page 84. See also paras. 79—81.

"The question follows—whether in the Deccan the gradual transfer of land to the money-lending class is a desirable process? It might be held that if the risks of discontent, manifested in crime and popular disturbance, could be avoided, the process of the transfer of property in land from a needy and ignorant to a monied and intelligent class is in itself desirable. We are of opinion that as regards the district and the two classes, *viz.*, the Kunbi and the Marwari, with which we have now to do, this conclusion would be unsound. There is no such superiority in intelligence in the ordinary sowkar as would result in improved cultivation, nor does the land itself offer him such good investments as his money-lending business. An intelligent and liberal landlord finds it very difficult to realize a small profit from inferior land held in *ryotwari* tenure, and it is only by rack-renting and often drawing on the debtor-tenant's labour in addition to his rent that the Marwari makes a fair average profit from land in his possession. Irrigated land, it is true, yields a large profit; but to a non-labouring landholder, who has to pay for all the work of making a well, the investment would rarely be attractive. In all that concerns agriculture the Kunbi is superior in intelligence to the Marwari, and, if the profits of his labour are secured to him, is by no means wanting in industry or enterprize. By converting him into a tenant at a rack-rent these advantages are lost to the land without any compensation whatever.

* * * * * * * * * * * * * * * *

It is barely a generation in time since Government began to divest itself of the powers of an irresponsible landlord for the benefit of the agricultural ryot. To allow these powers to be re-transferred to a class with none of the traditions of the hereditary landholder, and probably the least fitted in the civilized world to use them, would be to undo all that has been done, and to make the last state of the ryot worse than the first. It might, indeed, be possible by rent laws and other limitations to protect the tenant, but much stronger reasons than there are at present would be needed to make it desirable that the Kunbi proprietor of the Deccan should sink to the position of the most favoured Bengali tenant."

In 1879 the effects of the transfer of land were described to the Famine Commission by Mr. Robertson, Commissioner of the Central Division, as follows:—

Vol. II, Report, page 344. See also Commr., Central Division's, letter of 13th May 1882 at p. 14 of Sir E. Buck's note of Dec. 1882 on Bombay Survey and Settlement System.

"I noticed, when the revision settlement of the Dharwar Collectorate was being made, that since the introduction of the survey upwards of 25 per cent. of the land had fallen into the hands of non-cultivating occupants,—persons who held the land at the small Government rental and sub-let it at rates three or four times higher than the Government rate. Thus, as regards lands held by non-cultivating occupants, all the benefits of the survey settlement are lost to the poor actual cultivators.

As the case stands, a class of grasping men, who were never intended to reap the benefits of our low assessments, now secure those benefits; they rack-rent the ryots for whose benefit the low assessments were introduced, and, when the ryot complains of his miserable condition teach him that it is all due to the heavy assessments imposed by Government."

Para. 4 of letter No. 4274, of 22nd Oct. 1892, to Government, Bombay. (The cases cited are not, generally speaking, very conclusive.) Letter 1928 of 21st Sept. 1892, from Survey and Sett. Commr. to Govt. Bombay. (B August 1893, No. 5.) *See* p. 141.

The matter is not particularly noticed in the Report of the Commission of 1881, but instances have been selected by the Commissioner in Sind from the Commission's proceedings, which show that in some cases high rents are exacted. The process of sweating is declared to exist even by Mr. Fletcher, the Survey and Settlement Commissioner, but that authority is of opinion that, as the process cannot ultimately pay, the saukar will in the end abandon it. In the meantime it goes on.

In Madras it is said that the mortgagor sometimes holds as a tenant of the mortgagee. Beyond this we have no specific information, except it be certain complaints made by Mr. Price, Collector of Chingleput, in 1879, but it may be noticed that the tenants of Government occupants in that Presidency are at present unprotected by law against enhancements of rents.

Manual of Standing Instn. 1892-93, p. 77. Famine Commission Report, Part III, p. 417.

In Lower Burma the class of tenants is as yet small, but already it "is recruited in part from persons who have formerly been landholders but have run into debt and have in consequence had to part with the ownership of their holdings and occupy them as tenants." In Pegu "the figures show that land is bought by money-lenders and sublet by them—probably," says the Chief Commissioner, "to the former owners." In portions of Bassein and Henzada we are told that "about one-fourth of the landowners are not cultivators but traders and money-lenders who hold the land for purposes of speculation and consequently raise the rents above the amount fixed by custom. In one instance, in the Myeun circle, a money-lender, on being asked why he demanded such high rents, answered that the rent taken only represented the interest at 60 per cent. per annum on the sum which he had paid for the land."

Genl. Admn. Rep., 1892-93, para. 25, page 13.

Review of Revenue Report, 1891-92, para. 9. Settlement, Report, 1883-84, para. 52.

### (*b*) Administrative Evils.

176. In addition to the economic evils above indicated, we have in many parts of India a considerable administrative evil to cope with, which finds its source in the transfer of land to new hands especially those of the money-lending classes.

177. The money-lending transferee is not by any means generally a large capitalist. In the North-West and Central Provinces, no doubt, the large estates are bought in by large men, and in parts of the Central Provinces there has been said to be a tendency for the larger to supplant the smaller men in this class of business. But where properties are small the money-lender who acquires them is almost invariably a petty individual,—a resident of the village whose operations do not extend over more than a few square miles. In the Punjab, for instance, it was stated in 1879 to the Famine Commission that "the purchasers of land, whether agriculturists or capitalists, are almost invariably residents of the village in which the purchased land lies, or of its immediate vicinity," and in 1889 the Deputy Commissioner of Lahore said of the money-lenders of his district, that "great search was made for them in the assessment of the income tax, but they were difficult to find and not of much worth when found." In dealing with the Punjab, Ajmere, Bombay, and Burma, it is important to bear this in mind.

See para. 40, page 15, Review of Revenue Report for 1882-83.

Vol. II, page 401.

Letter of January 1889 from W. O. Clark, Deputy Commissioner, Lahore, to Financial Commissioner, Punjab (Pros. 10-11, December 1891).

178. Another aspect in which the mutual relations of the peasant and the money-lender differ from those of the corresponding classes at home is to be observed in the fact that the two parties to the contract of transfer are not in all ways equal. The transaction is not one between two men of business. The landholder, whether large or small, is generally thriftless and careless of accounts to the last degree, while the money-lender has been brought up for generations in an atmosphere of minute parsimony and accurate ledgering. Moreover, the peasant, though often ready to be as unscrupulous and untruthful as possible, is altogether outdone by the money-lender in any contest on technical grounds. The money-lender has in many cases obtained his hold upon the land in a manner perfectly legitimate and without fraud, by merely using the means which our legal system affords him; but in many instances also he has been guilty of absolute chicanery, and in almost all cases he is credited (whether rightly or wrongly) by the outwitted landholder with the perpetration of a long series of fraudulent cruelties. The actual legitimate system of overpowering the landowner is bad enough: see, for instance, the following description of the process in a Punjab district:—



Settlement Report of Jhang District by E. B. Steedman (1880), para. 167.

"What often does take place is this: When the owner of a good well or a fat piece of *sailab* deals with a bania who is anxious to hold some land in mortgage, he finds that his credit is unlimited. It is a case of spending made easy. He can have whatever he wants whenever he wishes. All that he is troubled with is his signature or assent to the usual six-monthly statement of accounts, and at harvest time he will make a few payments to the bania in grain. This goes on for four or five years or often longer. Then the demeanour of the creditor changes. He insists upon a registered bond for the amount due or a mortgage. The debtor temporises as long as he can, perhaps transfers his account to another shop, often takes his chance of a lawsuit, trusting in his luck to evade some of the items. All these devices fail, and he makes over a share in his property on a verbal lekha-mukhi contract to his creditor. This is probably the very worst thing he could do. A lekha-mukhidar is as hardly displaced as was the old man of the sea. The zemindar never goes into the account, and is fleeced in every possible way. Instead of growing less, the debt grows larger, and a mortgage is at last gained."

Add to this the fact that fraudulent practices are common, repayments are not credited, accounts are not given on demand, the consideration mentioned in a bond is more than the consideration actually received, and so forth. The Deccan Riots' Commission of 1876, after describing some of these forms of fraud, went on to remark:—

Para. 111 of Report.

"These and similar fraudulent practices are illustrated in the appendices; their impunity is made possible only by the ignorance and helplessness of the Kunbi which places legal remedies practically beyond his reach. Actual forgery is no doubt occasionally committed by the money-lender, and he has recourse to false evidence and subornation of witnesses, but such offences are not confined to the sowkar class. As most constantly using the Civil Court and most experienced in its proceedings, the sowkar class has no doubt more often occasion to use the means which all are too ready to have recourse to in judicial business. The element of gross criminality is hardly sufficient to be by itself a cause of serious mischief, though it must be admitted that those money-lenders whose reputation in this respect is most evil, are among the most successful in money-making, and that they enjoy the fruits of their dishonesty in comparative impunity. To a sowkar who is not thoroughly degraded, there is little temptation to commit serious fraud; the powers given him by the law are quite sufficient for his purposes without help from illegal weapons.

It is not surprising that the debtor, as is reported, sometimes endeavours to meet fraud with fraud. There is a strong concurrent opinion of local officers who have written on the subject, that the relations of the sowkar and ryot have been productive of considerable demoralization of the latter. The Subordinate Judges state that fictitious transfers of property and other fraudulent practices, such as pleading bonds are false when they are really genuine, and tendering false receipts in evidence are resorted to. It is also said that the ryots who know how to use these weapons against the Marwari are prosperous. But the contest is unequal. It requires some intelligence to use the resources of fraud and falsehood with any effect against the creditor, and as we have seen it is only in a small minority of cases that the debtor ventures into court to try conclusions."

It is this intellectual inferiority of the debtor that lends importance to the subject from the administrative point of view. Being impotent to meet the creditor on his own ground he becomes convinced that he is cruelly outwitted, and he complains loudly of his unprotected state. "In connection with civil litigation," says a very recent Punjab report, "one hears," *i.e.*, one hears from the agriculturists, "very bitter complaints of the conduct of certain money-lenders. If popular report is to be believed, some of them have acquired land and wealth by taking advantage of the ignorance of the debtor and the laxity with which decrees are given in the Court, by false cases, perjured evidence,

Gugaira Assessment Report (1894), para. 95.

forged documents, and the whole apparatus of lying and chicane, which astute and unscrupulous money-lenders know how to use." Whether these facts are true or not—and often they are only too true—the fact that the landholder believe them to be true and complains loudly regarding them, and feels bitterly disposed towards the money-lender as towards a man who has unfairly over-reached him, is a matter worthy of serious consideration.

179. A further source of bitterness lies in the fact, that the new money-lender landlord is in most cases a 'new man:' he belongs to a class which has been looked upon as a servile adjunct to the agricultural community, and he comes now into a position of equality or superiority among a previously dominant class, and in an atmosphere as conservative as any in the world. The exactions or cruelty, which, when inflicted by a man of old family and long connected with the land, would be borne with equanimity, are greeted with sullen murmurs when proceeding from a new-fledged money-lending land-holder. It was pointed out by Colonel Keating, Chief Commissioner of the Central Provinces in 1871, that the purchaser of a large estate in the Central Provinces could never "like the English city men become one with the old county families," but would remain in the eyes of the landowners "for generations an abomination and an interloper." In a community of smaller holdings the feeling is still stronger. "The village banniah," in Ajmere, we are told, "who formerly was the village servant, is now the master, and a very bad master. The villagers are intensely discontented with the change in their traditional relations." And the sentiment is stronger still in countries which our administration has more recently reached. In speaking of the proprietors of the Western Punjab, Mr. Thorburn, Deputy Commissioner, Dera Ismail Khan, wrote in 1884:—

Letter No. 741-90 of 14th April 1871. See page 162, Vol. II, Report, Deccan Riots' Commission.

Para. 10, letter No. 429 of 22nd November 1891, from Asst. Commr., Ajmere (Pros. A. Revenue, June 1892, No. 14).

Note of 29th June 1884, page 37, Selns. from Records of Fin. Commr., Punjab, New Series, No. 11, 37, LXV.

"Whether in a material sense they are as well off now as under Native Government, or even better off, is a side issue only, because, besides being materially poorer to-day than they were, say, twenty years ago, they are also worse off in this important respect than they were under Native Governments, members of the dominant caste, or connected with it at all events, whereas now they are becoming servants of the then dependent and still despised caste."

180. This difference in caste is by itself a matter for serious disagreement between the old and new landholders. The money-lender is no doubt in many cases a fellow agriculturist, and, as such, no more gentle in his dealings than the professional, but in the large majority of cases the lending of money is the business of a separate caste. In Eastern and Central Bengal and over the greater part of Madras the money-lender is to some extent merged in the surrounding population: but elsewhere there are found distinct castes who almost monopolize the business of lending money. Known in various parts as the Sahukár, the Shah, etc., he is also often designated by his caste name, as the "Bania," (Vanya, Mahajan), the "Bohra," the "Khatri," the "Karar," and so forth: and by "the Bohra," "the Khatri," etc., is meant simply "the shopkeeper" or "the money-lender." Being of a different caste, the new landholder tends to be outside the sympathies of, and to be uninfluenced by the public opinion of, the class which he is supplanting. "Money grubbing," writes Mr. Pedder, "is the life of these people: to drive sharp bargains is their pleasure and glory: public opinion—except that of their own class, which is that to make money anyhow is creditable, and that the mode in which it is made is amply atoned by some act of showy liberality—has no influence over them." Add to this the fact that they frequently belong to the same caste as the revenue accountant, the local official who has the

Quoted by Mr. James, Commissioner in Sind, in his letter No. 4274 of 22nd October 1892 (B Pros., August 1893, No. 5). See p. 133.



control of the revenue records, and it will be understood what opportunities they enjoy for circumventing the landholder and estranging his sympathies still further from them.

181. Not only is the money-lender almost always of a different caste, but he is also often a foreigner in the country where he operates. The Southern Punjab, and the greater part of Bombay, Berar, and the Central Provinces is the hunting ground of the Marwari, the trader from Rajputana, who either returns to his native country when his fortune is made, or, if he remains, is "in no way affected by any local opinion or local custom." The Gujarathi is also found in Berar, and, as we have seen, the money-lenders of Burma are foreigners from Madras or China.

Mr. Bernard, Commr., Nagpur, in letter No. 206 of 20th January 1871. See page 169, Vol. II, Deccan Riots' Commission Report. Moral and Material Progress of India (1892-93), page 476.

182. Finally, the alienation of the old and new proprietor is in many cases accentuated by a difference in religion. The Marwari, for instance, is in most cases a Jain trading on Hindus, and though there is no general animosity between them, the sectarian difference adds another bar to mutual sympathy. The feeling is, however, far more intense in the Western Punjab (and the same is true of parts of Sind), where the lender is almost invariably a Hindu and the borrower a more or less bigoted Muhammadan. This distinction forms a central feature of the arguments in Mr. Thorburn's book, published in 1886, called "Mussulmans and money-lenders," and Sir James Lyall, the Lieutenant-Governor of the Punjab, noticed it in 1888 in the following terms:—

"There is a special danger in alienations in the west to which Mr. Thorburn has drawn attention, *viz.*, that they are mainly from the Muhammadan land-owners to Hindu money-lenders. In the eyes of the Muhammadans of the west these Hindus hold much the same position that the Jews do in certain parts of Eastern Europe."

Para. 10, letter No. 231 of 7th November 1888 (Revenue A Pros., May 1891, Nos. 1-8). *See* p. 51.

183. Such being the class of men to whom the land is in most provinces being gradually alienated, and such being the relations between them and the existing landholding community, the Government has to face administrative danger of a double nature.

In the first place the agency by which the executive has ensured the interior administration of the villages and the means of control over the masses which were previously at the disposal of Government, have materially suffered in strength. It is essential on the one hand that the management of the villages should be in the hands of men who possess the confidence of the villagers, and it is equally essential on the other that if the executive is to be obeyed and its objects rightly understood, there should be a class of men intermediate between the Government and the mass of the people who, while trusted by Government, should have influence over their neighbours. In this respect the money-lender can never take the place of the large ancestral landlord or the substantial yeoman whom he dispossesses. This fact has been acknowledged by many authorities. As early as 1859, Lord Stanley, the Secretary of State, drew attention to the transfer of property "from the old hereditary families, to whom the tenantry were attached, to the mercantile classes, whom, as interlopers, they regard with dislike, and who in times of difficulty, while they look to us for protection, are unable to render us any assistance, or actively to co-operate with the Government authorities in the suppression of disturbance." Mr. Sturt, the Assistant Commissioner in Jhansi, reported later of the money-lending classes that they do not "possess any influence over the people of the country"; and Sir William Muir, speaking in 1859 of the transfer of land in the North-

See note by the Hon'ble Sir Charles Pritchard, dated 21th June 1893, in Proceedings A 1, Rev., April 1894. *See* p. 130.

Despatch No. 4, dated 25th January 1859. See Selections from Records of Government of India (Home Department), No. CLV.

See p. 279, Volume III, Deccan Riots Commission Report.

Ditto. Vol. II, p. 180.

Western Provinces, noted that "it ousted from their ancestral lands those who by their natural position could best manage them and be made instrumental in aiding the administration, and it substituted a set of men who were often unable even in times of peace to maintain themselves in secure possession and for all administrative purposes were far less responsible and less useful proprietors." In the Western Punjab Mr. Thorburn correctly states that "the creditors are trading Hindus and represent no political force in the country, and the Mahomedans are children of the soil, numerous, courageous and warlike." In 1871, the Judicial Commissioner of the Central Provinces, Mr. P. S. Melvill, noted:—

Para. 74 of memo. dated 29th June 1884, p. 953, Sel. from Records of Fin. Comm., Punjab, New Series, No. 11, 37, LXV.

Para. 23 of memo. forwarded with Chief Coumr.'s letter No. 741—90, 14th April 1871. See p. 139, Home Department Selns., No. CLV.

"Politically, the extensive transfer of land by order of court works evil to the Government. The old men rarely lose their influence over the agricultural population, and those newly made do not acquire strength that may, in time of need, be used for the support of Government."

Settlement Report, page 48.

And in the recent settlement of the Raipur district it was pointed out that "the duties towards Government . . . . which are inseparable from the status of proprietorship can ill be performed by non-resident Banias who are daily absorbed in account books." Sufficient has perhaps been quoted to show the general absence among the money-lending class of any real influence over the people, and the consequent loss of executive power suffered by the Government.

184. There is another and more important administrative evil entailed by the transfer of land to new classes, and that is the alienation from the Government of the sympathies of the rural population. It is difficult for the English mind to realize how quickly in India discontent against a class can be transformed into discontent against the Government for not affording protection from that class. Mr. Ibbetson, writing in 1885, pointed this out saying:—

Para. 8 of memo. dated 12th Aug. 1885, page 977. Selns. from Records of Fin. Commr., Punjab, New Series, No. 11, 37, LXV.

"In a country like England, where the people govern themselves, popular discontent means little worse than a change of Ministers. In a country like India, popular discontent takes the form of disloyalty."

The fact that popular discontent exists in many parts of the country may be gathered from the testimony—partly already quoted—of settlement officers and others who are in touch with the feelings of the agricultural public. And although as a rule it requires much oppression to drive the native of India to violent crime in vindication of his rights, there have been disturbances from time to time which showed that in certain areas the discontent had reached an acute stage. There is no evidence to show that the transfer of land has led to many instances of individual crime,* but a number of isolated cases in Bombay were noticed by Sir George Wingate in 1852, and similar cases in Sind have been recorded by the Commissioner in a recent letter, and the subject has not been anywhere specially investigated. Of concerted and combined outrage, however, traceable to agrarian discontent, we have several instances on record. There were Bhil raids upon usurers in 1845. Similar outrages were subsequently committed on several occasions by the Kolis. In Burma we hear of dispossessed proprietors joining bodies of dacoits. In parts of Berar in 1886-87 the money-lenders were extensively boycotted. And as lately as 1893 the Berar dacoits received the sincere sympathy of the villagers in their outrages

Page 7, Deccan Riots Commission Report, Vol. I. Paragraph 10, letter No 4271, 22nd Oct. 1892.

Deccan Riots Commission Report, Vol. I, p. 7.

Rev. Admn. Rep., 1886-87, page 25.

*See* p. 61.

* See, however, paragraph 6 of the Punjab Government's letter No. 563 S., dated 25th August 1891: "There have been several very daring cases of murder of these men (banias) by peasants indebted to them, in the last two or three years, and such crimes might easily become numerous, and would be hard to repress."



on money-lenders.* The chief occasions, however, on which agrarian outrage on a large scale has been occasioned by the discontent of the cultivator against the transfer of land to money-lenders or other new proprietors, are (*i*) the Sonthal rebellion of 1855, (*ii*) the North-Western Provinces mutiny of 1857, (*iii*) the Deccan riots of 1874, and (*iv*) the Ajmere riots of 1891. The Sonthal rebellion is delineated in Hunter's Annals of Rural Bengal as due to the oppressions of the Hindu usurer; and in a letter of 1871 the Deputy Commissioner of the Sonthal Parganas ascribes the cruelties practised by the rebels in 1855 to the rack-renting carried out by Bengali landlords. As regards the mutiny of 1857, the extent to which the disturbances in the North-Western Provinces were aggravated by the animus against new proprietors was at the time a matter of some dispute, but we have the authority of the Court of Sadr Adalat, of Sir W. Muir, of Lord Stanley, and of Sir George Campbell for holding that the transfer of land had much to do with the disturbances; and indeed the last-named officer wrote at the time: "If the land in the Punjab had been transferred as that of the North-West has been, it is quite certain we should not be here." The Deccan riots of 1874 were specially investigated by a Commission and were directly traced to the hatred of the money-lender. So also the late riots in Ajmere were ascribed by the local officers to "the deep-seated discontent caused by the action of money-lenders under our laws." We have therefore evidence to show that discontent exists, and on one pretext or another it from time to time breaks out.

See page 309, Vol. II, Deccan Riots Commission Report.

Pros. 22-6A. Jan. 1872.

See *e.g.*, Mr. Grant's remarks in Leg. Council of March 5th, 1859, and Mr. Edmonstone's Minute dated 26th May 1860 (pp. 260 and 263, Vol. III, Rep. of Deccan Riots Commn. Letter dated 24th December 1858. See p. 177, Vol. II, Deccan Riots Commn. Rep. Memo. dated 2nd Feb. 1859 (p. 16, Rec. of Gov. of India, Home Dep., No. CLV). Despatch No. 4, dated 25th January 1859. (Ditto, p. 1.)

As to the extent to which the discontent of the peasantry is already a "political danger" authorities have differed, and the question bears a different aspect in different parts of the country. In 1876 it was held by Mr. Colvin and by the Deccan Riots Commission, that while the question in Northern and Central India had been discussed from a political point of view, the question in the Deccan was "not a political difficulty only, or perhaps mainly, but an economic." It appears that on the one hand the economic aspect of the question has now attracted attention in the Northern and Central Provinces also, and that on the other hand the element of political danger is not now considered absent in Bombay. This view has at least been taken and forcibly represented by Mr. James, the Commissioner in Sind, who writes of the ryots as follows:—

Memoirs of my Indian career, by Sir G. Campbell, Vol. I, p. 278.

Letter from Chief Commr., No. 303, dated 3rd April 1892, and enclos. (A June 1892, No. 14).

Page 37 of Memo. Page 83, para. 99 of Report.

Para. 10 of letter No. 4274 of 22nd Oct. 1892, to Govt. Bombay. *See* p. 135.

"Our overwhelming power makes them feel the hopelessness of rebellion, and their lot of late years, I make no doubt, has materially improved owing to the general progress of country. But I can easily conceive that a time may come when the Deccan is denuded of troops and the British arms have sustained a reverse, and then we may see the long smouldering discontent fanned into a flame. The hungry unplaced agitator of Poona, whose disloyalty the Government can treat with contempt so long as the masses are content, would soon set to work, finding plenty of material to his hand."

The political danger in the case of large estates in the Central Provinces was represented as long ago as 1871 by the Chief Commissioner, Colonel Keating: and a voice has been raised in recent years to suggest political objections to transfers even in Behar.

Letter No. 741-90 of 14th April 1871.

Opinion of Collector, Shahabad, in Rev. Admn. Rep., 1886-87, para. 154.

Note of 28th November 1892. (A September 1893, Nos. 46 to 49.) *See* p. 125.

Sir Charles Crosthwaite, with experience both of the North-Western Pro-

* Paragraph 19 of Colonel Lane's letter No. 857, dated 6th April 1894 (Report on Police Department in Hyderabad Assigned Districts, 1893)—"A feature in the dacoities which ought not to be left unnoticed, for I think it is a serious one in some lights, is the apathy if not acquiescence with which the villagers saw these dacoities taking place in their villages. The men who suffered from the dacoits were those who had amassed wealth by usury, who had advanced money on mortgages of land, though not always the actual owners of the soil. The villagers will not lift a finger to help them."

vinces and of the Central Provinces, writes in 1892 regarding the transfers from hereditary occupants to men of other classes :—

"The political mischief thence arising was made evident in 1857 : and whenever the power of Government is weakened or in abeyance it will be made evident again. The ousted proprietor never forgets, but bides his time."

Pros. A. December 91, Nos. 10-11.

185. The subject is perhaps of most importance in the Punjab, and it has been there more fully discussed of recent years than elsewhere. Although there are other opinions which might be quoted, it will suffice to give the following extracts from those recorded by local officers in the special enquiry of 1888-89.

Mr. Maconachie, Deputy Commissioner, Gurgaon.

"In any considerable displacement of agriculturists probably, slow though it may appear to us, there is political danger. Yet there are in our administration risks which must be run. There is ignoble danger even in not accepting such risks, for boldness is a necessary ingredient in any English Government in the East."

Mr. J. A. Grant, Settlement Officer, Amritsar.

"In the Umballa district both permanent and temporary alienations have been increasing at an alarming rate. I would not, however, say that the increase there involves any political danger at present.

As regards the district of Amritsar, judging more from my own knowledge of it than from recorded figures, I am of opinion that the transfer of proprietary rights from the old agricultural classes to the money-lenders is not increasing to any serious extent. Land is undoubtedly changing hands, and a class of men is acquiring land which had little opportunity of acquiring it under former rulers ; but there is nothing in the rate at which they are acquiring to excite alarm in the near future."

Mr. E. O'Brien, Deputy Commissioner, Kangra.

"Neither in this district, nor in Muzaffargarh, Mooltan, Ferozepur or Delhi, do the alienations involve any political danger. The proprietor who has lost his land merely sinks lower in the social scale. Such men do not flock to the cities where they might form a discontented and dangerous element. They do not take to crime. I never heard of an offender whose crime had any connection with the loss of the land."

Mr. R. Dane, Dy. Commr., Hoshiarpur.

"I do not myself think that alienations are proceeding with sufficient rapidity to constitute a political danger—in the central portion of the province at any rate."

Mr. Coldstream, Dy. Commr, Simla.

"I am bound to say that in Hoshiarpur I observed no symptoms of political dangers from the alienations then in progress."

Mr. Clark, Dy. Commr., Lahore.

"I am not inclined to think that alienations in this district have assumed politically dangerous proportions."

Major Hutchinson, Dy. Commr., Multan.

"I am not at all convinced that the result involves any political danger."

Col. Ommanney, Commr., Peshawar.

"Here, in India, of course the evil is coupled, from the nature of our position, with a possible future political danger, but on the whole I think now that it is not so grave as I at one time was inclined to think."

Mr. Merk, Deputy Commissioner, Peshawar.

"Although alienations are undoubtedly proceeding in an increasing ratio, such a rise, in view of the development of the country and a sound state of business, is neither abnormal nor unhealthy as a rule, isolated tracts excepted. Nor do I venture to think is it a source as yet of any serious political danger."

Mr. Cunningham, Dy. Commr., Hazara.

"I should not say that the present state of things in this district is alarming, but it tends to get worse, and it is time to think of some remedy."

Mr. Rivaz, Commissioner of Lahore.

"I am decidedly of opinion that alienations to money-lenders constitute in a greater or lesser degree an ever-increasing element of political danger everywhere in the province ; that the refusal of Government to interfere and check such alienations is regarded by the agricultural classes with profound dissatisfaction ; and that the evil consequences of this feeling will assuredly be experienced hereafter, if no remedy in the matter be applied, should troublous times occur."

Mr. Ogilvie, Commissioner of Derajat.

"I think the present state of affairs creates discontent and that agricultural discontent on any large scale cannot fail to be a political danger. The danger is not actually menacing at present ; it should be our business to apply remedial measures before it becomes so."

Mr. Kennedy, Deputy Commissioner of Montgomery.

"There can be no doubt that these extensive alienations constitute a grave political danger I need not quote instances from ancient and modern history to prove that agrarian difficulties have been a fruitful source of revolutions and civil commotions in every age. In the Punjab at present the agricultural classes are thoroughly dissatisfied with the passing out of their hands of the lands of their forefathers, and I think any one who looks below the surface must have been struck by the spirit of sullen acquiescence with which the mass of the people regard our rule."



Mr. Browne, Dy. Commr., Gurdaspur.

"The result is a seething feeling of discontent which no Government, which ultimately rests on the peasant population, can disregard."

Mr. Dames, Deputy Commissioner, Dera Ghazi Khan.

"That it is a political danger admits in my opinion of no doubt. The animosity of the agricultural classes is at present mainly directed against the Hindus, but it might easily be diverted against the Government."

Mr. Wilson, Deputy Commissioner, Shahpur.

"We have seen an instance in the mutiny in many districts of the North-Western Provinces, where it was undoubtedly the indebtedness of the peasantry that tempted them to rebellion, and there is danger of a similar result arising from similar causes in many parts of the Punjab, should opportunity offer. Indeed, I believe, that the only serious disaffection that anywhere exists in the province is that of the peasantry, due to a sense that they are being unjustly deprived of their lands by the action of our laws."

Mr. Ibbetson, Deputy Commissioner, Rohtak.

"Thus I do not think it can be said that in either of these two districts political danger has yet arisen from the increase of alienations ; or, so far as I am acquainted with the facts, that it faces us in the immediate future. But I do not think it is enough to say this much. It seems to me that unless we alter our present system political danger must arise here as elsewhere, in the natural progress of events, though it may be further off than in other districts of the province.

"The danger will not spring from the facts of alienation. It will spring from the fact (if, as I believe, it be a fact) that our legal system not only affords facilities for enforcing alienations, but actually brings an unjust and one-sided pressure to bear upon the peasant, which eventually forces him to part with his land. If this is so, it will be unwise to wait till "political danger" has actually arisen, before we move in the matter. Nowhere could it be more unsafe than in the Punjab to appear to yield to pressure, to wait for agrarian disturbances, as we did in the Deccan, before we remove the causes of agrarian distress."

The Financial Commissioner, Mr. Elsmie, held "that it is not proved that any immediate political danger need be apprehended at present from the extent to which landowners have as yet alienated their land."

The Second Financial Commissioner, Mr. Young, expressed his views as follows :—

"But is there, from a political point of view, any reason for apprehension? In regard to this matter there is, I believe, the same political danger that there is in most of our measures. But there are no symptoms at present of widespread agrarian discontent, and we must be content to accept a certain risk in this as in all departments of our administration. The creation of a valuable interest in property has set loose the competitive process by which the land is passing from hand to hand in an increasing ratio. With this process we may not interfere rashly. It is the product of our own deliberate action and of principles which are incontrovertible. It is not accompanied with any immediate political danger. We only need to watch it and remove the defects in our system which place the competing parties on an unequal footing."

The Lieutenant-Governor Sir J. Lyall, in reviewing the reports furnished on the question of agricultural indebtedness, wrote :—

The opinions both of Revenue and Judicial Officers have almost all been given carefully and earnestly. They show a strong feeling of the existence either developed or commencing of a lamentable state of things, and even those officers who have least apprehension of political danger, who have least sentiment or repress it most carefully, and who are disposed to expect least advantage from radical alterations of law and procedure, virtually admit the great unsuitability of some parts of our legal system to the condition and circumstances of the agriculturists of the Province. On the other hand, there are a great many officers who feel that unsuitability so keenly as to find a difficulty, as Mr. R. Clarke says, in repressing intemperate language in writing about it. I have the advantage of knowing more or less well all the officers, European and Native, who have given opinions, and am able to judge of their weight even when they give them without full argument. There is great unanimity on certain points, but on other important ones the men of most weight are much divided. But from the whole body of opinions as well as from the statistics it may, I consider, be safely assumed to be proved that it is a fact, as we have already reported, that under the influence of indebtedness and of our present law and Civil Court procedure, transfers of land are proceeding in all districts in an increasing ratio, and in many with dangerous rapidity, and that measures to check this process, so far as it is due to the action of our laws and Courts, are

required throughout the Province. The fact that by a large proportion of these transfers the possession of the land passes from the old agricultural classes to men of the old commercial money-lending classes greatly increases the political danger of this state of things; but on the other hand, even transfers from one agriculturist to another agriculturist, so far as they are due to unsuitability of our law and Civil Court procedure to the condition and circumstances of the poorer agriculturists, are also a serious reproach to our system and tend to make our Government unpopular.

And further on, while quoting with approval the description of the attitude to our Government of the landholders in one district as "sullen acquiescence," went on to say:—

"To other districts it would be a gross exaggeration to apply it, but we could easily make mistakes which would make it generally applicable, and that there has been a marked tendency to a decline of good feeling in many, if not in all, districts is, in my opinion, very evident."

186. So far as we can draw any conclusions on this part of the subject from the evidence before us, we may perhaps say that the substitution of a new class of landholders for the old has a tendency everywhere to weaken the administration: that the relations of the landholding class to the money-lenders, especially in the Punjab, Bombay, Ajmere, and parts of Berar, the Central Provinces and the North-Western Provinces, are embittered: that such embitterment is already manifesting itself in the form of a marked decline of good feeling towards the Government in the Punjab, and that experience shows that wherever this embitterment exists it is likely to lead to the serious embarrassment of Government in time of disturbance or war.

The fact that the subject is not much noticed in the native newspapers is due largely to the fact that such papers are written mainly by townspeople and by persons more likely by breeding and caste to fall in with the money-lender's view of the case than that taken by the agriculturist.

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## III.—PROPOSED REMEDIES.

187. Nothing has been said above regarding the evils of indebtedness *per se*: not because the general indebtedness of the people does not involve evils of its own both economic and administrative, but because the chief and cardinal evil of debt is that it leads to the transfer of land. The agriculturist who borrows know that unsecured credit if it is to be renewed must in time be secured by mortgage, and that the simple mortgage, if not redeemed at an early stage, soon passes into usufructuary mortgage and sale. Take away from agrarian debt its connection with the land and you are left to face an evil of comparative insignificance. Consider it in its connection with the land and you find that behind the evils of land transfer there lies a mass of attendant evil, which increases and intensifies the danger indicated by the transfer of the land itself. If therefore we confine ourselves to attacking the evils of land transfer we attack not only the most intense form of the trouble, but also the source of other attendant mischief.

Presuming therefore that the result of indebtedness with which we have mainly to cope is the transfer of land, we may meet it in one or more of three ways. Inducements may be devised to prevent the people as far as possible from placing themselves in the debt of the money lender. Or, presuming debt to have been incurred, arrangements may be made to assist the debtor in meeting the consequences of his debt. Or, *thirdly*, by restricting the right of the agriculturist to dispose of his land, we may attempt at the same time to diminish both the opportunities for incurring debt and the chief misfortunes attending debt incurred. In other words, we may class roughly the proposed remedies in three groups, *viz.*:—

(*i*) Restrictions on the incurrence of debt;
(*ii*) Restrictions on the power of creditors; and
(*iii*) Restrictions on the transfer of land.

## CLASS I.—RESTRICTIONS ON THE INCURRENCE OF DEBT.

188. The agriculturist borrows from the local money lender either to meet expenses incurred on domestic objects, or to cover the cost of agricultural improvements and wants, or to meet the demands of Government in the way of revenue. In order to prevent his having recourse to the money lender for these objects it has been proposed (*i*) that he should be discouraged from incurring debt beyond his means on domestic objects; (*ii*) that to meet his wants for the cultivation and improvement of the land a better creditor than the money lender should be at his disposal; and (*iii*) that when the payment of land-revenue drives him into debt the necessary changes should be made in the land-revenue system. Each of these proposed remedies will now be mentioned in turn, *viz* :—

(*a*) The Discouragement of Private Debt;
(*b*) The Introduction of new agencies for money lending;
(*c*) The Improvement of the Revenue System by greater consideration in Demand and Collection of Revenue.

### (a) Discouragement of Private Debt.

189. Taking firstly the discouragement of private debt, we are confronted with a problem which the Government can only meet indirectly. Any measures which will increase the produce of the land or the value received for the produce tend of course to put off the hour in which the agriculturist is driven to borrow: but the real causes of his indebtedness lie deeper and are to be found in his improvidence and his ignorance—factors with which the State can only feebly cope.

190. The improvidence of the Indian agriculturist is often mentioned as the cause of debt, more especially when his improvidence takes the form of marriage or funeral expenses out of proportion to his income. The Deccan Riots Commission of 1876 were indeed of the opinion that the effect of these extravagances had been exaggerated, and their view of the question was as follows:—

Report, vol. i, page 38, paragraph 54.

"It would be idle," they wrote, "to say that improvidence does not exist as a cause of indebtedness. It consists however rather in the short-sighted imprudence of an ignorant class ready to relieve present necessity by discounting future income on any terms, and unable to realize the consequences of obligations foolishly contracted, than in an extravagant expenditure or misapplication of income.

The results of the Commission's enquiries show that undue prominence has been given to the expenditure on marriage and other festivals as a cause of the ryot's indebtedness.

The expenditure on such occasions may undoubtedly be called extravagant when compared with the ryot's means; but the occasions occur seldom, and probably in a course of years the total sum spent in this way by any ryot is not larger than a man in his position is justified in spending on social and domestic pleasures.

The expenditure forms an item of some importance on the debit side of his account, but by itself it rarely appears as the nucleus of his indebtedness.

The sums usually spent on these occasions have probably been over-estimated, or the operation of other causes in producing debt have been overlooked by the officers who have attributed the ryot's burdens so largely to this cause. This oversight would indeed be a natural consequence of the fact, that it is only on marriages or similar occasions that expenditure by a Kunbi comes under observation. The amount spent by a Kunbi of average circumstances on the marriage of his son is from Rs. 50 to Rs. 75, a sum which by itself even at 24 per



cent. interest could be repaid without much difficulty if his average margin of profit was not forestalled by other debt, and he were treated with fairness and moderation by his sowkar.

The constantly recurring small items of debt for food and other necessaries, for seed, for bullocks, for the Government assessment, do more to swell the indebtedness of the ryot than an occasional marriage."

In the greater part of India however the debt of the agriculturist can often be traced to extravagances thoughtlessly incurred. The Financial Commissioner of the Panjab collected statistics in 1889 regarding some 6,500 cases of alienation, and found that about one-sixth of these transfers were *acknowledged* to be due to extravagances of this nature. In the Central Provinces Mr. Fuller, Commissioner of Settlements and Agriculture, writes:—

Memorandum by Mr. Elsmie, dated 15th August 1889, paragraph 15. (A. December 1891, Nos. 10—11.)

Paragraph 8, Memorandum dated 29th September 1892. (A. May 1893, Nos. 18—19). (*Sel.*, p. 109.)

"The careful investigations which have recently been made into this subject have shown that ryots' debts have but little connection with their rents or the expenses of their cultivation. They are, as a general rule, the result of sheer extravagance and wastefulness. Cases are common in which a ryot will admit having spent 20 years' rental on marriages; they are not uncommon when he will admit having spent as much as 50 years' rental."

It is unnecessary to multiply testimony on this point, and it will suffice to say that this cause of debt has been long acknowledged, and that numerous laudable efforts have been made locally by the people themselves, either of their own motion or—more frequently—at the instigation of Government officers, to reduce the extravagancies considered necessary in particular areas or among particular castes. The matter is not, however, one in which Government can, with convenience, directly intervene, and it will perhaps be considered unnecessary to discuss here the possibility of such intervention.

191. It has been thought, however, by some that with a better education the peasant could not be so reckless in running into debt or so helpless in protecting himself from the consequences. The matter, however, is partly one of temperament rather than education, for in India generally the agriculturist, whether literate or not, is "the most pronounced of Micawbers." And, moreover, the exceeding backwardness of education in this country renders it next to impossible that any benefit could be conferred within a measurable period of time: meanwhile the land is daily passing into new hands and, as Mr. C. Grant, Commissioner of Jabalpur, said, in 1874, "the landed classes would probably be ruined before they are regenerated." The suggestion that other measures should wait till education had had its effect was very promptly brushed aside by Sir A. Colvin in 1875 in the following words:—

Mr. O'Brien, Deputy Commissioner, Kangra.

See Chief Commissioner's letter No. 3463-167, dated 7th October 1874. (B. May 1878, Nos. 51—55). Page 40 of Memorandum of 8th November 1875 in volume i, Deccan Riots Commission Report.

"Education has been constantly urged as the proper weapon for the Kunbi in his struggle against debt. But experience has shown that from education at least little or nothing can be hoped. How any man acquainted with the people could for a moment suppose that the school-master would be beforehand with the Marwari I cannot conceive. Long before the agricultural classes are educated they will have been ruined, and whatever comfort education may bring to a ruined man, it will not furnish him with solid cash. For the purpose of this enquiry we must assume not only that the Kunbi is uneducated, but that he will continue so, and must treat him as a man unable to help himself. To shirk the difficulty by commonplaces about education seems to me dishonest indolence. Thirty years have shown that panacea, in this case at any rate, to be a wind-bag, and if it is expedient to assist the agricultural classes, we must admit unreservedly that it must be for many years to come by other means than merely educating them. For thirty years Government has remained entrenched behind the lines of its *laisser aller* policy; and leaving matters to take their course, that is the course they have taken."

Without in any way minimising the possible ultimate effect of education—especially if conducted on rational lines—we may no doubt conclude that for

our present purpose it is unnecessary to discuss this form of remedy for the existing indebtedness of the agricultural classes.

## (b) The Introduction of new agencies for money-lending.

192. This class of remedy has generally been put forward in one or other of the three following forms:—

(*i*) that the formation by private associations of *agricultural banks* should be encouraged by Government;

(*ii*) that the lending of money on pawn should be confined to certain licensed persons, working under Government control, as in the case of the foreign "*Monts de Pieté;*"

(*iii*) that the *Government should itself lend money more extensively* than hitherto for land improvement and purposes of agricultural utility.

The main object of all these proposals is not so much to supply the solvent agriculturist with opportunities for borrowing,—these he has in plenty already,—but to exclude from legitimate debt the evils of usury which attend the loans of money-lenders, and hence ultimately to reduce the burden of the debt. The schemes under this head form a special class of themselves and can, to a large extent, be discussed independently of the other proposals mentioned in this note.

### (*i*) *Agricultural Banks.*

See Parliamentary Return East India (Agricultural Banks) 6th September 1887.

193. There have been several attempts to establish agricultural banks in India, and some—on a small scale—have apparently been successful. The subject was warmly taken up in 1882-83 by Mr. (now Sir) William Wedderburn, the Judge of Poona, who reported that a number of native gentleman were ready to start an agricultural bank in Bombay, and suggested the initiation on a selected area of a scheme by which (*a*) the present debts of the ryots should be liquidated; and (*b*) an agricultural bank should be established which, under certain conditions, would receive assistance from Government. The Local Government and the Government of India were ready to accede with some modifications to the formation of a bank on these lines at Poona, but the Secretary of State, Lord Kimberley, distrusted the financial soundness of the scheme, and after some further correspondence the proposal was allowed to drop.

Government of India letter No. 600, dated 31st October 1887. (A. January 1888, Nos. 12—15.)

Madras Government letter No. 735, dated 7th September 1893. (B. September 1893, Nos. 65—66.)

The Government of Madras has recently taken this subject again into consideration and has placed Mr. F. A. Nicholson on special duty to investigate and report on the possibility of introducing into the Madras Presidency a system of agricultural or other land banks. No information has yet been received as to the manner in which Mr. Nicholson's report has been dealt with by the Madras Government, and pending receipt of this information the Government of India does not, it is understood, desire to take any action in the important matter of the establishment of agricultural banks.

### (*ii*) *Licensed Pawnbroking.*

194. The introduction of a system of licensed pawnbroking on a moderate interest was advocated in 1863 by the Chief Justice of Bombay, Sir Matthew



Sausse, and his proposals were circulated to the Bombay officers for opinion. An abstract of their opinions was compiled by the Deccan Riots Commission of 1876, together with the following summary of the objections to the proposal:— Volume ii, page 28.

"It would be a great interference with the habits of the people, who, as far as they have the power, are all lenders. Not only is lending an adjunct of every trade, but it is extensively practised by persons engaged in no trade at all, women especially. It is one of the national modes of investing money, which is certainly preferable to hoarding and burying. The ornaments of the country are intended not only as ornaments, but as the means of raising money. To deprive the members of the public generally of the power of lending on these ornaments, and to vest the right as a monopoly in a few, would be considered an oppression, and from its opposition to the public feeling every means would be resorted to evade the law, the result being of a demoralizing tendency.'

The subject was allowed by the Bombay Government to drop and has not apparently been since revived. Its advantages are connected with urban, rather than agricultural, debt.

### (*iii*) *State Loans.*

195. The system of lending State money to agriculturists for the purpose of supplying at a low rate of interest the means for improving the agricultural efficacy of the country has been for a long time in force. The measures now adopted in India for carrying out this object are in principle the same as those which have been worked for some time with success under the Land Improvement Acts in the United Kingdom, and the system has in one form or other been in force in the Bengal and Bombay Presidencies, under various Regulations, from the end of the last century. The law on the subject was consolidated in the Land Improvement Act, XXVI of 1871, the provisions of which extended to the whole of British India, and under which the legitimate object of State Loans, the procedure to be followed on applications by tenants, the method of recovery of advances and other similar matters were for the first time clearly laid down. Details as to the amount to be lent, the mode of making applications, the security required, the interest to be charged, the manner and time of defraying instalments and the amount of those instalments were to be provided for by rules drawn up by Local Governments and sanctioned by the Governor General in Council. After a considerable amount of correspondence, started by the Government of India's Circular No. 2—2937, dated 10th April 1874, a simple set of model rules was in 1877 proposed in place of the more complicated rules previously in force, and these rules, with such modifications as were required for local needs, were finally accepted and adopted throughout India by the beginning of 1881.

In 1878—1880, however, the working of the Act came under the consideration of the Famine Commission, who were convinced that it had failed to realize the intention of promoting improvements, and there was a very general reluctance to make use of its provisions. They pointed out, in their report of 1880, that amounts advanced were exceedingly small and bore no proportion whatever to the need which the country has of capital to carry out material improvements, and suggested that Government should make an enquiry into the alleged causes for the unpopularity of the system. They further recommended the extension of the period for repayments and the simplification of the method of calculating instalments due; and after full consideration of the

question at the hands of Local Governments and a Special Committee of Revenue Officers convened for the purpose, the present Act (XIX of 1883) was passed, giving effect to the main recommendations of the Famine Commission, and it was understood that the removal, so far as this could be done by legislation, of the obstacles standing in the way of the success of the system, had been effected by this Act.

196. It had also been customary in various parts of the country to advance State money for miscellaneous purposes connected with agriculture, such as the purchase of plough cattle and seed, which were not provided for under the existing Acts for Land Improvement Loans; and legal authority for the recovery of such loans was provided by certain provisions in various Acts, in Bombay Madras, Bengal, and Burma, and by the enactment of the Northern India Takkavi Act (X of 1879) for the Punjab, North-Western Provinces and Oudh, Ajmere Central Provinces, and Assam. The provisions of the law on this class of loans were amended and consolidated in the Agriculturists' Loans Act XII of 1884. The Act authorised the grant of loans for any purposes connected with agricultural objects other than those specified in the Act of 1883, and made special provision for the grant of joint loans to village communities. It related in the first place to certain provinces only (*viz.*, to Bombay, the North-Western Provinces and Oudh, the Punjab, the Central Provinces, Assam, and Ajmere), but has subsequently been extended to the rest of British India excepting Upper Burma.

197. Although the amendments introduced in the Acts in 1883 and 1884 have in many ways added to the facilities for obtaining loans, experience has shown that, as anticipated by several eminent authorities at the time of the passing of the new Acts, these amendments by themselves have had little or no effect in increasing the extent to which the system has been adopted. The necessity for further efforts in developing the system of State loans was strongly urged by Dr. A. Voelcker in his "Report on the Improvement of India Agriculture," published in 1893, and the same matter formed the subject of certain Resolutions passed by a conference of agricultural officers held at Simla, in October of the same year.

*E. g.*, pages 84—91.

Progs. of the Agricultural Conference, 1893, page 19.

The sparseness of the advances made in the Deccan districts attracted the notice of the Commission of 1891-92, and in its Report the Commission made the following comments :—

Report, para. 68.

> "The policy of these loans has recently been under the consideration of the Bombay Government, and new rules have been drawn up which will, it is hoped, make the system more efficient and popular. The figures given in Statement I, Appendix V, show that the loans hitherto made were, with the single exception of the famine year, insignificant in amount. The Commission do not anticipate that Government will ever be able to supersede the sahuka, nor is such a result desirable. For various reasons many ryots will still prefer to deal with the ordinary money lender, but some are unable to obtain such accommodation at all or can only obtain it on exorbitant terms, and it is for the protection of these that the aid of the Government as supreme landlord is required. A further argument in favour of a liberal system of Government loans is that such a system has been found to reduce materially the ordinary rates of interest where they are unduly high."

198. These remarks related exclusively to the Deccan, but His Excellency Lord Lansdowne in reviewing the proposals made by the Commission for amending the Civil Law in India generally, placed on record his opinion that greater results were to be expected from certain administrative reforms, of which one was "the further extension of the system of advances to cultivators."

Note dated 3rd January 1894, Progs. A. April 1894, No. 1. (*Sel.*, p. 131.)



"There is, I fancy," he wrote, "no difference of opinion as to the advantage of a liberal system of loans to cultivators. The transaction is a perfectly safe one for the Government of India, and it is, I presume, only owing to financial considerations that we have up to the present time not done more in this direction." These views were communicated to the Revenue and Agricultural Department by the Home Department in February 1894, with the request that among other proposed measures which seemed to be "indispensable both for the Deccan and elsewhere in India," the extension of the system of advances to cultivators might be "further considered in the Revenue and Agricultural Department."

No. 199 Office Memo., dated 20th February 1894. (A. April 1894, No. 1.)

The subject is at present undergoing this further consideration separately and need not therefore be more fully discussed in the present note.

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## (c) Greater consideration in the Revenue System.

199. The schemes that have been put forward for relieving indebtedness by easing the burden of the assessment are based on the presumption that the assessment is the cause of, or at least aggravates, the indebtedness. As regards the aggravation of existing debt, any payment of dues can be charged with this and the responsibility of the State ends when the payment of revenue in itself does not occasion debt. The criterion for our purpose may be taken to be whether an unindebted person, subsisting at the current standard of living, is able to pay the year's revenue without borrowing.

This is practically the criterion of the Famine Commission Report, Pt. II, Chap III, Sec. III, para. 8 and Part I, para. 16

In practice there are, as Sir Charles Crosthwaite has pointed out, three ways in which the revenue may be oppressive : (*a*) the demand may be too heavy or (*b*) the instalments may be ill-timed or (*c*) it may be exacted in bad seasons while a failure of crops has deprived the cultivator of the means of payment.

Note of 28th November 1892, Proceeding A, Nos. 43—46, September 1893. (*Sel.*, p. 128.)

### *Incidence, Instalments, Elasticity.*

200. As regards the first point, the revenue is for the present purpose "too heavy" only when it trenches on the means of subsistence. This may be done when the assets on which the revenue is based are wrongly ascertained, or the revenue being fixed for a village may (where such village assessments are in vogue) be so distributed over holdings as to fall seriously on individuals : or, if the revenue bears (in Bombay) no definite relation to the assets, it may in individual cases swallow up the assets. These are on the whole exceptional cases and are as a rule soon brought to light and carefully looked to on general grounds. For the purposes of the present note they need not perhaps be dicussed further.

201. With reference to the second point abovementioned it must be remembered that the revenue is paid by instalments at certain periods of the year, whereas the produce from which it is paid may come to market at certain

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other times, so that when the date for revenue-payment comes the agriculturist may not have the means to pay without borrowing. In other words the dates of the instalments may be improperly fixed. This is a question which was specially brought by the Government of India to the notice of the Local Governments noticed by the Famine Commission of 1879-80 and was dealt with in detail by the Government of India in a Resolution issued in May 1882. It is believed that the matter has received on the whole sufficient attention since the issue of that Resolution, but in view of the following remarks recently recorded by Sir Charles Crosthwaite it might be expedient to look up the papers again with a view to the possibility of addressing Local Governments :—

Report, Part II, Chap. III, Sec. III, para. 2, page 127. Commission, Resolution No. 15R of 3rd May 1882.

"The times," he says, "at which the revenue instalments are made to fall require to be carefully examined: to make a man pay his revenue or rent before his crop has been harvested or brought to market, is a sure means of forcing him to borrow money. I believe much has been done of late years to improve our system in this direction, but there is always a tendency on the part of revenue officers to fix an early date lest the land-owner should sell his crop and spend the proceeds before paying the revenue."

Report, para. 67. Letter No. 1297 of 2nd June 1893. (Proceedings A. No. 8, Revenue, June 1893.)

So far as regards the Deccan Districts of Bombay, the Deccan Commission of 1891-92 brought the matter once more under consideration, and the Bombay Government has recently been requested to have the matter re-examined so far as concerns those districts.

202. The other point is that the revenue is generally assessed on the presumption that the crops for the year will give an average produce at an average price: whereas there are many areas in which the amount and (to a less extent) the value of the produce varies considerably from year to year. The cultivator is as a rule not in the habit of saving from year to year, so that in bad years he has to borrow to pay the revenue. In other words the revenue is said to be too *rigid* and not sufficiently *elastic*. As the literature relating to this branch of the subject is extensive, a separate note has been prepared regarding it.

*Abolition of land sale for arrears of revenue.*

203. This will be a convenient place to notice a proposal which has been urged strongly by Sir Charles Crosthwaite, *viz.*, the abolition of land sale for arrears of revenue.

Calcutta Review, 1876, Vol. LXIII, page 346.

The connection between land sale and indebtedness was thus indicated by him in 1876:—

"There is a tendency to avoid the use of coercive processes in the collection. It is held for some reason to indicate careless and slovenly action on the Collector's part. Nothing can be more unsound. The only result of frightening Collectors from using the legal methods of coercion is that they leave the whole thing to tahsildars. It is the tendency of the tahsildars always to go back to the old native practices: that is to say, instead of repairing the default, getting the settlement annulled and having the village legally transferred for a term, they take the defaulter to the money-lender and compel him to raise the money by sale or mortgage."

Calcutta Review, 1873, Vol. LVI, page 223.

In proposing the abolition of sale in 1873, the same officer had written :—

"It is a process very seldom used in the North-West or Punjab. Under our present assessments it is impossible, unless arrears are negligently allowed to accumulate for years, that sale should be necessary for the recovery of the public revenue. A temporary sequestration of profits, or a transfer for ten or a fifteen years, would be sufficient in all cases. It is probably impossible to shew that it is necessary to retain the power of putting estates up to auction for arrears. But several reasons may be given for its expediency. It is sometimes useful as a means of getting rid of men who are hopelessly involved, and of giving a clear title to the purchaser, who gets the estates free of all encumbrances. It will also be said by some revenue officers, that sale, although seldom put in force, is not without active effect in making the collection of the revenue easy. The answer to this has been in a measure anticipated by what has been said above regarding the assertion that men are compelled to borrow to pay the revenue. We profess to leave the landlord forty-five per cent. of the rental in the Punjab, Oudh and the North-Western Provinces. If it is necessary to sell the estates by auction in order to recover the Government share, either the share taken by Government is too heavy and more than the people can pay, or it has been erroneously calculated. The former alternative will hardly meet with much support at the present time. If the latter is true, then the assessment ought to be revised. But to promise a man forty-five per cent. of the rental, and to sell him up because we have not fulfilled the promise, is hardly consistent.



It may be conceded that there is no just ground for distinction between the public and private creditor, and that unless the lien of Government upon the land for its revenue be relinquished, the sale of land in satisfaction of private debts, must be permitted, whatever restrictions may be imposed on it. But Government, I think, can and should give up the power of sale, and so pave the way for that other change in the law which good policy so urgently demands."

204. The proposal was again put forward by Sir Charles Crosthwaite, as Member of the Viceroy's Council, in November 1892, when he wrote :—

Note of 28th November 1892. (A Pros., Sept. 1893, Nos. 43 to 46.) (*Sel.* p. 128.)

"It is true generally speaking that in collecting the revenue the Government acts too much with the precision of a machine. The causes which have led to default are not discovered in time and the people are ruined before any remedy is applied for or relaxation allowed. It is no doubt dangerous to permit of laxness in collecting the revenue and it is not easy without much difficulty and much personal investigation by the District Officer himself, to distinguish cases of misfortune from cases of wilful default; and in these days District Officers have so much work, that they cannot give personal attention to every case. I am of opinion therefore that some restriction on the power of selling land for arrears of revenue is advisable. It is quite true that the power of sale is not often used, but the threat is held over men's heads; and when I was District Officer, it was certainly not uncommon for tahsildars to frighten or compel men to raise money by mortgage in order to pay their revenue by threatening them with the sale of their estates. If it was made known that ordinarily no sales for arrears would be sanctioned by the Government, and that, as a rule, the most severe measure to be taken would be the transfer of land for a term of years, I think one cause of borrowing would be to a great extent removed, and that the land owner would prefer to have for his creditor the Government rather than the money-lender."

Note of 8th July 1892.

Further correspondence furnished demi-officially by Sir Charles Crosthwaite in July 1893 illustrates the prevalence in the North-Western Provinces of irregular methods employed by tahsildars for the recovery of arrears.

205. The existing law, as may be surmised from the brief sketch of it given in paragraphs 79—83 above, hedges in the power of sale in temporarily settled provinces with a good deal of restriction, and it is doubtful whether revenue officers generally would attribute to the power of sale, as now limited both in law and practice, any more deleterious effects than the powers of sequestration, etc., by themselves. The old terror of sale, so well founded in the earlier period of our rule, has largely passed away, and many officers would no doubt hold it advisable to retain the power as an ultimate resort. No correspondence relating to any proposals for the abolition of revenue sale has, however, been traced.

## CLASS II.—RESTRICTIONS ON THE POWERS OF CREDITORS.

### *Unsuitable character of the Civil Law of Debt.*

206. The creditor in this, as in other civilized countries, has the agency of the Civil Law at his back to assist him in enforcing his claims, but it is often alleged that our Civil Law, which is based on the commercial spirit of the West, bears too hardly on agricultural debtors in this country, and that certain changes in it are necessary in order to lessen the power which a creditor wields through the agency of the Civil Courts.

The Civil Law applicable to debt cases is practically the same throughout India and is to be found in the Civil Procedure Code, the Contract Act, the Evidence Act, the Limitation Act, and other similar enactments. These Acts are usually considered patterns of legislation and compare favourably with the best Codes of Europe as specimens of civilized law: but they have a comparatively recent origin, and the sudden substitution of these Codes for the old rough systems, previously in force, is said not to have commended itself to the agricultural population, whose idiosyncrasies they ignored. The Deccan Riots' Commission of 1876 were, it is true, inclined to repudiate the objections raised against these laws :—

Page 103, Vol. I. Report.

"There remains," it was said, "another cause which is often quoted. This is the alleged technicality and want of equity of the Courts. The Judges are said "to have given the people the dry bones of law and procedure, instead of the life-giving meat of equity and justice." Again it is said "the Subordinate Judge is quite aware of the inequitable nature of many of his decrees: but he is not a Court of Equity; he is bound to administer law, not justice, and is powerless to protect the ignorant Bheels." Upon these and similar statements, the first remark we have to make is that it is a mistake to suppose that Courts in India are bound only to administer law in the strict sense in which the term is here used. They are distinctly Courts of "equity and good conscience" as well as of law. Secondly, it is certain that the laws of this country—as, for instance, the Contract Act, the Evidence Act, and the Civil Procedure Code—are as little open to the charge of technicality as any laws can possibly be. If, then, the complaints in this respect have any force, the blame must lie not with the law but with the Judges."

207. It is to be noted, however, that the measure introduced as a result of the Commission expressly set aside the ordinary Civil law in a large class of cases. The feeling against the action of the Courts has moreover been of late strongly represented in various provinces. For instance, Mr. Ibbetson, Deputy Commissioner of Rohtak in the Punjab, writes :—

Memo. of 7th March 1889. (A Pros., Dec. 1891, Nos. 10 and 11.

"I believe that the whole of our system of law and justice is *utterly* unsuited to the circumstances, necessities, habits and ideas of the people. It is a machine, and they do not understand machinery. I *know* that our Civil Courts stink in the nostrils of the peasantry; for the only thing they are certain of when they enter them is, that they will have to pay. The present generation remembers the times that preceded our rule and will endure a great deal at our hands; the next generation will not, and I believe that in the existence and continuance of our present system, we have the germ of political danger, the gravity of which can hardly be exaggerated. Many generations must pass away before education, in any effective degree, can penetrate beneath the surface of the masses; and meanwhile it is only adding yearly to the number of those who are able to avail themselves of the facilities and encouragement which we offer to the educated to oppress the ignorant. In England, though matters are now on the mend, the technicality and costliness of the higher Courts amount to a denial of justice to the poor; yet even there I believe I am right in saying that all the subordinate



Courts, civil and criminal, paid and unpaid, are *infinitely* less hampered by rule and technicality both in procedure and in the substantive administration of justice than are our far less highly trained Courts. I have not a word to say against the application of a law which only a lawyer can hope to understand to the merchants of Calcutta and Bombay. But we enact the same Codes for and impose the same procedure upon our High Courts and our Munsiffs. My heart burns within me when, as I go through the villages, I am appealed to daily, by persons suffering wrong who hope for relief at the hands of the "Sarkar" and am forced to tell them that their only remedy lies in the Civil Courts. They go away sadly either to endure the known wrong rather than the certain but unknown evils of a suit, or to borrow money, and having borrowed it, to suborn false witnesses and concoct a story by the dim light of their ignorance of our law, convinced that the plain truth will be rejected on some ground or other that they do not understand. And yet I know that in *many* (not all) of these cases, if I or any other reasonably honest and competent man went to the village and had out the brotherhood, he could get at the truth of the matter. What we want is, first powers to executive officers to pass summary orders so as to throw the burden of an appeal to the Courts upon the *primâ facie* wrong-doer, and then, in place of our Codes, a body of principles, the spirit rather than the letter of which should be binding upon us, a set of simple rules of procedure, and that no order should be upset for any defect whatever that did not involve substantial injustice to somebody or other. Righteous personal Government is what the people understand and like; and the way to keep it righteous is not to fetter the just official because his unjust brother cannot be trusted with freedom, but to remove without hesitation officers whose incompetency or corruption are notorious, though not perhaps capable of strict proof. It is easy to laugh at paternal Government. But a father is better than even the *justa novercа* with her bandaged eyes whom we have set up in his place. Injustice would doubtless be committed under the one system as under the other. But even if *more* than under the other, it is wiser and safer, and in the end more kind, to administer to a subject and ignorant people a little injustice that they do understand, rather than a great deal of justice that they do not. We should aim at making our rule as simple as are the people over whom we exercise it; and it is as a step in this direction far more than because of any very special conditions existing at present, in the part of the Punjab which I know, that I welcome the legislation which is now proposed."

and the Lieutenant Governor Sir James Lyall, after consulting his officers, sums up their views and his own as follows :—

Note of 26th June 1891. (A Pros., Dec. 1891, Nos. 10 and 11.) (*Sel.* p. 61.

"The opinions, both of Revenue and Judicial Officers, have almost all been given carefully and earnestly. They show a strong feeling of the existence either developed or commencing of a lamentable state of things, and even those officers who have least apprehension of political danger, who have least sentiment or repress it most carefully, and who are disposed to expect least advantage from radical alterations of law and procedure, virtually admit the great unsuitability of some parts of our legal system to the condition and circumstances of the agriculturists of the Province. On the other hand, there are a great many officers who feel that unsuitability so keenly as to find a difficulty, as Mr. R. Clarke says, in repressing intemperate language in writing about it. I have the advantage of knowing more or less well all the officers, European and Native, who have given opinions, and am able to judge of their weight even when they give them without full argument. There is great unanimity on certain points, but on other important ones the men of most weight are much divided. But from the whole body of opinions as well as from the statistics it may, I consider, be safely assumed to be proved that it is a fact, as we have already reported, that under the influence of indebtedness and of our present law and Civil Court procedure transfers of land are proceeding in all districts in an increasing ratio, and in many with dangerous rapidity, and that measures to check this process, so far as it is due to the action of our laws and Courts, are required throughout the Province. The fact that by a large proportion of these transfers the possession of the land passes from the old agricultural classes to men of the old commercial money-lending classes greatly increases the political danger of this state of things; but, on the other hand, even transfers from one agriculturist to another agriculturist so far as they are due to unsuitability of our law and Civil Court procedure to the condition and circumstances of the poorer agriculturists, are also a serious reproach to our system and tend to make our Government unpopular."

208. Similarly for the Central Provinces the Chief Commissioner, Sir A. Mackenzie gives his testimony as follows :—

Letter No. 915 S. of 25th July 1888, paragraph 9. (Fam., Dec. 1888, Nos. 1 to 24.)

"Mr. Mackenzie believes that every one acquainted with the life of villagers in these provinces will bear him out in the assertion that the Civil Courts are considered by them to

be gradually ruining them; and that this is in great measure the result of the Courts being used as a means for enforcing contracts, the terms of which are altogether repugnant to justice which have been entered into by people who were too ignorant or too foolish to understand them, or who were compelled to do so by previous embarassment. It has been one of Mr. Mackenzie's most painful experiences to be beset in every district through which he has marched, by unfortunate men, often of old yeomen stock, anxious to spread before him their little bundle of decrees and to tell the story of their ruin, in the fond belief that the 'Sarkar' could somehow help them and restore them to their ancestral fields. He finds suppliants of this kind sitting almost daily at his gate, many of them having walked for weeks to reach him. In all these cases—and he has enquired into many—there is the same story of folly and extravagance, then debt, then a decree for many times the original loan, then sale, and after that the heart-breaking hunting of the camps and footsteps of the higher officials who can do nothing but send the petitioner away as he came."

Letter No. 915 S. of 25th July 1888, paragraph 15.

And after reviewing the condition of the people in the Central Provinces, the same officer is forced to conclude:—

"If only more of the money which the provinces are receiving reached the producers and less was intercepted by money-lenders and middlemen, the condition of the people might be described as prosperous. But over them hangs the grip of the usurer and the shadow of the Civil Courts."

## The Deccan Agriculturists Relief Act.

209. The multiplication of business and the acknowledged value of the bulk of the Civil Law have operated to prevent any serious proposals for the general repeal of the Codes: but the unsuitableness of certain portions of the law, more especially those dealing with the evidence of debt, the interest to be awarded and the method of enforcing decrees, have led to various suggestions for the alteration of these portions. Between 1859, when the Code of Civil Procedure was first produced and the enquiries of 1876—1879, several changes were introduced into the Civil Law, some of which have already been alluded to (sections 66—70). But the first attempt to substitute over a considerable area a special procedure applicable to suits between money-lenders and agriculturists was that represented by the Deccan Agriculturists Relief Act of 1879.

By Mr. Gonne, Secretary to Govt., Bombay, see enclosure V to Punj. Govt. letter No. 231 of 7th Nov. 1888. (May 1891, Nos. 1 to 8.)

The chief provisions of this Act have been summarized as follows:—

(1) Suits against agriculturists for debt or for foreclosure or possession of mortgaged property, and suits by agriculturists for the redemption of mortgaged property are, within certain pecuniary limits, to be disposed of by Subordinate Judges subject to no appeal, but in lieu thereof to revision at the discretion of the Special Judge.

(2) The Courts are bound to inquire into the merits of every claim from its earliest origin and to make a debit and credit account between the parties according to certain prescribed rules which allow only of simple interest at such rate as may seem proper to the Court, notwithstanding any agreement of the parties as to interest or compound interest of taking the profits of mortgaged property in lieu of interest (sections 12, 13 and 14).

(3) If possible, no cases are to be heard *ex parte*. The defendant is to be made to appear and the history of the claim against him is to be investigated even though he may not dispute it (sections 7 and 12).

(4) In suits for redemption a decree is not to be refused merely on the ground that the time fixed for payment of the principal has not arrived, or that the mortgage debt has not been completely discharged (section 15 A).

(5) The Courts are empowered to direct that any debt found due shall be paid with or without interest by instalments (section 20). This power of ordering payment by instalments has been extended to payment in redemption or in avoidance of foreclosure or sale, or of delivery of possession of mortgaged property (sections 15 B and 15 C).



(6) Agriculturists are permitted to sue for an account in ascertainment of debt even when there is mortgaged property to be redeemed (sections 15 D and 16).

(7) No agriculturist can be imprisoned in execution of a decree for money, and no immoveable property can be attached or sold unless specifically mortgaged (sections 21 and 22).

(8) The Court can order the Collector to take possession of any surplus land not wanted for the support of the judgment-debtor and his family and work it for the benefit of the decree-holder for any period not exceeding seven years (section 22).

(9) An agriculturist owing Rs. 50 or upwards may claim to be declared insolvent, even though he has not been arrested or imprisoned, and though no order of attachment has issued against his property in execution of a decree (section 25), and he may be treated as an insolvent by the Court on its own motion, irrespective of his own wishes or the wishes of his creditors (section 19).

(10) The Court may, as under head (8), direct the Collector to manage the insolvent's surplus land for a period not exceeding seven years for the benefit of his creditors, whose claims will then be deemed to be discharged (sections 22 and 32).

(11) When the agriculturist's debts are under Rs. 50, and the Court is satisfied of his inability to pay that sum, it may direct payment of a portion and grant a discharge for the remainder (section 19).

(12) Government is empowered to appoint village Munsiffs with jurisdiction in cases not exceeding Rs. 10: decrees subject to no appeal, but to revision only on the ground of gross partiality or misconduct (section 34, etc.).

(13) Government is also empowered to appoint Conciliators for composing disputes to which an agriculturist is a party, before one of which Conciliators when appointed *every* plaintiff is bound to bring his claim with a view to settlement before it can be filed in Court. An agreement come to before a Conciliator is to be sent to the Subordinate Judge, who will file it as a decree if not protested against within a month. Should no agreement be come to, the Conciliator is to give a certificate to such effect to enable the plaintiff to sue. The Conciliators have power to compel attendance under section 8 of Act XXIII of 1886.

(14) Money-lenders are bound under penalty to give receipts, pass books, and statements of account.

(15) No bonds or other instruments, whether affecting moveable or immoveable property, and however small the value, are to be valid unless drawn up by village registrars (section 56).

(16) The period of limitation for suing on any registered bond (and all bonds must be registered) is extended from three years to twelve years (section 72).

By Act XXIII of 1886 the Deccan Agriculturists Relief Act may be extended to any district in the Bombay Presidency with the previous sanction of the Governor General in Council; standing crops are excepted from immoveable property; and additional facilities are given for the execution by agriculturists of leases required to be registered by the Registration Act.

210. Special enquiries were made into the working of the Act in 1884 and in 1888: and ultimately in December 1891 a Commission was appointed both to enquire afresh into the working of the measure and to advise as to the possible application of its principles elsewhere. The instructions of the Government of India ran:—

"It is not only with the object of deciding whether the Act shall be retained with or without modification, where it is at present in force, nor even whether it should be extended to other districts in the Bombay Presidency that the Governor General in Council seeks the assistance of the Commission. It will be their task also to examine how far the principles which may have approved themselves by experience in the Deccan are capable of extension to other provinces where a similar problem presents itself, and are likely to afford an adequate remedy for the evils there complained of."

211. The Commission submitted in August 1892 a report in which, besides suggesting certain administrative changes in the Bombay Presidency, they recommended (*a*) the retention of the Act, in an amended form, in the Deccan; (*b*) the passing of an identical Act, to be applicable to other places where a similar problem had presented itself; and (*c*) the alteration in certain respects of the ordinary Civil Law.

Taken from Government of India's Despatch, Leg. Department, No. 21 of 2nd May 1894, para. 2. (A. Sept. 1894, Nos. 43 to 46.) (*Sel.*, p. 148.)

212. The following were the chief recommendations made for the amendment of the Deccan Ryots Relief Act:—

"That the classification of suits should be revised, suits in which non-agriculturists alone are concerned, being out of place in the Act (section 3); that the summons in a case under Chapter II should not be for final disposal of the suit in every case in which it seems to the Court possible to dispose of the suit at first hearing, but that the appearance of the defendant should be obligatory in all cases (section 7); that the system of revision should be replaced by the ordinary law of appeal (sections 10 and 33); that the inquiry into the history of transactions with agriculturist-debtors should be confined to facts and not based on assumptions (section 12); that the provisions of section 13, which relate to the setting aside, with retrospective effect, of agreements to take the profits of mortgaged property without an account in lieu of interest, should be repealed; that reasonable interest should be allowed in every case where the sum decreed is payable in instalments, and that Courts should be empowered to vary instalments according to the varying circumstances of the judgment-debtor as ascertained after due examination (sections 16 to 18 and 20); that the amount of standing crop which is liable to attachment should be limited to one-half (section 22); that certain amendments should be made in the provisions of Chapter IV, which relate to insolvency; that village munsiffs (Chapter V) should be constituted under a separate Act; that if conciliation (Chapter VI) is retained, it should be provided for in a separate Act; that the system of registration by Village Registrars (Chapter VIII) should be abolished; that the law of limitation contained in section 72 should be modified by prescribing a period of three years for simple money or shop debts, as under the general law, and six years for suits on bonds or on account stated; and that the provisions of section 73, under which the decision of the Court of first instance that any person is or is not an agriculturist is final, should be repealed."

Letter No. 1477 of 8th March 1893. (A. Sept. 1894, Nos. 43 to 46.)

The opinion of the Bombay Government on the proposal of the Commission having been received in March 1893, it was decided by the Government of India that the Act should remain substantially as it stood in the four districts where it was in force. It was also decided, in opposition to the suggestions of the Commission, that no change should be made in the existing system of revision, or in the special agency maintained under the Act. In regard to the other important recommendations for the amendment of the Act discussed by the Commission and the Local Government, it was determined:—

See para. 4, Leg. Department Despatch No. 21 of 2nd May 1894. (*Sel.*, p. 149.)

"That section I should be amended so as to admit of the extension of the Act to any part or parts of a district other than the four to which it now applies; that the previous sanction of the Governor-General in Council to the extension of the Act should continue to be required, although the Government of Bombay have recommended that this provision be repealed: that the definition of agriculturist in section 2 should be amended as proposed by the Local Government; that the Act should not be restricted to agriculturist's suits only in the area to which it now applies, nor, if it is extended to other districts in the Bombay Presidency, should it be limited to agriculturists in those districts (section 3); that in cases under Chapter II, summons should be for final disposal as at present (section 7); that the law as to the investigation of the history of transactions with agriculturist-debtors should remain as it is (section 12); that the principle of section 13 should also be affirmed, with the addition of a proviso as proposed by the Government of Bombay, upholding agreements to take profits in lieu of interest and the assessment charges (subject to consideration by Select Committee); that section 15, which provides for a reference to arbitration in certain cases, and section 19, which gives power to discharge the judgment-debtor, should be repealed as they have been practically inoperative; that for the reasons given by the Local Government the provisions as



to instalments should not be altered (sections 16 to 18 and 20); that in view of the practical difficulties brought to notice, it is inexpedient to limit the liability of standing crops to attachment to one-half (section 22); that Chapters IV (Insolvency), V (Village Munsiffs), and VI (conciliation), for the amendment of which the Government of Bombay do not press, should be retained as they stand at present; that the periods of limitation provided by section 72 should be maintained in the localities where the Act is in force, but in cases where it is extended to a new area, the ordinary law should be retained; and that it is desirable to repeal section 73, under which the decision of the Court of First Instance as to the status of the defendant as an agriculturist or otherwise is final, and to leave the matter open to revision like any other finding of fact."

The further opinion of the Bombay Government was asked for as regards the compulsory attendance of the defendant (section 7) and the advisability of placing the Village Registrars under the District Officers, and meantime on the 29th March 1893, a Bill was introduced in the Legislative Council for effecting the desired amendments of the Act. The Bill is still under consideration.

### Special measures proposed elsewhere.

213. With reference to the Commission's proposal that the measure should also be introduced in other places where a similar problem had presented itself, it should be mentioned that previous to the appointment of the Commission in December 1891, letters had been received from the Central Provinces and from the Punjab in favour of special legislation in those two Provinces.

#### *Central Provinces.*

214. Proposals for the amendment of the ordinary law in the Central Provinces had been made as early as 1874. Mr. Justice West's pamphlet on 'Law and the Law in India' had then recently been published, and after obtaining the opinions of his officers, including Mr. Grant, Mr. Jones and Mr. Bernard, on the subject of the book, the Chief Commissioner, Mr Morris, had submitted to the Government of India certain proposals for meeting the increasing transfer of landed property in those provinces.

Among these proposals were the exemption of landed property from attachment and sale in execution of Civil Court decrees for debt and the non-recognition of debts on bond until they were certified in the first instance by the Deputy Commissioner. The Civil Procedure Code of 1877 was however passed without carrying into effect either of these suggestions.

The discussions on the Deccan Relief Bill led at suggestion of the Government of India to a consideration of the possibility of extending the summary jurisdiction of the lower courts and of introducing again the old village panchayat system, but the Chief Commissioner was of opinion that the true direction in which to seek reform was "not in abolishing the Courts, but in changing the law," and accordingly proposed a modification of the law of contract in respect to 'going behind the bond and fixing interest.'

Circular No. 6—266-274, dated 6th March 1879. (Home Department Sel. CLV of 1879, page 432.) Letter No. 4207-233, dated 17th October 1879, to Government of India (Home Judicial Pros., Aug 1882. Nos. 332 to 513.)

215. The subject was allowed to drop, but again attracted attention when an enquiry was made in 1888 under the orders of Lord Dufferin to ascertain the material condition of the poorer classes in India. In reporting the results of that enquiry, Mr. Mackenzie alluded in terms already quoted to the influence of the Civil Courts, and dwelt especially on the necessity for giving Courts equitable powers in dealing with contracts. The Chief Commissioner ventured "to urge very strongly on the Government of India the great necessity which exists here for legislation in the direction of the Deccan Agriculturists Relief Act (XVII of 1879) and the Jhansi Encumbered Estates Act (XVI of 1882)

Letter No. 915S. of 25th July 1888. (Pam. Pros., Dec. 1888, Nos. 1 to 24.)

to oblige Civil Courts in decreeing on contracts of mortgage or loans to go behind the letter of the contract and to enforce the payment of only so much as is warranted by the principles of justice." After further investigations as to the extent of the malguzari area alienated in the Central Provinces, the Chief Commissioner again addressed the Government of India in November 1889, forwarding, among other enclosures, a note from Mr. J. W. Neill, (afterwards President of the Deccan Commission) in which that officer doubted the capacity of the Courts to deal equitably with complicated contracts. On this the Chief Commissioner wrote :—

Letter No. 1466S-212, dated 11th November 1889. (A. May 1891, Nos. 9 to 14.)

Dated February 1889.

Para. 14 of letter. (*Sel.*, p. 78.)

"Mr. Neill doubts whether the Subordinate Civil Courts of these Provinces are competent to exercise the functions imposed on the special Courts established by those Acts But the Chief Commissioner never contemplated conferring these powers on all Courts indiscriminately. He would only empower specially selected officers, and he does not think there would be any difficulty in establishing at least one competent tribunal in each district."

Telegram from Secretary of State, dated 24th April 1890. (Page 2, notes to Pros., May 1891 Nos. 9 to 14.)

216. While these proposals were with the Government of India, the following question and reply in the House of Commons was reported :—

Mr. Bradlaugh :—To ask the Under-Secretary of State for India, whether any legislative action is being taken by the Government of India to provide for the great necessity existing in the Central Provinces of India for legislation in the direction of the Deccan Agriculturists Relief Act of 1879, and the Jhansi Encumbered Estates Act of 1882, to oblige Civil Courts decreeing on contracts of mortgage or loans, to enforce the payment of only so much as is warranted by the principles of justice :—

"Whether he is aware that indebtedness is everywhere increasing in the Central Provinces to such an extent that, unless relief in the direction indicated is found, the inevitable result will be the transfer to the money-lending classes of a very large portion of the land of these Provinces :—

And if no action has been taken, whether the Secretary of State will give instructions for a measure to be prepared and considered during the next session of the Viceroy's Legislative Council."

Reply to above—

"Sir F. Gorst said :—This is a matter in which the initiative must be left to the Government of India, and the Secretary of State has not yet heard of any legislative action being taken by them. Careful inquiries have, however, been made regarding the condition of the lower classes in the Central Province. The conclusions arrived at were that the agricultural classes were, generally speaking, very well off, but that a deplorable amount of indebtedness existed. A very large proportion of the cultivating classes has been thrown, by extravagance, into the money-lender's hand and is now practically at his mercy."

Telegram dated 24th November 1890.

With reference to the above, the Government of India explained that similar proposals from the Punjab were awaited, and that the whole subject would be considered together for Bombay, the Central Provinces and the Punjab.

217. Then came the appointment of the Commission in December 1891, and the receipt of their report in the ensuing summer. The report was at once despatched to Mr. A MacDonnell, who had succeeded Sir A. Mackenzie as Chief Commissioner of the Central Provinces, for his "general opinion as to the advisability of introducing in the Central Provinces an Act framed on the lines proposed in pages 76 and 77 of the Report." It was added that only a general expression of views was required such as would enable the Legislative Department to draft a measure which would be forwarded in due course. The Chief Commissioner consulted the Commissioner of Settlements, Mr. Fuller, who gave the following opinions :—

Government of India letter No. 2089—239, dated 16th September 1892. (A. May 1893, Nos. 18 and 19.)

(I) As regards landlords—

Memo. dated 29th September 1892. Para. 6. (*Sel.*, p. 108.)

"Cases of common present occurrence in the law courts show the expediency of so far



modifying the law as to protect the more ignorant malguzars (who are often the best managers of their villages) against being overreached in money transactions. If the ordinary law is not amended, malguzars might reasonably be given the benefit of a special enactment enabling the Courts to reduce unreasonable interest."

(II) As regards tenants (including malik makbuzas). Para. 11.

"The report of the Commission seems to show that the Deccan Ryots Act has not prevented a large increase in the number of ryoti transfers, but it seems clear that its operation has on the whole been beneficial to the ryots and affords a reliable basis for general legislation in the ryots' interests. The most valuable provisions seem to be those rendering obligatory the appearance of the defendant, enabling courts to revise mortgage contracts by which profits are taken without an amount in lieu of interest, prohibiting the sale of land in execution of simple money decrees, and empowering the courts to reduce exorbitant interest. Looking to the complicated character of the transaction between money-lender and ryot (advances being generally taken and repaid in numerous small instalments) I have doubts as to the feasibility of resolving them in court in the manner contemplated by sections 12 and 13 of the Act. But the measure deserves a trial."

And the Chief Commissioner himself, after declaring that the true form of relief so far as tenants were concerned seemed to him to lie in a restriction of the right of transfer, agreed unreservedly with the proposals of the Commission in the following terms :— Letter No. 170, dated 30th September 1892. (*Sel.* p. 106.)

"The Chief Commissioner has personally (he has not had time to consult local officers) carefully considered the proposals for legislation contained in pages 76 and 77 of the Commission's report, and he accepts each of them. He indeed considers them palliatives rather than remedies. But they all touch undoubted evils and good may be expected from their operation, more especially when the Local Courts are officered by men competent to deal with questions of intricacy.

Here the question for the present rests so far as the Central Provinces are concerned.

*The Punjab.*

218. The history of the Punjab proposals has run on somewhat different lines. Allusion has already been made to the evolution in that Province of the special arrangements in force for the protection of land from sale in execution.

Proposals for legislation in favour of an equitable treatment of interest and for an extension of the term of limitation were made as early as 1872 by Mr. Justice Melvill of the Chief Court and were considered by the Lieutenant-Governor Sir H. Davies, to be unnecessary. In 1879, again, the possibility of investing Subordinate Courts with summary jurisdiction and of revising the old panchayat system were discussed at the instance of the Government of India, and both proposals were negatived by the Lieutenant-Governor, Sir Robert Egerton, who however took occasion to add that a change in the law regarding the acceptance of bonds as evidence of the amount of debt would be very advisable. The proposal was not acted upon by the Government of India, but it was taken up and urged on the Punjab Government in an extended form in 1884 by Mr. Thorburn, Deputy Commissioner of Dera Ismail Khan, who suggested the following changes in respect of the law dealing with agriculturists :—

Resolution No. 4609, dated 23rd December 1874, Punjab Government Selections, new Series, XIII (1876).

Letter No. 4595, dated 17th September 1880, Home Department Proceedings, Judl., August 1882, 332—513.

Memo., dated 29th June 1884, p. 930. Punjab Financial Commissioner's Selections, New Series, No. 11-37, LXV.

(i) The abolition of imprisonment for debt.

(ii) The exemption from attachment (unless specifically pledged) of the land and of the cultivator's share of the produce or of a certain minimum.

(iii) The introduction of an improved insolvency law.
(iv) The introduction of rules regarding interest and of an order requiring Courts to ascertain the true principal.
(v) The extension of the period of limitation.
(vi) The exclusion of Legal Practitioners or their payment by the party that employs them.

Financial Commissioner's letter No. 489, dated 24th October 1884, ditto, p. 923. Punjab Government letter No. 507, dated 22nd May 1885, ditto, p. 955. See para. 4, Punjab Government letter No. 231, dated 7th November 1888. (*Sel.* p. 45)

The proposals received a partial support from the Financial Commissioner, Colonel Macmahon, and were under the orders of the Lieutenant-Governor, Sir C. Aitchison, forwarded to local officers for opinion. These opinions (confined mainly to proposals ii and v) were received, but no further action being taken, Mr. Thorburn in 1886 published a book called "Mussulmans and Money-lenders in the Punjab," in which he recommended (in addition to certain administrative changes) the following procedure for Civil Courts in dealing with cases of agriculturists (pages 142-3) :—

(*a*) Courts should examine the plaintiff before summoning the defendant;
(*b*) The real issues should be ascertained by oral examination of the parties in one another's presence;
(*c*) Courts should disregard elaborations of procedure, and give decisions according to equity, justice and good conscience;
(*d*) Courts should go behind bonds and separate interest from the principal due and decree only reasonable interest;
(*e*) Arbitration should be encouraged by restoring to the courts the power to modify awards by arbitrators;
(*f*) Courts should define the manner in which they recommend that decrees should be executed;
(*g*) Sales in execution of decrees should be conducted with more consideration; and
(*h*) Agriculturists should not be summoned to court at harvest times.

And the following alterations in substantive law :—

(1) Exemption of all necessaries from attachment and sale in execution of a decree—page 144;
(2) Exemption from imprisonment for debt of honest insolvents—page 145;
(3) Extension of the period of limitation—page 147;
(4) The keeping of accounts in a business-like manner—page 149;
(5) Extension of compulsory registration of bonds over R 49—page 150;
(6) Exclusion of legal practitioners from the Courts of Munsiffs and Tahsildars—page 152.

Despatch No. 27, dated 24th March 1887. (A. May 1887, No. 33.)

The book attracted the notice of the Secretary of State, Lord Kimberley, who addressed the Government of India as follows: "Experience in other parts of India sufficiently shows the very great importance of the questions with which Mr. Thorburn deals, and I shall be glad therefore if Your Excellency should see fit to request the Lieutenant-Governor of the Punjab to give the subject his early and attentive consideration and report his conclusions for my information."

Letter No. 231, dated 7th November 1888. Paragraph 17. (A. May 1891, Nos. 1—8.) (*Sel.* p. 58)

219. The Local Government was accordingly addressed, and in November 1888 the Lieutenant-Governor, Sir James Lyall, replied. The Lieutenant-Governor was not in favour of the administrative changes suggested by Mr. Thorburn, but expressed views generally in favour of the changes proposed in the Civil Law and promised to submit a more matured reply on receipt of further opinions from local officers.

"Sir James Lyall," it was said "as at present advised, intends to seek the opinions of the Judges of the Chief Court and of the Revenue Officers of the Province as to whether action is necessary or desirable on various points discussed in the present communication. On all of these points the present views of the Lieutenant-Governor have been briefly indicated; and if on further consideration His Honour sees reason to retain them, he will ask permission of the Government of India to submit a brief draft of an Agriculturists Relief Act for the Punjab. The general lines on which this Act is likely to be framed must be clear, His Honour thinks, from a perusal of the present correspondence. The body of the Bill would apply to the whole Province, and would consist (1) of certain alterations of provisions of the Civil Procedure Code to apply to suits against agriculturists; (2) of sections empowering the Local Government to appoint Village Munsiffs and Conciliators and prescribe rules of procedure; and (3) of certain alterations of the Limitation Law and rules as to legal practitioners' costs. But in addition to these general provisions the Bill would probably contain stronger provisions like those in Sections 12 to 14 of the Deccan Agriculturists Relief Act, to be applicable to certain tracts or classes only when formally applied by the Local Government with previous consent of the Government of India."



Letter No. 563 S., dated 25th August 1891. (A. December 1891, Nos. 10—11.) (*Sel.* p. 59.)

220. A voluminous body of opinions were received and were forwarded to the Government of India in August 1891, together with notes by the Judges of the Chief Court and the Financial Commissioners and a memorandum by Sir James Lyall. The Lieutenant-Governor adhered to his previous view that an Act on the model of the Deccan Ryots Relief Act was required for the Punjab and sketched the outlines of such an Act as he would suggest. The points on which the Punjab measure should in the Lieutenant-Governor's opinion differ from the Deccan Act may be summarized briefly as follows :—

Omit Section 2A and make the Act applicable to the whole Punjab.

Deccan Act, Chapter I.

Power should be taken to confer the powers of a Subordinate Judge of the 2nd class on Munsiffs of the 1st or 2nd class and on Special Judges and Benches. Such powers not to be exercised in suits for rent or damages. Assistant Munsiffs to be appointed.

Chapter II.

Chapter III. Section 12. Enquiries into the history of transactions not ordinarily to go back beyond a registered bond, but an addition to be made to the Contract Act declaring undue influence to be exercised in cases where "a person obtains a grossly unfair advantage from a person who is ignorant and improvident, or hard pressed by debt or want."

Section 14. Limitation of Interest. Add a proviso "Provided that the Court shall not, except for special reasons to be recorded, award under this clause a higher rate of interest than 12½ per cent. per annum on cash and 25 per cent. or one-fourth per annum on transactions in kind."

Section 15. Reference to Arbitration. Omit all but first clause and modify that so as to allow arbitration in certain cases to be conducted under the procedure of the Punjab Land Revenue Act instead of that of the Civil Procedure Code.

Sections 15B and 15C. In cases of default in instalments decreed in mortgage, suits for redemption, foreclosure, sale and possession, the Court should be allowed to transfer the mortgage to the persons entitled to presumption.

Section 19. Omit.

Section 20. The Court of execution should have power to revise orders passed regarding instalments. The Court to be able to fix upset prices for sales of movables; the Local Government to be able to order transfer of sales of cattle to Revenue authorities; and Courts of execution to be given discretion in recognizing payments out of Court (Section 258, Civil Procedure Code).

Section 21. Exemption from imprisonment not wanted; but the Court to be allowed to hold unwillingness to sell ancestral or self-cultivated land as inability to pay under Section 337A, Civil Procedure Code.

Section 22. Exemption of immovable property from attachment and sale need not extend beyond ancestral property.

Chapter IV. (Insolvency.) Substitute a chapter declaring that no agriculturist debtor shall be pronounced insolvent under Chapter XX, Civil Procedure Code, except on his own application, and claim due shall be investigated as in Sections 12—15 above, also further provisions in modification of the Insolvency Procedure laid down in the Punjab Laws Act (IV of 1872).

Chapter V. (Village Munsiffs.) A chapter should be inserted, founded on this chapter and on the Madras Act, leaving a good deal to rules to be framed by the Local Government. The system to be tried tentatively.

Chapter VI. (Conciliators.) Also to be tried experimentally.

Chapter VII. (Supervision and Revision.) For 'District Judge' substitute 'Divisional Judge' and make necessary reorganisation of the staff.

Chapter VIII. (Village Registrars.) Omit.

Chapter X. (Legal Practitioners.) For Section 69 substitute a section prohibiting the appearance of pleaders, etc., in any suit under Rs. 100 in value before a Subordinate Judge or Munsiff, and prohibiting their fees being made costs in Munsiffs' Courts.

Section 70. (Mortgages, etc., to be written.) Requires further consideration.

Section 72. (Limitation.) Omit the clause allowing twelve years for a registered instrument or reduce the term to nine years.

Add in this chapter (XI. Miscellaneous) a provision requiring day books and ledger to be properly kept and declaring that balances struck and signed in an account book do not require to be stamped.

Also repeal as against agriculturists the words in Section 256, Civil Procedure Code, which allow immediate arrest of the judgment-debtor.

Also allow the Local Government to exempt agriculturists from attendance in Court during spring harvest, to reduce institution fees in certain areas where parties agree at first hearing, and to remit institution fees on suits for redemption.

Such very briefly were Sir J. Lyall's proposals; they are accompanied in the original with an account of the reasons on which they are based and of the development of the existing law in the Punjab on the various points mentioned. The forwarding letter (*a*) points out that the proposals are in the main a return to the law of 25 years ago, (*b*) deprecates strongly any attempt to frame a single Act applicable both to the Punjab and to other provinces, and (*c*) defends the proposals against objections raised on general grounds of political economy. In conclusion, the Lieutenant-Governor asked for early leave to assemble a committee of Punjab Officers to draft a bill on the above lines.*

221. The appointment of the Deccan Commission led to a postponement of the consideration of the letter, and the Commission's Report, when received in 1892, was found (as above noticed) to contain a proposal that a single Act should be framed which should be applied at discretion to areas outside the Bombay Deccan. The Punjab Government were at once asked in September 1892 whether, after perusing the recommendations of the Commission, Sir Dennis Fitzpatrick had any general observations to offer regarding the advisability of introducing legislation on the lines suggested by the Commission and by Sir James Lyall.

Letter No. 2088—238, dated 16th September 1892. (A. May 1893, No. 21.)

Before a reply was received, a proposal was made in this Department that Sir E. Buck, the Secretary of the Department, should be deputed to consult with the various Local Governments on certain aspects of the question of agricultural indebtedness, and while the proposal was still under consideration it was decided in October 1893, in demi-official correspondence with the Punjab Government, that pending further instructions no action should be taken towards replying to the letter of September 1892. Subsequently the proposed deputation of Sir E. Buck was negatived by the Secretary of State in December 1893, but no further action has been taken to obtain the opinion of the Punjab Government regarding legislation, and Sir James Lyall's letter of August 1891 remains practically unanswered.

Despatch No. 79, dated 1st November 1893, to Secretary of State. (General Pros., November 1893, No. 61.)

Demi-official letter No. 2512, dated 11th October 1893.

Despatch No. 162, dated 14th December 1893.

* The extent to which a special Act would affect civil justice in the Punjab may be estimated from the fact that some 43 per cent. of the total number of suits in that province are between agriculturists and money-lenders. (See Civil Justice Reports.)



222. With reference, therefore, to the second of the Commission's proposals alluded to in paragraph — above, *viz.*, the enactment of a measure applicable primarily to the Deccan, but liable to be extended if required to other areas, the situation is this:—

(*a*) The existing Act is being revised with reference to the purely local needs of the Deccan.

(*b*) The Chief Commissioner of the Central Provinces has agreed to accept an Act on the lines laid down by the Commission, and the Government of India have intimated their intention to forward a draft bill for approval, but have not yet done so.

(*c*) The Lieutenant-Governor of the Punjab has submitted a sketch of a bill for his province and has asked for leave to have a bill drafted by a Local Committee; but no action has been taken by the Government of India on this proposal.

(*d*) As regards special legislation for other provinces no action at all has been taken.

It will be seen from Mr. Hewett's note of 30th July 1894 that action on points (*b*), (*c*) and (*d*) is being deferred till the results of the further enquiry now in progress (*i. e.*, the questions raised in Home Department's letter of 4th June 1894—see paragraphs 224 (*vi*) & (*vii*) below—and the investigations regarding transfer, etc.) have been ascertained.

Pros. A. Rev., Nos. 43—46, Sept. 1894.

A April 1894, No. 1.

## Proposed Changes in the ordinary Law.

223. We may turn now to the third proposal of the Deccan Commission, namely, that certain changes should be made in the ordinary law. The changes proposed by the Commission were:— Report, page 7.

(*i*) The constitution of Village Munsiffs under a separate Act.

(*ii*) The constitution of Conciliators (if conciliation is retained) under a separate Act.

(*iii*) Some modification of Section 337A of the Civil Procedure Code so as to prevent it from being used to defeat the intention of Section 266, Civil Procedure Code.

(*iv*) Some amendment of Section 525, Civil Procedure Code, and of the Registration Act so as to prevent the abuse of the arbitration procedure.

(*v*) The alteration of the period of limitation in suits on bonds and accounts stated to six years.

(*vi*) The amendment of Act XXVIII of 1855 so as to give the Court the equitable power of reducing unconscionable interest: and of the Contract Act so as to make contracts voidable when a creditor has taken undue advantage of the simplicity or necessities of his debtor.

(*vii*) The amendment of the Evidence Act so as to throw, when the parties are not on an equality, the burden of proving the consideration for, and the good faith of, the transaction on the party possessing the advantage.

224. The following explains the present state of the case under each head:—

Paragraph 45, Government of India Resolution No. 17, dated 20th November 1891. (A. Sept. 1893, Nos. 46—49.)
Paragraph 55, Commission's Report.
Paragraphs 15 and 24, letter No. 1477, dated 8th March 1893. (A. September 1894, Nos. 43—46.)
Paragraph 4, Leg. Department Despatch No. 21, dated 2nd May 1894. (A. Sept. 1894, Nos. 43—46.) (*See* p. 149).

(*i*) The employment of Village Munsiffs and Conciliators being intended primarily to relieve the Courts of work, this branch of the subject has no direct bearing on agricultural indebtedness and it was for that reason suggested that the provisions of the Deccan Act regarding Village Munsiffs should, with some modification, be relegated to a general Act. The Bombay Government were however in favour of retaining the sections in the Deccan Act pending general legislation, and in this view the Government of India have concurred. A tentative measure of the kind has lately been introduced in the North-Western Provinces, but it is not known whether any steps towards general legislation are contemplated.

N.-W. P. Act III, 1892.

(*ii*) A separate Act regarding conciliation was advocated on the same grounds as in the case of Village Munsiffs, but, as the Bombay Government was not in favour of any alteration of the Deccan Act in this respect, the provisions of the Act were allowed to stand, and it is not known if separate general legislation on this head is contemplated or not. Sir P. Hutchins was not in favour of such legislation.

Para. 56, Report.
Para. 16, letter No. 1477, dated 8th March 1893.
Para. 4, Leg. Dept. Desp. No. 21, 2nd May 1894.
See note of 14th May 1893, in Home Dept. Pros., June 1894, Nos. 329—364 (Judicial).

(*iii*) Section 337A of the Civil Procedure Code allows a Court to refuse or cancel the arrest of a judgment-debtor if he is 'unable to pay' the debt; but as long as the property exempted from attachment by Section 266 is available the debtor is technically 'able to pay,' so that Section 337A may be interpreted so as to defeat the exemptions allowed by Section 266. The Bombay Government declined to express an opinion on the Commission's proposal to alter Section 337A till the precise change was indicated. The Home Department were ready to exempt agriculturists from arrest, subject to section 337A (2), but the Legislative Department had 'grave doubts' on the subject, and the matter seems to have gone no further.

See para. 50, Commission's Report, and para. 4, Sir James Lyall's memo. dated 26th June 1891. (December 1891, Nos. 10—11.) (*See* p. 64.)
Para. 24, letter No. 1477, dated 8th March 1893.

(*iv*) The object of the proposed changes in Section 525, Civil Procedure Code (regarding the filing of awards in cases referred to arbitration without the intervention of the Court) and in the Registration Act was to prevent collusive and unfair awards entered into outside the Court, and the consequent avoidance of registration. The Bombay Government deferred giving an opinion on the point till the general question of conciliation was settled. The Home Department appear to have been in favour of calling for opinions on the proposal, and the Honourable Member in the Legislative Department, though *primâ facie* opposed to it, was ready to have the proposal discussed.

Conspectus in K.-W. Home Department Proceedings, June 1894, Nos. 329—364, p. 19.
Paragraph 58, Commission's Report.
Paragraph 74, letter No. 1477, dated 8th March 1893.
See Conspectus in K.-W. Home Dept. Pros., June 1894, Nos. 329—364, p. 29, and Sir P. Hutchins' note of 14th May 1893.

(*v*) The Commission saw objections to the existence of a special limitation law in the Deccan, and while willing to retain the three years period for simple money or shop debts, desired to fix the period for suits on bonds or on account stated (arts. 64, 66, 67 and 68, of the second schedule to the Limitation Act) at six

Paragraph 62, Report.



years throughout India. The majority of the Bombay Government were against changing the Deccan law and desired to await a practical demand for an alteration of the period elsewhere before amending the general law. The Government of India determined to leave the Deccan periods undisturbed in the localities where the Act is in force, but to retain the ordinary law in any new areas to which the Act might be extended. From the opinions given by the Honourable Members of Council it appears that there is no intention to suggest elsewhere the general extension of the ordinary period, but this is not definitely stated, and there is a good deal of local opinion in some areas in favour of an extension of the period of limitation.

Paragraphs 18 and 24, letter No. 1477, dated 8th March 1893.
Paragraph 4, Despatch No. 21 (Leg. Department), dated 2nd May 1894. (*See* p. 149.)
Conspectus in K.-W. Home Dept. Pros. June 1894, Nos. 329—364, p. 41.
See as regards the Punjab, Sir J. Lyall's proposals, para. 220 above.

(*vi*) In connection with the proposed grant of discretion to the Courts in the reduction of excessive interest, allusion has already been made to the suggestions put forward by the Chief Commissioner of the Central Provinces in 1888-89 and by the Lieutenant-Governor of the Punjab in 1891 with regard to their respective Provinces. The second section of Act XXVIII of 1855 (an Act for the repeal of the Usury Laws) declares that "in any suit in which interest is recoverable the amount shall be adjudged or decreed by the Court at the rate (if any) agreed upon by the parties." The terms of the Act were so definite that the ordinary Courts in spite of certain rulings to the contrary were understood to be often under the impression (*a*) that the Act did away with the Hindu laws as to interest, and (*b*) that it prohibited the Court from taking into consideration the possibility of coercion, undue influence, fraud or misrepresentation,—factors which under Chapter II of the Contract Act render ordinary agreements void. Moreover, there was considerable doubt as to whether by taking undue advantage of a debtor's simplicity or necessities, the creditor was technically making use of coercion, undue influence, fraud or misrepresentation. The Government of India in their Resolution of 1891 specifically suggested to the Commission the amendment of the Act of 1855, and the Commission in their report recommended that "the law should be clear—that agreements to pay interest are voidable on the same grounds as those on which other contracts are voidable; and that the Contract Act should be amended so as to include in those grounds the taking of undue advantage of another's simplicity or necessities." In this view the Government of Bombay agreed, and the Government of India in June 1894 consulted the Local Governments on these proposals. The replies of the Local Governments are still awaited. In the meantime, it may be noticed, a private Bill was introduced in the Indian Legislative Council on the 7th, March 1895, by the Honourable Mohini Mohun Roy for regulating the interest awarded by Courts on simple money debts and mortgage debts.

Para. 215 above, Para 220 above.
Paragraph 36, Resolution No. 17 Judicial 1497—1502 (Home Department), dated 20th Nov. 1891.
Paragraph 41, *ad fin.*
Letter No. 5—(Judicial 607-615 Home Department) dated 4th June 1894.

(*vii*) The last proposal of the Commission regarding the onus of proof was also suggested by the Government of India in 1891.

Paragraph 37, Res. No. 17. Jud. 1497-1502 (Home Dept.), dated 20th Nov. 1891.

"It was proposed to add a proviso to Section 92 of the Evidence Act empowering the Court to require from the plaintiff other evidence if it suspected the written agreement of specifying other consideration than that which had actually passed. An addition also was contemplated to Section 111 enabling the Court to require proof of the transaction being entirely *bonâ fide* from

See paragraph 3, Government of India letter No. 5, Judicial 607-615 (Home Department), dated 4th June 1894. (*Sel.* p. 151.)

that party who had a decided advantage over the other at the time of the agreement. The Government of India added that no Court should be required to go behind a bond or to open up the past history of a transaction, until some unfairness or inequality had been established or at least made probable. The Special Commission supported (paragraph 40 of their report) these proposed changes in the general law, observing that the principles which they desired to see recognized were that, where the parties to a contract or transaction were not on an equality, the burden of proving not only the good faith of, but also (where it is not admitted) the consideration for the contract or transaction should rest on the party possessing the advantage, and that in the case of written contracts the Court should be empowered to require the party possessing the advantage to prove the consideration by evidence independent of the document. These amendments of the law were also approved by the Bombay Government in paragraph 24 of its letter No. 1477, dated 8th March 1893, submitting observations on the recommendations contained in the Report of the Special Commission."

This proposal also was circulated to the Local Governments for opinion in June 1894 and the replies of the Local Governments are still awaited.

225. It is a question how far these general changes will render unnecessary the initiation of any special laws for provinces outside Bombay (see paragraph 222 above). If passed into law, these changes will practically meet the demands of Sir A. Mackenzie for the Central Provinces, but they will not cover the same ground as the measures demanded by Sir A. MacDonnell for the Central Provinces or by Sir J. Lyall for the Punjab.

## Defects in the Civil Law.

226. From the account above given of the changes made or proposed in the Civil Law it will be gathered that the Civil Law, in areas where the agricultural population is much in debt, presses hardly on the agricultural debtor in two ways:—

(*a*) It often prevents the Court from getting at real facts and from restricting its decrees to reasonable amounts.

(*b*) It often requires the Court, in realizing the amounts decreed, to inflict unnecessary hardship on the judgment-debtor.

### (i) The decision of claims.

227. With reference to the former class of defects in the existing law it will be sufficient to refer to the facts (i) that they are to a large extent met in the four Deccan Districts by the Relief Act of 1879, as modified or about to be modified; (ii) that an Act similar in this respect to the Deccan Act is said on good authority to be wanted for the Central Provinces and Punjab, (iii) that proposals for amending the general law of the country have been made by the Deccan Commission of 1891 and that some of these which affect important items in this class of defects, are now under the consideration of Local Governments. These matters only directly affect the main subject now



under review, *viz.*, the transfers of land due to indebtedness, and are being or will be fully dealt with in the Home Department of the Government of India.

### (ii) The Execution of Decrees.

228. The transfer of land is more directly affected by the defects in the existing law of execution, and this branch of the subject may be noticed somewhat more fully.

An attempt has been made in paragraphs 74 to 78 above to state how the general law at present stands on this point, and a reference to those paragraphs is solicited.

229. The chief particulars in which the Deccan Act of 1879 differs from the general law regarding execution are:—

(*a*) In the case of decrees against an agriculturist for less than R50 the Court may discharge the debtor on payment of a part only of the whole debt. (This having proved inoperative, it is now proposed to repeal the Section). — Act XVII, 1879, Section 19.

(*b*) The Civil Procedure Code (section 210) allows instalments after decree only with the consent of the decree-holder, but this consent is not required under the Deccan Act in the case of an agriculturist. — Section 20.

(*c*) No agriculturist may be imprisoned in execution of a decree for money. — Section 21.

(*d*) The land of an agriculturist, unless specifically mortgaged, cannot be sold in execution, but any surplus land not required for his sustenance may be transferred to the Collector for management for a period not exceeding 7 years. — Section 22.

(*e*) A special insolvency procedure is provided for, under which subordinate Courts have insolvency powers; a decree-holder may not apply for a debtor to be declared insolvent; an agriculturist may apply though he is not arrested nor is his land under attachment; the amount of debt is equitably ascertained; land does not vest in the Receiver, and so forth. — Chapter IV.

230. The Deccan Commission recommended the inclusion of the following provisions in any Relief Act framed for other parts of India:— — Report, paragraph 77.

(i) The Court should have enlarged powers of ordering payments by instalments (Section 20).

(ii) No agriculturist should be liable to arrest or imprisonment in execution of a decree for money (Section 21).

(iii) A special insolvency procedure should be provided.

(iv) The immoveable property of an agriculturist (other than half his standing crops) should be exempted from attachment unless specifically pledged: but the Court should have the power to assign for a certain period the produce of any land not required by the debtor for his support, for the benefit of the creditor (Section 22).

231. We may now take up these proposals in conjunction with proposals received from other sources, with a view to considering the possibility of their being introduced either in the ordinary law or in Special Relief Acts passed for limited areas. — Para 51, page 53.

(i) No proposal seems to have been made for introducing into the general law an arrangement allowing *instalments* to be fixed after decree inde-

pendently of the decree-holder: but this arrangement, so far as concern cases in which agriculturists are concerned, has been accepted among others for the Central Provinces, and Sir James Lyall noting on the subject in connection with special legislation for the Punjab has written :—

Chief Commissioner's letter No. 17 C., dated 30th September 1892.

Para. 10 of Note of 26th June 1891. (*See* pp. 105 & 66.)

"Section 20, giving power to fix instalments in execution is, I think, much wanted in a Punjab Agriculturist Relief Act, as is held by the great majority of Punjab Officers, Revenue and Judicial. The power should be not only to fix instalments where none were fixed by the Court of decree, but also to revise instalments fixed by that Court; but, in the latter case, and in the case when the Court of decree had refused in writing to fix instalments, the Court of execution should record its reasons for revising or allowing instalments after hearing both parties and recording their statements. The Court of execution should also be allowed to revise, for reasons given, any order passed by the Court of decree or by itself to effect that if any one or more instalments are not paid on due date the whole decree money will be recoverable at once."

The following proposals are also made by Sir James Lyall :—

"After the above section I think we should want in our Act another section (1) directing the Court of execution to fix an upset price on cattle and other moveable property of agriculturists attached and to release the property absolutely or on security if that price was not bid at auction; (2) empowering the Court with consent of the debtor after the upset price was fixed instead of proceeding to auction to require the decree-holder to take the property at the upset price under penalty of either (*a*) auction at his risk to the extent of the difference, if any, or (*b*) release of the property from attachment at his cost. The opinions of most officers are in favour of some provisions of this kind. The Court might be directed to fix the upset price as near as might be 2 annas in the rupee or 12½ per cent. below the estimated full value. The price to be fixed by arbitrators if either of the parties objected to the valuation of the Court or of the officer deputed by the Court.

The section might also empower the Local Government to direct, with regard to any district or tract, that proceedings for attachment and sale or sale of agriculturists' cattle should be transferred to the Revenue authorities for execution. This is already the rule in the Punjab as regards all sales of agricultural land and standing crops in execution of decree.

Another section is also, I think, wanted in this Chapter modifying Section 258, Civil Procedure Code, by giving Courts of execution discretionary power to admit evidence as to and recognize uncertified payments out of Court in the case of illiterate agriculturists presumably ignorant of the law, and also imposing on decree-holders under penalty the duty of certifying all payments. The law as it stands is too advanced for the mass of agriculturists and should be made looser."

232. (ii) The general question of the abolition of *imprisonment* for debt came to the front in 1888, and the result was the passing of Sections 245A and 245B of the Civil Procedure Code, which forbid the arrest of a woman and give the Court power to call on the debtor to show cause before actual arrest. The Deccan Act of 1879 forbids the imprisonment of an agricultural debtor, and it has several times been proposed to introduce a similar provision elsewhere: *e.g.*, in the Punjab by Mr. Melvill in 1874 and Mr. Thorburn in 1884.

Act VI, 1888, Section 2.

Sec. 21.

Paragraph 18, Minute dated 1st April 1874, Punjab Selns. XIII (1876).

Although the number of agriculturists imprisoned for debt is believed not to be large, it is urged that the threat of imprisonment often leads debtors to make worse arrangements out of Court than would have been made by judicial process against their property. Sir James Lyall, however, considered that the proposal went too far, so far as the Punjab was concerned, and suggested merely the alteration in the general law alluded to in paragraph 220 above. The Deccan Commission of 1891 were of opinion that the exemption from imprisonment in the Deccan, being but rarely abused, should not only be retained in the Deccan, but should also form part of Relief Acts elsewhere: and

Paragraph 26, Note of 29th June 1884, page 947, Fin. Com. Selns. New series, No. 11, 37, LXV.

Paragraph 11, Memo. of 26th June 1891. (*Sel.* p. 67.)

Report, paragraph 50.

Report, paragraph 77.



this proposal (among others) was accepted for the Central Provinces by Sir A. MacDonnell in 1892.

Letter No. 17C., dated 30th September 1892. (*Sel.*, p. 105.)

233. (iii) It is believed that agriculturists nowhere commonly resort to *insolvency* proceedings, but it has been urged that such proceedings as are applicable to them should be less stringent than those laid down in Chapter XX of the Civil Procedure Code, more especially as regards (*a*) the equitable ascertainment of claims, and (*b*) the exemption from sale in insolvency of the same assets as are exempted in execution. The changes recently proposed in the Evidence Act would, it is understood, lead to a change in the former direction: but the latter defect still remains. The Deccan Act reserves from the purview of the Receiver the whole immoveable property of the insolvent and allows the Court to entrust any surplus land to the Collector for temporary management: an arrangement of which the principle has been accepted by the Commission, and by the Chief Commissioner of the Central Provinces, as regards those provinces. The procedure suggested by Sir James Lyall for the Punjab is :—

Section 29.

Report, paragraphs 54 and 77. Letter No. 17C., dated 30th September 1892.

Paragraph 13, Note of 26th June 1891. (*Sel.*, pp. 105 & 69.

"I would have a Chapter with sections declaring that no agriculturist judgment-debtor shall be declared insolvent under Chapter XX of the Civil Procedure Code except on his own application to be declared insolvent under that Chapter; and that if the Chapter is applied at his request, the Court in determining under Section 352 of the said Code the amount of any claim of the nature referred to in Section 12 of this Act (the Punjab Agriculturist Relief Act) due by an insolvent agriculturist shall proceed in the manner prescribed by Sections 12 to 15 of this Act, both inclusive. Other sections should refer to the Insolvency provisions of the Punjab Laws Act, and should declare (1) that proceedings under them against agriculturist debtors shall be held in the Courts of Revenue Officers only; (2) that such Courts in inquiring into the amount of any claim against an agriculturist debtor of the nature referred to in Section 12 of this (Punjab Agriculturist Relief Act) Act shall proceed in the manner prescribed by Sections 12 to 15 of this Act, both inclusive; (3) that the Court may refuse to sell any or all of the agriculturist insolvent's ancestral land or buildings, and may, instead thereof after excluding land and buildings required in his opinion for the support of the argriculturist and the members of his family dependent on him, manage the rest for the benefit of the creditors by letting them on lease or making them over to the creditors on usufructuary mortgage for terms not exceeding 20 years; on the expiry of such terms of lease or mortgage the liability of the said lands or buildings or their rents or produce for the balance of the debt, if any, to be extinguished; (4) as in Section 31, Deccan Agriculturists' Relief Act."

234. (iv) Under this head we may consider all the main proposals made for the restriction of the *attachment and sale* of property.

As regards *moveables*, the agriculturists' "implements of husbandry and such cattle and seed grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such" are already exempt. Proposals to exempt manure milch-cattle and brood mares of agriculturists were made in 1892, but were abandoned after consultation with the Local Governments: and no further proposals of this nature appear since to have been made.

Section 266, Civil Procedure Code.

Circular No. 31—26 of 20th July 1893. A. Proceedings 34—45, July 1893. (Horse-breeding and Agricultural Stock.)

235. With regard to *immoveables*, it may be premised that the following paragraphs relate only to cases in which sale is ordered in satisfaction of a debt not specifically secured: the restriction on the sale of land in satisfaction of debts secured on the land is practically a restriction on private mortgages,

and will be more conveniently dealt with in treating (paragraph 293) of proposed restrictions on mortgages.

It will be convenient to consider in succession the possibilities of extending the principles of (*a*) Section 266, (*b*) Section 320, and (*c*) Section 327.

(*a*) *Section 266, Civil Procedure Code. Exemptions from attachment.*

236. Section 266 already exempts from attachment and sale "the materials of houses and other buildings belonging to, and occupied by, agriculturists," but it has from time to time been proposed to include among the exemptions conceded by this section the exemption of a certain area of agricultural land in each property. The proposal applies primarily to the provinces of small proprietors, and it is one of those put forward by Mr. Thorburn in the Punjab in 1884. It is described by Mr. F. D. Cunningham, Deputy Commissioner of Hazara, in the Punjab correspondence as a proposal for "the exemption from sale or attachment in execution of a decree of such a holding as may be fixed for each district and class of soil to be the smallest on which one average peasant's family can exist." A slight modification of the same proposal came from Mr. Benton, District Judge of Peshawar, who wrote:—

Financial Commissioner's Selections, new Series, No. 11, 37, LXV, page 97.

Letter No. 2, dated 2nd January 1889, para. 4.

Letter No. 8 of 14th January 1889, para. 19.

"The measures which I should consider expedient would very much depend on the urgency established by the inquiries which I have above suggested. If it appeared necessary I would suggest that a certain modicum of land sufficient to maintain an average peasant and his family should be fixed for each district, due regard being had to variety of soil and advantages, and that it should be enacted that, while the land-owner was free to sell or mortgage his last acre, his holding to the extent just mentioned should not be attached in execution of decree for debt, save to recover a sum equal to the value of the net profits for three years or some similar short period. This enactment might be justified as a suitable extension of previous legislation exempting from attachment the tools of artisans, plough-cattle, seed-corn, and other necessary elements of production. While it would not abolish the land-owner's credit, it would undoubtedly reduce it, which is, I consider, a very desirable object. It would, I think, be beneficial, inasmuch as it would be a reserve against want for the ignorant and improvident peasant, of which he could only be deprived by his own express act. It would give him a last standpoint which he might successfully defend if so disposed."

As a matter of fact, in the Punjab it is the practice in dealing with applications for sale under Section 327 to provide for a minimum reserve of the nature described.

See paragraph 44, Mr. Elsmie's Note of 15th August 1889. (A, December 1891, Nos. 10—11.)

The system is the same as that represented by the 'Homestead Laws' of America, specimens of which are quoted in a subsequent part of this note. And in this connection it may be observed that Sir George Campbell has expressed a doubt "whether it was desirable at once to give to the ryots complete permanent property without any homestead law, such as in America and elsewhere protects homesteads from sale." The principle of the homestead law is accepted in Section 22, Clause 2 of the Deccan Ryots Relief Act, under which the management of the debtor's profit by the Collector is confined to such area as is not required for the support of the debtor and his family. And, although the extreme variations of season in certain areas may prove an obstacle, it is perhaps worth considering whether the homestead principle could not form a part of the general law.

Appendix IV.

Autobiography, Vol. II, page 129.

237. Another proposal is the extension of Section 266 to the whole or a part of the standing crops. It was represented in 1873-74 by Mr. W. B. Jones, Commissioner of Nagpore, and it has frequently been pointed out since, "that a landholder whose standing crops and farm produce are constantly

Home Department Selections, CLV, page 358.



attached for a debt, which it is beyond his power to shake off, is just as effectually ruined as one whose land passes from him altogether." It is urged that the obvious intention of Section 266 of the Civil Procedure Code is to provide the agriculturist with such sustenance as is necessary to enable him to earn his livelihood as such, and that as long as crops can be attached this intention is defeated. The evils of the present system were forcibly represented by Major Wace, Settlement Officer of Jhelam in the Punjab in 1877, as follows:—

Para. 10, letter No. 214, dated 19th February 1877, page 912, Financial Commissioner's Selections, new Series, No. 11, 37, LXV.

"I would ask those who have it in their power to influence the course of legislation in this respect, and who are familiar with the condition of the rural agricultural classes, to try to realise the position of an agriculturist whose crops the decree-holder has attached and sold in satisfaction of his debt. The debtor's outlook is bad enough even if the proceedings have satisfied the decree; but in a great number of cases a balance will be left over with no possible prospect of its liquidation, except by a repetition of the process at the next harvest. Let us try to realise the circumstances of this agriculturist as he looks round on his empty threshing floor. What have we left him? We have refused to sell his tenure, and have protected his plough, his cattle, and his seed-grain. What then? It will take at least four, and more often six, months before he can garner his next harvest; and how is he to get over that next six months? Except what we protect as seed-grain, not a day's food has been left in the house for himself and his family, and the very fodder of his cattle has been sold. Now, it is obvious to any person acquainted with the life of these people, that an agriculturist in this situation has only three courses open to him—

(1) He may tide over a few months by the help of his neighbours alone; in this case the law will *de facto* have satisfied the decree-holder at the expense of the debtor's neighbour; but such help is not usually forthcoming except for a few days:

(2) He may sell his interest in the land, or if he has no saleable interest, he may desert his land and become a day labourer or plough servant; but Government has decided that this is usually an undesirable result; and this opinion is held so strongly and generally that I need not discuss this matter: or

(3) He lives on credit till next harvest. This is the course usually followed, and it means, speaking roughly, that he will, in the first place, consume his seed-grain for food; that he will borrow other seed-grain at sowing time, and have to re-pay it at harvest time in kind, plus 50 per cent; that he will be charged something like the same rate of interest on all he spends before next harvest to feed himself and family and his cattle; that when harvest time is approaching, the former decree-holder (if a balance remained over on the decree at last harvest) will repeat the attachment of his crops, and that the new account will be totalled, plus interest and compound interest at like ruinous rate.

The proposals made to meet this state of things have assumed various shapes, *e.g.*:—

238. (*i*) Mr. Melvill in 1874 suggested that "the creditor should only receive the portion of the net produce which remain after paying the last revenue, or, in other words, that the creditor should only get the proprietor's profit," and Mr. Thorburn on the same principle advocated in 1884 "that land and the tenant's or cultivator's share of the produce of land, unless specifically pledged, when held by Muhammadan agriculturists, be exempted ... either altogether or below the minimum—to be fixed for each district according to circumstances—requisite for the support of the agriculturist and his family." The Lieutenant-Governor, Sir Charles Aitchison, thought Mr. Thorburn's proposal a fair one, but would apply it to the necessities of all classes, not merely of agriculturists, and asked for opinion on the point. The opinions were generally favorable to the principle advocated by Mr. Thorburn, but some officers object to the precise form adopted. Mr. Ibbetson, for instance, did not think the exception should be limited to the cultivator's share, as some proprietors (*e.g.*, a widow without grown-up sons) are entirely dependent on the

Paragraph 19, Minute, dated 1st April 1874, page 29, Punjab Government Selections, New Series, No. XIII (1876.)

Para. 27, Memo, dated 29th June 1884, page 947, Fin. Com.'s Selections, New Series, No. 11, 37, LXV.

Paragraph 5, Letter No. 507, dated 22nd May 1885, page 956, ditto.

Letter No. 1624, dated 17th August 1885, page 975, ditto.

landlord's share of the crop: and the same officer contested Sir Charles Aitchison's view that agriculturists were not in a special position as regards their exemption of necessaries. Mr. Rivaz, Deputy Commissioner of Kangra, alluded in this connection to rules introduced by Mr. Mackworth Young and himself in the Kapurthalla State under which, "in the case of owners and tenants paying revenue or rent in cash, only two-thirds of the grain and one-third of the straw in ordinary crops, and three-fourths of zabti crops, can be attached in execution of decree, the decree-holder being required to pay into Court, prior to attatchment, the whole of the revenue or rent charges on the crops, and in the case of tenants paying rent in kind, half of the tenant's share of the grain in ordinary crops and three-fifths of such share in zabti crops."

Letter No. 907, dated 7th July 1885, page 962, ditto.

239. (*ii*) In the Deccan the Relief Act as first passed exempted all the immoveable property of an agriculturist, including thereby his standing crops, from attachment; but the amending Act of 1886 withdrew the exemption from standing crops. The objections to this change are noticed in the Home Departments Resolution of November 1891 as follows:—

Act XXIII, 1886, Section 7.

Paragraph 44, Resolution No. 17 (Judicial), dated 20th November 1891, Progs. A, Revenue 46-9, September 1892.

"It has been suggested that the exception of standing crops from exemption from attachment, which was effected in 1886, has led to oppression of the ryot and waste of the crop, which after attachment is no longer watched and guarded by the cultivator; and the proposal has been made by the District Judge of Ahmadnagar that "one-half of the standing crop, after deducting the part attached or required for payment of assessment, should be exempt from attachment to prevent lands going out of cultivation and to enable the agriculturist to recover the actual cost of cultivation."

*Vide* pages 81-92 of Sir R. West's "Observations."

And the Commission of 1891-92 recorded the following observations on the practice in the Deccan:—

Paragraph 52, pages 54-55, Report,

"The object of exempting land from attachment and sale in execution of money-decrees was to secure to the ryot, as far as possible, a means of subsistence. The land, however, is only of use to the ryot in so far as it enables him to grow crops on it. If then all the crops are attached and sold, the land becomes practically valueless to the ryot, and it is essential that some return must be preserved to him if the land is to be tilled at all. Apart from this, when the entire crop is attached, the judgment-debtor's interest therein naturally ceases, and the cost of watching and harvesting the crop must fall on the judgment-creditor, who is seldom in a position to perform these functions economically. For these reasons the Commission recommend that the amount of the standing crop which is liable to attachment should be limited to one-half, and that this half should be sold subject to the payment by the purchaser of the Government revenue due on the crop attached. This is the principle of division between landlord and tenant generally recognized by the people themselves where crop rents prevail; and its adoption appears to promise a ready and practical method of meeting a serious difficulty—

Theoretically, the amount of the produce reserved to the ryot should be so much, and so much only, as is necessary—

(*a*) to supply the ryot with seed-grain and sustenance for himself, his family, and to keep up his stock; and

(*b*) to enable him to pay the Government revenue.

In the Deccan, however, it would be difficult to work such a system. With many ryots agriculture is not an exclusive occupation, and many of the holdings are so small that all the produce would not suffice to support the ryot and pay his revenue. In such cases, therefore, there would be no surplus from which the creditor would recover. In the case of big holdings half of the whole produce may be more than the ryot is, on theoretical grounds, entitled to, and the rule may work unfairly to the creditor; but it is unlikely that creditors wil. have much difficulty in realizing their dues from large holders in other ways."

This proposal, accordingly, is to a large extent another form of that mentioned under (*i*) above. The practical difficulties connected with the proposal were urged as follows by the Bombay Government:—

See paragraphs 13 and 21, letter No. 1477, dated 8th March 1893 (A. September 1894, Nos. 43-46.)

It would probably be necessary to attach the whole in order to render possible and certain the sale of the half. It may be true that the provisions of the existing law are rarely enforced, and that when enforced they tend to bring about a prompt settlement, but the parties know best their own interests. The report of the Commission, paragraph 52, indicates a series of difficulties that at present hamper the judgment-creditor in proceeding against standing crops, and these difficulties would not be removed by dividing the crops which may be attached. It appears to this Government that the law had best be left alone. It provides a remedy for the creditor which is sound in principle; and if on a consideration of all the difficulties he does not resort to it, the legislature has done its best to offer him a remedy, and it may safely leave him to study his own interests in availing himself of it."



On this the Hon'ble Sir P. Huchins noted—

"Revenue Department will have to be consulted. No doubt there are difficulties, but they might possibly be got over as Bombay itself suggests. Perhaps however we had better accept its conclusion that 'the law had best be left alone.'"

Conspectus, page 21, in H. D. K. W. Proceedings Nos. 329 to 364, Judicial, June 1894.

This was the decision ultimately arrived at as regards the Deccan Act, but it would seem desirable to revive consideration of the proposal for general application, either as regards all judgment-debtors or as regards such as are agriculturists. The main objection to it which remains after difficulties of procedure are got over, is the inducement such a measure would give to the mortgage of land or crops where such are not now mortgaged, and with respect to this objection attention is invited to paragraph 255, below.

### (*b*) *Section 320, Civil Procedure Code. Execution through the Collector.*

240. Under Section 320 of the present law the Local Government is allowed in certain cases to order the transfer to the Collector of the execution of decrees ordering sale of immoveable property, and the Collector thereafter may attempt by temporary alienation to avert sale. The extent to which this permission has been utilized has been indicated in paragraphs 149, 152, 153, 154, and 156 above, and on the whole the protection afforded by this procedure, though not insignificant, is not very great and no proposal seems to have been made for its general extension to all Provinces. In areas where sales are practically prevented by order under Section 327, Civil Procedure Code, the effect of a declaration under Section 320 is to recover by temporary transfers of land sums which otherwise would not have been recovered from the land at all. This at least is the case in the Punjab, as stated by Sir James Lyall in 1891:—

Para. 12, note, dated 26th June 1891. (*Sel.* p. 68.)

"By attaching land and without getting sanction to its sale moving the Collector to either get sanction to its sale or to take action under Section 326, the Civil Courts have lately begun to increase the temporary transfer of land in execution of decrees, and many of these transfers are equivalent to permanent transfers. We have been afraid in the Punjab to notify under Section 320, seeing that it would inevitably lead to far greater transfers of land in execution of decree than have hitherto been allowed. Sections 320 to 326 of the Civil Procedure Code, which were introduced to moderate the free power of selling land by Civil Courts in other Provinces of India, have had, or would have, quite the opposite effect in the Punjab so far as applied, which is a curious but not uncommon instance of the effect of enacting elaborate Acts for all India."

### (*c*) *Section 327, Civil Procedure Code. Prohibition of sale of land in execution.*

241. As has been already noticed, certain Local Governments which previously had rules in force requiring sanction for sale of certain classes of land, were allowed by Section 327, Civil Procedure Code, to continue such rules in force, and it has from time to time been suggested that the principle of these restrictive rules should be further extended either (*a*) by the substitution of temporary transfer for sale in execution of decrees for money, or (*b*) by the absolute prohibition of transfer in such cases.

242. The former of these proposals, *that temporary transfers only should be permitted*, was considered and rejected by the Deccan Riots Commission of 1876 in the following terms :—

Page 86, para. 101, Report, Vol. I.

"With regard to the restriction of the liability of the land to a transfer for a limited period, its intention is to limit the borrowing power of the debtor to an amount equivalent to the income of the land for the given period, but it amounts to a proposal that an insolvent should retain, besides necessaries, a reversionary interest in the land, whatever its extent."

After pointing out that the proposal was subject to the general objection that it restricted credit, the Commission went on—

"There is also the special objection that in practice the reversionary interest of the debtor would frequently be discounted during the term of alienation, and the object of the provision would be defeated. Mr. Pedder advocates the limitation of liability to the lifetime of the debtor. This limitation is open to the objection that it does not sufficiently recognize the readiness with which the son accepts the duty of paying his father's debts. This law of religion is one which to their great credit the poorest individuals in this country are loth to disregard; and as yet they have not learnt to place the equitable limits to its observance which are recognized by our statutes. It is doubtful whether they should be encouraged to do so."

As long as the system advocated extends to the whole property of the debtor, it can scarcely be considered suitable for large proprietors: while if a portion only of the property is to be protected, this can be more efficiently done in other ways. In the case again of small areas so protected, such as the home farm of large, or the holding of small, landowners, the effect of a temporary transfer often differs little from that of permanent alienation.

See para. 12 of note dated 21st June 1891 by Lieutenant-Governor, Punjab. (*Sel.* p. 68.)

243. The second proposal—that land should *not be held liable in any way* for money debts—is one which has found a good deal of support. A distinction is made, for convenience sake, between an unsecured debt and a debt secured by simple mortgage, but from most points of view the two species of debt are the same and have the same results. The land in either case is the ultimate security of the creditor, and the main difference, it is urged, between the two kinds of debt is that in the one the peasant debtor recognizes that his land is at stake while in the other this is not brought clearly before him. Why then, it is urged, should we introduce into simple contracts of the latter nature a liability which was not contemplated when the contract was made?

Proposals to exempt land from attachment for unsecured debt have been very frequently made during the last forty years, and there has been much correspondence on the subject, most of which is to be found collected in a Selection of the Records of the Home Department. The history of the proposals is briefly as follows.

No. CLV (1879).

P. 281, Vol. iii, Report, Deccan Riots Commission.

244. The matter was brought to notice before the mutiny by the Mr. J. R. Colvin and others in the North-Western Provinces, and after the mutiny when the conduct of the sold-out peasantry attracted special attention it was again much discussed among the local officers. It formed, moreover, the subject of a despatch from the Court of Directors, and in forwarding that despatch to the Sudder Court and Board of Revenue in the North-Western Provinces, Lord Canning (then administering those provinces) wrote that he "was disposed to think that the law might so far be altered with advantage as to limit the sale of real property to decrees of debt in which such property had been distinctly hypothecated, and to limit the process of recovery for simple debt to the personal effects of the debtor." While this proposal was still under discussion, there came a despatch from Lord Stanley

P. 281, ditto.

No. 4, dated 25th January 1859, p. 3, Home Department Selections, CLV.



suggesting consideration of the possibility of exempting land from process in decrees below a certain amount.

The discussions of 1859-60 in the North-Western Provinces elicited two classes of opinion on the subject. On the one hand, there were those—represented by Mr. W. Muir of the Board of Revenue and by the Sudder Court—who advocated the exemption of land from sale for money debts. "For all simple debts," wrote Mr. Muir, "I would limit the process of our Courts to the person and personal effects of the debtor, and entirely exempt land from liability in the execution of the decree," and the Court of Sudder Adalat advocated, on two separate occasions, the limitation of "sales of real property to decrees for debt in which such property had been distinctly hypothecated and to cases of fraud on creditors." On the other hand, was the high and dry theoretical school represented by Mr. F. B. Pearson, Judge of Saugor, and the school of those who, like Mr. J. Strachey and the Lieutenant-Governor, Mr. Edmonstone, considered that the proposal even as a practical measure went too far. The first Code of Civil Procedure was meanwhile being introduced, and during the discussions on the Bill, the possibility of exempting land in the manner indicated was considered. The proposals made in this direction were not adopted, and though the Secretary of State again drew particular attention to the matter, it was thought best to leave the new Code (which allowed management and alienation as an alternative to sale) to its operation for some years and to drop the subject meantime. It was decided, as Sir Charles Crosthwaite puts it, "to leave the law alone, and to trust all to Providence and Section 244 of the Civil Procedure Code."

Memo. dated 2nd February 1859, ditto, p. 18.

Letter dated 24th Dec. 1858, p. 177, Vol. ii, Deccan Riots Com. Rep.

Letter dated 16th May 1859, p. 64, Home Dept. Selns. CLV.

See Home Department Selections, CLV, pp. 4, 55, and 64.

Proceedings of Legislative Council, 5th March 1859, pages 283-9, Vol. iii, Report Deccan Riots Commission.

Despatch No. 33 of 4th August 1859, p. 84, Home Department Selections, CLV.

Calc. Rev., Vol. LVI, 1873, p. 214.

245. In the Punjab, as has already been noticed, the sale of land required special sanction which was rarely granted, and in 1869 the Judges of the Chief Court proposed that the prohibition of the sale of land should be made absolute. After consulting Revenue Officers the Lieutenant-Governor, Sir D. McLeod, declared himself "strongly of opinion that the absolute sale of hereditary or joint acquired property in land in execution of decree should be prohibited." Mr. Justice Lindsay dissented from this view, considering that the employment of sale in last resort was open to no objection, and the whole correspondence was forwarded to the Government of India. That Government thought it best, before coming to a decision, to obtain the views of Local Governments on the working of Sections 243 and 244 of the Civil Procedure Code, which permitted mortgage or temporary alienation in place of sale.

Para. 68.

Para 5, letter No. 1550, dated 10th May 1869, Home Department Selections, CLV, p. 86.

Letter No. 1652, dated 26th November 1869, p. 107, ditto.

p. 110, ditto.

Circular No. 1713-21, dated 22nd September 1870, p. 114, ditto.

246. The replies received, which showed that comparatively little use had been made of the sections in question, were as a rule confined to the point specifically referred, but in the Central Provinces certain officers took the opportunity to resuscitate the proposal to exempt land entirely. Among these was Mr. Bernard, Commissioner of Nagpore, who thought it would be "an excellent thing for all parties connected with land, and also a most politic measure for the British Government, if the law of land-sale were altered and if money-decrees could no longer be executed by the sale of landed property" and Mr. Melvill, Judicial Commissioner, supported Mr. Bernard's proposal. The Chief Commissioner, Colonel Keatinge, anticipated trouble, not (as the Secretary of State in 1859 apparently did) in the case of small holdings, but in that of larger properties, and confined himself to a proposal that Government should "prohibit all sale of ancestral land above R300 in value."

Para. 8, letter No. 206, dated 20th January 1871, p. 142, ditto.

Para. 4, memo., p. 138, ditto.

Para. 7, letter No. 741-90, dated 14th April 1871, p. 128, ditto.

247. While the replies to the Circular of September 1870 were still under consideration, the question cropped up again in the Punjab and the North-Western Provinces.

Registrar's letter No. 630, dated 6th April 1874, p. 20, Punjab Selections, New Series, XIII (1876).

In the Punjab (which had not been addressed in the Circular) Mr. Melvill, now a Judge of the Chief Court in that Province, urged in 1872 the amendment of the law of interest, and during the discussions on the proposal Mr. Justice Lindsay advanced from his position of 1870 so far as to recommend that "land should be answerable for secured debts alone." The proposal was, however, looked on by the Lieutenant-Governor, Sir H. Davies, as uncalled for, and the matter dropped.

Resolution No. 4609, dated 23rd December 1874, do. p. 5.

Page 195, Vol. i, Deccan Riots Commission's Report.

In the North-Western Provinces the subject was brought again to the front by Sir W. Muir, as Lieutenant-Governor, in connection with the Land Revenue Bill which was under contemplation in 1872. As the matter did not become part of the general Revenue Bill, a separate measure was drafted, in which it was proposed to prohibit sales of land in execution for unsecured debts. "Should the creditor," it was explained, "insist on security at the time of borrowing, the debtor will be at once called on to hypothecate his property, and will have the risk plainly brought before him." The contemplated measure was, however, dropped, and Sir W. Muir in 1874 withdrew from his position on the ground that the custom of sale had been too long in force. "The long prevalence of sale during nearly three quarters of a century renders it impossible now to stop the practice."*

Mr. Colvin's note, p. 279, Vol. iii, Deccan Riots Commission's Report.

Para. 5, letter No. 688 A., dated 5th March 1874, to Govt. of India, p. 323, Home Dept. Selns., CLV.

*It is understood that this includes sale for unsecured debt.

248. But the question once raised could not be laid. The suggestions made by Mr. Justice West in his Pamphlet of 1872, entitled "The Land and the Law in India," having come under consideration in the Central Provinces, the Nagpur Commissioner, Mr. W. B. Jones, was moved to propound a scheme under which no debt should be recovered from the land which had not been certified by the Revenue officials to be a suitable charge on the land. This scheme was subjected to some criticism from the other Commissioners, and in addressing the Government of India in 1874 on the subject in connection with the Revenue and Rent Bills then under contemplation, the Chief Commissioner, Sir J. Morris, advocated the absolute rule in the following terms:—

See pp. 366-367, Home Department Selections, CLV.

Minute dated 30th September 1874, para. 36, Home Department Selections, CLV, p. 341.

"I would recommend that land in future be exempted from sale in execution of decrees for simple debt. If mortgages are still permitted to be freely entered into, no doubt a provision disallowing sales of land in execution of decrees for debt will result in all loans being secured by a mortgage on the land. But clearly a proprietor making an engagement of this kind sees the consequences of failure. In cases of simple debt this is not the case, and when the land comes to be sold under the order of the Courts, the whole procedure is looked upon as some inscrutable action of Government, for the people cannot separate the action of the Courts from that of the Government. It cannot be comprehended why a simple debt, when there was no special lien allowed on the land, can involve such a penalty, and I would therefore hereafter protect the land absolutely from being proceeded against in all cases of simple debt."

249. So far we have dealt with North and Central India only, but in Bombay the proposal dates from an even earlier period, having been put forward by Captain Wingate in 1852 in the following terms:—

Report, Deccan Riots Commission (1876), Vol. ii, pp. 80-2.

P. 80.

"The compulsory sale of land by Civil process in payment of debt not secured upon the land by mortgage or otherwise is, I believe, entirely opposed to native law and usage throughout India. In our own Presidency the practice is authorized by regulation, but so incompatible is it with native ideas, that it has been resorted to to very limited extent in the districts where our regulations have been longest in force; while in others, as in the Southern Mahratta country and the Deccan, it is to this day almost unknown. Throughout these districts, and I believe generally over the Presidency, the cultivators of fully assessed land believe that their lands belong to Government and that they cannot be dispossessed of them unless at the instance of Government. The idea of their lands being subject to sale in satisfaction of a bond debt or a running account with a money-lender has occurred to few of them, and the contingency, I may safely say, is regarded by these few with dismay and amazement as the very height of injustice and oppression. In Guzerat I apprehend that sales of inam land even in satisfaction of bond debts have only become frequent of late years, and that sales of Government land on the same account have been wholly unheard of until very lately.



"It occurs to me that the desired end might be accomplished by the passing of a brief enactment to declare all land subject to the full assessment, or which would perhaps be better, all immoveable property whatsover, situated beyond the jurisdiction of the Supreme Court, to be incapable of attachment and sale in satisfaction of a decree by a Civil Court, unless the suit in which the decree is given refer to such land or immovable property and its sale is provided for by the terms of the decree. I think the exemption might safely be extended to all descriptions of immovable property and with advantage."

P. 82.

250. This proposal and those made in other provinces were considered by the Deccan Riots Commission of 1876 and criticized as follows:—

Para. 101, p. 85, Report, Vol. i.

"It is a noteworthy fact that in the districts under our notice, owners of land do not ordinarily mortgage it as security for the loans they take. In most cases the debtor, having land to give as a security, borrows merely on his own personal security. There seems also good reason to believe that these loans on personal security are obtained at a higher rate than the same person would have to pay if he gave a mortgage. Rather than give their land as security borrowers are ready to pay higher rates of interest. It might be inferred from this that there is some idea in their minds that when land is not mentioned in the bond it is not liable for the debt; or in other words, that there is an understanding or implied contract that the creditor is not to realize from the land. Whatever may have formerly been the case as to this, the ryots have now learnt that land is liable for unsecured debts; but the debtor avoids mortgaging his land as long as he can probably because he knows that when it is once mortgaged he will find it very difficult to raise money from other lenders, and because experience has shown him that the mortgage is the beginning of a transfer to the Sowkar. The effect of the restriction would be to compel the borrower either to give his land as a security or to pay a higher rate of interest for an unsecured loan. In either case the compulsion would appear to him a hardship; and, though the hardship might be only imaginary in the first case, it would certainly be real in the second.

"We do not therefore advocate any restriction in this form."

The views of the Commission were supported by the Government of Bombay in April 1877, but Sir Richard Temple, as Governor, reverted in November 1877 to the old proposal that land unpledged should not be sold and the Deccan Relief Bill, presented to the Legislative Council in June 1879, incorporated Sir R. Temple's views.

Letter No. 2202, dated 6th April 1877, para. 14, Bombay Government Selections, New Series, CLVII (1882, p. 17).

Minute dated 12th November 1877, page 35, do.

The 22nd Section of the Act as passed in 1879 ran:—

"No agriculturist's immovable property shall be attached or sold in execution of any decree or order unless it has been specifically mortgaged for the repayment of the debt to which such decree or order relates, and the security still subsists.

"But the Court may, when passing a decree against an agriculturist or at any subsequent time, direct the Collector to take possession, for any period not exceeding seven years, of any such property of the judgment-debtor to the possession of which he is entitled, and which, in the opinion of the Collector, is not required for his support and the support of the members of his family dependent on him....."

The wording of the section was afterwards altered, but the principle was retained.

251. The numerous proposals to make this system part of the general law were not accepted when the Civil Procedure Code was remodelled in 1877, it being thought better to give the new provisions of that Code regarding temporary alienations, etc., a fair trial before proceeding to further measures.

See Mr. Hope's speech 17th July 1879, p. 177. Bombay Government Selections, New Series, CLVII.

Report, Part II, Chap. III, Sec. IV, para. 22, page 136. (*Sel.* p. 22.)

Financial Commissioner's Selections, New Series, No. 4, No. 37, No. LXV, p. 948.

See para. 220 above.

Para. 12, note dated 26th June 1891. (*Sel.* p. 63.)

252. The old proposal, however, appears to have formed part of the scheme suggested by the Famine Commission in their Report of 1880, and it was again revived in the Punjab in 1884, by Mr. Thorburn, along with his other suggestions for relieving agricultural debt. The Deccan rule differing, as it did, but little from the practice in force in the Punjab was not referred for opinion to the officers consulted on Mr. Thorburn's proposals, but in sketching a measure for introduction into the Punjab, Sir James Lyall in 1891, while accepting the first clause of the Deccan section, thought that it "should be confined to ancestral lands and houses and other buildings belonging to and occupied by the agriculturist debtor, which would exclude acquired land and buildings and standing crops."

Report, para. 51.

253. The Deccan Commission of 1891-92, again, supported the retention of the Deccan rule, fully accepting the argument "that to make land liable for debts not specifically charged upon it is to import a liability which was not contemplated by the parties, and that at the time he incurs the obligation a borrower ought to have clearly presented to him the consequences which his act may entail." They went on to recommend "that the law regarding the exemption of immovable property from attachment and sale in execution of money-decrees should now be extended to agriculturists in other parts of India."

Report, para. 77, pages 76-77.

but from the summary of recommendations at the end of their report it appears possible that they desired to extend this provision only to areas which should be placed under special Relief Acts. It is, however, perhaps worth while considering whether the change might not be incorporated in the general law so far as it affects agriculturists.*

254. Of the special objections raised against the scheme the most forcible appear to be (*a*) the difficulty of altering a law so long in force, and (*b*) the fear that the provision would lead to excessive mortgaging.

*E. g.*, Mr. Turner in 1873, p. 273, Vol. iii, Deccan Riots Commission's Report.

The former was apparently the reason which led to the abandonment in 1874 of Sir William Muir's support of the proposal, but it would seem scarcely consistent to say on the one hand that the agriculturist does not yet realize that all debts are practically mortgages, and on the other, that the law is so well known that it cannot be abrogated. Some have doubted the alleged ignorance of the agriculturist, but on the whole there seems a strong presumption for it, and, if so, the length of time during which the present practice has continued is a matter of comparatively little importance.

P. 179, Vol. ii, Deccan Riots Commission's Report.

255. The other objection is perhaps the more serious, but it has been met. For instance, in 1859 the Sudder Court of the North-Western Provinces wrote:—

"It has, however, been urged, the Court believe, that to restrict sales in execution of money-decrees would only be to increase the number of mortgages and *Bye-bilwufahs* without eventually decreasing the number of transfers. The Court think this probable, but there does not seem to them the same objection to a voluntary transfer as to a compulsory one. Landed property is daily becoming more valuable. It is a tangible and valid security much sought after, and the man who holds it can generally borrow in the cheapest market with the advantage of being specially protected by the mortgage laws. A further advantage in a mortgage is that it reduces the contract to definite terms in writing, necessitates the enquiry by the mortgagee into the title and extent of interest pledged, and gives the other sharers an opportunity of claiming pre-emption or placing a veto on the alienation rights which have generally been secured to them by the settlement contract."

* The measure has been supported also in Burma (page 82, Revenue Report for 1882-83, by Commissioner, Irrawaddy Division; see also para. 3 of the same officer's review on the Bassein and Henzada Settlement Report, 1883-84.)



And in 1892 the special Commission reported:— Para. 51, page 53, Report.

"That the law has led to some extension of mortgage debt cannot be doubted, but the extension has been chiefly confined to men of bad or doubtful credit, and it has not entailed any increase of indebtedness, but merely an alteration in the character of the debt, which places the debtor and creditor on practically the same footing as they were on under the ordinary law. On the other hand, there is a great mass of evidence to show that once the terms on which a loan will be granted are made clear to the would-be borrower, he in many cases prefers or contrives to do without the loan rather than pledge his land. This voluntary self-denial is not always submitted to with a good grace, and though many of the complaints made of the difficulty of borrowing, except on the security of the land, proved to be exaggerated, they cannot have been altogether without foundation. Too much weight, however, must not be attached to these petty temporary inconveniences. The striking extent to which the law has encouraged thrift and self-help constitutes its justification."

In any case it might be possible to alter Section 327 so as to permit the issue of restrictive rules in all provinces, which, if they are properly worked, would be nearly as effective as a complete prohibition of sale for unsecured debt.

## CLASS III.—RESTRICTIONS ON LAND TRANSFER.

*Reasons for such restrictions.*

256. Those who would impose restrictions of one kind or another on the private transfer of land have two objects in view, *viz.*, (1) the curtailment of the agriculturist's credit and hence of his indebtedness, and (2) the restriction—in whatever degree is thought desirable—of the alienation of the agriculturist's land. In other words, they wish to attack the problem of indebtedness on both sides—to minimize on the one hand the inducement to debt and on the other the worst consequences of debt.

257. The second object is of course the more directly gained. As regards the former, it is not proposed to do away with debt,—this is neither desirable in itself nor, however great the restrictions on transfer became, would it be possible—but it is believed that the credit of the agriculturist rests mainly on his land and that by restricting his right to negotiate the land a large and dangerous source of credit will be stopped. It is scarcely necessary perhaps to produce evidence on this point, but reference may be made, for instance, to the remark of the Famine Commission of 1879, that "It is commonly observed that landholders are more indebted than tenants with occupancy rights, and tenants with rights than tenants-at-will—a result obviously attributable to the fact that the classes which have the best security to offer are the most eligible customers of the money-lenders." Mr. Steedman, Settlement Officer of Jhang in the Punjab, puts the case even stronger:— Part II, Chapter III, Section IV, para. 4.

"So long as the zemindar has credit so long will he borrow, and so long as he borrows shall we find our annual returns of land transfers slowly but surely and steadily increasing. Settlement Report (1880), para. 169.

The sole basis of his credit is his transferable property in the land. Take this away and all the security that the money-lender has is the annual outturn of the crops. In such case we should not hear of zemindars being thousands of rupees in debt. Their credit would shrink and their debts too. There are numbers of villages alongside the Bar east of Kot Isa Shah in which there is hardly a single mortgage. Why? Because cultivation is uncertain and the mortgagee might find the mortgaged well abandoned in a few months and himself left saddled with the revenue. It is not good enough. Here the zemindars have no credit, and they are not in debt except to a small amount. You do not find tenants-at-will over head-and-ears in debt. They are in debt it is true, but the limit is the amount that the baniah considers it pretty certain to be repaid to him at the next harvest."

Paras. 9-11, letter No. 290, dated 26th July 1879, Home Department. Progs., Judicial. Aug. 1882, Nos. 332—513.

Or take the testimony of an officer of the North-Western Provinces, Mr. Fisher, Collector of Meerut, who writes:—

"An ignorant man, whose heart is larger than his means, will always spend freely so long as he can procure money for the purpose. Hence it is that all our plans for the improvement of the condition of landholders and agriculturists, from the permanent settlement to occupancy rights have been disastrous failures. What can be a stronger proof of the unsuitableness of our system to the existing state of native society than the fact that the punishment of a man by confiscating his landed property has actually improved his condition? What greater satire can there be on our laws? Yet the reason is clear and the remedy plain.

"A landholder has good security to offer, an estate of known value; hence the money-lender is always ready and anxious to get him into his books. Until the estate is mortgaged for nearly its full value, he need never plead that he cannot get money. A generous man and a weak one, he yields to his wife's passion for jewellery and showy weddings for her daughters, and to his own desire to outshine that son of an ill-conditioned mother who owns the next village but one and always gives himself such insufferable airs. Then at last the reckoning comes and in spite of an untold amount of perjury and degradation on the debtor's part the greasy Shylock buys the village when sold in execution of his decree. If the debtor has any surviving rights as a cultivator in the village, the unequal contest may be prolonged, but in the end he, or his son, will settle probably in the neighbouring village, and with the proceeds of some of the family jewels which they manage to secrete and preserve from the execution of the decree, start as cultivators. Now their credit is very limited, it will rarely exceed one-third of the estimated value of their growing crops, and the result is that, though they pay a high rent and are always pining for their lost village, they enjoy a comfort and plenty to which they had been strangers for years.

"Had our friend's credit as a lambardar been as limited as it is now that he is only a tenant-at-will, he would have been well-off, contented, loyal, and happy. The money-lender would have raised difficulties innumerable when asked for a loan exceeding half the value of his movable property, and would under no circumstances have advanced more than with the interest could be well covered by it; the borrower would then be constrained to live within his means, and expensive marriages and other extravagances would die a natural death. It is, too, highly probable that the rate of interest would fall."

Para. 40, memo., dated 30th September 1874, p. 346, Home Department Selections, CLV (1879).

So, for the Central Provinces, Sir John Morris speaking in 1874 of the extravagance of the landowners writes: "this very extravagance is the result of increased credit, flowing from the new land system and transferable rights which we have recently introduced among a weak and ignorant proprietary body." And so also Mr. Woodburn in Bombay: "I think the whole history of indebtedness in the Deccan shows that the free gift to the ryots of the right to dispose of their occupancies, which was apparently a great boon, was in reality the source of nearly all their trouble. It enabled them to borrow more than they ought to have borrowed and led consequently to many losing their lands and to many living in constant dread of a similar fate."*

Letter No. 4094, dated 6th October 1892, to Comr. in Sind. (B. Aug. 1893, No. 5.) (*See* p. 142.) *cf.* the evidence given by Mr. Robertson, Colonel Anderson, and Mr. Pedder before the Famine Commission of 1879-80 (Report, Appendix III, pp. 344—345).

* The same sentiments as regards Burma will be found expressed in the Review of the Burma Revenue Administration Report for 1889-90, page 8.



258. The objections to this source of credit are based mainly on the premise, that the credit conferred by proprietary rights in land is comparatively new to the agriculturist and that the agriculturist has, generally speaking, shown himself too ignorant and improvident to make proper use of it. The presumption is supported by the facts quoted in those portions of this note which deal with the history of transfer under native and early British rule, and the ill effect of the suddenness with which the gift of property has been bestowed has often been pointed out. "It is a fact anomalous but true," writes Sir A. Mackenzie from the Central Provinces in November 1889, "that the owners of land are growing poorer while the value of the land is increasing: and the Chief Commissioner fears that the cause of this is to be found in the introduction of English notions of proprietary right and of the alienability of land into an Oriental community disqualified by hereditary predisposition and by training for meeting successfully the changed conditions of the country." Or as Mr. Ibbetson puts it: "The evils complained of are largely owing to an insular ignorance of all conceptions of rights in land other than those current in England, which is only now disappearing under the light of an enquiry first suggested by the facts of Indian landed tenures ..... Our landowners are thriftless, very much because we have placed them in new circumstances in which they have never had to exercise thrift." The proposition "that the average agriculturist, in the Western Punjab at least, is not a suitable subject for the dangerous boon of unrestricted credit" of this nature, was put forward by Mr. Thorburn in 1884, and although it was considered by the Lieutenant-Governor, Sir James Lyall, in 1888 to be "much too strongly put" and consequently was not referred to district officers for opinion, similar views regarding the agricultural population were spontaneously advanced by a number of officers in replying to the specific suggestions of the Local Government for the alteration of the Civil law. And whenever special protection of any kind is given to the agriculturist, such protection must, it is presumed, be based largely on this view of the agricultural character.

Para. 3, letter No. 1466 S.—212, dated 11th November 1889. (*Sel.* p. 74.)

Letter No. 1624, dated 12th August 1885, p. 977, F. C.'s Selections, New Series, No. 11, 37, LXV.

Para. 25, memo., dated 29th June 1884, p. 946, F. C.'s Selections.

Letter No. 231, dated 7th November 1888. (*Sel.* p. 46.)

259. Whether it is wise in consequence to restrict the agriculturist's power of alienation is another matter; but we have the recent opinions of several high authorities recorded in favour of some such restriction. Mr. Benett, for instance, as Secretary in the Revenue and Agricultural Department, when noting in 1890 on the status of the landowners in the Central Provinces, recorded his view that the question of withdrawing the right of transfer was "at least worthy of further consideration" and that "all the other remedies proposed are mere palliatives and will not prevent, though they may delay, the ultimate loss of at least a large portion of the land by its present owners." A similar suggestion has been made by Sir A. MacDonnell as regards the occupancy tenants of the Central Provinces, and numerous modified suggestions in the same direction have, as will be seen below, both formerly and recently, been put forward. When the Deccan question was before the Council of the Government of India, Sir Charles Crosthwaite, Sir P. Hutchins, Sir Charles Pritchard, Sir David Barbour and Sir E. Buck expressed themselves in favour of some kind of restriction, and Lord Lansdowne recorded his view that measures for restricting the right of land transfer were probably 'indispensable if the evil is to be held in check. The thing is no doubt wrong,' he said,

Note dated 19th September 1890, in Pros. A., Revenue, May 1891, Nos. 9-14.

Letter No. 17 C., dated 30th September 1892. (*Sel.* p. 105.)

Note dated 28th Nov. 1892. Note dated 25th Oct. 1893. Note dated 24th June 1893. Note dated 21st Oct. 1893. Note dated 9th Feb. 1891. Note dated 3rd January 1894. (A. Sept. 1893, Nos. 46—49, and Sept. 1894, Nos. 43—46. (*Sel.* p. 126, 118 and 131.)

'from a purely economical point of view, but we have to deal with a serious political danger and I see no way out of it but this.'

*Some general objections.*

260. There are however other objections besides the "purely economic" one alluded to by Lord Lansdowne, and having noticed the existence of a body of opinion in favour of restricting the right of alienation, it will be convenient if we review also in one place the main objections raised to the principle thus advocated. The objections mentioned refer chiefly to the strongest form of the proposal, *viz.*, the absolute restriction of transfer, but they also affect in a more or less degree the greater number of the modified suggestions to be discussed below, and as it would be impossible to recapitulate them with reference to each of these, they are stated here in a collective form. The main objections may be considered to be six:—

(i) that the rule proposed will render the agriculturist practically void of all credit.
(ii) that it will deprive him of all stimulus to work.
(iii) that it will lead to minute subdivision of the land.
(iv) that it cannot be enforced.
(v) that it constitutes a breach of faith on the part of Government.
(vi) that it will be unpopular.

261. (i) The first objection is perhaps the least serious. A very considerable reduction of the landholder's credit is aimed at, but the entire *abolition of his credit* is neither aimed at nor possible. There is abundant evidence to show that even when transfer is prohibited the landholder can still be involved in debt. The tenant-at-will has always a modicum of credit. The non-occupancy ryots of the Central Provinces, writes Mr. Fuller, "are able to raise on the security of the crops or their good-will such money as they require" for paying rent or improving the land. The occupancy tenants of the North-Western Provinces have no difficulty in obtaining a certain amount of credit. The istmrardars of Ajmere, who possess no power of transfer, have had to be relieved by a special Encumbered Estates Act. The money-lender is not unknown in native states or in Afghanistan, where he can practically never obtain a lien on the land. Private debts were common in areas such as the Deccan or the Saugor territories before free transfer was introduced. In fact there is enough evidence to show that, although in particular instances hardship might ensue, even a complete withdrawal of the power of alienation would not as a rule prevent a reasonable amount of credit. In connection, moreover, with a modified proposal of the same nature Mr. Woodburn, Collector of Hyderabad, Sind, writes:—"There is considerable competition among money-lenders for business. They have to make a living, and I have not the slightest doubt they will continue to lend."*

Para. 9, memo. dated (29th September 1892. A. May 1893, Nos. 18—19.) (*Sel.* p. 109.)

Central Provinces Settlement Code, p. 63.

Letter No. 4094, dated 6th October 1892, to Commissioner in Sind. (B. Aug. 1893, No. 5.) (*Sel.* p. 143.)

*Attention is also invited to the following passages from a demi-official letter, dated 20th January 1895, from Mr. Martindale, the Commissioner of Ajmere-Merwara: after stating that in the Thakurs' estates (istimrari areas) the tenants cannot alienate he writes: "Both in the Thakurs' estates and Government villages the people are up to the neck in debt. Possibly in the former the interest exacted is a trifle higher owing to inferior security. But this makes no practical difference as the accumulated interest under the law may nowhere exceed the capital and the courts freely cut down excessive interest without fear of being upset on appeal. That point therefore does not affect the case . . . . The objection I have always heard [against restricting transfer] is that it would be hard on the cultivators, who could not then raise loans. But even if this were an objection in *ordinary* times (in *scarcity* Government always comes forward with Takkavi), which is not quite clear, we have proof positive that the reason is baseless. In Niáran (a fine Government village) the people are mortgaged up to the hilt. In Bágsúri (a Thakur's village two miles off) the people cannot mortgage a yard, yet they have little less difficulty in raising loans than their friends across the border. But they have *some* more difficulty, which surely is an advantage; and the prime point is that *they* keep their lands, and *we* keep a loyal class instead of a pack of sordid money-grubbers . . . . . We had ample proof last famine that the bohra will continue to lend unless Government unduly intervenes too early or too liberally with takkavi advances at 6 per cent. and thus supplant the people's natural bankers, the village bohras, who cannot afford such easy terms."

Similar remarks will be found in the opinions by Mr. Crump and Mr. Fuller forwarded with letter No. 4423 of 10th October 1894, from the Chief Commissioner, Central Provinces: and indeed in many other cases which it is not necessary to quote.



It may be accepted as an axiom that the agriculturist must borrow money in India as elsewhere to carry on his business, and the advocates of restrictions on transfer have, it is understood, no desire to see the money-lender entirely dispensed with or the cultivator unable to borrow.

It seems *primâ facie* probable that a restriction on the right of transfer would raise the rate of interest on loans, but it has been doubted whether the depreciation of the security would appreciably affect the rates of interest so long maintained by custom.

Mr. Woodburn in letter quoted above. Punj. Govt. Resolution No. 4609, 23rd December 1874. (Punj. Sels., No. XIII, New Series). Mr. Ibbetson on p. 978, Punjab. Fin. Com. Sels., New Series, No. 11—37, LXV.

In any case the advocates of restrictive measures see no harm in a reasonable rise in interest, and some of them draw attention to the fact that, as loans for real agricultural wants will always be obtainable at 6¼ per cent. from Government, there will always be at hand both a check on and a remedy for any very large rise in the rate of interest.

Col. Grey, Commr., Delhi, in letter No. 510, 29th July 1889 (Pros. A, Revenue, December 1891, Nos. 10—11.)

262. The restriction of credit would no doubt hamper the Government seriously if it were to be carried so far as to prevent the ready payment of the Government revenue, and this was pointed out in 1875 by Sir A. Colvin, who wrote:—

Para. 73 of memo. dated 8th November 1875, Vol. i, Deccan Riots Commission's Report.

"I am opposed to any general scheme of prohibiting sale of land in execution of decrees of Civil Courts because I think so sweeping a measure unnecessary, because I should be very averse from prohibiting absolutely the transfer of land which must, I think, follow the more partial measure, and because we cannot foresee the effects of such a measure on credit,—a matter of extreme importance when viewed, especially with a ryotwari system, in its relation to our rigid system of land revenue payments.

Mr. Woodburn, Collector of Hyderabad, Sind, has given the following reply to this objection:—

Para. 7 (d), letter. No. 4094, dated 6th October 1892, to Commissioner in Sind. (*Sel.* p. 143.)

"I have no fear on this account. Possibly the instalments might not at first come in with the same promptitude as before, but that would be the worst. If the assessments cannot be recovered by any of the processes at the command of Government, it would mean either that the assessment is too high or the occupant a useless farmer. In the latter case, the sooner he is sold up the better. I have not mentioned bad seasons, because remissions and postponements are allowable."

The reply does not appear a complete one, and it must be confessed that in making any restrictions on transfer the extent to which the ability to pay a fixed Government demand will be affected can only be a matter of guess-work. If, however, it is found that the fixed demand in some cases cannot be paid, the remedy would lie in altering the character of the demand to meet such cases.

263. (*ii*) A further difficulty has also been raised as to the *effect on the cultivator* of leaving him nothing but his annual produce (or a portion thereof) liable to attachment. It is contended that as this will practically be always attached and as the land would be in no danger, the cultivator would lose all the stimulus of land-owning. Objections of this nature had been urged by Sir G. Edmonstone in 1860, and in a note written under the direction of Sir W. Muir in 1873, it was said:—

Home Department Section CLV, page 11.

Deccan Riots Commission Report, Volume ii, page 195.

"The only security being moveable property, houses, standing crops and so on, a man would be compelled to pledge these, and we should see what has been illustrated, in Jhansi. The debtor would become the slave of his creditor; the annual profits of his land would be swept by the money-lender in payment not of the principal, but of the annual accumulation of interest. You would retain your proprietors on the land, no doubt; but you would take from them all that makes land worth having."

And the Famine Commission of 1879 after describing the state of things under native rule concluded that, "though the cultivator (in the absence of any power of obtaining loans on the security of his holding) was never deeply

Part II, Chapter III, section IV, page 130. (*Sel.* p. 22.)

involved, he was seldom free from debt, and lived the life of a contented serf, exempt from the risks and responsibilities which accompany the possession of independent rights, but also without any stimulus to raise himself or to improve his position."

See note above referred to, page 196, Volume ii, Deccan Riots Report. See also page 264. Report on Progress of Madras Presidency by Srinavasa Raghavaiyangar.

264. (*iii*) Some critics have also pointed out the effect of restrictive measures in stimulating the *morcellement* of the land, an evil already only too apparent in many parts of the country. It is stated that, if a man may not transfer his holding, the law of equal inheritance must lead to increasing sub-division of properties, and this leads after a certain stage to decreased agricultural efficiency and decreased power to pay revenue. This criticism no doubt affects seriously the most radical form of the proposed restrictions, and applies—though, in most cases, with much less force—to the modified forms put forward. In dealing with it we have to weigh the economic disadvantages of increased *morcellement* against the economic and political evils which form the special subject of this note.

Note on Punjab Tenancy Bill by Major Wace, dated 11th August 1886. Note by Mr. Muir-Mackenzie in Proceedings A, Nos. 15 to 18, May 1891.

See para. 370 below.

See para. 347 below.

265. (*iv*) There is reason to suppose from experience elsewhere that it is very *difficult to prevent* either all or certain specified kinds of transfer by an Act of the Legislature. The rights of occupancy tenants in the Punjab used not unfrequently to be alienated contrary to law: and service lands in Bombay and occupancy tenures in the North-Western Provinces are still sometimes so alienated. Even where the status would appear to have no marketable value, alienations have been known, as in the case of tenants at will in the North-Western Provinces and of kurfa sub-tenants in Bengal. This objection, however, seems to be one of minor importance, for so long as the powers at the command of the authorities are properly used, the number of illicit transfers would ordinarily bear a small proportion to the area in question, and consequently would have a correspondingly small effect on the economic result aimed at. There are no doubt practical difficulties in preventing an enactment from being circumvented: but these can only be discussed in connection with specific proposals and not in dealing with the restrictions on transfer as a whole.

Fam. Comm. Report, App. III, pages 344-345. Para. 5, letter No. 231, dated 7th November 1888. Letter No. 1466—2125, 11th Nov. 1889, Para. 12. Note of 28th Nov. 1892 (Home Dept. Pros., Nos. 329 to 364, June 1894). (*Sel.* p. 46, 78 & 125.) See Sir A. Mackenzie's letter of 11th Nov. 1889. Financial Commissioner, Punjab, on page 106, Home Dept. Sel., CLV. (*Sel.* p. 78.)

266. (*v*) There is a general feeling that it is now *too late* to alter radically the status enjoyed for so many years by the landholders of the country: and expression has been given to this feeling by such high authorities as Colonel Anderson, Mr. Pedder, Sir James Lyall, Sir A. Mackenzie and Sir Charles Crosthwaite. In the Central Provinces, where the right to transfer was expressly and comparatively recently transferred, it is felt that any serious restriction of that right would be considered a breach of faith on the part of Government, but elsewhere this feeling is not quite so strong. It has been urged even in the Punjab that the Government has a joint interest in the land with the landholder, and has according to native ways of thinking every right to interfere in the status of the latter, and this view would have still greater force in provinces such as Bombay and Berar, where care has been taken in official language to distinguish the position of an occupant from that of a proprietor. Moreover, it may be said that the Government is in theory as much justified in altering the factors of a proprietary status as it is in its frequent alterations of the status of tenants. The gravamen of the objection does not, however, lie in the theory on the subject, but in the view of the proposal genuinely taken by the people, and this is a matter which will be noticed below.



The form of this objection which relates to the expectations of purchasers is perhaps less difficult to meet. Restrictions on transfer will depreciate the value of land and the purchasers, who obtained land before the passing of the restrictions, would complain accordingly; but their case can scarcely be counted as peculiar or more deserving of attention than that of landlords who suffer by a sudden change in the Rent Law, or merchants who are affected by sudden changes in the Tariff or the Currency.

See Mr. Finucane's Note, dated 6th April 1894. (A. April 1894, No. 1.) (*Sel.* p. 146.)

267. (*vi*) Perhaps the most serious objection of all is the anticipated *unpopularity* of any restriction on transfer. In Bengal, certainly the outcry against any restriction of proprietary rights would be very great, but even in provinces less peculiarly situated, there seems reason to anticipate opposition to any limitation of the joint status of the landholders. This view was accepted by the Government of India in 1880 when commenting on Mr. Caird's proposals to restrict transfer:—

Paragraph 32, Despatch No. 38, dated 8th June 1880. (Home Dept. Public Pros., June 1880, Nos. 43—45.)

"The question of the desirability of giving a right to sell and to mortgage land has been much debated. Volumes have been filled by the discussion, and we do not think it necessary to recapitulate even the heads of the arguments on either side. But whatever may be said as to the abstract question, it is agreed on all hands that, where the right of sale and mortgage has for a generation or two been recognised by the law, it is difficult to rescind the law without large claims for compensation to those who have bought land or lent money on the security of land under the belief that it was transferable and marketable property, and without exciting much discontent among those who have grown up in the belief that they were possesed of a property of this kind on which money could be realized whenever the occasion arose. Such a course of action could only be justified by the certainty that the results arising from the existing state of law were in a high degree injurious to the community. Many isolated cases of unthrift and indebtedness are on records; and we have on occasion felt bound to move the legislation to restrict transfers of land in certain limited tracts. It remains to be seen how these restrictions will work; but in any case they can hardly be permanent. As the tracts and the people to whom special legislation of this kind applies, recover and grow rich, they will assuredly claim, and they will most probably obtain full power to deal with their landed as with their other property, subject, of course, to the Native law of inheritance."

See notes of May 1894 on Consolidated Settlement Rules, Assam.

It may be noticed that when it was recently proposed to alter the form of periodic lease in the Assam valley so as to render the Deputy Commissioner's sanction necessary for the validity of transfer, the proposal was protested against at meetings and in the newspapers, and, though it may be doubted how far the protest was genuine, the fact has significance. For the Central Provinces, Mr. J. W. Neill in February 1889 anticipated that "any legislation tying up the land would prove distasteful to the great majority of the landholders." A similar opinion was put forward in 1888 as regards the Punjab, by Sirdar Gurdyal Singh, District Judge of Multan: and it may apparently be inferred from Sir James Lyall's recorded views that he was of the same opinion also. And perhaps the strongest argument in favour of introducing a change of the civil law rather than a restriction of the right of transfer is that the former course, though less efficacious, is sure of obtaining greater popularity. It must be remembered, however, that the popular objections to an absolute restriction on transfer do not necessarily attend the modified forms of the proposal, and there is evidence that, in the Punjab at least, a rule requiring the Collector's sanction to transfer, or a rule forbidding other than temporary transfers to persons other than members of the village community, would be found popular.

Memo. of 13th December 1888. (A Proceedings, Nos. 10-11, December 1891.) Paragraph 5, letter No. 231, dated 7th November 1888. Note of 26th June 1891, paragraph 1. (*Sel.* p. 46 & 62.)

Mr. Silcock, letter dated 26th March 1889. Mr. Ibbetson, letter No. 65, dated 7th March 1889. *Cf.* Mr. Douie, paragraph 7, letter No. 259, dated 21st March 1889.

## Proposals dealing with Large Proprietors.

268. In dealing with the proposals entailing interference with the rights of property a distinction may be drawn between (*a*) such proposals as are suitable only in the case of fairly large proprietors—men who, generally speaking, do not cultivate the land themselves, and (*b*) such proposals as are primarily applicable to all proprietors, whether large or small.

The former are distinguished from the latter mainly by the fact that they entail separate consideration of each case dealt with, instead of disposing of classes of cases by self-working enactments. The definite suggestions under the first head may be classed as follows:—

(1) The use of the system of Encumbered Estates Acts.
(2) The extension of the provisions of the Court of Wards Acts.
(3) The introduction of entail in certain cases.
(4) The purchase by Government of large encumbered estates.

### (1) The Encumbered Estates Acts.

269. There are two methods already employed by the Government of India for relieving indebted landholders, by withdrawing from them temporarily the power of alienation, *viz.*, the system of Encumbered Estates Acts, and that of the Court of Wards. The former method is applied to areas in which the landholders or a large class of them have become generally indebted, the latter to particular cases in which the landholder is found incapable of managing or of rationally managing his own estate.

The Encumbered Estates Acts are valuable as affording instances in which the Government has accepted the principle of extending relief to indebtedness by withdrawal of the rights of property, either with the consent of the debtor, or—at the instance of his heir or of the officers of Government—without his consent.

270. The Bombay Presidency, with a population of only 19 millions, has at the present day no less than four of such Acts in operation, in addition to the special Act in force in the Deccan. Firstly, there is the Ahmadabad Talukdars Act of 1862, which allows the Government to compulsorily oust an encumbered owner from management for 20 years. Then in 1871 an Act was passed to relieve the encumbered landholders in Broach; in 1877 a new measure was enacted which extended both to Broach and Kaira; and in 1881 an improved measure was substituted for the last. At the same time legislation was resorted to for the protection of indebted zamindars in Sind. And in 1888 it was found necessary to place further restrictions on the powers of the Talukdars in the three Gujarat districts of Ahmadabad, Broach, Kaira, and Panch Mahals.

Bo. Act VI, 1862.
Act XV, 1871.
Act XIV, 1877.
Act XXI, 1881.
Act XX, 1881 & Act XIV, 1876.
Bo. Act VI, 1888.

The first Act of the kind in Northern India appears to have been the Act of 1870 for the protection of the Oudh Talukdars. This was followed in 1872 by a regulation for Ajmere; and in 1876 an Act on the Oudh model was adopted for the landholders of Chota Nagpore. Finally, in 1882, a special legislation was undertaken to relieve the indebted proprietors in Jhansi.

Act XXIV, 1870.
Reg. V, 1872.
Act VI, 1876.
Act XVI, 1882.



271. It may be noticed that in many cases the Acts in force are temporary in their character; for instance, no application can apparently now be received with respect to the Jhansi, Oudh, Ajmere, Broach and Kaira and Sind Acts; and the number of estates dealt with by those Acts tends to diminish from year to year. Some thirteen hundred cases were brought under in Jhansi Act and have—except so far as a certain number still owe repayment of Government loans—been finally dealt with. The Oudh Act, which in 1872 embraced 53 cases, now deals with 1 estate only; in Ajmere 5 estates were under management in 1875, now only 2. So also in Broach and Kaira, where in 1882 53 estates were under management, there are now only 43, and in Sind, where in 1882 there were 339, there are now only 21.

Letter from N.-W. P., No. 1385, dated 11th October 1887.

With reference to the areas in which management may be assumed from time to time, it appears that at the end of 1891-92 there were 59 estates under the Chota Nagpore Act; and at the end of 1892-93, 57 estates under the Ahmedabad Act. The number managed under the Gujarat Act is not known, but there are not more than 18 so managed.

Bengal Court of Wards Report.

The Acts, generally speaking, are not applicable to very small estates. The average revenue payable in 1892 by estates under the Ahmedabad Act was Rs. 1,470; by estates under the Broach and Kaira Act, Rs. 2,650; by estates under the Sind Act, Rs. 2,175. In Ajmere there were two estates with assessments of 7,000 and 500, respectively; in Oudh a single estate of 11 villages with an annual income of ₹27,000; and in Chota Nagpore, the average revenue was ₹700, and the average rental ₹5,900. The estates dealt with by the Jhansi Act were much smaller, averaging apparently some 40 acres.

272. All the Acts above mentioned, though differing in details, have a general similarity of structure, with the exception of the Gujrat Act and the Jhansi Act.

The main features of the *Gujarat* Act which may be mentioned in the present connection are (*a*) that management is not necessarily undertaken with a view of preserving the estate from debt, but may be imposed in order to preserve peace or protect the inferior holders; (*b*) that quite apart from indebtedness or management by Government, no Talukdar may encumber the estate without the sanction of the Talukdari Settlement Officer, or alienate the ownership without the sanction of the Governor in Council. In these respects, the Gujarat Act represents perhaps the greatest interference with proprietary rights yet attempted in India. The annual reports of the Talukdari Settlement Officer indicate that the Act is working smoothly.

Bo. Act VI, 1888. Secs. 26 and 28.
Ditto, Sec. 31.

273. The *Jhansi* Act differed from the ordinary Encumbered Estates Acts in that it did not involve the management of the Encumbered Estates by Government. The following is a brief sketch of the measures provided for by the Act:—

In the *first* place, the principles already accepted in the Deccan Agriculturists' Relief Act (XVII of 1879) were to be applied to the reduction of the debts by striking from the account after a judicial investigation extravagant accumulations of interest; and in the *second*, the fair debts thus ascertained might be discharged in three ways.

N.-W. P. Letter No. 1385—58 of 11th October 1887, para. 3.

(1) Cash payment by debtor into court of the amount decreed; or sale of moveable property, or of immoveable property other than land;
(2) Loan by Government;
(3) Sale of landed property.

The value of an estate was estimated for the purposes of a loan at six times, and for the purposes of purchase by Government at ten times its net annual profits. If the debts, as finally determined, amounted to a larger sum than what the estate had been valued at for the purposes of a loan, or if the loan were refused, the rights of the proprietor were to be put up to public auction, and be bought in by Government, should no bid be made of a higher amount than the sum at which they had previously been valued for the purposes of purchase. A special Judge was appointed for the determination of claims against the embarrassed zamindars, and all applications for the benefit of the Act were to be filed, together with a full list of the liabilities of the applicant, within a twelvemonth of his appointment, leave being given to the Local Government to extend the period. In cases where the zamindar did not come forward voluntarily, the Deputy Commissioner was authorized to make an application on his behalf. The sale of the whole of a zamindar's proprietary rights was to operate as a discharge of all debts due from him, whether public or private."

Letter No. 1835–58, dated 11th October 1887.

The results of the Act were reported on by the Local Government in 1887, and from the report it appears that claims aggregating R11,25,581 were reduced by the Special Judge to R7,61,855; that over 90 per cent. of this was paid in full; and that cash was paid by the debtor in 13 per cent. of the cases, loans were granted by Government in 61 per cent. of the cases, and sales took place in 26 per cent. of the cases, but the sale was often of a part only of the property, and only 15 per cent. of the whole annual value of the indebted estates was sold. R3,30,238 were spent on loans (well secured), R37,910 spent on purchases of property, and R99,091 on the special establishment.

The results were considered in every way satisfactory, but subsequent reports contained complaints to the effect that the zamindars have only freed themselves by fresh debt or have relapsed into fresh debt since release. For instance, the following remarks may be quoted from the Board's Revenue Administration Report for 1890-91 :—

Para. 73, page 64.

"The Collector reports that the collection of arrears under Act XVI of 1882 gives an amount of trouble altogether disproportionate to the sums due; and he fears that when the history of the working of the Act comes to be written, it will be found that the ultimate amount of good it has conferred will be small in comparison with the hopes that were entertained when it was passed. He observes: 'The cases in which direct and immediate benefit followed to the landlord were the comparatively rare ones in which the money-lender had been in usufructuary possession of the mortgaged property, and in which an equitable settlement resulted in the reinstatement with a clear title of the original proprietor. In few of the other cases has the money-lender been defeated. He has advanced sums on simple bond to the landlord, assisted him to pay off the instalments of the loan, and when the property has been freed, has either induced the landlord to sell it to him, or if the latter demurred, has sued on the bond, and taken out execution against the immoveable property. The problem of retaining landed property in the hands of the old proprietors, by any means less drastic than by suspending the sale provisions of the Civil Procedure Code, is as far from solution as ever. The Jhansi landlord cannot live without credit, and as long as debt involves sale of his land, the money-lender must sooner or later oust him, whatever artificial obstructions are interposed.' It is to be feared that the conclusion contained in the last sentence of the Collector's remarks quoted above is correct; but the Board are of opinion that at any rate the Act did this much good, that accounts between zamindar and money-lender were settled on an equitable basis, which was not always the case when matters were left to the ordinary Civil Courts. Short of confiscating the money-lender's capital, however, it was impossible to give him less than the sum he had actually advanced and fair interest thereon. The real mistake dates from the time when saleable interest was given to the Jhansi landlords. If the Jhansi Encumbered Estates Act had taken away the right of sale from all landlords who could only pay their debt by the aid of Government loans, it would have done much more good than it has done."



And the following from the Report for 1892-93.

Para. 89, page 52.

"The Collector of Jhansi has made further local inquiries into the working of Act XVI of 1882, with the view of ascertaining whether the proprietors of encumbered estates had derived any real and permanent benefit from it. The result of these recent inquiries has induced Mr. Jackson to take a more favourable view of the effect of the Act than he did last year, when he was under the impression that, in only 10 per cent. of the cases dealt with, was the operation of the Act likely to relieve the estate permanently. He now writes—"the most sanguine estimate possible is, I think, that in something less than half the cases there has been more or less permanent relief. That this is so, is due to the fact that many persons of a character less thriftless than the old Bundela territorial aristocracy were admitted to the benefit of the Act. If we confined our examination to the cases of Bundela Thakurs, of acknowledged social standing and position, I am afraid we should have to admit that the benefit was very small. Nothing will save the Bundela from extinction as a zamindar so long as he has the right of transfer." Amongst other instances cited is that of a man who borrowed money, paid off his loan under the Act, and now owes over R5,000 on private debts. Mr. Jackson also observes that the Act generally is more effectual in the case of the small than of the large debtors."

274. With the exception of the Gujarat and Jhansi enactments, the remaining Acts above referred to exhibit a considerable uniformity of outline, the procedure laid down being similar to that followed in applying the provisions of the Court of Wards Act. First, as a rule, comes an application to be brought under the Act; then a preliminary enquiry as to claims and assets; then an order bringing the estate under the Act and appointing a manager. On the issue of the order existing suits and processes are blocked; the debtor becomes free from arrest and his land from attachment; the claims of creditors are received; the amounts due are equitably decided, generally by a Revenue officer; and a scheme for management is initiated, the manager being invested with considerable powers. On liquidation of the adjudicated claims the land (or so much as has not been sold under management) is released, and the debtor restored to full rights.

There are, however, variations in this general plan, and the most important of these may be noticed as follows :—

(1) The application of the Acts.

In Ahmadabad the local Act may be brought into use whenever Government consider that a Talukdar's liabilities exceed five times his income; and under the Gujarat Act an estate may be attached either on the application of the Talukdar or when there is reason to apprehend "danger to the peace of the country or danger to the well-being of the inferior holders."

Bo. Act VI, 1862, Sec 1. Bo. Act VI, 1888. Secs. 26–28.

Elsewhere relief is only granted on application. The application must be made :—

In Chota Nagpur (*a*) by a holder (including a tenure holder) of encumbered land or his heir, or (*b*) if the land is under attachment of a civil Court, by the Deputy Commissioner. — Act VI, 1876, Sec. 2.

In Jhansi (*a*) by any proprietor (including a quit rent holder) of encumbered land or (*b*) on behalf of such proprietor by an officer appointed by the Local Government or (*c*) when the proprietor is disqualified by the Collector or Court of Wards. — Act XVI, 1882, Sec. 4 as amended. See Sect. 194, Act XIX, 1873.

In Oudh by a Talukdar of encumbered land or his heir. — Act. XXIV, 1870, Sec. 3.

In Ajmere by a Talukdar, Thakur or Jagirdar of encumbered land.

In Broach and Kaira by an indebted Thakur or his heir. — Regn. IV, 1872, Sec. 2.

And in Sind by a Jagirdar whose title dates from 1843 or a zamindar holding land which in any year between 1871 and 1876 paid not less than R300 as revenue or the heir of such jagirdar or zamindar. — Act, XXI, 1881. Act XX, 1881, Sec. 4.

The application may be made in Chota Nagpur at any time. In Jhansi it had to be made within twelve months of the appointment of a Special judge for any local area. In Oudh and Ajmere it had to be made within twelve months of the passing of the Act; in Broach, Kaira and Sind within six months.

## (2) Method of dealing with claims.

Act VI, 1876, Secs. 5-10.

In Chota Nagpur a notice is issued by the manager and claims to be valid must be notified within three months (a term which may be extended on cause shewn to nine months). In settling the amount of claims justly due, the manager is guided by rules under the Act, which (*a*) allow him to admit acknowledged debts in spite of technical differences regarding limitation, stamps, etc., etc ; (*b*) forbid the grant of over 12 per cent. per annum. Moreover leases not more than three years old may be set aside on the ground of insufficient consideration.

Rules sanctioned in Govt. of India letter No. 701 of 20th Sept. 1877. (A, Pros., Sept. 1877, Nos. 1—7.)

Act XVI, 1882, Secs. 7-13.

In Jhansi the claims had to be presented within two months of notice issued by the Special judge; a term which might on cause shown be extended to four months. In determining the principal and interest due, the Special Judge was guided by elaborate provisions in the Act which required the opening of the history of the transaction ; he might set aside unreasonable interest, and might not award an aggregate interest in excess of the aggregate principal.

Act XXIV, 1870. Sec. 6-10.

In Oudh claims had to be presented within three months of the manager's notice, a term which might for cause shown be extended to one year. In dealing with claims, the manager was guided by rules under the Act.

Reg. IV, 1872, Secs. 8-14. Sec. 31.

In Ajmere notice is issued by the Commissioner, and claims had to be presented within three months (or, on cause shown, one year) of the notice. The Commissioner is given free powers in registering claims, and may if he wish refer points to subordinate Courts for decision.

Bo. Act VI, 1862, Secs. 2-10. Act XXI, 1881, Secs. 12-16. Act XX, 1881, Secs. 12-16. Pages 535 & 539. General Rules of Rev. Dep., Bombay (1893).

Claims in Ahmadabad have to be submitted within three months (or, on cause shown, one year) of notice : and the special Talukdari officer is not apparently hampered by any rules in allowing or disallowing debts. In Kaira and Broach and in Sind the claims had to be submitted in six months, or (on cause shown) within the year : and the manager was bound to enquire into the history of claims and determine the amounts justly due in accordance with rules under the Act which forbid the adjudication of interest in excess of principal : forbid interest after two generations : allow the reopening of the merits of decrees already passed ; and so forth.

## (3) Restrictions imposed during management.

Act VI, 1876, Sec. 3.

In Chota Nagpur the rule is that during management—(*i*) "the holder of the said immoveable property and his heir shall be incompetent to mortgage, charge, lease or alienate their immoveable property or any part thereof, or to grant valid receipts for the rents and profits arising or accruing therefrom." (*ii*) "The holder of the same property and his heir shall be incapable of entering into any contract which may involve them, or either of them, in pecuniary liability."*

Act XV, 1882. Sec. 8.

In Jhansi the Act requires that until the disabilities are removed "the zamindar shall be incompetent to sell, mortgage, exchange, give, or, without the consent of the Commissioner, lease his proprietary rights in land or any part thereof:" and similarly in Oudh "the talukdar and his heir shall be incompetent to mortgage, charge, lease or alienate their immoveable, property or any part thereof or to grant receipts for the rents and profits arising therefrom."

Sec. 3, Act XXIV, 1870.

Reg. IV, 1872, Sec. 26.

The Ajmere section runs :—"During the management of his property by the Court, no Talukdar, Thakur or Jagirdar shall have power to borrow money, or to alienate his property or any part thereof ; nor shall he be bound by any contract made by him during such management, unless it is in writing, and has been entered into with the consent of the Commissioner, and bears the Commissioner's official signature and seal."

Sec. 12, Bo. Act VI, 1862.

The Ahmedabad Act lays down :—"Any debt or liability, except as hereinbefore excepted, which may be incurred by the talukdar, either personally or in respect to his said landed estates or any part thereof, during the period of such management as aforesaid, shall not be enforceable in any manner whatever, either during or subsequently to such period of management, against his said landed estates or any part thereof, and it shall not be competent for the talukdar during the said period of management to charge, encumber, sell or alienate his said landed estates or any part thereof, and such charge, encumbrance, sale or alienation shall be null and void."

* Notwithstanding these provisions "many landlords run into debt at ruinous rates of interests even while their estates are under Government management" (para. 104, Court of Wards Report, Bengal, 1891-92).



The Broach and Kaira Act and the Sind Act use identical terms on the point, declaring that during management "the debtor shall be incompetent—(*a*) to enter into any contract involving him in pecuniary liability ; or (*b*) to mortgage, charge, lease or alienate the property under management or any part thereof ; or (*c*) to grant valid receipts for the rents and profits arising or accruing therefrom."

Sec. 9, Act XXI, 1881. Sec. 9, Act XX, 1881.

## (4) The term of management—

In Chota Nagpur the debtor or his heir must be restored to possession and enjoyment—(*a*) When the scheduled debts and loans from Government are discharged or (*b*) before the scheme of management is sanctioned, if it is thought inadvisable to apply the Act or (*c*) at any time if an arrangement can be made which is accepted by both the creditors and the Commissioner.

Sec. 12, Act VI, 1876.

The Jhansi Act requires the Commissioner to release the debtor from liabilities—(*a*) When the zamindar before liquidation commences to pay in the total claims due ; (*b*) When the claims are met by the sale of such property as is available, excluding proprietary rights and the property exempted by the Civil Procedure Code from attachment; (*c*) When the loan granted after such sale has been repaid and recovered ; (*d*) When the whole or a part of the proprietary right has been sold or vested in Government.

Sec. 25, Act XVI, 1882.

In Oudh restoration is necessary when the liabilities have been discharged, or, if within six months of the order for management, it is determined not to apply the Act.

Sec. 12, Act XXIV, 1870.

There is nothing in the Ajmere Regulation to limit the period of management : and it may be noticed that in Ajmere the debtor may, if it is thought advisable for the preservation of his dignity, be retained as manager under the Regulation.

Sec. 20, Reg. IV, 1879.

The Ahmedabad Act is peculiar in limiting the term of management to 20 years. In Kaira and Broach and in Sind the management terminates when the scheduled liabilities are cleared and any loan taken from Government repaid. Moreover, in cases of compulsory management under section 26 of the Gujarat Act all sales and agreements are limited in effect to 5 years.

Sec. 16, Bo. Act VI, 1862. Sec. 26, Act XXI, 1881. Sec. 26, Act XX, 1881. Sec. 29, Bo. Act VI, 1888.

## (5) The position of the property after release—

In all cases (except in Ahmedabad) the encumbrances created by the manager during management remain in force, but otherwise the owner regains full rights over the estate made over to him. In Ahmedabad no encumbrances made during management may last beyond the period of 20 years fixed for management, and the estate goes back to the owner free of all debts and encumbrances. In Broach and Kaira and in Sind, and under the Gujarat Act there is a provision that when the owner is restored, "no mortgage, charge, lease or alienation" of the property made by such owner "shall be valid as to any time beyond his natural life."

Secs. 11, 16 & 20, Bo. Act VI, 1862. Sec. 28, Act XXI, 1881. Sec. 28, Act XX, 1881.

The Ajmere Regulation contains no rule on this point, and in Jhansi as noted above the arrangement is altogether peculiar.

275. The two leading principles of the existing Encumbered Estates Acts may be said to be (*a*) the equitable determination of claims, and (*b*) the management or assistance of the estates by or under Government. If, as is not impossible, the former principle is accepted as part of the general law, the only benefit ordinarily conferred by this form of legislation will be Government assistance or management, and this must entail a certain extension of the duties and responsibilities of the State. And unless the power of alienation after release is in some way restricted, there is always the danger of these duties and responsibilities having been undertaken for nothing. These are the two objections raised by Mr. Benett, Secretary in the Revenue and Agricultural Department, in discussing the possibility of introducing a measure like the Jhansi Act in the Central Provinces :—

See para. 224 above.

Note of 19th September 1890. Pros. A Revenue, May 1891, Nos 9 to 14. Sel. p. 99.

"It has to be considered," he wrote, "that the operations in Jhansi which is only one district, occupied the whole time of an officer, who is perhaps the most capable Judge in the

North-Western Provinces establishment, for four years, and cost Government, exclusive of loans to proprietors which will be recovered, a lakh of rupees. A similar measure for all the eighteen districts in the Central Provinces would be very costly and make demands on the existing establishments which they could not meet.

"Again, it is a question whether the effect of the measure will be permanent. The proprietors have no doubt been saved for a time, but it is impossible to say that they will not again become encumbered. My own opinion, as far as I venture to have one on the subject, is that the majority of them have by this time adjusted themselves to their new position, and learned to defend themselves from the money-lenders, and that the relief will therefore be permanent. But this is a lesson which cannot be learned in a few years, and it might be suggested for the consideration of the Chief Commissioner whether his Province is yet ripe for so expensive a measure as one based on the lines of the Jhansi Relief Act would be. It is possible that its effects would have better prospects of permanence if it were postponed for a few years."

In 1876 the Bengal Government suggested the introduction of a measure for the relief of encumbered estates in Behar: but the Government of India negatived the proposal on the grounds that no sufficient reason for such legislation has been shown and that the provisions of the new Civil Procedure Bill (passed in the following year as Act X of 1877) would sufficiently meet the case.

Letter No. 797 of 31st October 1876. (A. Pros., Oct. 1876, Nos. 28—29.)

Similarly in 1894 the Madras Government proposed the introduction of an Encumbered Estates Act for the benefit of the Zamindars of the Madras Presidency, but it was held by the Government of India that the case would be sufficiently met by an alteration of the Court of Wards Regulation V of 1804.

Letter No. 333 of 15th February 1894. (A. Pros., Mar. 1894, Nos. 40—45.)

### (ii) The Court of Wards.

276. The system of placing estates under the Court of Wards is borrowed from English law, and finds a place in the Indian Statute Book as early as 1793 and 1804. Commencing in Bengal and Madras it has gradually been extended to other provinces, so that now there are seven * enactments in force in India, under which estates can be brought under the Court of Wards, *viz.*,—

Bengal Regulation X, 1793.
Madras Regulation V, 1804.

Reg. V, 1804, in Madras.
Act IV, 1872, in the Punjab,
Act XIX, 1873, in the N.-W. P.,
Act XVII, 1876, in Oudh,
Act IX, 1879 (B. C.), in Bengal,
Act XVII, 1885, in the Central Provinces, and
Reg. I, 1888, in Ajmere.

These enactments, with the exception of the Madras Regulation, apply to two classes of persons, *viz.*, (*a*) females, lunatics, minors, etc., who are incompetent to manage their estates themselves, and (*b*) persons declared by Government on their own application to be unfitted to manage their estates. With the former class of wards this note has no concern. The latter class was apparently brought under the Court of Wards for the first time in the North-Western Provinces Act of 1873: the Punjab Act of 1872 was amended in this sense in 1878, and all the Acts passed subsequently to 1873 contain a provision by which persons unfitted to manage their estates may apply for the protection of the Court. The extension of the Madras Regulation also, so as to include such persons, is at the present moment under consideration.

Section 194 (9), Act XIX, 1873, known as "the Crosthwaite clause."

Act XII, 1878.

(A. Pros., Mar. 1894, Nos. 40—45.)

The principle of all the Acts is practically the same, *viz.*, that the estate should be placed temporarily under the management of Government officers.

* Excluding Bengal Acts IV of 1870 and IX of 1879 in force in Assam, but not utilized.



The system differs from that of the Encumbered Estates Acts only, (*a*) in granting to the Court no equitable powers of dealing with debts and (*b*) in applying not to special classes of persons in a limited area, but to all proprietors coming under the prescribed disqualification.

277. Proposals for making a more extended use of the Court of Ward Acts were made by Sir John Morris, Chief Commissioner of the Central Provinces, in 1874, and have been repeated from time to time. It is believed that, generally speaking, the Local Governments have made fairly full use of the existing provisions, and that until powers are granted for the equitable reduction of debts, no considerable extension of the use of the Acts can be looked for, but the "extension and free use" of the law has been advocated as lately as 1892 by Sir Charles Crosthwaite. The extent to which the Acts are employed in the several provinces is indicated roughly below:—

Page 317 Home Department Selections CLV (1879).

See para. 22, Mr. Benett's note of 19th Sep. 1890 in Progs. A Rev., May 1891, Nos. 9 to 14. Sel. p. 100. Sir C. Crosthwaite's note of Nov. 1892. (Pros. Sept. 1893, Nos. 46—49). Sel. p. 128.

| Province. | Year. | Population of province in millions. | Under Court of Wards. | | Remarks. |
|---|---|---|---|---|---|
| | | | Area in lakhs of acres. | Rental in lakhs of rupees. | |
| Madras . . . . | 1892-93 | 36 | 5·74 | 28·25* | * Revenue demand. |
| Bengal . . . . | 1892-93 | 71 | ... † | 92·99 | † 74 estates. |
| North-Western Provinces and Oudh. | 1891-92 | 47 | 17·35 | 37·21 | |
| Punjab . . . . | 1892-93 | 21 | 3·28 | 3·99 | |
| Central Provinces . . . | 1891-92 | 11 | 21·99 | 10·52 | |
| Ajmere . . . . | 1891-92 | ·5 | ... ‡ | ·92 | ‡ 14 estates. |

278. The Government of India have lately had under consideration the desirability of extending the scope of the provisions contained in the various Acts, and it has been proposed to refer the following questions to Local Governments for opinion:—

(i) Whether estates should be taken under the management of the Court of Wards without the consent of their proprietors—
  (*a*) at the will of Government;
  (*b*) at the request of the next heir or other relations of the proprietor.

(ii) Whether a ward should be declared to be incapable of entering into any contract which may involve him in pecuniary liability.

(iii) Whether the Court of Wards should have power to declare, after issue of proclamation, that all claims against the estate not registered within a fixed period shall be extinguished.

(iv) Whether persons interested in land other than proprietors should be brought within the scope of the Court of Wards.

Enquiry is also being made as regards the advisability of introducing the Court of Wards system into provinces which at present are without it, and more especially into Bombay and Sind.

The Government of India have examined the question whether the powers of a proprietor to encumber his estate should be restricted after release from the jurisdiction of the Court of Wards, but have decided that such a course is not called for.

### (iii) Entail.

279. Proposals for preserving large estates from distintegration by a system of entail were made in Madras by Sir Thomas Munro as long ago as 1821.

Para. 4, Madras G. O. 606, dated 10th July 1893 (Progs. A Rev., March 1894, Nos. 43 to 45) Para 37 of "The Land and the Law in India."

Similar suggestions were put forward in 1872 by Mr. Justice West in the following terms :—

"To keep the wealthier families together in a position of a social superiority, they must be endowed with the means of securing their estates against the chance recklessness of at least one generation. This might be effected by a system of family settlements authorized by the law. The owner of land, with the concurrence of those, if any, whose assent would be necessary for a sale, could be empowered to make a voluntary settlement of it for a life and a majority beyond his own; or else for a definite period of fifty years. Six months' notice of the intended settlement should be published, and the particulars of the property intended to be embraced in it should be recorded in the local registry office. Within the six months all persons claiming in the lands an interest not admitted in the document registered, should require their claims to be admitted by supplemental documents, or else file suits to establish their rights. No pre-existing claims except the ones thus admitted or proved should operate against the settlement; nor should it be liable to be affected by any subsequent transactions except in the precise way allowed by the law. This should make provision for leases, at not less than one-half of a rack-rent, for any period not exceeding seven years, at the will of the tenant for life, and at any time not exceeding 21 years on conditions approved by the Collector or other local representative of the executive Government. For sanctioned improvements money should be obtained under the Land Improvement Acts as a charge on the property, or by a sale approved by the Collector of a portion of the estate. If the circumstances of the family, or of the property, had become so entirely changed that the maintenance of the settlement would be obviously mischievous, it should be open to the tenant for life to apply to the District Court for its rescission. Six months' notice should be given for opponents to come forward; and in decreeing a rescission the Court should be at liberty to put a portion of the property into a fresh settlement. A new settlement should be competent to each tenant for life in succession."

Page 356, Home Department Selections CLV (1879).

280. The proposal was discussed pretty fully in 1874 in the Central Provinces. Mr. Grant, the Jubbulpore Commissioner, was at first against the scheme :—

"The project," he wrote, "of guarding against alienation by means of voluntary family settlements would unquestionably have a certain effect in keeping together large properties (for it is obviously inapplicable and apparently not intended to apply to other cases); but it seems doubtful whether any measure of the kind could be really efficacious, even in its limited sphere, which rested on the spontaneous prudence of an apathetic and improvident class, and which did nothing to weaken the attraction of land for investors. Even now the Hindu law supplies a safeguard against reckless alienations by vesting in sons an interest in the family property; but either carelessness or filial respect or both must be constantly working to defeat the object which the old law-givers set before them, for this provision of the law is very seldom asserted. It may be presumed that, so long as land is one of the most desirable of investments, weak land owners will constantly be assailed by temptations to borrow, and that when their encumbrances have reached a sufficiently overwhelming pitch, not even the stringent check of a settlement will prevent the younger members of a family from joining with its head in taking any means open to them to stave off immediate annoyance and pressure. If the term of a settlement were fixed for a definite period instead of depending on lives or generations, the inducements to lend on the security of the settled property would obviously be weakened, but even in this case the temptations to money-lenders would revive with the gradual lapse of the embargo on sale."

Para. 20 note on page 366, Home Dept. Selections, CLV (1879).

Mr. Jones, Commissioner of Nagpur, however, supported the proposal, saying—

"As Mr. West has fully explained his proposal for family settlements, I shall merely remark that I do not concur with Mr. Grant in thinking that they would be ineffective* (the Collector might be made a party to the settlement if there were any fear of this,) and that I believe that they would be hailed by the people with delight and would do more to add popularaty to our institutions than almost any other measure we could adopt. The feeling of the people is for something that shall give permanence to their families, something that shall enable them to secure themselves against the recklessness or weakness of their children.

*The readiness with which life pensioners have surrendered half their incomes in order to secure smaller perpetual pensions to their families is a strong fact in Mr. West's favour. W. B. J.



India is now (to borrow an illustration from the author of Notes on Indian Affairs) much in the position in which England would have been if in the days of Richard 1st, when our nobility were all in debt to Jews for money borrowed for tournaments and crusades, she had been conquered by an African nation proud of its civilisation and bent on giving her the benefit of economic principles which it had found to answer at home. Had such an event occurred, civil courts would soon have done their work in transferring the land to the Jew (as Mr. Bernard remarked, the Marwari is the Jew of India,) and the healthy spontaneous development of a great people would have been stopped.

A rich banker of Jabalpur once came to ask me to show him some means by which he could tie up his money for one life, and expressed his readiness to invest one or two lakhs, I forget which, in Government Securities if this would aid his purpose. So strong is the feeling to which I refer that I believe that if the privilege of family settlements were attached to money invested in Indian securities, the bulk of the debt of the country would pass into the hands of Natives. W. B. J.

"Hindu institutions formerly did the work which the power of entail did in England, and I am convinced that if we would avoid violent social revolutions disastrous alike to our subjects and ourselves, we must provide something to supply the place of the institutions we have superseded. I have no 'fancy for reconstructing Native Indian Society upon a purely Native model,' but I see that 'our unintended influence metamorphoses and dissolves the (ancient) ideas and social forms, and that there is no expedient by which we can escape the duty of re-building upon our own principles that which we unwillingly destroyed.' The complaint which Natives of Oudh made to Sleeman 'that four times more of their ancient families had gone to decay in the half of the territory (Oudh) made over to us in 1801 than in the half reserved by the Oudh sovereign,' is one the like of which we may hear in too many parts of these Provinces. If we would free ourselves from such reproaches, we must cease to Americanise, and adopt measures like Mr. West's family settlements which shall recommend themselves to the instinct of the people as well suited to the transition state in which they now find themselves."

And Mr. Grant modified his original opinion as follows :—

"On reconsideration, I think I may have understated the advantages to be anticipated from a measure of the kind; and I agree with Mr. Jones that the power of thus tying up land would be prized by certain classes of native proprietors. I think, however, that we should deceive ourselves if we supposed that it would meet with universal, or even very general acceptance. The interests of most Hindu families are so undivided, and the younger members are so much influenced by the opinion of their elders, that the folly of one is the folly of all, and the divergence of wills, in which lies the chief security of settlements by consent, is often an inappreciable force. Still I should be glad to see the scheme tried, because it would be quite in consonance with native ideas; and even if it had not all the effect which is hoped for from it, it could do no possible harm."

Home Dept. Selections, CLV (1879), page 378.

The Chief Commissioner's view was also in favour of the scheme in one form or another :—

Ditto, page 337.

"Whatever opinion then Government may form of Mr. Jones' general scheme, I think that his support of Mr. West's proposal for a system of family settlements, concurred in as it is by other officers, may be accepted as conclusive proof that some plan effecting this object requires to be devised for these Provinces. It would only apply to the owners of large estates and would tend to maintain intact the great body of zemindars and chiefs in the position of social superiority in which we found them. Even an entail for one generation would be a great protection against recklessness; but as regards these larger properties I should be glad to see them placed under a permanent law of entail, which would prove an effective bar to all future alienations—a course which would be in keeping with the history and traditions of the past and in consonance with the wishes of the people."

281. No action was taken by the Government of India on these suggestions. The Succession Act of 1865 had already laid down the following principles :—

Act X, 1865.

*Section 100.*—"Where a bequest is made to a person not in existence at the time of the testator's death, subject to a prior bequest contained in the will, the latter bequest shall be void, unless it comprises the whole of the remaining interest of the testator in the thing bequeathed."

Bequest to a person not in existence at the testator's death, subject to a prior bequest.

*Section 101.*—"No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the life-time of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong."

Rule against perpetuity.

And the Transfer of Property Act in 1882 extended the same principles to transactions *inter vivos*—

Transfer for benefit of unborn person.

"*Section 13.*—Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferer in the property.

Rule against perpetuity.

"*Section 14.*—No transfer of property can operate to create an interest which is to take effect after the life-time of one or more persons living at the date of such transfer, and to the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong."

The Hindu law, generally speaking, leaves less liberty of disposition than the above, and the Mahomedan law less liberty still.

See Mr. Hewett's note of 13th April 1892 in Home Dept. Progs. Judl., May 1893, Nos. 47-55.

It may be noticed, however, that in certain exceptional cases a law of entail is practically recognized. For instance (omitting from consideration the case of jagirs which descend to a single heir), there are certain large estates which are by custom treated as impartible and descend to a single heir after the fashion of a Raj. And there are two cases in which the British Government has itself created by legislation a system resembling entail, *viz.*, (1) Act XX of 1860, by which a lakh of rupees was transferred to trustees for the benefit of the Baronet Sir Jamsetjee Jeejeebhoy and his successors in title, and the mansion and hereditants of Mazagon Castle were exempted from alienation except in case of failure of a male heir, and (2) Act VI of 1893, by which a similar arrangement was made in favour of the Petit Baronetcy.

See, *e.g.*, para. 5 above regarding the Madras zemindars.

See also the, Murshedabad case. Act XV, 1881.

See Mr. Hewett's note above quoted.

282. In 1879 Sir Saiyad Ahmed Khan of Aligarh proposed to introduce a bill by which large Mahomedan estates would be preserved from diminution through inheritance by means of an adaptation of the Mahomedan law of wakf or religious endowments. As, however, there were objections to this proposal, from the point of view of orthodox Mahomedan law, the bill was never introduced.

The objections were emphasized by a decision of the Calcutta High Court in February 1891, to the effect that to constitute a valid wakf there must be a dedication in favour of a religious or charitable purpose, although there may be a temporary intermediate application of the whole or a part of the benefits thereof to the family of the appropriator.

Upon this Nawab Ahsanulla Khan of Dacca represented that the decision would seriously affect arrangements made by Mahomedans for keeping their property in their families, and the question was investigated by the Government of India.

Letter No. 1503 B of 20th April 1892. Home Dept. Progs. Judl., May 1893, Nos. 47–55.

283. Meantime representations of a similar character were received from the Lieutenant-Governor of Bengal and the Chief Commissioner of the Central Provinces. The former pleaded for entail legislation on behalf of Sir Jotendro Mohan Tagore and the Nawabs of Dacca, adding at the same time that general legislation for an extension of the principle of entail in certain large estates was desirable.

"What is wanted," Sir Charles Elliot wrote, "is a law which should apply to Muhammadans as well as Hindus, and to all Hindus, whatever the normal law applicable to them may be, whether Mitakshara, Dayabhaga, or any modification of these laws. The law might provide that an impartible and indivisible character should be given to a particular estate either by a notification to that effect by the Government of India in each case, or by enacting that such an attribute should be inherent in estates which are owned by noblemen who possess the hereditary title of Raja or Nawab."



The communication from Sir A. MacDonnell, Chief Commissioner of the Central Provinces, suggested for consideration "whether some means might not be devised of enabling persons who are possessed of a large self-acquired fortune to tie up a portion of it in such a manner that it may descend intact to the heir whom the possessor may designate, so as to prevent its being squandered on the latter's death."

No. 260 of 13th January 1893, Home Dept. Progs.

"The Chief Commissioner," it was added, "finds that there is a feeling in this part of India that some measure of this kind would be well received. Cases frequently occur in which self-acquired wealth is, on the death of the possessor, either dissipated by the extravagance of his heirs or frittered away by litigation having its origin in family dissensions. In either case the patrimony is wasted, and those who should enjoy the influence and weight among their fellow-countrymen which attaches to the possession of large landed estates or of some form of wealth, are reduced to a subordinate position in the social scale, if not to beggary, while the Government is deprived of the support and influence which is, as a rule, afforded to it by those who have acquired wealth under its protection and whose fortunes are often largely bound up with those of the Government. Where self-acquired wealth is invested in land, something is in those Provinces done by the Court of Wards to prevent this dissipation of property and to resuscitate fallen fortunes. As a rule, however, this remedy is only capable of application when the mischief is already done, and the question which has occupied the Chief Commissioner's attention is whether something could not be done to preserve a self-acquired fortune while it is still intact, or, in other words to enable the possessor to tie it up, subject to suitable restrictions, while he is still alive."

Letter No. 7 Judl. 383-3 dated 3rd April 1893, Home Department Judl. Pros., April 1893, Nos. 47—55). See abstract in para. 2, Secy. of State's despatch No. 8 of 26th April 1894. Sel. p. 161.

284. Thereupon a bill was drafted by the Government of India and circulated in April 1893 to Local Governments for opinion. This bill referred primarily to titles which had been granted by the Government of India as a hereditary distinction and was based on the principle that "such title should carry with it the right to settle an adequate income out of the grantee's own pocket, from resources entirely at his disposal, for the perpetual maintenance of the title, so that no holder, however he may squander his life-interests, may be able to prejudice his successors." It was proposed, however, to take power to extend the scope of the enactment by notification to any other hereditary title; that is to say, to titles which are hereditary but have not been granted by the Government of India.

On receipt of opinions, not a few of which were adverse to the Bill, a revised Bill was framed in which the same primary provisions were maintained, but the power to extend them by notification was so enlarged as to embrace titles of any description, though they might not be hereditary. A settlement made with the consent of the executive Government, in accordance with the terms of the enactment, was declared to have the same validity as if it had been specially confirmed by an Act of the Legislature; and it was further proposed to leave it to the discretion of the Governor-General in Council by executive order to determine among other things the value of the property which might be comprised in the settlement and the circumstances under which a settlement once made might be cancelled or set aside.

Despatch No. 8 Legs., dated 28th April 1894, (Home Department Judl. Pros. Jany. 1894, Nos. 340—445). Sel. p. 161.

285. The Bill was forwarded to the Secretary of State in January 1894, but Mr. Fowler declined to permit of its introduction in the Legislative Council. He objected on principle to alter the existing law which "is based on a recognition that it is not expedient to fetter further the free transfer of property;" he pointed out the opposition with which the proposal had been met in several quarters; indicated practical difficulties in limiting the scope of the measure and in preventing discontent at its working; and concluded that the political

advantages did not compensate for the economic evils which the enactment would produce.

He added moreover—

"If the permission of the Government to the creation of an endowment is to be given only in exceptional cases, there is no occasion for a general law; and it is probable that closer attention to the circumstances of each case would be secured if special legislation has to be resorted to for the purpose of meeting it. If, on the other hand, it could be conceded that such permission might be freely accorded, I consider that the Bill should define with much greater fullness the principles upon which permission should be given or withheld, and that it is not expedient to leave so wide a discretion to the Government of the day, when it is asked to set aside the law of inheritance to which the particular family is ordinarily subject."

### (iv) Pre-emption on the part of Government.

Report, para. 73, page 73.

286. In their report of 1892 the Deccan Commission stated that proposals had been brought to their notice "to prohibit alienation except to the Government or at least to give the Government in every case the prior option of purchase."

See App. to Cawnpore Sett. Report.

It is not known precisely from what source the former of these proposals came, but it is probably founded on the suggestion made by Mr. Buck, as Settlement Officer, Cawnpore, in 1872, "to prohibit for the future all mortgages of estates except to Government and all sales of estates otherwise than through the agency of Government, except in the case of *bonâ fide* transfers to ancestral members of the community." There is no record apparently of any repetition of the suggestion in this form.

Calcutta Review, 1873, Volume LVI, page 227, seq.

287. The second proposal, *viz.*, that Government should have the right of pre-emption at the sale of an estate, forms part of a scheme set forward by Mr. Charles Crosthwaite in 1873, under which all compulsory sales for debt or arrears of revenue were to be abolished and Government was to have a right to buy estates and resettle them with the ex-proprietors at an enhanced revenue and on an untransferrable tenure.

The following quotations indicate the nature of this part of his scheme:—

"This proposal will probably have an alarming sound to some ears. A little consideration will, however, show that the scheme is not of a very gigantic nature, and that it is one capable of contraction or extension at pleasure. The right of pre-emption does not imply any necessity of purchasing, or of exercising the right. But the possession of it will put the Government in a most commanding position, and will enable it to apply a remedy to the worst instances of hardship that occur, even if it sees fit to go no further.

The details of the measure might be something as follows: No sale of any kind, conditional or direct, or by decree of Court should be final unless an offer of the land had first been made to the Government, and declined by it. A certain percentage of profit should be laid down, say, ten per cent.; and unless a careful valuation of the estate showed that the rental would yield that profit, the Government should, in ordinary cases, refuse to buy. On becoming owners of the estate, there would be several courses open to pursue. If the outgoing proprietors were men of family and influence, or there was any special reason for wishing to maintain them, it would be easy to make a settlement with them on terms sufficient to yield the required amount of profit. Their position under such an arrangement would be vastly better than any they could hope for did their land pass to the hands of any private purchaser. If, again, the outgoing proprietor had himself purchased the estate, or was a man of bad character, or one whom it was thought better to get rid of, a settlement could always be made on very advantageous terms with the hereditary tenants. A very large portion of the Etawah district was so settled after the breaking up of the estates of the larger talukdars in 1839, and the plan was worked admirably as a rule.

If neither of these courses was approved, the estate could be held under the direct management of the Collector or farmed to one of the best landlords in the neighbourhood.



In any case the Government would have an ample opportunity of making such arrangements as would protect the old proprietors in their cultivating rights, and save the tenants from oppression. The occasions that Government would thus have of showing itself in the character of a friend would be many. Take for instance the very common case of an estate sold at auction much below its real value and bought by the judgment-creditor himself. Such sales are seldom widely advertised. Even when it is well known that certain land is to be sold, an influential man has only to announce his intention of buying it to stop all real competition. Such cases are much more likely to occur within the period immediately subsequent to the passing of a law abolishing the compulsory sale of land in satisfaction of future debts. The immediate effect of such a law will be, as has been said, to cause a rush of creditors to the Courts. Many estates will be put up to sale, and, in all probability, will sell cheap for want of purchasers. The right of pre-emption would enable Government to take over all estates that were sold below their value, and to make such arrangements with the owners as would, at any rate, save them from utter ruin."

And he goes on to meet possible objections as follows:—

"There are two grounds on which it is probable that opposition will be raised to this proposal. In the first place it will be said that, in the case of sales or mortgages with conditional sale, the price will be so large or the amount will be so swelled by the addition of interest, that it will pay no one but the mortgagee or creditor himself to take the estate. In the second place it will be urged that this pre-emption scheme is only another form of a Government land bank. It would be better and shorter, it may be said, to come forward in the first instance and lend a man money on the security of his land, than to wait till he is embarrassed and has borrowed it from some one else. Both of these objections seem to me to be without good foundation. In the first one it is forgotten that compulsory alienation of land for debt will have ceased. It will no longer be the object of the money-lender to run up a long bill which he may never realise. The landowner will also have been freed from the fear of compulsory sale by the Collector, and will be under no temptation to prefer the banya to the Government as a creditor. His power of borrowing will also have been largely diminished for the same reason. Even granting then, which I do not, that estates at present are generally transferred by compulsory or conditional sale for amounts exceeding their value, and the recovery of ten per cent. on which would be impossible, still under the new conditions this would not, nay, could not, be the case. It would also be the direct interest of the embarrassed landowner, when the intention of Government was understood, to avoid putting such a price on his estate as would render its pre-emption by Government impossible. But if my surmises turn out to be incorrect, if it is found that the price put on land, either *bonâ fide* or collusively, is such that Government cannot afford to purchase, what harm has been done? None, whatever: the scheme will simply have failed, nothing more. But the Government will not have been involved in any embarrassment.

This consideration seems to lead naturally to the answer to the second objection. The failure of the pre-emption plan would not lead to any difficulty or loss. The failure of a Government land bank, if carried on in any large way (and in any small way it will be useless), can hardly be contemplated with like equanimity. The fact is that the two schemes are diametrically opposed in their nature. A land bank to be of any use for political purposes must lend to all landowners. If we refuse any, we may refuse the very one whose position we may afterwards most wish to save. The right of pre-emption, on the other hand, may be restricted within any limits that may from time to time be dictated by expediency. It is a weapon that need never be used, and yet is always ready for use when most wanted. It might be interposed at any time to save an estate which Government wished from whatever motive to preserve from strange hands. It might, on the other hand, be laid aside altogether

But a Government land bank must, from its very nature, go on extending its business. It is hardly necessary to say what that involves, what an enormous establishment, what an addition to the already overgrown business of administration, year by year the business would grow, the capital out on loan increase, and with it the labour of collection. Even granting that the management was perfect, that no bad debts were contracted, still it would be necessary in many cases to resort for recovery to distraint and transfer. We should have Government appearing in the most objectionable character—that of a relentless and exacting usurer. With time, the old rate of interest, and oppressions of the old money-lenders, would be forgotten. Nothing would remain but a sense of present misery, and the dull impersonal severity with which the debt

to the Government bank were collected. The very arguments that can be adduced in favour of claiming a right of pre-emption for the estate tell against the institution of a public land bank."

Note of 28th November 1892, in Home Department Proceedings, Judicial, 329 to 364, June 1894. Sel. p. 127 & 128.

288. The exercise of pre-emption by Government was again put forward by Sir Charles Crosthwaite in November 1892, as part of a scheme for the relief of large estates. In that scheme, preemption by Government appears as a measure supplementary to the grant of power, when not already possessed, of placing proprietors under the Court of Wards on their own application. It was proposed that in cases where a proprietor had not availed himself of the protection of the Court of Wards and it was politically advisable to retain him on the land, the Government should have power (*a*) to purchase the land either on voluntary sale or at sale in execution, and (*b*) replace the ex-proprietor on the land as a tenant with untransferable rights, who would pay an increased rent or revenue to cover the interest on the price paid by Government.

"These two measures, namely, the power of placing men under the Court of Wards on their own application, and, secondly, the reservation to Government of a right of pre-emption ought, I conceive, to enable the Government to do everything that is politically necessary. The majority of cases could be met by the Court of Wards' system. In some cases a man might have let things go too far before he applied, and execution might be taken against his land. In that case he could still be saved if the Government had a right of pre-emption. The free use of these means in suitable cases would, I think, operate to restrict the credit of land-owners, and would make the money-lender less eager to involve his victim in debt with the object of acquiring the land. They do not involve any diminution of existing rights, or any such disturbance as the abolition of all transferable rights in land might cause. I think they meet the necessities of the case so far as those necessities are known."

Also to that proposed on page 148 of the Banda Settlement Report (1881).

289. It will be observed that the scheme has some resemblance to that which was successfully employed under the Jhansi Encumbered Estates Act. Under that Act, when sale was found necessary, Government was empowered to purchase at 10 (subsequently raised to 16) times the annual profits and to grant to the ex-proprietor the status of an ex-proprietary tenant in the sir-land purchased.

Note of 17th December 1890. (Proceedings, Revenue A, 9 to 14, May 1891.) Sel. p. 102.

This resemblance was pointed out in 1890 by Mr. R. J. Crosthwaite in a note in which he supported the proposal above described, at least so far as concerned pre-emption at sales under decree of Court :—

"The only other means," he wrote, "of effectually preserving estates in the possession of their present owners is that which was originally, I think, proposed by Sir Charles Crosthwaite, and which was adopted to a certain extent in the Jhansi Encumbered Estates Act, 1882. The principle is to give the Government a right of redemption in case of foreclosure, or a right of pre-emption in case of sale of proprietary right in land. The Local Government might be empowered to make rules directing the Civil Courts to give notice of decrees for foreclosure or sale and of orders for sale to the Deputy Commissioner, and the Deputy Commissioner could take, under orders of the Local Government, the necessary steps to redeem or purchase the property. When the Government purchased or redeemed, the property should vest in the Crown, and the ex-proprietor might be made an occupancy tenant of his sir-land, or the Government might settle the estates again with him, but as patel, and not as proprietor. The result of this last arrangement would be that the ex-proprietor would be restored to the position he held before, and would only lose the privilege of transferring his estate and raising money on it. The scheme would require working out, and it would perhaps be necessary to limit, as in the Jhansi Act, the amount which the Local Government might pay for redemption or purchase. If the Government had such a power of redeeming or purchasing estates, it would be possible to save any land-owner whose connection with the land it might be desirable to preserve, and as the Government would acquire the proprietary right and could impose an enhanced assessment on the ex-proprietor, the measure ought not to involve a loss of money."



See, *e. g.*, Mad. Govt.'s letter No. 419, dated 12th June 1894 and Govt. of Madras' reply No. 16, dated 3rd January 1895; Mr. Campbell's paper, page 783, Vol. II, Fifth Report (Madras Ed.); para. 154, Bengal Board's Rev. Adm. Rep. for 1886-87, Banda Sett. Rept. page 148, etc. Para. 7, North-Western Provinces letter No. 1385—I-58, dated 11th October 1887.

290. The objections raised by the Commission of 1891 were three, *viz.*, (*i*) the high price of land, (*ii*) the impossibility—in the Deccan at least where the revenue bears no fixed relation to the land-value—of ascertaining the true value of land, and (*iii*) the chance of Government being defrauded by collusion between the vendor and the purchaser. Proposals for the purchase of estates by Government—either for the better protection of the tenants or for other reasons—have moreover from time to time been put forward by various persons, and the objections generally raised are that Government would never obtain the estate except for the highest bid which it was prepared to make, and that estates sold under the circumstances implied—more especially in execution of decrees—are, as a rule, much involved. If, however, the Government can secure, as it did in Jhansi, an income of 8 per cent. on its outlay, there seems to be reason for reconsidering the question whether Local Governments should not be entrusted with power to experiment from time to time in the purchase of old estates which otherwise would fall into the hands of money-lenders.

Dated 9th February 1891. (A. Pros., Sept. 1893, Nos. 46-493.) Sel. p. 120.

Sir E. Buck, in a note on the proposal to appoint the recent Deccan Commission, has written :—

"I think I am right in stating that when these questions were discussed in the years 1882—84,* Sir Charles (then Mr.) Crosthwaite pointed out that there were only three courses :—

(1) to forbid transfer ;
(2) to let things go on as they are ;
(3) to buy up encumbered estates and resettle them on enhanced terms with absolute restrictions as to transfer.

"I submit that when opinions have been recorded by high authorities, as they have been now by the Secretary of State, that the second course is wrong and that things ought not to go on as they are : too much attention has been paid in dealing with them to the impracticability of the first course—the absolute prohibition of transfer—and too little to the possibility of a practical application of some such remedy as that suggested in the third proposition above stated."

The Honourable Sir P. Hutchins, however, expressed a preference for the system described in paragraphs 332—336 below.

### Proposals dealing with proprietors generally.

291. Turning now to restrictions of a more general character than those above dealt with, we may consider, first of all, the proposals which deal directly with the right of transfer and then pass on to those which aim at a restriction on credit by changes in assessment or at the protection of the ousted proprietor by a modification of the revenue and tenant law.

## (I) DIRECT INTERFERENCE WITH THE RIGHT OF TRANSFER.

### (A) Restrictions on Mortgage.

292. The possibility of prohibiting land sales in execution of decrees for unsecured debt has already been discussed, and it has been noticed that the Para. 243.

* This reference has not been identified.

result of such a measure would be to increase the resort to mortgage. We may now consider some proposals which have been made for discouraging this resort to private mortgage without restricting the right of private sale.

The proposals dealing with particular classes of mortgages may first be considered.

### Simple Mortgages.

293. To prevent *simple* mortgage only the directest way is to prevent the sale under decree of land so mortgaged. Restrictions on such sales already exist in Chota Nagpore, Oudh, the Punjab, Berar and the Central Provinces, where the rules requiring sanction for the sale of land make no distinction between cases in which the land was pledged and cases in which it was not: but such sales do not appear to be absolutely forbidden in any Province except Ajmere. Several officers have from time to time advocated the complete abolition of sale under decree, but it is not always clear whether they desired their proposals to extend to the case of secured debts or not: and, though no doubt this was sometimes intended, yet there seems to have been at no time any general desire to extend to simple mortgages any restrictions not applicable to mortgages at large. *Primâ facie* the result of restrictions on simple mortgage is to drive creditors to demand usufructuary mortgage or mortgage by conditional sale; but there are no facts available to show how far this has been the result in areas where sale for simple mortgage is already restricted.

See para. 72.

See, *e.g.*, Home Department Selections CLV, page 53 (Mr. Mayne); page 86 (Punjab Chief Court), page 102; (Mr Griffin), page 107; (Sir D. Macleod), etc. The proposal is put forward as a *pis aller* by Mr. Woodburn, Collector Hyderabad, in his letter No. 4094, dated 6th October 1892 (B. Pros., Aug. 1893, No. 5). Sel. p. 144.

### Usufructuary Mortgages.

294. As regards *usufructuary* mortgages a proposal has been made that, in areas where pre-emption is allowed, it should be extended to the case of such mortgages. Preemption is legalized in Oudh, Ajmere and the Punjab; in Oudh and Ajmere the right is apparently restricted to cases of sale and foreclosure, and in the Punjab Law this is expressly stated, pre-emption of mortgage being only admissible where local custom recognizes the claim. Much fault has no doubt been found with the working of the law of pre-emption, but on the whole, its influence has been in the direction of restricting alienation to outsiders and the extension of the principle to mortgages has been once or twice suggested. It is stated in the Ludhiana Settlement Report that "the right of pre-emption is generally claimed and insisted on; and it would be also in the case of mortgages if the law allowed of this." And in 1889 Mr. Wilson, Deputy Commissioner of Shahpur, wrote:—

Act XVIII, 1876, Sec. 9; Reg. III, 1877, sec. 9.

Sec. 9, Act IV, 1872.

Rattigan's Digest of Civil Law (Fourth edition), page 70.

Settlement Report, para. 165.

Letter No. 1C, dated 21st January 1889, para 8.

> "In cases of mortgage with possession a right of pre-emption should be given to the agriculturalists of the village. It is in every way desirable that land when it passes from the hands of one peasant should go with those of another and not of a money-lender, and the present common system of mortgage with nominal or actual possession is often practically a sale, and should be open to pre-emption just as sales are."

Para 41, Mr. Elsinie's memo. dated 15th August 1889. (A. Pros., Dec. 1891 Nos. 10-11.)

The proposal met with the support of the Financial Commissioner and, if no more rigorous measures are to be taken, it may be worth reconsidering in the three Provinces above mentioned.

### Mortgage by Conditional Sale.

295. *Mortgage by conditional sale* is in ordinary use, apparently, in all parts of India, but we have no information as to the extent to which it prevails. In the Central Provinces it is said to be the most common arrangement

See Mr. J. W. Neill's note of February 1889. (Pros. Rev. A, 9—14 May 1891.) Sel. p. 91.



in the case of large estates, and Mr. Grant pointed out long ago that it was used with increasing frequency as a means of avoiding the general rule restricting sales of land. To meet the evils occasioned by this form of contract, Mr. Fuller, Commissioner of Settlements and Agriculture, has suggested an arrangement by which "the foreclosure of a mortgage would only have the effect of placing the mortgagee in possession of the land for a definite number of years or till the expiry of the current period of settlement, the ryot being disabled from incurring fresh debts to the mortgagee during the period of the mortgagee's possession." The proposal is similar to the general suggestion made by Sir W. Muir, to which allusion will be made below.

Note of 1874 on page 349, Home Dept. Sels. CLV.

Memo. dated 29th September 1892, Proceedings Revenue A, 18 and 19, May 1893. Sel. p. 110.

Para. 301.

296. The effects of this form of mortgage do not appear to have attracted special notice in any other Provinces, except in the Punjab. In that Province the Transfer of Property Act is not in force, and consequently the mortgagor obtains under Regulation XVII of 1806 a year of grace after application for foreclosure instead of six months, but the feeling against conditional sales is very strong and they are objected to mainly (*a*) because the insertion of the condition in the mortgage bond is often made without the mortgagor realizing the fact, and (*b*) because these sales defeat the object of the rules under Section 327, Civil Procedure Code, which require special sanction for sales of land. Enquiry was made in 1886 as to the extent to which such sales were prevalent, and the general result of the replies was that—except in one or two districts such as Umballa and Gujranwala—the number of applications for foreclosure was found to be trifling. At the same time some officers took occasion to point out the evils of the system, and suggestions were made to the effect that, if such sales were allowed, the Court should at least have equitable powers in fixing the amount due. The Settlement Officer of Umballa, Mr. Kensington, advocated the abolition of the system in the following terms:—

Section 8.

Act IV, 1882, Section 86.

See page 986, Sec. 9, Final Com. Sel. New Series Nos. 11—37, LXV (1887).

*Eg.* Mr. Clifford and Mr. Ibbetson, page 989, ditto.

Page 991, ditto.

> "I believe it may be accepted that mortgages on conditional sale are among the most ruinous forms of agricultural loans, and that their rapid increase is due to the growing helplessness of the people to struggle with their difficulties in obtaining money on any reasonable terms. With whole sections of agriculturists belonging to the less provident castes, the money-lenders have long refused to make any advance at all, otherwise than on actual hypothecation of the land, and year by year the terms grew harder as the baniyas feel their growing power. I believe myself that the crisis is being rapidly reached in this district, and that, within the next 10 to 15 years at least, the Government will be almost compelled to step in and enforce wholesale measures of relief similar to those adopted in the Deccan Ryots Act. As a preliminary measure the abolition of conditional sales might afford some small relief, but in my own opinion the time is already past for partial remedies, and no scheme will be of real use which does not take into account the whole conditions of agricultural indebtedness."

When the subject of indebtedness was discussed in 1888-89, protests were again made against the system of conditional sales. Mr. Wilson, Deputy Commissioner of Shahpur, wrote:—

Letter No. 1-C., dated 21st January 1889, para. 7 (Proceedings 10 and 11, A Revenue, December 1891).

> "Suits for foreclosure of mortgage are becoming very common in many districts, and should be put a stop to by the repeal of the antiquated regulations under which they are brought and the enactment of a clause declaring such conditions of sale on failure to redeem to be of no effect. It is better that the peasant should in a few instances be compelled to sell his land outright, than that he should be gradually involved in the meshes of the law. Let us have three simple forms if we must have any, either (1) a simple mortgage without possession; (2) a mortgage with actual possession, the peasant really quitting the land for the time being; or (3) a downright sale."

And Mr. Ibbetson, as follows:—

Para. 74, enclosures to letter No. 65, dated 7th March 1889. (Proceedings 10 and 11, A Revenue, December 1891.)

> "First I would abolish conditional sale so far as to give it no effect beyond that of an ordinary mortgage. Either the restrictions which we have imposed upon the sale of agricultural land in execution of a decree are good, or they are not good. If not good, they should be abolished.

If good, conditional sale should be abolished, as it is, as at present used, simply a device for turning our flank in this matter. There is no reason why a man should be protected against foreclosure in the case of mortgage, which does not apply with at least equal force to that of conditional sale. When a peasant sells his land outright, he at least knows what he is doing. But it is not so when he mortgages by conditional sale. He wants money and is ready to do anything *but* sell; and he hopes for the best, and believes that he will presently redeem his land. This is precisely the form of insidious temptation from which he should be preserved. The Banias are already finding out that conditional sale affords a simple and certain means of obtaining possession of the land. Out of 5,744 registered alienations of agricultural land in this district between 1884 and 1888 no fewer than 1,260 were conditional sales. In Tahsíl Sámpla for the same period, 1,069 out of a total of 2,611 were conditional sales affecting 15,484 acres of land. During the same period 1,029 notices of foreclosure have been issued under the regulation, or very nearly as many as there have been conditional sales registered. Out of 1,260 deeds of conditional sale registered, 1,069 were in a single Tahsíl, Sámpla; and this is accounted for by the fact that the petition-writers of that Tahsíl have appreciated the advantages of this form of mortgage, and strongly urge their clients to accept no other. The knowledge will spread."

Hafizabad Assessment Report, para. 147 (Punjab Revenue Proceedings, February 1894).

The subject has again recently come to the front in connection with the settlement of the Gujranwala District. The Settlement Officer, Mr. O'Dwyer, has reported:—

"This tendency has, however, been much strengthened by the 'bai-bil-wafa' or foreclosure procedure which has been extensively employed in this tahsil. The cultivation being precarious and the profits rather low, it has been the practice in the past for the money-lenders of this tahsil to get the borrowers to execute deeds of mortgage under which the debt is secured against the land pledged. Possession remains with the mortgagor who binds himself to pay so much interest yearly. The mortgagee then inserts a foreclosure clause—of the existence, or at least of the effect of which I believe the mortgagor is very often ignorant—to the effect that unless the whole debt with arrears of interest, etc., is discharged in one particular year, the mortgage shall be foreclosed and the conditional sale made absolute in favour of the mortgagee. The mortgagor after a few years in which he has made little or no progress towards clearing himself thus finds himself called upon to pay up at once the whole debt swelled up by accumulated interest, and before he realises his position, he finds his property has passed out of his hands. In this way the Khatri and Arora money-lenders of Hafizabad, Pindi Bhattian and Chak Bhatti, who are notoriously clever and unscrupulous, and have to deal with a peasantry exceptionally backward and ignorant, have acquired enormous areas—and sometimes whole estates—for a nominal price. An alien point of law borrowed from the Muhammadan system, in which it was applied only for mortgage of moveables, furnishes the basis of this system: our technical legal procedure supplies the machinery. Both are foreign to the ideas of the people, unintelligible to their minds, and the result of their combined action is to whittle away rights of property before the parties affected have realised their position."

The Commissioner, Mr. Thorburn, supported this view in the following words:—

"I remember in, I think, 1885 when acting for three months as Divisional Judge at Gujranwala, that the foreclosure condition in mortgage and hypothecation deeds struck me as unjust for ignorant peasants. I permitted foreclosure in no case that came before me, but a technical judge would have enforced it. I imagine that some early Deputy Commissioner favoured foreclosure, hence mortgagees and deed-writers, seeing its advantages for the creditor, got into a habit of inserting a foreclosure clause. It seems that it is inserted in hypothecation deeds as a matter of course now. As Mr. O'Dwyer says, 'an alien point of law borrowed from the Muhammadan system in which it was applied only for mortgage of moveables furnishes the basis of this system; our technical legal procedure supplies the machinery. Both are foreign to the ideas of the people, unintelligible to their minds, and the result of their combined action is to whittle away rights of property before the parties affected have realised their position.' A strong Deputy Commissioner would stamp out the cruel innovation in a few years, did he set his mind to it. Unfortunately such Deputy Commissioners are annually becoming rarer."

The prohibition of this class of contract, at any rate in provinces enjoying provisions such as those sanctioned under Section 327 of the Civil Procedure Code, appears to be worthy of consideration.



297. Complaints similar to the above have been received from Burma regarding the interpretation put by the Courts on the so-called "Burman sales" prevalent in that province.

"Land under Burman rule was never sold in the usual acceptance of the term. It was frequently conveyed for a price from one person to another, and though the transaction was styled a sale, and not a mortgage, it was fully understood that the vendor retained a right to repurchase the land at any time he liked, and that the emptor could not resell the land without the consent of the original vendor." Spearman's British Burma Gazetteer, 1880, Vol. I, page 438.

Mr. Aston, the Judicial Commissioner, has recently written regarding these:— Para. 4 of letter No. 1038—20, dated 6th July 1894, to Chief Comr., Burma, received by the Govt. of India demi-officially.

"The same local usage was affirmed in the decisions noted in the margin and discussed in Po-Shwe-Aung *v.* Po To Bya (Burma Selected Judgments, page 494), but the effect of these decisions is to so apply a rule of the law of evidence as to make it probable that such 'Burman sales' or mortgages by way of conditional sale by Burman agriculturists would in the majority of instances be transformed into absolute sales not by giving effect to the ascertained intentions of the parties to the contract, but because of the displacement of Native law and usage by English law when the two sets of rules are in contact—'A phenomenon,' as a former Legal Member of the Viceroy's Council remarked, 'which may be observed over the greater part of India, at the present moment."

### Mortgages in general.

298. Turning now to mortgages generally, the remedies suggested are—

(*a*) That they should be invalid unless previously sanctioned by the Revenue authorities.

(*b*) That the term of lien should be limited.

(*c*) That mortgages should be treated as 'charges' only.

### (*a*) *Sanction of Revenue authorities.*

299. The prohibition of mortgages, while sales are permitted,—a course which has been proposed (see, *e.g.*, para. 358 below) in respect of tenancies—does not appear to have been suggested in dealing with proprietary holdings. The proposal, however, to require previous sanction for the validation of a mortgage, was strongly urged by several officers of the Central Provinces in 1874. It formed part of the remedy suggested by Mr. Jones, Commissioner of Nagpur, who catalogued his proposals as follows:— Page 365, Home Department Selections CLV. Similar proposals by Mr. West and Mr. Low are noticed further on.

"I.—I would allow all landholders to sell their land outright, without let or hindrance, and would confine State interference, to securing them against incumbrances to operate in the future. But I would make all sales voidable until possession had been given, or until the parties had appeared before the Collector and had proved to him that the sale was *bonâ fide* and not a mortgage in disguise.

II.—I would declare ancestral lands exempt from civil process except in respect of debts expressly certified against it as provided in the next rule.

III.—I would require lenders desiring a lien on ancestral land as their security to appear before the Collector with the borrowers and ask him to certify the debt to be a proper debt to be allowed against the land.

IV.—I would supplement the remedy provided in Rules II and III, by permitting family settlements in the manner proposed by Mr. West.

V.—I would place no restriction on the acts of parties or the action of the Courts in the case of acquired land."

The working of the plan is thus described:— Page 367, ditto.

"An owner of land desiring to raise money on its security would appear with his lender before the Collector, explain the nature and terms of the loan, and apply for a certificate stating that the object was one on account of which the land might be properly encumbered. The certificate would be granted at once for loans required in order to improve the estate, to buy seed, pay the Government demand, or to meet pressing family necessities: it would be I include under Collector, Assistant, Tahsildars, and such other official as it might seem fit to entrust with the duty of receiving these applications. W. B. J.

refused if its object were to raise funds for extravagance at marriages, etc. If the duty of scrutinizing applications and granting certificates were entrusted to the Registration Department, the work could be done without imposing much labour on Government officials or trouble on applicants, and as a collateral advantage we should obtain a complete knowledge of all the encumbrances affecting land all over the country. When a certificate had once been given, I would let the Civil Court deal with the land with as much freedom as with moveable property. Until it had been given, I would not let them issue process against it at will."

Para. 42 of minute dated 30th September 1874, page 346. Home Department Selections CLV. Paragraphs 22-23, ditto, pages 336-337.

The proposal was supported by the Chief Commissioner, Sir J. Morris, but that officer also pointed out the difficulties connected with the scheme:—

"For dealing with the disease in its origin," he wrote, "the above scheme, declaring all ancestral land exempt from civil process except as regards debts duly certified against it by the Collector, *if it could be uniformly and judiciously applied*, would be most effective. The difficulty, however, of satisfactorily working such a scheme would be very great, and I have little doubt that it would to a certain extent be an unpopular measure. It would be possible to declare by precise instructions as within the scope of admissible loans all such as should fairly be allowed, and thus to limit the large range of personal discretion which the bare declaration of the rule seems to contemplate. But even admitting this, there must after all remain much uncertainty in the application of the rule; and under officers with different views, there would be the greatest variation in practice, namely, at one time or place a reprehensible facility in borrowing, and at another an interference amounting almost to absolute prohibition.

Not only, however, is the system proposed one which must of necessity apply in an uncertain manner, but its effect on credit it is impossible to estimate. It might almost destroy the borrowing power of the landholding class, owing to the intervening impediments attending money transactions based on the land as a security; for money-lenders would probably give up taking much of such business on the terms, with all the delays that would be inseparable therefrom. It would doubtless increase also the current interest charge on all landholders alike; and wherever the rule itself was strictly enforced, it might cease to be effective, for there would always be the fear of collusion, and money would often be raised by a certificate obtained under false pretences."

Note dated 19th September 1890, (Proceedings Nos. 9—14A., May 1891, paragraph 16.) Sel. p. 98.

The root of the objection has been put briefly by Mr. Benett, Officiating Secretary in the Revenue and Agricultural Department, as follows:—

"The power proposed to be conferred on Deputy Commissioners under remedy (4) would have to be strictly defined by law. No one would dream of leaving the fortunes of both debtor and creditor to their arbitrary discretion; and if the circumstances under which liens may be recognised were defined by law, there would be no advantage in having the case tried first by the Deputy Commissioner and afterwards by the Civil Court."

Report, Part II, Chapter III, Section IV, paragraph 23, page 136. Sel. p. 28.

A similar proposal was put forward by the Famine Commission of 1879 as a part of their scheme for the reduction of indebtedness. The scheme required the public execution of agreements before the Collector, and it was noted that "in special tracts it might be thought advisable that the Collector should be empowered to refuse his sanction to a loan incurred for an extravagant or merely ceremonial purpose or for any cause but one of agricultural improvement or necessity." With the proviso was coupled a proposal that debts thus secured should be recovered in instalments by Revenue officers along with the revenue, but no part of the scheme has so far been submitted to the criticism of Local Governments.

See, *e.g.*, Mr. Melvill, page 28, Punjab Government Selections New Ser. XIII (1876). Mr. Gubbins, page 44, Home Department Selections, CLV (1879). Memorandum dated 2nd February 1859, page 19, ditto.

*(b) Limitation of the term of lien in mortgages.*

300. Suggestions that the term of lien should last only for the life of the mortgagor have been made from time to time: but the main proposal in this direction is that put forward by Sir W. Muir, as Member of the North-Western Provinces Board of Revenue, in 1859, under which the term of a mortgage would be restricted to a definite number of years.



"I am averse," he wrote, "to carrying into effect through our Courts the permanent alienation of land, excepting in cases where the terms of the alienation imply a direct, absolute, and perpetual transfer.

Where an owner creates a simple lien, or even a lien involving prospective conditional sale, I would limit the action of the Courts to aiding the realization of the debt from the proceeds or usufruct of the property for a limited term. I believe that in all such cases nothing more was in the intention of the mortgagor than that the income of the property should for a term of years be devoted to the liquidation of the debts. And I would not enforce more by our Courts. I believe that this will be quite in accordance with native habits and principles. The lender will feel that nothing short of a direct voluntary sale can secure for him more than the usufruct of the lands for a limited term, and he will have to look to his own interests in restricting his loans accordingly.

Where in addition to creating a recorded lien upon his land the owner has resigned his land into the possession of the mortgagee, the procedure would be analogous. There would be no foreclosure to be enforced, as at present, by our Courts on the suit of the mortgagee. The only cause of action would then be on the part of the mortgagor to secure an adjustment and restoration to possession."

As to the term to which the mortgagee's lien should be limited, 15 years was suggested, this being the term already familiar for revenue transfers and farms. Sir W. Muir then went on to say:—

"But, it will be added, even the hypothecation of property will fail to answer the owner's purpose of raising money. He will be driven to an absolute and irrevocable sale. Perhaps this may be the result. Perhaps we shall have more direct and voluntary sales than before. But it will be another form of doing that which was formerly brought about by an insidious and deceptive process. It is far better that a man should sell his property with his eyes open than be inveigled into parting with it by a process of false and delusive hopes that the transfer is only temporary. It is against human nature to suppose that the permanent transfer of land will be, in any comparable degree, so frequent where the alienation must be made immediate, absolute, and perpetual, as under the present insidious system. And if a man will barter away his ancestral lands knowingly and with the full consciousness of what he is doing, the law cannot help him further without locking up entirely the right and property in land by a perpetual entail.

It may further be objected that these proposals will reduce the value of land as a collateral security in raising money. They will no doubt do so to some extent. But they will still leave a wide enough margin for all purposes of agricultural improvement."

Note of 4th Sept. 1874. Home Dept. Sels., CLV, p. 406. Para. 42, Minute of 30th Sept. 1874. p. 346, ditto. Para. 12, letter No. 4094, dated 6th Oct. 1892, to Comr. in Sind. Paragraph 12, Memo. dated 29th Sept. 1892 (Progs. A., Nos. 18-19, Rev., May 1893.) Para. 53, Minute dated 26th May 1860, page 14, Home Dept. Sels., CLV. ditto. page 407. Report, paragraph 75, page 75.

The proposal was accepted in 1874 by Mr. Carpenter, Commissioner of Jabalpore, as suitable for the Central Provinces, and it formed—with the alteration of 10 for 15 years in the period named—a part of the scheme put forward by Sir J. Morris in the same year. It has been recently supported by Mr. Woodburn, Deputy Commissioner of Hyderabad, Sind, and that portion of it which relates to usufructuary mortgages is advocated by Mr. Fuller, Commissioner of Settlements and Agriculture in the Central Provinces.

301. Objection was taken to the proposal by Sir G. Edmonstone in 1860 on the ground that the mortgagee would rack-rent during his limited period of occupation. In 1874 Mr. Carpenter pointed out that the measure would raise the rate of interest, and unless made retrospective in effect it would by reducing the credit of involved proprietors, lead to a temporary increase in alienations which would render it unpopular. In 1892, again, the Deccan Commission objected * to the proposal on four grounds, *viz.*, (i) that it would raise the rate of interest, (ii) that a fixed term would operate harshly in cases and a term left to the discretion of the judge would injure security, (iii) that

* The Deccan Commission say that 'Sir W. Muir appears subsequently to have abandoned the proposal.' The reference is no doubt to his letter No. 688A., dated 5th March 1874 (page 321, Home Department Selections, No. CLV). The abandonment, as pointed out by Mr. James, Commissioner in Sind (letter No. 4274, dated 22nd October 1892), is apparently not an abandonment of the principles involved.

care would have to be taken to guard against fresh mortgages or the land being mortgaged twice over, and (iv) that it would lead to an increase of out and out sales.

It is doubted whether there is any of these objections which could not be met. And the proposal has this advantage over most other restrictions of the right of mortgage, that by practically turning the mortgage into a lease it prevents the parties from circumventing restrictions on mortgages by substituting a lease for a mortgage.

### (c) *Treatment of mortgages as charges.*

Act IV, 1882.

302. Section 100 of the Transfer of Property Act runs: "Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property;" and it has been proposed by Mr. Aston, Judicial Commissioner of Lower Burma, that what are now treated as mortgages should be treated as charges only. The creditor would thereby be entitled to satisfy his claim from the property charged, but the property would not be transferred. In other words, the mortgage would no longer be one of land, but only of the produce of land.

Paragraph 16, letter No. 1038-20 of 6th June 1894, to Chief Commissioner, Burma.

The proposal is based by Mr. Aston on the theory that the occupants of land have, by oversight on the part of Government, been permitted to deal with the right to the land as though it were their private property, and that this state of things should now be put right: but the proposal is capable of consideration apart from this theory. The scheme would apparently abolish the distinction between simple mortgages on the one hand and usufructuary mortgages and conditional sales on the other.

## (B) Restrictions on Sales.

303. The above paragraphs relate to proposals for restricting or prohibiting mortgages without interfering with private sales. Proposals in the reverse sense—*viz.*, that sales should be prohibited while mortgages are allowed—have also apparently been made, but no reference can be given to the record of such proposals. They are open to the objection pointed out by Sir R. West, that a mortgage can be framed, so as to be practically equivalent to sale, and that devices could easily be started by means of friendly suits to defeat the arrangement contemplated. Under these circumstances it is perhaps unnecessary to discuss this form of remedy further, and we may proceed to the proposals of those who in restricting sales would restrict mortgages equally with sales.

Land and the Law in India, paragraph 30; page 13 of Sel. Volume II, Deccan Riots Commission Report.

## (C) Restrictions on Transfers generally.

304. The proposal to restrict sales as well as mortgages is based as a rule on the presumption that a restriction of mortgage only is liable to evasion, and that consequently it is necessary to restrict sales also. There is no doubt that mortgages can be made so as to be practically sales, and that even if the term of a mortgage is limited, the creditor may make it worth while for the debtor to sell the land outright, so that if the remedy is to be a radical one, there is a justification for extending it to sales also.

See, *e.g.*, para. 106, Report of Deccan Riots Commission.



### *Absolute prohibition.*

It would appear that, though authorities can be quoted in favour of an *absolute* prohibition of transfer, the objections to such a measure—many of which have been detailed in paragraphs 261—267 above—are very serious. The proposal was dismissed by the Riots Commission of 1876 with the remark that "this would be to subvert entirely the form of the property, and such a subversion could hardly be justified by any possible political or economic advantages." The Commission of 1891-92 were "unable to accept so extreme a view," and they reported as follows as regards their own opinions:—

Even in these cases it is difficult to say whether this is meant by the general statements made, *e.g.*, that of Mr. Robertson (Comr., C.D., Bo.) on p. 344, Appx. III. Fam. Comn. Rept. that of Mr. Hodgkinson, Comr. Irrawaddy, in para. 6, Bassein Set. Rep., 1882-83, etc. Para. 70, page 71, Report.

"They consider that the transfer of land in an agricultural country to a body of rack-renting aliens, who do nothing for the improvement of the land, is a subject which no Government can regard with equanimity; and that the adoption of any remedial measure would be fully justified if shewn to be necessary on political grounds or for the welfare of the people. The evidence at their disposal, however, is insufficient to enable them to express any opinion as to whether such a necessity has at present arisen."

In view, however, of the difficulties connected with the proposal and the absence of authority in its favour, further consideration of the subject on the part of Government seems unnecessary.

305. The Commission of 1891-92 were, however, it will be observed, in favour of prohibiting absolutely the power of transfer in new grants or alienations of Government land.

Para. 70, page 72, Report.

"There is not," they wrote, "in the four districts much Government waste land available for cultivation, and escheats and resumptions of culturable land are few. But outside the four districts there may be places where the experiment could be tried on a fairly extensive scale. The Commission understand that the one great difficulty in the way of inducing jungle tribes to settle on the land is to keep them from falling into debt and losing their holdings. The grant of the land without a power of transfer seems the natural remedy."

Even this proposal goes beyond anything that has yet been tried in India. The colonists on the canal lands in the Punjab may transfer with sanction, and those settled in the ryotwari areas of the Central Provinces may transfer to heirs and co-sharers. It will be sufficient perhaps to note the fact that measures, which can be objected to in their application to ordinary lands, may be found feasible in new areas, and that in provinces where large areas are still open to 'internal colonization' this distinction should be borne in mind.

Section 8, Act III, 1893. Section 67E., Act XVIII, 1881.

306. We may therefore deal exclusively with the various modifications of the absolute rule which have been suggested.

### *All transfer to be invalid unless sanctioned.*

The first of these is that transfer should be prohibited *unless sanctioned* by proper authority. This proposal may be said to form part of Mr. Justice West's original scheme of 1872, and it has found several advocates both before and since.

The Land and the Law in India, para. 27. *Sel.* p. 15.

The proposal as it stands contains two distinct suggestions, *viz.*, (*a*) that all transfers should come under official cognisance and be invalid without the official imprimatur, and (*b*) that the officer dealing with such cases should be absolutely at liberty to grant or refuse sanction as he pleases.

*E.g.*, Mr. Mayne on page 53, Home Dept. Sel., CLV. Mr. Woodburn, para. 6, letter No. 4094 of 6th Oct. 1892, to Comr. in Sind.

As regards the former it may be noticed that it has been adopted in dealing with the new Punjab colonisation schemes, where all transfers (other than exchange) must under law be sanctioned by the Financial Commissioner, but the area affected by these schemes is comparatively limited, and the rule has not yet stood the test of experience. It may also be observed that in some

Sec. 8, Act III, 1893.

provinces all transfers of proprietary right already come under the cognisance of the Revenue authorities who sanction mutations in the village and tahsil registers, but such cognisance is not and could scarcely with the present staff be transformed into a careful examination of the facts of each case.

Report, para. 71, page 72.

It has accordingly been pointed out by the Deccan Commission of 1891-92 that the amount of work entailed would in some areas at least be beyond the powers of the District agency :—

"The largeness of the number of such transfers in the Deccan would render a careful consideration of each application impossible, while anything short of a careful enquiry into each case would only lead—where there is a brisk demand for land and it is the interest of both parties to evade the law—to fictitious transactions."

Home Department Selections, CLV, page 391.

As regards the second part of the proposal, it was observed by Mr. Carpenter in 1874 that any measure of the kind "would involve the laying down of principles which would themselves be more conveniently presented in the form of a primary system of modified right of transfer." It would *primâ facie* be dangerous both to official morality and to the credit of the agriculturists to leave the validity or otherwise of every transfer in the hands of a Government officer, necessarily an officer of comparatively low rank: and accordingly we find even advocates of the principle that sanction should be requisite, laying down restrictions as to the principles which should guide Government officers in granting or refusing this sanction.

It being once granted that certain cases only need be investigated, the proposal becomes feasible and the extra work involved becomes less serious. In all provinces where a record-of-rights is maintained, each transfer must come under the notice of the authorities, and it would only be necessary to examine such of them as appeared *primâ facie* to be objectionable under the rules laid down.

307. The following is the procedure sketched for Burma by the draft Land Revenue Bill prepared in 1891 :—

Burman agriculturist intending to transfer land to appear before Revenue officer, together with the person to whom land is to be transferred.

Section 8. When any Burman agriculturist intends to execute a conveyance or lease of land, not being a lease under the provisions of section 5, he and the person or persons in whose favour it is intended to execute the conveyance or lease shall appear before the Revenue officer empowered in this behalf. The Revenue officer shall then enquire of the parties present and of any other person who may appear or be produced by the parties, and record in a proceeding the following particulars :—

(i) the race, occupation, and principal means of livelihood of the parties;

(ii) the area and description of the land intended to be conveyed or leased and (if a survey has been made) the Survey numbers of the fields;

(iii) the circumstances and cause of the intended conveyance or lease;

(iv) the consideration (if any) on payment of which the conveyance or lease is intended to be made.

If transferee is an agriculturist, Revenue officer shall approve transfer.

9. If the person in whose favour the conveyance or lease referred to in section 8 is to be made, is an agriculturist, and if the Revenue officer is satisfied that the consideration (if any) which has been or will be given is reasonable, the Revenue officer shall approve the conveyance or lease and shall, on presentation of the instrument by the executant, make an endorsement in his own handwriting certifying that he has approved it, and shall sign the endorsement.

Cases in which the Revenue officer shall refuse approval of conveyance or lease.

10. If the person in whose favour the conveyance or lease referred to in section 8 is to be made, is not an agriculturist, the Revenue officer shall proceed in the manner hereinafter laid down :—

(*a*) if the conveyance is—

(i) by sale, or

(ii) by simple mortgage, or



(iii) by mortgage by conditional sale, or

(iv) by English mortgage, or

(v) by gift, or

(vi) by usufructuary mortgage for a longer period than 15 years or for an indefinite period, or

(vii) if the lease is for a longer period than 15 years;

the Revenue Officer shall refuse to approve the conveyance or lease;

(*b*) if the conveyance is—

Cases in which the Revenue officer shall approve conveyance or lease.

(viii) by exchange of land for land, or

(ix) by usufructuary mortgage for a period not exceeding 15 years, or

(x) if the lease is for a period not exceeding 15 years,

The Revenue Officer, if he is satisfied that the consideration (if any) which has been or will be given is reasonable, shall approve the conveyance or lease and shall, on presentation of the instrument by the executant, make an endorsement in his own hand-writing certifying that he has approved it, and shall sign the endorsement.

308. Even in Bombay, where no record of rights is at present maintained, the proposal is considered by some officers to be feasible, and Mr. James, Commissioner in Sind, has suggested the following procedure for application in Sind and the Deccan :— Paragraphs 14-15, letter No. 4274, dated 22nd October 1892. (B. Pros., Aug. 1893, No. 5.)

So far as the Deccan or Sind is concerned, I would introduce no radical change in the present system beyond ordering that, from the date of the passing of the new Act, any private transfer or sale of agricultural land by an agriculturist shall be void unless entered in the *village* books, and that if the Collector is satisfied that the transfer is or was collusive, or what section 317 of the Civil Procedure Code calls *benami, i.e.*, that the nominal was not the real purchaser, or that the transfer was made in order to raise a loan or pay a debt, he may, subject to rules by the Governor in Council, refuse to make the entry in his books, and may also, on the suit of the original occupant or by a 'formal enquiry' held on his own motion under the Land Revenue Code, evict any person found in possession of such land. The Collector should also, if he has made the entry in his books, be empowered to cancel it within three years should he be satisfied that any material facts were withheld at the time of making the entry.

How would this work? At present some transfers are not entered in the Collector's books at all. The rest are made under section 74 of the Land Revenue Code and the rules under it. Occupant A, resigning his occupancy, must petition in person to the Mamlatdar or Mukhtyarkar, after having his petition signed by the village officers and two respectable persons, that he wishes to surrender in favour of occupant B, and then, in the presence of both, the order is given for the necessary entries to be made. The alteration I propose would ensure, first, that *all* transfers came before the Mamlatdar, which is the great point; and secondly, that, after the passing of the Act, no new title would be good, or upheld in a Civil Court, without such entry. Next, what is the Mamlatdar to do when a ryot and saukar appear before him, and he ascertains that the transfer is made to wipe off a debt or raise money? If the transaction be fair and above board and the ryot clearly understands it, the Mamlatdar will sanction it himself, or report the case to the Assistant Collector for orders, with a recommendation for sanction. But if he thinks that the ryot is being cheated, and such cases would be very rare (for few ryots would persist in knowingly sacrificing themselves), he will state his objections, and the sanction would be refused. The fact that sanction has to be obtained and may be refused, will prevent any, or scarcely any but *bonâ fide*, cases coming up, and the additional work to the Mamlatdar will be inappreciable. My proposal in fact amounts to causing the Mamlatdar to do efficiently what is now only one of his regular duties. In the four districts the *sales* to non-agriculturists average something under 750 a year, which, spread over 12 months and over 10 to 12 talukas, would even, if enquiry were made into all, be within the competence of the Revenue Officers to cope with.

309. As a general rule however the officers proposing restrictions on certain kinds of transfer have not entered into details as to the manner in

which the transfers shall come to the cognizance of Government officials; and instead of suggesting that all transfers shall be invalid unless expressly sanctioned, have proposed that *all transfers coming under a particular class shall be invalid.* This object would be attained presumably in most provinces by rendering them void in a civil suit and incapable of entry in the Revenue records; but Sir Charles Crosthwaite apparently doubts whether in ryotwari areas any measure short of the ejection of the purchaser by Government as a trespasser would suffice, and he doubts if such a measure would be expedient.

Note of 28th Nov. 1892. (A. Pros., Sept. 1893, Nos. 46—49). *Sel.* p. 125.

The prohibition in some cases is based on the class of land and in others on the class of transferee: the chief of the proposed exceptions to free transfer may be considered under one or other of these two heads. It may be remarked that neither class of proposal came under the consideration of the late Deccan Commission of 1891-92, although it may be very well held that these modified proposals are far more deserving of examination than the absolute scheme which was criticised by the Commission.

*Prohibition of the transfer of certain specified classes of land.*

310. Allusion has already been made to the proposals for introducing a 'homestead' provision in connection with the execution of decrees. An extension of this arrangement to voluntary transfers was advocated, among other schemes, by Mr. Justice West in 1872 in the following words:—"A holding exceeding in extent what was necessary for the comfortable maintenance of the family or families, its tenants would be made freely alienable as to such excess. Such excess and such only should be liable to attachment and sale in execution of decree."

Land and the Law in India, paragraph 27. *Sel.* p. 14.

311. The proposal was discussed in the Central Provinces in 1874 and the Narbada Commissioner, Mr. Low, put forward a similar suggestion to the effect that during the currency of the existing settlement "proprietary rights in ancestral property should be declared inalienable by the holder in so far as regards three-fourths of each estate, the remaining one-fourth to be alienable at the owner's pleasure." Liens were not to be valid without the Collector having certified that "the first and all previous transactions included no more than one-fourth of the owner's total ancestral land in the district had been parted with, or that his total estate was not burdened beyond one-fourth of its total value, as the case may be." Mr. Low admitted that there were objections to the scheme, *e.g.*, (*a*) that "there would be some unevenness in valuing estates" and (*b*) that "the dividing of each estate into specified proportions permanently alienable and permanently inalienable during the currency of the present settlement is a very hard and fast line;" but pleaded that no scheme put forward could be perfect. The Chief Commissioner, Sir John Morris, further objected that the remedy would not reach the evil and that it would introduce a discordant element into the villages:—

Page 395, Home Department Selections CLV.

Paragraphs 29 and 31, Minute of 30th September 1874, pages 340-341, Home Department Selections, CLV.

"The limit of credit," he said "so far as the alienable portion of an estate was concerned, would in most cases soon be reached; and after this the landholder's life would be a perpetual struggle, followed ordinarily by serious deterioration of the property,—a result which Government is directly interested in preventing. Then in a large number of cases, the alienable portion would inevitably come to be transferred to the money lending class. This in itself would be a great evil, and would give rise to endless disputes and complications ruinous to all the interests of the land holding class and harassing to the tenantry..... .....The preservation.....of existing landed relations, so far as possible, being the aim and end of all that is proposed—a scheme which allows a stranger with a decree in his hand to step in and hold



a fourth of any estate, or share in an estate, is a departure from the principle which seeks to keep out from the village counsels whatever would occasion disturbance and discord, or every estate brought under a scheme such as suggested would be subject to an innovation disastrous in most cases to any prospect of harmonious management; and the result would be that everywhere there would be an "outsider" interfering in village affairs whose action would scarcely help proving an element of perpetual antagonism."

312. Meantime in 1872-73 Sir William Muir had drafted his Landed Estates Relief Bill (afterwards abandoned) in which a provision was made that "in coparcenary estates held by cultivating proprietors, whether of the kind known as Pattidari, imperfect Pattidari or Bhayachara, or in lands partitioned therefrom into estates held by one or more proprietors, the rights and interests of the co-sharers or proprietors in their *sír* lands shall be alienable for their life-time only, except in the case of transfer among members of the proprietary body." And the provision was justified as follows:—

Page 219, Volume II, Deccan Riots Commission Report.

Page 198 ditto.

"Finally in coparcenary communities, it is proposed, while leaving as at present the rest of the estate, to declare anything but the life interest in *sir* lands inalienable, except among members of the community. It is impossible to apply to small and frequently undivided holdings the provisions of a Landed Estate Relief Law. The number of cases are too considerable: the difficulty of management would be too great. Nor is it desirable to prohibit all transfers in such estates. Members of a coparcenary brotherhood are frequently found possessed of sufficient capital to purchase temporarily or conditionally the interests of an embarrassed co-sharer. Such transfers are perfectly agreeable to the people, and wholly unobjectionable to the Government. If all transfers were prohibited, estates would become intolerably sub-divided, and the collection of land revenue would be difficult. But the most familiar form of property in land itself, as distinguished from the right to collect revenue, is to be found in sir holdings. Under native rule, they were usually exempt from revenue; and whatever may be the case with his tenants' land, a petty proprietor still looks upon his sir as peculiarly his own property. In private sales, *sír* land, or an equivalent is very frequently reserved to the proprietor. No doubt, in course of time, sir holdings will become sub-divided. But there will be a right of transfer among the community, and the proprietors will be found cultivating as tenants on the rest of the estate. Credit on all of a man's holding, except his *sír*, will be unaffected. His *sír* represents his ancestral property; and it is in accordance with Hindu custom to preserve such property in the family. The relief is partial, but perhaps its best recommendation is that it is partial. The land revenue will, of course, be assessed on the *sír*, and be paid by the proprietors who, *quoad* their *sír*, will still remain a cultivating community. It may be said that proprietors will remain on their estates discontented and sullen, with only a fraction of their former proprietary rights to which it seems a sufficient answer that now they remain on their estates without even that fraction. With the life interest of the proprietors the obligations on the estate, except in the case of transfer among the community, will cease."

This proposal was confined to coparcenary estates for the reason that Zemindari villages were to be dealt with by an extension of the Court of Wards system. It is, as it stands, inapplicable to provinces such as Bombay and the Punjab where the delimitation of definite areas as *sír* is not recognized.

313. We accordingly find fresh suggestions made in the Punjab discussions of 1888-89. One officer suggests the prohibition of the alienation of ancestral land:—

Mr. Ogilvie, Commissioner, Derajat's note, dated 3rd May 1889, para. 8.

"The proposal briefly is, that a law should be made restricting the power of proprietary alienation of ancestral land in the case of proprietors who have direct male heirs, that is, sons or grandsons.

That is all. The law in question need not apply throughout the country, but only in localities to which it may be specially extended by the Local Government, and the Government also might be granted the power of withdrawing or cancelling any order of extension.

Provision might without difficulty be made for special cases in which the alienation of ancestral land might be beneficial or necessary. A procedure might be provided whereby the permission of the Collector might be obtained for alienations of that kind. Although under the proposed law a proprietor with direct male heirs could not sell his ancestral land, he would be allowed to mortgage it for the period of his own life; and self-acquired land he would be allowed to alienate as he pleased."

Mr. Steel in Pros. Rev., Dec. 1891, Nos 10-11.

Another proposal was to confine the liabilities to a certain proportion of the value of the estate "by fixing an upset price on the land inside its real value beyond which it cannot be liable for debts incurred by the cultivator." It is true that, as pointed out by the proposer, the valuations required by this measure can be carried out roughly at settlement, but the scheme would apparently treat different estates unequally, and there seem to be more direct methods of attaining the same end.

314. Omitting, then, this last suggestion, the remedies just noticed would exempt from alienation either—

(*a*) the sir land,

(*b*) the ancestral land or a part thereof, or

(*c*) a homestead area:

and the exemption might be nominally permanent, or (as in Mr. Low's proposal) temporary only. Presuming that we want at present to fix no time-limits to our scheme, we should no doubt find difficulties, as time went on and properties divided, in carrying out Sir R. West's proposal for an inalienable homestead: and either of the other schemes would probably be found more workable though in the beginning less theoretically just. Where sir land is recognised as in the North-Western Provinces and Central Provinces, the area of *sir* is well understood and recorded, and where sir is not recognised as in Bombay, the Punjab and elsewhere, the exemption of ancestral land would, with an official definition of the term, be feasible and as a rule intelligible to the people.

*Prohibition of transfer to certain specified classes of transferee.*

315. The class of transferee to which objection is mainly taken is the money-lending class: but there are objections—though of less moment—to the alienation of property into the hands of other classes, both agricultural and non-agricultural, which are not connected with the village. It would thus be possible to forbid transfers from agriculturists—

(*a*) to money-lenders or

(*b*) to (*a*) and to all other non-agriculturists; or

(*c*) to (*a*), (*b*) and to all persons not connected with the village.

316. The chief evil, as we have seen, comes from the money-lenders, and a local definition of the money-lender could no doubt be evolved on which the Government officers could work in carrying out the prohibition of transfers to this class. By this means not only would the main evil of the present system of transfer be obviated, but also the unhealthy influx of capital on to the land would be checked, and by the diversion of capital to other channels the industrial development of the country and the increased diversity of occupations, advocated by the Famine Commission, might be largely furthered.

Report, Part II, Chap. VI, Section I, page 175.



The proposal to forbid transfer to money-lenders in the western Punjab was put forward in a modified form by Mr. Thorburn in his book, "Musulman and Money-lenders in 1886." 'I would,' he said, 'make it illegal for any person deriving profits from a shop or from money-lending, to acquire any interest in arable or pasture land, other than land in the immediate vicinity of a town or large village, or manured and irrigated land anywhere, or irrigated alone if from a well.' The proposal was very summarily discussed by Sir J. Lyall in 1888, when he wrote:— Page 102. Para. 5, No. 231, dated 7th Nov. 1888. (Sel., p. 46.)

"Mr. Thorburn has not ventured to recommend the cancelment of the alleged gift of proprietary right, but has contented himself with suggesting that it should be made illegal for the moneyed classes to acquire lands other than lands of two highly artificial descriptions proposed by him. The Lieutenant-Governor thinks, however, that it is obviously impossible that any such rule of law could be proposed, or that if imposed it could be carried out. It may be necessary—and Sir James Lyall is at present disposed to think it probably will be necessary—to take steps to check the alienation of lands to the money-lending classes in the Punjab. But this cannot be done by such enactments as that suggested by Mr. Thorburn. It will be sufficient to state that in His Honor's opinion Mr. Thorburn's proposed remedy against the alienation of land to money-lenders is altogether impracticable."

Whether the principle of the measure suggested, apart from the provision specified by Mr. Thorburn, is altogether impracticable, does not appear certain; the possibility of carrying it out would seem to turn mainly on the possibility of distinguishing the money-lending class by a definition sufficiently close for executive officers to act upon, and this is a matter which would require detailed consideration for each province.

317. It should be observed however that the new landlords, whose intervention occasions so much discontent, are not by any means all money-lenders: but many belong to other classes of non-agriculturists, more especially that of the successful legal practitioner, the commissariat contractor, and the like. So far as these obtain hold on the land by money-lending or by buying up debts and decrees and forcing sales, they may be said to come under the class of money-lender, but not a few obtain their hold by direct purchase or by such investments in mortgage as would scarcely bring them under the ordinary definition of a money-lender, and it is by many considered desirable to exclude these also. The draft Burma Bill, 1891, for instance, would, as we have seen, (para. 307) place special restrictions on transfer to non-agriculturists, and it may be noted that in 1882 the Government of India themselves advocated the exclusion of non-agriculturists in dealing with the transferable tenancies of Lower Bengal, and that the subsequent abandonment of the idea was apparently due to causes not connected with the principle involved.

See Sir Pritchard's note dated 24th June 1893. Pros A. Rev., September 1894, Nos. 43-46. (Sel., p. 130).

See para. 361 below.

An 'agriculturist' under the Deccan Act is— Act XVII, 1879, section 2.

"a person who by himself or his servants or tenants earns his livelihood wholly or principally by agriculture carried on within the limits of the said districts, or who ordinarily engages personally in agricultural labour within those limits.

*Explanation* (*a*).—An agriculturist who, without any intention of changing his status as such, temporarily ceases to earn his livelihood or to engage personally in agricultural labour as aforesaid, does not thereby cease to be an agriculturist within this definition.

(*b*) An assignee of Government or mortgagee is not as such an agriculturist within this definition.'

Some slight alterations in the above are about to be proposed at the instigation of the Bombay Government, but the main outlines of the definition will not be interfered with, in respect of the Deccan districts. As regards

Report para. 28, page 32.

the employment of a similar definition elsewhere the Commission of 1891-92 wrote :—

"It is possible that if the Act, or any of its provisions, is ever applied to other provinces some alteration of the definition may be found advisable with reference to local circumstances. The Commission are not sufficiently acquainted with the circumstances of other provinces to be in a position to say what the alterations should be. The local authorities will be in the best position to decide the question when it arises."

This will no doubt be done if legislation on the pattern of the Deccan Act be undertaken, and the definition employed in such legislation would probably be suitable also for dealing with the validity or otherwise of transfers under the proposal now under consideration.

318. Whether we should or should not go further, so as to exclude also agriculturists unconnected with the land in each village, is another question which has been raised. So far as such a measure is meant only to allay discontent occasioned by the intrusion of an outsider or to make doubly sure by a wide definition the exclusion of the non-agricultural classes, it would possibly be acceptable in many parts of India, and it has, apparently with this object, been at one time proposed for application to the tenancies of Bengal, but it is open to doubt whether in most areas such a stringent exclusion of outsiders is called for. So far, however, as the measure would aim at maintaining intact, where it now exists (as in the Punjab and parts of the North-Western Provinces), the system of the village coparcenary, the proposal would have to be made still more exclusive, and we should have to prohibit alienation not only to agriculturists outside the village but also to agriculturists other than proprietors and privileged tenants inside the village itself. A slight alteration in the Punjab definition of a "new agriculturist" would be needed to effect this, *viz.*, the substitution of *the* for *any* in the rule which brings under that heading "all persons, who neither in their own names, nor in the names of their cognate ancestors, were recorded as hereditary tenants in *any* estate at the first regular settlement." With the same object in view, a modified proposal was put forward by Mr. Ibbetson in 1889, *viz.*, that "no alienation of land to any but a member of the village community proper (I do not include landowner by purchase) should take effect beyond a fixed term of years." It may be considered unfair (and a similar plea has been put forward by Christian missionaries in Madras) to impede the accrual of property in the hands of the village menials, but the increasing power of that class and the disturbance thereby threatened in the village system of Upper India is a danger which requires special consideration from an administrative point of view, and it might be advisable in certain districts to go to the length proposed.

Para. 27, enclosure to letter No. 65 of 7th March 1889. (Pros. A. Rev., Dec. 1891, Nos. 10-11.)

See, *e.g.*, page 320, Punjab Census Rep., 1891; also Report on Moral and Material Progress, N. W. P., 1892.

It will be seen from the last proposal quoted that it would be possible to vary the measures above described as the "*prohibition* of transfer to certain classes" by permitting transfers to the excluded classes under certain restrictions such as the limitation of the term of transfer. And it might in many areas be found very desirable to introduce an alleviation of the general rule in this sense.



## (II) ACTION THROUGH THE ASSESSMENT.

319. Proposals for impairing credit and preventing transfer through the medium of the Government assessment are of two kinds :—

(*a*) The general raising of the pitch of the assessment by assigning to Government a high percentage of the profits and revising the assessment at short intervals : in other words, by high assessments and short terms of settlement.

(*b*) The imposition on new purchasers generally or on new purchasers of a particular class of a higher assessment than that paid by the previous owners.

### (*a*) *High assessments.*

320. The action of the assessment on the indebtedness of the people has already been alluded to. The view that the heaviness of the assessment is *per se* the cause of indebtedness is one which, cannot,—save in very exceptional cases — be maintained.

Several officers, observing this, have argued somewhat as follows :—The transfer of land, they say, is best restricted by restricting the credit of the land-holder. The credit of the land-holder rests mainly on the amount of the share of the net annual produce of the land which he has at his disposal after paying the Government revenue. Increase the proportion of the net produce represented by the Government revenue, and you by so much reduce the land-holder's credit and his opportunities for losing his land.

It is also pointed out that owing to the rise in prices the value of the net assets secured by the land-holder increases in 20 or 30 years (the usual term of settlement) to an exceedingly large extent, that the Government is properly averse at the end of such a period to increase suddenly in a very startling degree the actual sum due from a holding or an estate or a village or a tract of country, and that it is advisable therefore for Government to maintain its claim to a proper share of the net assets by shortening the term of settlement or by self-acting increases of assessment during the term of settlement.

The proposal therefore is, briefly, by either of these devices, or by a combination of the two, to diminish the value of land as a security for debt.

The view has been strongly urged in the Central Provinces by Mr. Fuller, Commissioner of Settlements and Agriculture. In 1889 that officer wrote :—

Para. 11, note of 15th January 1889. (Progs. A, Revenue Nos. 9-14, May 1891.) (Sel., p. 85.)

"Had a policy been followed of making short-term settlements, the Government would have retained in its hand a means of control which would have been of the greatest value to the people as well as to the State. By the recent decision to shorten the term of future settlements the Government of India has made the best possible provision for checking the growth of indebtedness in future. The re-survey operations which have now been commenced throughout the Provinces have already had an effect in lessening the value of the land as a means of raising money, although the re-settlement which is to follow is still generally five or six years distant. This effect can be regarded without the least dissatisfaction. It is abundantly clear from the information which has been from time to time collected—and above all from the circumstances of the numerous estates which have come under the management of Government for debt—that the purposes for which land-holders ordinarily employ their credit are very far removed from those which were pictured at the time proprietary rights were conferred. Money is practically never raised for the improvement of estates, and in almost every

case the cause of debt has been improvidence and ignorance, pure and simple. In such a case a fall in the value of land as a means of raising money is one of the best things that can happen in the interests of proprietors."

Para. 48 of Sir E. Bucks' note of 10th July 1894. (Progs A, Revenue 5-6, September 1894.)

And in a subsequent demi-official communication the same officer said :—

"The thirty years' settlement has been far from an unmixed boon to the less intelligent classes. Their profits have induced them to launch into expenditure which their fathers would never have dreamt of.

A large proportion are heavily indebted and numbers have been ousted by money-lenders. In some assessment groups, a quarter of the villages have changed hands. The profits which accrue under a long-term settlement are of course well appreciated by the money-lending and speculating classes for whom landed property becomes a profitable investment though they manage by sub-letting and make no attempt to reap the legitimate profits of cultivation. The greatest charge that can be brought against the thirty years' settlement is that it has left the agricultural classes deeply indebted, and it is a fact that indebtedness is largest in the districts where the land revenue has been lightest."

Para. 11, letter No. 510, dated 29th July 1889. (Progs. A, Revenue 10-11, December 1891.)

The same standpoint has been adopted in the Punjab by Colonel Grey, Commissioner of the Delhi Division.* In 1889, that officer, after pointing out the gradual reduction since 1822 in the share of the assets taken by Government, described the consequences as follows :—

"Now, when the Government gradually reduced its demands on the produce of the land from five-sixths to one-half, thus foregoing one-third of that produce, the object was clearly to improve the condition of the agriculturists, not out of mere philanthrophy, but in order to place its revenue in a sounder and more improving condition. 'Over-assessment,' say the Directions to Settlement Officers, 'prevents the accumulation of capital and dries up the resources of the country. Viewing the question simply in a financial light, an assessment which presses hard on the resources of the people is most injurious.' If the result of the Government's self-denial in foregoing what its predecessors had always taken had been the accumulation of capital anticipated above, and the improvement of a property in which the Government has so large an interest, then these successive reductions of demand would have been justified. But they were based on European theory, which lost sight of the character of the Indian people. The only result of Government's relinquishment of so large a portion of its share of the produce has been its transfer to the money-lenders."

And he proposed to remedy this state of things "by diminishing the attractions of landed property in the eyes of the money-lending classes by taking for the State most of the unearned increment according to the universal principle of Eastern countries."

See para. 5, letter No. 231, dated 7th November 1888. (Sel., p. 46.)

Note of 26th June 1891. (Progs. A, Revenue 10-11, December 1891.) (Sel., p. 62.)

This view was consistently opposed by Sir James Lyall, so far as the Punjab is concerned, owing to the extreme disfavour with which, in his opinion, it would be received by the agricultural population. After consulting district officers on the subject of indebtedness, he wrote in 1891 :—

"There is no opinion of any weight in favour of seeking a remedy by reducing the value of the proprietary right by high land revenue assesments and short-term settlements. Officers who are in contact with the agriculturists of the Punjab and in sympathy with them know how they would regard such a policy, and feel how little we can afford at the present day to shake the belief in the liberality and friendliness of our Government by adopting such an attitude. It was that belief, based mainly on the recognition of their right, and the improvement of their position in the early land revenue settlements, which reconciled the Punjabi peasant proprietors to our rule, though an alien one, and made them throw in their lot with us at the time of the Mutiny, and it is from these peasants that we have since recruited the bulk and the flower of our Native Army."

The subject of the term of settlement (which involves to some extent that of the share to be taken) is at present under consideration in the Revenue and

* In Burma also we find the same views held. See para. 147, Amherst Settlement Report, 1891-92.



Agricultural Department in connection with the Secretary of States' despatch No. 147 of the 23rd November 1893, and the Local Governments of Bengal the North-Western Provinces the Punjab and the Central Province have (among other things) been consulted as to the connection between the term of settlement and the indebtedness of the proprietors. The replies received (with the exception of those sent in by the Central Provinces,) are generally speaking, to the effect that the debt or solvency of proprietors is a matter independent of the length of the term of settlement.

A. Sept. 1894, No. 4. Ditto, Nos. 5-6.

*(b) Differential assessments on new purchasers.*

The Land and the Law in India, para. (Sel., p. 15.)

321. The proposal that land should be "subject on alienation to a re-assessment and to a rack-rent for the benefit of the community" formed a part of the scheme advocated by Sir R. West in 1872. Two years later the suggestion was in a modified form supported by Mr. Grant, Commissioner of the Jabalpur Division in the Central Provinces, who put forward the view that the executive duties of the landlords should be stringently insisted on, and that in cases where they were ill performed (as they generally would be by banker landlords) the Government should have power to cancel the settlement and assess a higher revenue. He justified the suggestion as follows :—

Home Department Selp., CLV., page 353.

"It is an admitted fact, if not an unfortunate necessity, that if the old proprietors are to be preserved, land revenue assessments must in many cases be personal rather than territorial, that is to say, they must vary with the means and character of the proprietor as well as with the quality of the land. When these concessions fail, as is often the case, to prop up improvident owners, it certainly seems unreasonable that the State should be expected to continue sacrifices of revenue, devised to support a particular class of the community, for the benefit of their supplanters. If it was understood that the 50 per cent. margin which had been left to meet the wants of the improvident and growing proprietary communities, would be liable to reduction to 33 or even less when the land changed hands, a stop would be put to speculative investments in land, and purchases would only be made either for the sake of aggrandisement or in satisfaction of otherwise irredeemable debts."

He admitted that there were objections: for instance, it could be said that the extra assessment would be spent by Government on distant objects not directly affecting the land from which it came, and that the purchaser "would try, and probably with success, to transfer the burden to the shoulders of the tenants."

Home Department Selns. CV, page 392.

Mr. Low, Commissioner of the Narbada Division, agreed that the principle "would operate with enormous force towards prevention of transfers," and that "it would be quite workable in practice:" but pointed out certain imperfections, *viz.*, (*a*) the uncertainty it would introduce into the landlord's security; (*b*) the probability of the re-assessment being passed on to the tenants; (*c*) the absence in the scheme of any attempt to educate the existing proprietors in dealing with their estates. The scheme too was not supported by the Chief Commissioner and was shelved.

322. In 1875 Mr. Robertson, Collector of Dharwar in Bombay, suggested an alternative scheme, applicable to ryotwari areas, under which the occupant of land which was sublet to tenants should pay a higher assessment than an occupant who cultivated land himself: but it was objected by the Commissioner that the extra assessment would only be passed on to the lessee.

Letter No. 67 of 7th January 1875, Deccan Riots Commission Report, Vol. III, page 83.

Ditto, page 83.

323. Sir Charles Grant's proposal was revived, in a modified form, by Mr. Fuller in 1889, who suggested that on the loss of proprietary rights in any estate, the revenue, if it is (as, for reasons of policy, it often is) below the share of the assets allowed by rule, should be at once raised to the full share of the assets permitted.

Note of 15th January 1889. (Progs. A. Rev., May 1891 P., Nos. 9 to 14.) (Sel., p. 87.)

"It would seem," he wrote, "that the Government would be perfectly justified in following to some extent the policy suggested by Sir Charles Grant of raising the land revenue in certain cases on the occurrence of a transfer. I would advocate nothing like a detailed reassessment. Our land revenue is a land tax, and if fully and fairly assessed should most certainly not be liable to alterations during the currency of settlement on personal considerations. But it not unfrequently happens that the Government refrains from taking the full share of the assets to which it is entitled, on the ground that the exaction of a full share would give an increase which is larger than could be fairly imposed on the proprietor at a bound, having regard to his circumstances compared with those of his neighbours. It has been ruled by the Government of India that the share of the assets to which the Government is entitled is from 60 per cent. to 65 per cent. having regard to the incidence of the former assessment. But in many cases a lower share is taken from considerations which are purely personal ones and affect the particular proprietor in possession. Should this proprietor lose his rights these considerations would cease to have force, and I would in such a case enhance the revenue up to a full share of the assets as recorded at settlement. To this end no local investigations of any kind would be required, as the enhancement could be effected by a glance at the records of assessment. The difference between the share actually taken and a full share would be viewed in the light of a drawback liable to resumption on a transfer taking place."

Note of February 1889, A. May 1891, Nos. 9—14. (Sel., p. 90.)

To Mr. J. W. Neill, Commissioner of Jabalpur, however, the plan appeared 'quite futile,' because "it will not help the landholder in the slightest degree, though it may prevent the creditors from foreclosing on the estate quite so soon, for the Government will be paying part of the interest on the mortgage or debt," and Sir A. Mackenzie, the Chief Commissioner, expressed his disapproval of the scheme. Mr. Benett also in noting on the proposal considered that the measure would fail of its object.

Note dated 19th September 1890, (ditto). (Sel p. 98.)

"In the first place to apply it to existing encumbrances would be a sheer act of confiscation and could not be thought of. If made applicable to future encumbrances only, it would certainly have the effect of deterring money-lenders from foreclosure, but they would continue to suck the proprietors dry by means of mortgages, etc."

Notes of 17th December and 28th December 1890, ditto. (Sel p. 101 and 103.)

Mr. R. J. Crosthwaite, Sir P. Hutchins and Sir E. Buck also objected to any interference with the settlement of an estate in the manner proposed.

324. The proposal was noticed in a general fashion by the Deccan Commission of 1891-92 and criticized in the following terms:—

Report, paragraph 72.

"The same objections apply to the suggestion not to interfere with the powers of alienation, but to assess all land so transferred to a full revenue. The object in imposing a moderate revenue was undoubtedly to benefit the ryot, and it does not follow that another person to whom the ryot may choose to transfer it is entitled to hold at the same favourable rate. Such a system would, if it could be efficiently enforced, undoubtedly reduce, if it did not entirely stop, the demand for land, for a full assessment would absorb all that remained of the return from the land after meeting the cost of cultivation, and no one would buy land if the land yielded no profits. The injury to the ryots would however be considerable. In proportion as the market value of the land was decreased, the smaller would be the sum which the ryot could raise by sale or mortgage and the higher the interest he would have to pay. There would also be considerable difficulty in preventing the concealments of transfers and in assessing the full revenue in every area transferred. It seems hardly worth while facing all these difficulties when in any case full opportunity for the enhancement of the assessments would present itself at the next periodical revision of settlement."

And further difficulties are raised by Mr. James, Commissioner in Sind, who writes:—

Paragraph 13, letter No. 1274, dated 22nd October 1892 (B., Aug 1893, No. 5). (Sel., p. 137.)

"The suggestion to tax land that has passed from the hands of the agriculturist to a money-lender at the full rents, instead of the moderate tax on the rent which Government (with a view of improving the condition of the ryot) has been content to levy, sounds feasible, but would be insuperably difficult in practice. Differential rates were always open to objection; the special tax would probably fall on the actual cultivator, and the question would arise whether, after a re-transfer, the land should retain its new assessment or its old. We have



a precedent, it is true, in the taxing of watan-service land which a non-watandar obtains possession of at the full rent to be paid to the person performing the service. But, even if the difficulties could be got over, they would add greatly to the complication of administration which is already almost too complicated for the machinery."

325. Similar proposals have of late been put forward in the Punjab in connection, mainly, with the recent settlements, and it will be convenient to collect in one place a record of the proposals made.

During the enquiries on Indebtedness in 1889, suggestions in this sense were made by Mr. L. W. Dane, Settlement Officer of Gurdaspur, and Mr C. M. Rivaz, Commissioner of Lahore. Mr. Dane wrote:—

Paras. 9, and 10, letter No. 4, dated 4th January 1889. (Progs. A. Decr. 1891, Nos. 10-11 Revenue.)

"If practicable, the best revenue system in the case of highly cultivated and densely populated villages would be one adjusted to the status of the land-holders for the time being, admitting of a reduction when the land was held by cultivating owners and of the imposition of a very full half net assets demand, based not on customary cash rents only, but also on a careful estimate of the owner's share of the produce, whenever a holding was alienated by mortgage or sale to a money-lender. If this system could be carried into effect, Government, while tenderly nursing an over-populated village so long as this was possible, would not lose its share of the produce when the holdings passed into the grasp of a capitalist merely seeking an investment, as they must do sooner or later unless real emigration with ultimate settlement in other parts of the country is more freely resorted to than at present.

No doubt all kinds of tricks would be resorted to in order that the fact of alienation might not be brought to light in the annual papers, but such stratagems could only be successful in rare instances, as in the long run the rent receiver whose name was not recorded in the papers would be forced to sue for his share of the produce, and it could easily be provided that such suits brought by a person, whose name was not recorded as proprietor or mortgagee with possession, should not be entertained until he had caused the necessary entries to be made, in the Land Records. We have to show the revenue assessed on each holding alienated in the mutation register, and it would be easy to show the revenue both according to the reduced demand and the full half net asset rate. In the new annual papers the higher rate would of course be entered, as they are prepared in accordance with the entries in the mutation register.

The new system could be applied to all new sales and mortgages, and to all old mortgages (to money-lenders). It could be introduced into the districts now under settlement when the new revenue is announced; and in the case of other districts such as those in the south-west of the province, where these alienations are really forming a source of ultimate danger, it should be possible to calculate for each village a full half net asset demand to be levied on holdings alienated to money-lenders as soon as the terms of the current settlements expire.

The advantages to be derived appear to be these—

(*a*) Government would know at once what was the full revenue on each estate.

(*b*) An increased revenue would be realized on land so alienated; so that the transfer, even if it did take place, would not be an unmixed evil.

(*c*) By reducing his profit we should deter the money-lender from investing his capital in land and force him to put it into Government paper or stimulate his trading enterprise. Government thereby would gain in every way, as the land would not pass into the hands of a class who as landholders are useless to the State, since they are not improving landlords, but mere rack-renters, and who also carry no weight politically. Their money-getting talents could be exercised on other lines with more profit to the State.

(*d*) The landholders would at once see from the differential revenue levied that the State was really anxious to maintain them in the possession of their lands, and that they and not the money-lenders were the chief object of its care, and the reproach of the British Government that its administation is mainly for the benefit of the baniya would thereby be removed.

The drawbacks are of course—

(*a*) The fluctuating nature of the land revenue demand.

(*b*) The diminution of the selling value of land. This would not be great, as it would still be sought after by the cultivating classes.

(c) The consequent curtailment of the agriculturist's money credit. This would rather be an advantage, as it would prevent his obtaining advances for litigation or extravagant marriages or funerals; while the baniya would still be probably ready to make the small temporary advances necessary for the purchase of seed, payment of revenue, etc., which he could recoup out of the current income."

Letter No. 151 of 21st February 1889, para. 4. (A. Dec. 1891, Nos. 10-11.)

And Mr. Rivaz :—

"There is one thing, however, which I think might well be done. If Government is not prepared to place any restrictions on voluntary alienations of land, at least, when land passes into the possession of a professional money-lender, the full amount of land revenue on such land to which Government is entitled under the half-net-assets rule should be exacted. I have discussed this question with Mr. L. Dane, Settlement Officer of Gurdaspur, and I see that he has noticed it in his present reference. It is often the case that land of superior quality and in the most favoured tracts is assessed at considerably below the half-net-assets standard on account of the small size of the proprietary holdings or for other material reasons, and it is in these very parts of the Punjab that land is most eagerly sought after by the money-lending classes. But the reasons for fixing a favorable assessment cease to be applicable when the land in question passes out of the hands of its original owners into the possession of a professional money-lender, who only acquires it as a speculation and makes the utmost profit he can out of it, whether he keeps on the former proprietor as his tenant on a rack-rent or puts in another cultivator. If, when, in framing land revenue assessments, it is found necessary for any reason to impose a favorable rate of assessment on the present holders of any lands, the full rate strictly demandable according to the prescribed standard were also fixed, and it were provided that such full rate would be taken on the land passing into the possession of a money-lender by sale or mortgage, a material check on such alienations would probably be imposed, or at least Government would secure its proper revenue in such cases. I do not see that there would be any insuperable difficulty in giving practical effect to this idea."

Para 38, Note of 15th August 1889 (ditto).

The Financial Commissioner, Mr. Elsmie, was inclined to consider the scheme impracticable :—

"Messrs. L. Dane and C. Rivaz think that it should be provided that when land passes into the hands of a professional money-lender, the full amount of land revenue to which Government is entitled under the half-net-assets rule should be exacted. These officers point out that it is often necessary for various reasons to impose a favourable rate of assessment on the present holders of land; but that no such reasons should be allowed to prevail when a money-lender becomes proprietor. A plan of this kind would perhaps be consonant with native opinion, *c.f.* para. 81 of the Directions to Settlement Officers, where the tendency to assess heavily the poor and industrious and to be more lenient to the powerful and indolent is described. It seems hardly to be one which could be deliberately adopted by the British Government. No doubt in assessing villages it is practically impossible to impose as high assessments on indolent Rajputs as on industrious Jats, yet I think Government would stop short of laying down a fixed rule recognizing the distinction. It does not seem to me to be practically possible to have two rates of assessments for each holding and to declare that so long as the present owner remains he shall pay the lower rate, but as soon as he sells his estate to a money-lender the higher assessment shall immediately become due. No doubt in future settlements it would be right and proper to consider the fact of a change of proprietors, and if, with reference to all the circumstances, an enhanced assessment could be rightly imposed, it might often happen that the new owner might properly find himself liable to pay revenue at a considerably higher rate than the previous owner; but I have difficulty in believing that a scheme such as that put forward by Mr. Rivaz and Mr. Dane is within the range of practical politics."

326. The same proposal had meantime been raised again by Mr. Dane in reporting on the assessment of the Batala tahsil. In his report he urged the advisability of recording the full half-assessments and added :—

Asst. Rep., para. 118 (Pb. Govt. Rev. Progs., Feb. 1890).

"By exhibiting matters in their true light and thereby rending possible the imposition on new agriculturists of a revenue double or nearly double that ordinarily levied from Zemadars, it will, I believe, be possible to check the present rush after land on the part of the money-lending classes and thereby retain the old proprietors in their holdings."



The proposal was again supported by Mr. Rivaz, the Commissioner :—

"It is, I think, a matter for serious consideration whether some extra assessments may not be appropriately and advantageously imposed on all lands which are transferred by mortgage, sale or gift, whether to new or old agriculturists, during the currency of the new settlement. I expressed my views on this question generally in furnishing my reply a few months ago to the reference regarding agricultural indebtedness in this province, and it seems to me that the Batala tahsil is preeminently a tract where such a measure may with much advantage be introduced. The conditions here are that an assessment at all approaching the real prescribed standard of half-net-assets demand cannot be imposed on revising the expired settlement, because the present holders of the land have been accustomed for the past twenty years and more to pay a very inadequate revenue demand and have presumably adapted their standard of living accordingly. But this consideration does not apply to those persons who may acquire land hereafter in this tahsil by gift, sale or mortgage; and I see no reason why in the case of all such transfers after the announcement of the new assessments the ordinary revenue demand of the new settlement should not be increased 25 per cent. whether the transfers be to money-lenders or to *bona fide* agriculturists. If the enhancement to such extent of the revenue demand on land thus alienated in future should operate as a check in some degree on the acquisition of land by persons who merely desire to obtain it as a money speculation, a distinct advantage will be gained. But the measure proposed would assuredly not deter *bona fide* agriculturists from acquiring land by sale or mortgage, for even an addition of 25 per cent. in the demand I have proposed above, with the enhancements I have recommended of 10 per cent. after ten years, will still leave a decidedly light assessment in this tahsil generally. In the case of mortgage transfers, the enhanced assessment should be imposed when the mortgagee takes possession of the proprietary rights and becomes responsible for the revenue demand, even if he leaves the mortgagor in cultivating occupancy as a tenant."

Review of 27 Aug. 1889, para 19.

The Financial Commissioner, Mr. Mackworth Young, refused to concur. "The objections," he said, "to such a system founded on general principles appear to outweigh any possible advantage."

Para, 29, Review of 18 Dec. 1889.

And the Lieutenant Governor, Sir James Lyall, was disposed to favour other measures, though of a similar nature to those suggested :—

"Experience has shown that the creditors of the agricultural classes are apt to get into their hands either the lands which are most lightly assessed, or the best lands assessed at a uniform rate, and His Honour would be prepared to consider suggestions by which this state of things can be remedied. It has been proposed that power should be taken by Government to order in these circumstances a redistribution of the assessment of such lands, or to direct that a heavy entrance fee be levied when the property is transferred. These proposals appear to Sir James Lyall to be more hopeful than that put forward by Mr. Dane, and they will receive consideration with the general question of agricultural indebtedness."

Para 9, letter No. 25 of 29 Jany. 1890.

These suggestions were not, however, alluded to in the general scheme set forth by Sir James Lyall in 1891 and appear to have been abandoned. Meantime Mr. Thorburn, Commissioner of Rawalpindi, revived the original proposals in connection with the assessment of the Jhelum circle of the Bhera tahsil in the Shahpur District :—

See para 2, Punjab Government letter No. 506S., dated 2nd August 1894 (Punjab Revenue Proceedings, August 1894).

"Two conclusions seem to me to stand out clearly, *viz.*, that non-agriculturists, *i. e.*, generally money-lending Hindus who have invested in land as a commercial speculation, should pay full assessment, and that measures should be taken to prevent the further expropriation of the rude Mahomedan peasantry of this tract by Hindu money-lenders.

Para 11, Review of Bhera Assessment Report of 20th September 1890 (Punjab Proceedings, March 1891).

"As to these measures, the exceptionally serious state of the circle will perhaps justify my making a suggestion cognate with that made by Mr. L. Dane, and supported by Mr. C. Rivaz, in the Batala Tahsil Assessment Report and Commissioner's Review, even though unfavourably received by both Mr. Young as Financial Commissioner and His Honour. My suggestion is that if a full assessment be imposed and distributed, and then a suitable abatement made on lands held by true agriculturists, the State will both receive its due on lands in the usufructuary possession of money-lending investors, and men of the *Zemindari* class will not be over-assessed. To check further expropriations in favour of money-lenders, I would also suggest for consideration, that provision be made, that as new mutations of the

kind occur, either the difference between the reduced and the full assessment or a specially heavy mutation fee be taken. I discussed the subject with Mr. Wilson when we were inspecting the circle together, and he said he would be glad to work out details should Government be prepared to entertain the question. A class differential assessment is not unknown, as in most districts some classes are assessed lighter than others. In any case the distribution of the revenue must be carefully controlled, or, as too often happens, the poorest lands, in which the money-lenders rarely invest, will have to bear more than their fair share of the land revenue."

Para 28, Review of 29th January 1891.

In view, however, of the orders issued by the Lieutenant-Governor regarding Batala, Mr. Rivaz, then Financial Commissioner, refrained from commenting on the suggestion.

Para. 12, Review (Pb. Govt. Revenue Proceedings, August 1891.)

Mr. Thorburn, however, in submitting the assessment report of the Daska Tahsil in Sialkot, again drew attention to the point :—

"That money-lenders should be in the quasi-permanent usufructuary possession of rather more than 18 per cent. of the whole cultivated area of the tahsil brings into prominence the questions touched on by me in para. 11 of my Review of Mr. Wilson's assessment reports for the Jhelum and Bar Circles of the Bhera Tahsil of the Shahpur District. Orders not yet having been received on these reports, I now make no more remarks on the subject. I merely draw attention to it and urge that land acquired by speculators and investors of the money-lending classes should be assessed fully either by official action upon distribution or in one of the ways suggested by me in the Review above referred to."

Para. 6, Review (Pb. Govt. Proceedings August 1891.)

And again, in reviewing the Gujrat Assessment Report in February 1891, reference was made by Mr. Thorburn to his previous suggestions.

Para 111, Asst. Rep. (Pb. Revenue Proceedings.)

327. A more sweeping measure was shortly afterwards advocated by Mr. Wilson, Settlement Officer of Shahpur, when reporting in September 1891 on the assessment of the Shahpur tahsil. After describing the low relation of the revenue to the assets, the impossibility of taking a larger enhancement from the agriculturists, and the small benefit derived from this leniency by the revenue payers, he continued :—

"I propose therefore that it be made a condition of the settlement *not only for this tahsil but for the whole district*, that *all land, the possession of which has been acquired by the present owner or mortgagee or his representative in interest since the regular settlement, or shall be acquired hereafter, by sale, gift or mortgage, or otherwise than by inheritance or partition shall pay an assessment 25 per cent. higher than other similar land in the village, the fact of possession being determined by the transferee's being entitled to receive the rent or landlord's share of the produce, or to eject the cultivating owner or tenant.* This proposal is practically the same as that made by Mr. Thorburn in his Review of the Bhera Assessment Report (para. 11), but will be easier to work in practice. If sanctioned, there will be no difficulty in putting it into force. The new assessment of each village will be announced and distributed in the ordinary way; a comparison will be made between the existing record of rights and that of the regular settlement, and wherever a man is found in possession, as purchaser, donee or mortgagee, of land not held by his ancestor at regular settlement, 4 annas per rupee will be added to his assessment. And similarly when a new sale or mortgage takes place, the tahsildar when attesting the mutation of names in the record will report the transfer to the Collector by whose order 4 annas per rupee will be added to the assessment of the holding, unless it is already assessed at the extra rate. This will necessitate frequent changes on the rent roll, but they will all be increases and may safely be left to the Collector. The only difficulty is the question of principle. A narrow view of political economy teaches us to treat all men as equal, to establish laws which would be just if all men were equal, and if unfortunately they are not, to leave the weakest to go to the wall, and in this particular case, if we find it necessary to give a light assessment to one class to give it to all. A truer view of the needs of society and a higher sense of our duty as rulers teach us to see that some classes of men require more protection from the weakness of their character or position than others, lead to class legislation such as that exemplified by the Punjab Tenancy Act, and would, I venture to think, show that it is perfectly



in accordance with justice and good policy to take a full assessment from men who have simply invested in land as a profitable pecuniary speculation, and at the same time to assess leniently men whose fathers cultivated the land before them, and to whom it is a part of their very life. The principle of assessing different classes differently is not a new one in the Punjab. As shown in my report on the Jhajgar assessments in Rohtak, the thrifty and industrious Ahirs and Jats of that tahsil were assessed at a considerably higher rate than were the lazy and extravagant Rajputs and Pathans for land of similar natural qualities. The principle has recently been again enunciated in the Government orders on the Batala Assessment Report, para. 6, and in those on the Hissar Assessment Report, para. 3.

Acting on a similar principle it is easy to assess at full rates an estate owned entirely by a well-to-do purchaser, and to assess lightly an estate still owned and cultivated by unthrifty Musalman peasants, but this is not the form in which the problem presents itself to the Settlement Officer. He more often finds in the same estate half the area held on mortgage by money-lenders taking the landlord's share of the produce and paying the land revenue, and the other half by self-cultivating Musalman peasants struggling against their fate; and his difficulty is that if he assesses the whole estate at full rates in order to get a fair assessment from the mortgagees, he ruins the remaining Musalman peasantry, while if he out of regard to the Musalman peasants, assesses the whole estate low, he unnecessarily sacrifices the revenue the State can justly and safely claim from the mortgagees. My proposal will obviate this constantly recurring difficulty. Under it the whole estate would be assessed leniently, and then the revenue payable by purchasers or mortgagees will be raised by 25 per cent., that payable by the original peasant class being left at the low rate. Something similar to this was done in a case of the Saiyads and Ulama in the Bannu District, who as being holy and learned men, receive a distinct remission on their holdings scattered through different villages. And still more similar to the present proposal is the case of Gurgaon, where outsider purchasers and mortgagees were excluded from the benefit of the remission and temporary reduction granted by way of relief for agricultural distress, and Government was saved R23,452 of remissions and R12,634 per annum for seven years of temporary reduction, so that in that case the application of the principle saved altogether R1,11,890, to the State. If it is sanctioned for the Shahpur Tashil, the increase of revenue to the State will be 25 per cent. of about $\frac{1}{5}$ of R2,28,000, or about R11,400 per annum, and if it is sanctioned for the whole of the Shahpur District, the State will benefit to the extent of some R30,000 per annum. All purchasers or mortgagees, whether agriculturists or not, should come under the rule, and mortgaged land should continue to pay the higher rate after redemption, for the principle on which it is founded is not that money-lenders should be made to pay more than peasants, but that the State should take the full amount of revenue to which it is entitled wherever it safely can, as it can in the case of all land which has been transferred by sale or mortgage. This will make it clear that it is not a measure directed against money-lenders as a class, but a measure intended to secure a full revenue to the State from all classes of purchasers and mortgagees.

Bannu Tahsil Assessment Report. Settlement Commissioner's Review, para. 16. Gurgaon Revision Report, para. 27-30.

Should this be considered too large a measure to be adopted as a general rule for the province I would suggest that it might be sanctioned for the Shahpur District only by way of experiment as to how it would work. Or again, should doubts be felt as to the justice or expediency of applying it to past transactions, I would suggest that at all events it be made a condition of future transfers throughout the division, as was proposed for Gurdaspur by Mr. Dane and Mr. Rivaz. And in any case I ask that where, owing to the great enhancement of the revenue of an estate, part of the increase has been deferred for five years, such purchasers and mortgagees be excluded from the benefit of the temporary reduction and required to pay the full assessment at once, and that this rule be extended to the Bhera assessment already announced, as well as to those still to be announced."

Batala Assessment Report, para 78. Commissioner's Review, para. 19.

Mr. Thorburn, in forwarding, refrained from commenting on the proposal, but Mr. Mackworth Young as Financial Commissioner again expressed his objection to them :—

Para. 14. Review. Para. 36. Review of 2nd July 1892.

"He does not agree," his Secretary wrote, "in the view which is held by some experienced officers that the British Government made a great mistake in recognizing, the proprietary right of those who practically occupied the position of proprietors when we took the country or in moderating its land revenue demand to such an extent as to create a valuable property in the land. He is disposed to think that officers who are brought face to face with individual acts of oppression, and are unable to rescue the landowner from the consequences of his want of thrift, are liable to take too limited a view of the general outcome of our policy in

this matter. The particular evil is palpable, and forces itself on our notice. The growth of thrift, self-reliance and prosperity is gradual and attracts little attention, but the Financial Commissioner believes it is at least as real and as much due to the liberal policy of the Government as are instances of failure. In any case such partial measures as Mr. Wilson has proposed would in Mr. Young's opinion be quite unavailing, even if it were desirable to do so, to stay or diminish transfers of land."

Para. 16, letter No. 493 of 5th August 1893. (Pb. Rev. Pro., May 1894.)

328. Again in reviewing the Gurdaspur Settlement Report Mr. Rivaz, as Commissioner, wrote:—

"I also suggested the imposition of an extra assessment of 25 per cent. over the new demand on all lands which might be alienated by gift, sale, or mortgage during the currency of the new settlement. This proposal too was negatived, the Financial Commissioners remarking that the objection to such a system founded on general principles outweighed any possible advantage, while in the Government orders on the report the idea of imposing a substantial fee on the record of such transfers in the mutation registers was favoured. Nothing has, however, been as yet done in this direction, and the objection to such a course is that the burden of paying these entry fees would in all probability be generally shifted by the purchaser or mortgagee on to the alienator, and thus the object of the measure would be defeated. I still venture to think that in tracts where the Government demand has to be kept especially low for reasons affecting the present landowners, it would be a wholesome check on transfers and a legitimate means of increasing the revenue if some extra assessment were imposed on alienated lands, and I agree with Mr. Dane (para. 63 of his report), that this might have been done fairly and with advantage in, at all events, the Batala, Gurdaspur and Shakargarh tahsils of this district."

Para 22. Review (Pb. Rev. Pro., February 1894.)

329. Hitherto no attention had been paid by the Government since 1890 to these reiterated proposals, and in 1893 Mr. Thorburn, in reviewing the Zafarwal Assessment Report, again returned to the charge:—

"My proposal is that the announced assessment of a tract or an estate should be fuller, *i. e.*, nearer half assets than is usual, that an abatement of so many annas in the rupee be allowed in the case of all lands in the unencumbered occupancy of zamindar agriculturists without restriction as to size of holding—or after the exclusion of estates of large landlords as Government may determine—and that as during currency of assessment such lands become alienated to non-agriculturists the full assessment should be imposed on them. If my proposal be adopted, I think the following objects will be achieved:—

(1) Government will in each case secure a higher initial assessment than is at present practicable.

(2) Its distribution will be better adapted to the paying ability of the landholders than is now the case.

(3). If during currency of settlement more land becomes alienated to money-lenders, Government will receive its full assessment thereon and thereby increase its land revenue receipts.

(4). Transfers amongst true zamindars will not be discouraged, whereas transfers to money-lenders will be stopped or at least checked—both political objects of the highest importance amongst a manly and potentially fighting peasantry."

Review, para. 24.

Mr. Rivaz, then Financial Commissioner, referred to the previous suggestions by Mr. Dane, Mr. Wilson, Mr. Thorburn and himself, noticed that as the settlements in the central districts were approaching completion, the opportunity for working on these suggestions was passing away, and concluded:—

"All purchasers or mortgagees, whether agriculturists or not, were included by Mr. Wilson in this proposal, and mortgaged land, if redeemed, was to continue to pay the higher rate after redemption. Mr. Rivaz entirely agrees in the views thus expressed by Mr. Wilson, and in applying them to the tahsil now under consideration, where the demand proposed by the Financial Commissioner is 24 per cent. below a certainly moderate half assests estimate, would enhance the ordinary assessment by 20 per cent. in the cases thus contemplated."



In issuing orders, the Lieutenant-Governor, Sir D. Fitzpatrick, agreed to consider the proposal and to address the Financial Commissioner on the subject. This he has since done in a letter of 2nd August 1894.*

Para 24, Letter No. 147 of 13th February 1894. (Pb. Rev. Pro., February 1894.)
Letter No. 516 S of 2nd August 1894, (Pb. Rev. Pro. August 1884.)

330. In this letter Sir Dennis Fitzpatrick first of all assumes that it is not proposed in any case to assess at a penal rate, but merely at a full half assets rate. He then goes on to discuss whether the extra assessment, if levied at all, should be levied on all transfers (as proposed by Mr. Wilson and latterly by Mr. Rivaz) or on transfers to money-lenders only (as proposed by Mr. Dane and Mr. Thorburn), and decided in favour of the latter course, on the ground that the agriculturist transferee is generally a man of small means and that transfers between agriculturists are not open to the same objection as transfers to money-lenders.

To the principle of the proposal, as thus narrowed down, Sir D. Fitzpatrick has no objections, but he doubts whether it will have the effect aimed at. It will not deter the bania from buying or taking on mortgage, because the additional assessment will be discounted in the transaction, and the small difference in credit will at the same time fail in deterring the landholder from borrowing. The objection is thus stated:—

"Now let us take the case of such a plot and let us suppose that its half assets estimate is R12-8 per annum, but that, finding it in the hands of an agriculturist, we determine through consideration for him to assess it 20 per cent. below the half assets estimate or at R10. Let us further suppose that the selling value of the land, subject to this assessment of R10, is R400. The question for consideration is how far a threat by us to impose the full assessment of R12-8 on the land, if it is alienated to a non-agriculturist, will operate to deter the owner from selling it or mortgaging it, say to a bania, or to deter the bania from buying it or taking it in mortgage.

"Mr. Dane seems to argue in paragraph 8 of his No. 4, dated 4th January 1889, that such a threat would have a considerable effect in deterring the bania from investing his money on the land because, he says, with the extra assessment put on the bania would not get so good a profit on his investment. Sir Dennis Fitzpatrick confesses that he is unable to follow the argument. He cannot see why the bania should not get as good a profit on his investment under the conditions supposed as he would otherwise get. Take the case of a sale. The selling value of the plot subject to a revenue of R10 is, as we have supposed, R400 and that is what the bania would be prepared to pay for it if the revenue was to be maintained at R10. Now if, in the event of his purchasing, the revenue is to be raised to R12-8, what will be the result? Simply that he will not give R400 for the land, but something less;—so much less as will cover the additional annual charge of R2-8 and will leave him the same annual rate of profit as if the R10 revenue were allowed to stand. If this be so, what becomes of the deterrent efficacy of the threat to raise the revenue? Similarly in the case of usufructuary mortgage. If the money-lender would be prepared to advance R250 on the land with the revenue at R10, he would advance something less if the revenue was to be raised to R12-8, as the ultimate security would thus be diminished. It might be that, if he kept on the mortgagor as his tenant, he would make him pay the additional R2-8 into the bargain, and anyhow that additional revenue would be somehow or other debited against the mortgagor.

"It may be urged that, though the threat to raise the revenue would have no deterrent effect on the bania, it would have such an effect on the zamindar, inasmuch as he would see that he would get so much less; perhaps that, if he sold, he would get only R350 instead of R400, or that if he mortgaged, he would get only R200 instead of R250, and this no doubt is true in theory and to a certain limited extent in practice. But can any one who reflects on the terms to which zamindars in want of money will submit suppose that the effect would be anything worth speaking of? Is it likely that a petty zamindar pressed for money, and

* Meantime Mr. Thorburn, in reviewing the Gujrat Settlement Report, in November 1893 wrote "Until differentiation in assessment distribution on class of holder is introduced, Government must either lose potential land revenue or assess small proprietors oppressively," and Mr. Fryer, Financial Commissioner, in June 1894 added; "there is no reason why Government should show special consideration to new agriculturists and if it were known that this class would be assessed up to the full amount which they can fairly be called upon to pay, a considerable and most wholesome check would be put upon the transfer of land."

who could raise several hundred rupees by selling or mortgaging his holding, would be deterred from selling or mortgaging it because we stepped in and arranged matters so that he would get ₹50 or even ₹100 less by the transaction ?

No doubt both the bania and the zamindar would be fully alive to the fact that by transacting their business in such a way as would put the bania in the place of the zamindar as malguzar ₹2-8 per annum would be lost, and it is accordingly very likely that they would before long have recourse to some device to avoid this, as, *e.g.*, by adopting the form of mere hypothecation unaccompanied by delivery of possession and letting things run on on that footing for a considerable time, but we may be pretty sure that, whatever was done, the zamindar would get his money and the bania—well we may be sure that the bania would not suffer and that he would take good care to secure an ultimate hold on the land."

Sir Dennis then goes on to show that the scheme would add but little to the revenue, and concludes by pointing out that it would be inconsistent with the Punjab system of village assessments based on a calculation of the net value of the produce.

Para. 19.

"What we call one-half assets estimate is framed for the circle as a whole, and we can at once say how much exactly our assessment of the circle as a whole falls below it; but when we descend from the circle to the village, and still more when we further descend to the field the position becomes much more complicated. The Settlement Officer in assessing a village no doubt keeps the half assets principle in view and perhaps frames some sort of a half assets estimate, but it would be difficult for him to frame any such estimate which would be worth much. It would therefore be impossible to say how much the assessment of a village falls short of a true half assets estimate for the village. Again, even if we could tell this, there would be the further difficulty that the lump assessment of the village is distributed over the lands in the 'bachh' very much as the zamindars wish, and often on principles more or less arbitrary, and this with the variations in quality in the soils of particular fields, would make it impossible to form any idea of how much the revenue payable on a particular field fell short of a true half assets estimate for that field. This being so, we can only deal with the matter in some very rough and ready way, as, *e. g.*, by assuming, as Mr. Wilson and others seem to do, that the assessment on every field is below the true half assets estimate for that field in the same proportion as the assessment for the circle as a whole is below the half assets estimate which we have worked out for the circle as a whole. This would be a somewhat violent assumption in many cases, but considering that the non-agriculturist purchaser or mortgagee usually contrives to get hold of the best lands and those which are let off most lightly in a roughly made bachh, and further remembering that the enhanced revenue we would propose to take from the transferee would be a light one even for average land, it would perhaps be permissible to make the assumption in question, and anyhow no other practicable method of carrying out the proposed scheme has been suggested."

The objections are stated tentatively and Sir D. Fitzpatrick admits that he is open to argument.

331. Allowing that there are arguments the other way, we may for convenience sake narrow down the proposal, as Sir D. Fitzpatrick has done, to future transfers to non-agriculturists.* The main proposal then would be that where a holding paid something less than a full revenue (and this must very frequently happen for various reasons), a full revenue should in future be levied when the holding was alienated to a non-agriculturist. The objections which have been raised, and the answers to be urged against them, appear to be :—

(i) the old objections, that credit is impaired, that this is class legislation, etc. These need not be examined.

(ii) that it will merely keep mortgagees from foreclosure. But *ex hypothesi* the extra assessment would be levied at the commencement of a usufructuary mortgage or conditional sale.

* This may be altered, at will, to "money-lenders," "persons not belonging to the village community," etc.



(iii) that transfers can be easily concealed. This is doubtful: in the case of usufructuary mortgage Mr. Wilson's test of receipt of rent and right to eject would suffice, and where there is a record-of-rights transfers are not easily concealed.

(iv) that we add to the intricacy of our revenue system. But we increase our revenue.

(v) that the extra payment must ultimately come from the ex-proprietor either in the shape of rent after transfer, or in the shape of reduced credit before, or both. Increased rent is an evil, but can be provided against. Reduction of credit, though not an evil, is in these cases so small as to be no deterrent, but it may be accepted as something of a deterrent though only small, and the scheme has the advantage of increasing revenue.

(vi) that it indicates a grasping policy on the part of Government which the people would despise and object to. This was evidently Sir J. Lyall's reason for suggesting as an alternative a higher mutation fee or a redistribution (without an increase) of the village assessment. The latter proposal would suit the revenue system of the Punjab only: but some further consideration might be invited in other provinces to the former.

Besides these there are special objections in some provinces, *e. g.*,—

(*a*) in Bombay, the revenue rates are empirical only, so that a full assessment would not represent any definite relation to the profits of the land.

(*b*) in the Punjab the assessment of the village and much more that of the holding bears no very exact ratio to the net assets: so that by fixing a ratio of increase to be taken on transfer we are acting very roughly. To this it may be replied that no exact relation to the assets is aimed at, but merely a slight increase of an assessment which in the majority of holdings must be admittedly light. Even if we aim at a rough ratio to the value of land, we shall only be doing what Government already does in its fluctuating assessments, its Cess Laws, Stamp Laws, Occupancy Rent Laws, etc. There is, of course, the further objection that we should not do more than we can help to destroy the notion of aggregate responsibility in the village assessments of the Central and Eastern Punjab, and the only answer to this is that we have gone too far in that direction already.

## (III) PROTECTION OF THE EX-PROPRIETOR.

332. In transferring his land, the proprietor, under the ordinary law, loses both (*a*) his proprietary right and (*b*) his right to cultivate the soil on a reasonable payment. The distinction between these two rights was early

observed in the North-Western Provinces in connection with revenue sales; Mr. Thomason, the Lieutenant Governor, holding that the effect of such sales was the loss of proprietary rights only. "If they were cultivators also," he says, the ex-proprietors "retain their rights in that character, and, as regards their own or sir land, are entitled to hold at fixed rates."

Directions to Settlement Officers, para. 132.

The extension of the principle to proprietors who had lost their rights by decree of court or voluntary sale was advocated by the Lieutenant Governor, Sir W. Muir, in 1872 in connection with the preparation of the North-Western Provinces Rent Act of 1873, and the proposal was generally concurred in by Messrs. Inglis, H. S. Reid and C. A. Elliott. Accordingly the law of 1873 provided that—

Note of 4th July 1872. (Progs. A, Rev., Oct. 1872, Nos. 54-57.)

Act XVIII, 1873, sec. 7.

"Every person who may hereafter lose or part with his proprietary rights in any mahal shall have a right of occupancy in the land held by him as sir in such mahal at the date of such loss or parting, at a rent which shall be four annas in the rupee less than the prevailing rate payable by tenants at will for land of similar quality and with similar advantages."

Persons having such rights of occupancy shall be called "Exproprietary tenants" and shall have all the rights of occupancy tenants."

And these provisions are reproduced in Act XII of 1881, which constitutes the present Rent Law of the North-Western Provinces. The rights, being occupancy rights, are not transferable.

Sec. 7.

333. Similar provisions are found in other Provinces.

In Oudh, for instance, a tenant who or whose predecessor had been in possession as a proprietor in a village or estate at any time between 1826 and 1856, was granted by Act XIX of 1868 a "heritable, but not transferable, right of occupancy" in all land held in the village or estate in 1866, which had been occupied before 1866: and the present law continues the same rule in the following terms:—

Sec. 5.

Act. XXII, 1886, sec 5.

"Tenants who have lost all proprietary right, whether superior or subordinate, in the lands which they hold or cultivate, shall, so long as they pay the rent payable for those lands according to the provision of this Act, have a right of occupancy under the following rule:—

Every such tenant who, within thirty years next before the thirtieth day of February 1856, has been, either by himself, or by himself and some other person from whom he has inherited in possession as a proprietor in a village or estate, shall be deemed to posses a heritable but not a transferable right of occupancy in the land which he cultivated or held in such village or estate on the twenty-fourth day of August 1866: Provided that such land has not come into his occupation, or the occupation of the person from whom he has inherited, for the first time since the thirteenth day of February 1856: Provided also that no such tenant shall have a right of occupancy in any village or estate in which he or any co-sharer with him possesses any under-proprietary right."

The Act of 1868 permitted the tenant to contract himself out of the rule, and this permission is continued in the Act of 1886, section 5 of which concludes as follows:—

"Nothing contained in the former part of this section shall affect the terms of any agreement entered into in writing between a landlord and a tenant after the twenty-second day of July 1868."

In the Punjab under the Tenancy Act of 1868, a (transferable) right of occupancy on a low rent was claimable by any one "who has involuntarily parted or shall involuntarily part with proprietary rights in land otherwise than by forfeiture to Government, and who has continuously occupied or shall con-

Act XXVIII, 1868, sec. 5 (2).



tinuously occupy such land or any part thereof from the time of such parting."

And the same privilege was continued, though somewhat altered in wording, by the Act of 1887, which lays down as follows:—

Act XVI, 1887, sec. 5 (1) (b).

"A tenant.....who having owned land, and having ceased to be the land-owner thereof otherwise than by forfeiture to the Government or than by any voluntary act, has, since he ceased to be land-owner, continuously occupied the land.....has a right of occupancy in the land so occupied."

In the Revenue Regulation of 1877, the provisions of the North-Western Provinces Act, with slight modifications, were extended to Ajmere:—

Reg. II 1877, section 41.

"Any person who may have, whether before or after the passing of this Regulation, lost or parted with his proprietary rights in any holding, either temporarily or permanently, and has since continued in occupation of any of the lands comprised in such a holding, which, as proprietor, he retained under his own cultivation, shall have a right of occupancy in such lands at a rent five annas four pies in the rupee less than the prevailing rate payable by tenants at will for lands of similar quality and with similar advantages in the neighbourhood.

Such persons are hereinafter called 'exproprietary tenants.'

Any agreement executed, whether before or after the passing of this Regulation, by an exproprietary tenant to pay a higher rate than that prescribed by this section shall be void.

And a modified form of the same protection was extended to exproprietors in the Central Provinces by Act IX of 1883:—

Sec. 42.

"Every person whose proprietary rights in land comprising sir land are, after this Act comes into force, transferred in any of the following cases, namely—

(a) when he sells those rights without expressly agreeing to transfer his right to cultivate the sir land;

(b) when those rights are sold for an arrear of land-revenue;

(c) when those rights are sold in execution of any decree, which does not expressly direct the sale of his rights in the sir land;

shall become an occupancy tenant of that sir land, and the rent payable by him as such shall be fixed by a Revenue officer on application made by him or by his landlord."

The ex-proprietor then may be said roughly to enjoy the following protection:—

In the North-Western Provinces he has an untransferable occupancy right at a low rent in his sir, however he may have lost his proprietary right.

In Oudh he has, subject to certain conditions, an untransferable occupancy right in land which he was cutivating as a tenant in 1866: but if he has lost his estate since that date he apparently has no special protection.

In the Central Provinces he has an occupancy right in his sir land with limited power of transfer and with restrictions on enhancement of rent, however he may have lost his proprietary right; but he may contract himself out of this right.

In Ajmere he has a transferable occupancy right at a low rent in his sir land, however he may have lost his proprietary right.

In the Punjab he has, if he lost his property involuntarily, a transferable occupancy right at a low rent in any of his old property on which he remains as a tenant.

It may be noted that in the draft Central Provinces Tenancy Bill recently prepared in the Department of Revenue and Agriculture (see paragraph 407A below), it has been proposed to alter the law on this point as follows:—

"For section 42 the following shall be substituted:—

42. Every person who may, after the commencement of the Central Provinces Tenancy Act, 1895, lose or part with his proprietary rights in land comprising sir land shall, at the date

Act XII, 1881, sec. 7.

of such loss or parting, become an occupancy-tenant of that sir land, and the rent payable by him as such shall be fixed by a Revenue officer on application made by him or by his landlord.

If there are two or more sharers in any sir land, and one of them becomes an occupancy-tenant in it under the provisions of this section, the share which previously belonged to such tenants shall, on application made by him or by his landlord, be divided off by a Revenue officer, and the rights of such occupancy-tenant shall be limited to the land comprised in such share.

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334. With reference to the principle involved in these and similar provisions Sir J. Morris, the Chief Commissioner of the Central Provinces, pointed out in 1874 that it only alleviated instead of preventing the loss of proprietary rights and the discontent that follows such loss. And Mr. Benett, Officiating Secretary in the Revenue and Agricultural Department, wrote in 1890 of this remedy :—

Para. 14, note of 19th Sept. 1890. (A., May 1891, Nos. 9–14.) Sel., p. 98).

"It reproduces section 7 of the North-Western Provinces Rent Act. In those Provinces it works very well in making a provision against the absolute starvation of proprietors who have alienated their rights. But it does not prevent alienation."

Note of 15th Feb. 1891. (A., Sept. 1893, Nos. 46–49.)

335. In noting in 1891 on the proposal to appoint a Commission to examine the working of the Deccan Act, Sir P. Hutchins expressed himself in favour of "a law which would enable proprietors who have been sold up to become occupancy tenants of a reasonable portion of their former estates without power of transfer," and the Commission when appointed considered among other schemes that of conferring on the ex-occupant "an inalienable right of continuing to cultivate the land subject only to the payment of a fair rent," but to the plan, so far as concerned the Deccan, they were opposed on three grounds, *viz.*, (*a*) that it would be difficult there to fix a fair rent, (*b*) that the ex-occupant could still be induced in various ways to abandon the land, and (*c*) that in a capricious climate like the Deccan it would be impossible to realise regularly the legal rent.

Report, para. 74, page 74.

"It would of course be possible," they added, "to provide that the rent payable by an ex-occupant shall be fixed by a Revenue officer at a certain share of the produce not to be commuted into money. There may be a sufficient number of tenants who pay rent in this form to enable Revenue officers to ascertain what the customary rate is : and it might be possible to guard against the danger of the landlord inducing the ex-occupant to relinquish the holding and giving it to another tenant at a higher rent, by providing that every tenant shall have a right to have his rent fixed by a Revenue officer. But this would be an entirely new departure in the Bombay Presidency, and the Commission feel some doubts whether these four Deccan districts offer, under present conditions, a promising field for the trial of the experiment."

Among Bombay officers the scheme met with little approval. Mr. James, the Commissioner in Sind, for instance, wrote :—

Para. 13, letter No. 4274 of 22nd Oct. 1892. (B. Aug. 1893, No. 5.). (Sel., p. 137).

"As for a law of tenant right I concur with the Commission in holding that it will be very difficult to arrange such a thing in the Bombay Presidency, and I doubt the propriety of attempting it beyond limiting the amount which the Courts should be empowered to recover by legal process. Dual ownership is productive of difficulty everywhere, and to complicate the simple Bombay Survey tenure with tenant right provisions seem to me a doctrinaire kind of proceeding which should not be thought of till all other remedies have been tried. It may suit the North-Western Provinces where the 'sir' or private land of a partner in a co-parcenary village is a thing apart, but could not be adapted to the Bombay Presidency."

336. Sir Charles Crosthwaite, however, as Member of the Viceroy's Council, urged strongly the adoption of the scheme in Bombay. For Provinces such as the North-Western Provinces, the Punjab, and the Central Provinces where the 'sir' is often inadequate, he proposed to apply the proposal, not to the

Note of 28th Nov. 1892. Sel., p. 126),



home-farm as it stood, but to a suitable 'homestead' area, whether partly under tenants or not. His proposal may be quoted in full :—

"I recommend a course similar to that which has been followed I believe with some success in the case of proprietors whose land is sold for debt in the North-Western Provinces. The rights in land are looked upon as divisible into two parts : the rights of the owner and the rights of the hereditary cultivator. I think there is no doubt that under the old native system the only rights possessed by the ryots as a body were those of an hereditary occupier who was not subject to ejectment so long as he paid his rent to the Government. We took these men and gave them what was called in the old Regulations proprietary right. And this right became liable to be seized and sold in satisfaction of money decrees. The greater right was held to include the lesser; and so when a man was sold up he not only lost the new right that we gave him, but also his old right of occupancy. On these grounds it was argued by those who framed the North-Western Provinces Rent Law in 1873 that it was equitable and in accordance with the old customary law to exempt the cultivating right from seizure for debt, and it was enacted that when a landowner was sold up he should remain in possession of his home-farm as an hereditary tenant without right of transfer, and that he should pay a fair rent at favourable rates to be fixed by a Revenue officer. I think an arrangement of this kind would prevent in the Deccan and elsewhere the worst evils resulting from the present process of transfer. The ryot would get quit of his debts, and would retain his ancestral land. He would pay more for it than he had hitherto done, and his power of incurring fresh debts would be much diminished because he would have no transferable right remaining. The Bombay Government will probably advance two objections to this proposal : (1) that it introduces a middleman between the Government and the ryot, which is foreign to their system; (2) that their officers are unable to fix a fair rent, as the revenue in Bombay is fixed on *à priori* principles which have no reference to the rental value of the land in the market or to the produce of it. The reply to (1) is that it is abundantly plain from the record that the ryots whose land has been sold are retained on it by the purchasers who receive a rack-rent from them, and hold them entirely at their mercy. To say that there are no middlemen is inaccurate. It is better to recognize the facts and to protect the ryot. The answer to (2) is that the difficulty can be got over either by saying that the new rent is to bear a certain proportion to the revenue, or by setting some of the Bombay Revenue officers to enquire into the rents paid by the numerous sub-tenants who undoubtedly exist and to ascertain the letting value of land. To us in Northern India who are accustomed to fix rents and decide rent cases as part of our daily duty the difficulty seems an inadequate reason for rejecting the proposal.

In the case of the ordinary ryot who cultivates all the land in his holding, a provision similar to that in the North-Western Provinces' Rent Law would afford ample protection. But I do not think it goes far enough to protect men of the stamp of the landholders of the North-Western, Punjab, and Central Provinces. Sometimes a man has no sir or home-farm or very little. In such cases he gets either insufficient or no protection. To remedy this it may be necessary to exempt from sale an area of land equal to the area ordinarily held by a substantial cultivator, or sufficient to provide the ex-proprietor with means of subsistence. There are, however, difficulties in making any arrangement of this kind, as the land in which the owner's rights are sold may be all held by tenants with right of occupancy.

It would not be possible, therefore, to leave the ex-proprietor in all cases land which he could cultivate himself. But this need not prevent us from leaving him a small area of land occupied by tenants who would pay him rent. He would have no right of transfer in that land."

Note of 24th June 1893. (A., April 1894, No. 1.) Sel., p. 130.

Contrary to the views expressed by the Bombay officers, Sir Charles Pritchard gave his support to the scheme.

"I agree," he said, "with those who hold that the mischief and evil arising from the dispossession and reduction to virtual serfdom of the hereditary occupants of lands in the Deccan and elsewhere is so great as to justify Government in going great lengths in shaping a remedy. I believe that the only really effectual remedy lies in the direct restriction of the ryots to transfer their occupancies, and I am prepared to support the recommendations in this direction made by Sir Charles Crosthwaite in his minute of 28th November 1892. There may be some reluctance at first on the part of Bombay Revenue officers to accept measures that are apparently foreign to the system in which they have been trained; but I expect that that reluctance

will disappear on a close examination of the proposals, and that means will be found for adapting a system that has produced successful results in the North-Western Provinces to the circumstances of the raiyatwari tenure prevailing in Bombay."

And Sir P. Hutchins, in expressing pleasure at this anticipation, added that "the adaptation of the North-Western Provinces law to a raiyatwari province will be no easy matter."

337. The scheme appears, to speak roughly, in three shapes according as it affects ex-proprietors :—

(*a*) Under whatever circumstances they have parted with their estates ;

(*b*) When they have parted involuntarily (*i.e.*, by order of a Civil Court or Revenue authority) with their estates ; or

(*c*) When the sír has not been expressly alienated with the estate.

It also appears in three forms according as the land affected is—

(*a*) the sír land,

(*b*) a 'homestead' area arbitrarily fixed, or

(*c*) (in provinces of small landholders as in the Bombay, Ajmere and the Punjab) the whole area held.

As regards the form of protection granted there can be little doubt that to make the scheme effective we require not only a right of occupancy and a fair or low rent, but also invalidity of transfer.

The general objections are two only, *viz.*, that the scheme is cure, not prevention, and that the non-transferability will be difficult to enforce.* Special difficulties also occur in every Province, especially when the tenure is ryotwari and where there is no record of rights: and if the scheme is to be undertaken it would possibly be found desirable to introduce it in different forms in different Provinces.

Sel., p. 60.

338. With reference to the suggested restrictions on transfer, it may be permitted to make some general observations.

In the first place the plea put forward by Sir James Lyall (para. 220 above) against forcing Relief Legislation of a uniform type on all Provinces alike has still greater force if any attempt is to be made to interfere with the freedom of transfer.

"In the next place," it was said "Sir James Lyall strongly hopes that the view will not be taken that it will be better to attempt to frame one Act applicable to the Punjab and other Provinces. This would in his opinion mean not only delay, but in the end a law not adequate or suitable to Punjab requirements. * * * The whole Province was in fact down to some 25 years ago a country roughly governed according to the spirit, but not the letter, of laws and regulations then applying in other parts of the Bengal Presidency, and according to rules framed from time to time by the Board of Administration, the Chief Commissioner or Lieutenant-Governor. It was only some 25 years ago that laws

* See, *e.g.*, paragraph 29, Jalaun Settlement Report.



relating to civil justice and intended to be generally applicable began to be extended to the Punjab, and it is the unsuitability of parts of these laws to local circumstances and requirements which has landed us in the present difficulty. In the Despatch constituting the Punjab Board of Administration the officers of Government were enjoined to maintain the village coparcenaries or communities in integrity. We had failed to do that in some parts of the North-Western Provinces and Bengal, but we cannot be said to have yet failed in the Punjab. We shall, however, in Sir James Lyall's opinion, fail presently if we do not take strong action ; and there is less difficulty at present in taking such action in the Punjab than there would be in other Provinces, because, as already noted, the law as practically administered has hitherto differed considerably and been more favourable to the agriculturists."

There are instances in the correspondence, notably that of Mr. W. B. Jones, of officers who have given entirely different opinions on the subject in connection with different provinces, and, although for convenience' sake the proposals have in this note been considered in the light of general proposals applicable to all provinces or to groups of provinces, it is almost certain that, in applying any remedy of which the principle may be approved, the divergent systems existing in the different provinces will necessitate the enactment of distinct measures for each province concerned.

Regarding Mr. Jones, different opinions as to the Central Provinces, and Berar, see p. 298, App. III, Famine Commission's Report

Moreover, in applying any such remedies as proposed to selected areas in a province, there are two extremes which it seems desirable to avoid. One is the indiscriminate use of restrictive measures where not required. And the other is the application to too confined an area of measures, the results of which can only be properly ascertained after a prolonged period during which other areas may continue to suffer from want of such measures.

Further it may be noted, as a matter of theory rather than as a practical consideration, that measures undertaken for the restriction of transfer need not necessarily be permanent in their character. For the purposes of present legislation they may be looked on as permanent, but the policy they would inaugurate need not, and probably should not, contemplate the perpetual restriction of transfer. It was long ago pointed out in the Central Provinces that such measures were required mainly to 'bridge over the interval between the old state of things and the new,' and this was a view strongly advocated by Sir George Campbell in treating of the subject. Whether the ultimate grant of unrestricted transfer in any area is in itself advisable may be a point open to discussion, but the restriction of the right for the present does not necessitate our formulating any conclusion on this point.

Home Department Selections CLV, pp. 130, 339 and 370.

Memoirs of my Indian Career, Vol. I, p. 149, and Vol. II, p. 179.

## IV.—TRANSFERS OF TENANT RIGHT.

339. The only provinces in which the bulk of the soil is cultivated by tenants are Bengal, the North-Western Provinces and Oudh, and the Central Provinces: and it is in these three Provinces alone that the transfers of tenant right have so far attracted much attention. In view of this fact and of the different grades of tenants existing in different parts of India, it will be advisable to treat this branch of the subject separately for each Province, and not primarily as a question affecting the country as a whole.

### Bengal.

*Early law and custom.*

340. The question whether the self-cultivating raiyat of Bengal had originally any power of transfer or not was one which was much discussed during the preparation of the Bill which afterwards became the Bengal Tenancy Act of 1885. On the one hand, arguments were put forward in favour of the view that originally the raiyat had no power of transfer. Mr. Justice Field in his "Note on the transferability of raiyats' holdings," appended to his "Digest of the Law of Landlord and Tenant, 1879," stated that, although the raiyat's interest was generally supposed to be heritable, "that he could not sell it was admitted by the highest authorities;" and in support of this view he quoted Sir John Shore's Minute of June 1789, to the effect that "though his title is hereditary, yet the raiyat cannot sell or mortgage his land." Mr. Field then argued "that first the Legislature declared estates to be transferable and then patnis, and that the idea of alienability by a natural progress extended to the raiyat's holding, this result being in some measure brought about by the zamindars bringing such holdings to sale for arrears of rent. The sequence then was (1) transfers at the landlord's request, (2) transfer with his consent, (3) transfers without his consent;" and this view was agreed in generally by the Bengal Government in 1883, when Sir Rivers Thompson wrote:—"It may be accepted that freedom of transfer was not an incident of the khud-kasht raiyat's holding."

Paragraph 14, letter No. 972 T.R., dated 27th September 1883. (Legislative Department Proceedings, April 1885, Nos. 8—555).

There were others again who maintained that the transferability of a raiyat's holding was recognised by the ancient custom of the country, and that the practice fell into disuse in consequence of the power acquired by the zamindars as a result of the Permanent Settlement.

The Board of Revenue (Mr. Stevens) pronounced in 1894 in favour of a third view, inclining rather to the second than to the first of the views already quoted. It was said:

Letter No. 800A., dated 20th June 1894. (A. October 1894, Nos. 1—2). *See* p. 32.

"More probable than either of these pronouncements would seem to be the view that in the times after the breaking up of the village communes in Bengal, and before the Permanent

Settlement, there was as great a diversity of local conditions as there is now, and that it was as dangerous as it now is to make broad assertions based on limited experience. Though the stages of transferability have, no doubt, been correctly given by Mr. Field, so far as the history of British legislation is concerned, Mr. Stevens hesitates to believe that the transferability of raiyats' holdings is of such recent creation as that writer thinks. Looking to the original position of the zamindars before the settlement, it is easy to see why their zamindaris should not have been alienable. But the case of the actual cultivators of the soil was altogether different. It is true that over a large part (perhaps the greater part) of the country there was no pressure of population on the soil, and that the competition was (as it now is in the Chota Nagpur Tributary States and other localities) for raiyats rather than for land; but there must always have been localities favoured by fortune or improved by labour beyond others, so as to be attractive to raiyats; and when a possession or a privilege, in its nature susceptible of transfer, is held by one man and desired by another, it requires a very powerful counteracting influence to prevent the making of a transfer either by force or by agreement. It may well be doubted whether the influence of the zamindar would have been sufficient or could have been applied with sufficient uniformity to entirely prevent transfers of raiyats' holdings."

Petition of Central Committee of zamindars of 3rd December 1883, paragraph 48.

341. Whether transfers were allowed after the Permanent Settlement is a further point which was disputed in the discussions of 1883-85. The landlords in some of their petitions denied it and appealed to Bengal Regulation VII of 1799, which presumes an occupancy raiyat to have "no transferable possession in the soil." On the other hand, it was contended that the tenant right "if not saleable in 1793.....seems to have soon afterwards become saleable."

Section 15, clause 7.

Mr. MacDonnell's Minute of 5th January 1884, paragraph 12.

(Legislative Department Proceedings, April 1885, Nos. 8—555).

Whatever the original rights of the raiyat may have been, they were not directly affected by the first general rent legislation of the British Government, as expressed in Act X of 1859 and re-enacted in Bengal Act VIII of 1869. This legislation recognized two classes of privileged tenants, *viz.*, (*a*) the tenant who had held at fixed rates since the Permanent Settlement, and (*b*) the tenant who secured occupancy rights by 12 years' continuous possession. But on neither of these classes did the law confer a right of transfer, and the Courts expressly declared that a right of occupancy did not bring with it a right of transfer. For instance, a full bench of the Calcutta High Court laid down as follows:—

7 W. R., page 528.

"It appears to me that there is nothing in section 6 of Act X of 1859 which shows that it was the intention of the Legislature to alter the nature of a *jote* and to convert a non-transferable *jote* into a transferable one merely because the raiyat who had held it for 12 years thereby gained a right of occupancy under Act X of 1859."

Accordingly the right to transfer was left to be regulated by custom.

*Transfer under the Tenancy Act of 1885.*

342. So far as concerns the rights of *tenants holding at fixed rates*, the question of custom seems to have been little discussed. The Rent Law Commission of 1880 held that custom distinctly declared the holdings of such tenants to be transferable and proposed to legislate in this sense. There were, however, two classes of such tenants, one holding by agreement or order of Court, and the other by presumption from long possession: and it was doubted by some whether the latter had as clear a claim to a right of transfer as the former. At the last sitting moreover of the Legislative Council on the Bill of 1885 the Maharaja of Darbhanga proposed to leave the validity of transfers of fixed-rate tenancies to be decided by custom: and Babu Piari Mohan Mukarji suggested the prohibition of such transfers. It was felt however that all fixed-rate tenancies should be treated together and that custom generally admitted of their transfer. The new law accordingly grants to tenants holding at fixed rates a free right of transfer, subject only to the payment of a fee to the landlord.

Paragraph 26, Report, Volume I, page 15.

Paragraph 7, Government of India letter No. 784 of 5th May 1884, (page 242. Legislative Department Proceedings, Nos 8—555, April 1885.)

Meeting of 4th March 1885.

This follows from the proposal to omit section 11.

Sections 11, 12 and 18 (*a*).



343. As regards *occupancy tenants*, who did not belong to the privileged class above mentioned, the extent to which custom allowed transfer, with or without the landlord's consent, was a question on which opinions differed considerably during the discussions on the Tenancy Bills of 1883-85, and the evidence then put forward will be noticed further on. It will suffice to mention here that transfers were certainly allowed without permission in parts of the country but that no general rule either for or against the custom appears to have been proved.

The first definite proposals for legislation came from the Bihar Rent Committee of 1879, who reported that a majority of their number were "against rendering occupancy rights transferable by sale and purchase," but that subletting should be permitted. This was followed by a shoal of very varying proposals from the different authorities by whom the subject was treated. In the first place the Rent Law Commission of 1880, to whom the proposals of the Rent Committee were referred, decided by a majority "in favour of transferability," so far as regards private sale and execution of decrees for rent, but not as regards mortgages or sales in execution of decrees for ordinary debt. Then the Lieutenant-Governor, Sir Ashley Eden, proposed a third course, *viz.*, the free transfer of occupancy rights, subject to the condition that the landlord should have a veto on a sale if the purchaser were not a resident of the village. The Government of India put before the Secretary of State a fourth plan by which the occupancy right should be transferable in execution of decree and private sale, but subject to the landlord's right of pre-emption and, except when the Local Government might otherwise direct, to the condition that the right of occupancy should not be acquired through any form of permanent transfer, including foreclosure, by any one who was not an agriculturist. For some reason, apparently unrecorded, this condition was, in its turn, put by, and the Bill as first presented to Council in March 1883 recognised the right of an occupancy raiyat to free sale and mortgage subject only to the landlord's preemption.

Paragraph 18 of Report of 8th March 1879, page 253, Volume II Report of Rent Law Commission.

Report, paragraph 32.

Letter No. 849T., dated 27th July 1881. (Legislative Department Proceedings, April 1885, Nos. 8—555).

Paragraph 97, Despatch No. 6, dated 21st March 1882.

But the series of metamorphoses was not at an end. At first the Lieutenant-Governor, Sir Rivers Thompson, accepted the proposals of the original Bill, and the revised Bill of March 1884 maintained practically the same position as the original Bill in respect of transfer. In September 1884, however, the Lieutenant-Governor declared the system of pre-emption unworkable, suggested the substitution of a right of veto, and, while prepared to legislate for free transfer in Bengal Proper, urged that the matter should in Bihar remain subject to custom. Finally the last Select Committee resolved to forego all attempt to introduce general transferability with or without conditions, and the Bill as ultimately presented on 27th February 1885 left the law in regard to transfer much as it stood. An amendment was moved by Mr. Justice Amir Ali with the object of legalizing transfer, but it was opposed by Lord Dufferin and withdrawn. The result of all the discussions was therefore to leave the question of the transferability of occupancy tenancies theoretically *in statu quo*.

Letter No. 972, date 27th September 1883 paragraph 15.

Letter No. 1906, dated 15th September 1884.

344. The Act as passed recognizes four classes of raiyats, *viz.*:—

(*a*) raiyats holding at fixed rates, "which expression means raiyats holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity";

Act VIII, 1885, Section 4

(*b*) occupancy raiyats, "that is to say, raiyats having a right of occupancy in the land held by them";

(*c*) non-occupancy raiyats, "that is to say, raiyats not having such right of occupancy", and

(*d*) under raiyats "that is to say, tenants holding whether immediately or mediately under raiyats."

Section 18. As regards (*a*) a raiyat at fixed rates, he is "subject to the same provisions with respect to the transfer of his holding as the holder of a permanent tenure,"

Sections 11, 12. and a permanent tenure—"subject to the provisions of this Act," *i.e.*, subject to registration and payment of landlord's fees,—"is capable of being transferred and bequeathed in the same manner and to the same extent as other immoveable property."

Transfers by (*b*) occupancy raiyats are regulated by section 178 (*3*) (*d*), which runs:—"Nothing in any contract made between a landlord and a tenant after the passing of this Act shall take away the right of a raiyat to transfer or bequeath his holding in accordance with local usage." Sub-leases, moreover, are

Section 85. not valid except for terms not exceeding nine years, and are not valid against the landlord unless registered or made with his consent; and the sub-division of

Section 88. a tenancy is not valid without the consent of the landlord.

Classes (*c*) and (*d*), *viz.*, ordinary raiyats and sub-tenants have practically no transferable rights, and transfers by these classes are not expressly alluded to in the Act.

*Extent of Transfer.*

345. The above being the state of the law in respect of the transferability of tenancies at fixed rates and occupancy tenancies, it remains to review the evidence we possess as to the extent to which these tenancies are in fact transferred and into what hands.

Bengal Government letter No. 972, dated 27th September 1883.

346. For *tenancies at fixed rates* we have figures only for a single year, *viz.*, 1881-82, taken from the Registration Returns. These are given below for what they are worth, but we have nothing to show whether transfers of such tenancies are increasing or what proportion the transfers bear to the total area:—

| Division. | Number of transfers by sale. | | | Rent (000 omitted). | Purchase-money (000 omitted). |
|---|---|---|---|---|---|
| | To mahajans, traders or money-lenders. | To others. | Total. | Rs. | Rs. |
| Burdwan | 1,500 | 4,079 | 5,579 | 47 | 634 |
| Presidency | 660 | 5,057 | 5,717 | 82 | 508 |
| Rajshahi | 130 | 822 | 952 | 10 | 94 |
| Dacca | 239 | 2,655 | 2,894 | 43 | 201 |
| Chittagong | 113 | 1,766 | 1,879 | 13 | 98 |
| Patna | 82 | 1,099 | 1,181 | 11 | 361 |
| Bhagalpur | 76 | 321 | 397 | 6 | 49 |
| Total | 2,800 | 15,799 | 18,599 | 212 | 2,005 |

It will be observed that in the year in question 15 per cent. of the transactions were in favour of money-lenders; but as no particular attention has been drawn to these transfers hitherto, nothing more can be said.



347. As regards *occupancy tenants*, there was, as has been noticed, considerable difference of opinion before the passing of the Act as to whether they transferred their tenancies, and, if so, to what extent. Generally speaking, there were no statistics to go upon. On the one hand we find Sir Richard Garth, the Chief Justice, maintaining that "such tenures have never yet been transferable except by special custom, and such custom is very rarely proved:" and the zamindars of Bihar and Tirhoot in their petitions declared that such transfers as took place were always with the landlord's consent. On the other hand, the Rent Committee of 1879 admitted the existence of transfers: Mr. O'Kinealy in 1882 referred to the fact as notorious. Mr. Ilbert, moving for leave to introduce the Bill in Council on the 2nd March 1883, referred to "the very strong tendency towards transferability which the prevailing customs show to exist in rights of this class in almost all parts of the country." In discussing the Bill on the 12th March 1883 Sir Steuart Bayley stated that he had "a good deal of evidence to show that so strong is the belief in the inherent right of the actual cultivator to a possessor's status in the soil that even korfa or sub-tenants' holdings are frequently brought to sale in execution of a decree," and he further observed that "there is ample testimony to the effect that the tendency to recognize occupancy tenures as transferable is increasing, and the real question was whether the facts as they stand were to be ignored or recognized." In concluding the debate the Viceroy, Lord Ripon, said: "The evidence appears to me, I confess, to be overwhelming that in the greater part of Bengal the practice of transfer exists under a custom which the Courts have recognized."

Minute of 6th September 1882 (page 89, Proceedings of Legislative Department, Nos. 8—555, April 1885). Petition from zamindars of Bihar dated 21st May 1884 and from zamindars of Tirhoot, dated 24th February 1885 (pages 293 and 359 of above Proceedings). Para. 18 of Report. Page 101 of Legislative Department Proceedings.

348. The only actual statistics available when these remarks were made were certain figures compiled for a single year (presumably 1879) by the Rent Law Commission of 1880. The sales of raiyats' holdings according to these figures were:—

Pages 365 *et seq.* Report, Volume II.

| Division. | Number of Sales. | Remarks. |
|---|---|---|
| Burdwan | 2,812 | Note.—Raiyats' holdings included in this table are those at rents fixed in perpetuity, occupancy holdings and others. |
| Presidency | 5,142 | |
| Rajshahi | 1,361 | |
| Dacca | 2,266 | |
| Chittagong | 961 | |
| Patna | 1,317 | |
| Bhagalpur | 460 | |
| Total | 14,319 | |

Letter No. 972, dated 27th September 1883.

A further set of statistics is obtained from a table supplied by the Bengal Government in 1883, which gives information regarding occupancy (excluding fixed rent) holdings transferred by registered deeds of sale in 1881-82 :—

| Division. | Number of sales. | Rent (000 omitted). Rs. | Purchase-money (000 omitted). Rs. |
|---|---|---|---|
| Burdwan | 11,134 | 85 | 736 |
| Presidency | 3,729 | 44 | 384 |
| Rajshahi | 5,699 | 35 | 436 |
| Dacca | 6,770 | 39 | 308 |
| Chittagong | 720 | 6 | 32 |
| Patna | 900 | 6 | 43 |
| Bhagalpur | 1,352 | 12 | 105 |
| Total | 30,304 | 227 | 2,114 |

Appendix II, letter No. 1906, dated 15th September 1884.

More complete returns for the same class of holdings, based also on the registration figures, were made available in 1884. These may be summarized as follows :—

| Year. | Number of sales. | Price in lakhs of rupees. | Number of years' purchase of the rents. |
|---|---|---|---|
| 1881-82 | 32,633 | 23·3 | 9·2 |
| 1882-83 | 40,144 | 29·0 | 9·0 |
| 1883-84 | *47,030 | 32·0 | 9·6 |

Letter No. 800 A., dated 20th June 1894. (A. October 1894, Nos. 1 & 2.) *See* p. 36.

The latest figures for occupancy holdings (those for 1892-93) are thus given by the Board of Revenue :—

| Division. | Number of sales. | Price in lakhs of rupees. | Number of years' purchase of the rents. |
|---|---|---|---|
| Burdwan | 28,856 | 21·1 | 12·4 |
| Presidency | 7,154 | 4·6 | 7·9 |
| Rajshahi | 23,896 | 20·6 | 13·6 |
| Dacca | 19,159 | 13·7 | 14·7 |
| Chittagong | 17,716 | 12·1 | 13·9 |
| Patna | 14,260 | 11·4 | 17·1 |
| Bhagalpur | 10,099 | 7·9 | 13·6 |
| Total (excluding Chota Nagpur and Orissa) | 121,140 | 91·4 | 13·3 |
| Orissa | 2,624 | 2·0 | 32·4 |
| Chota Nagpur | 1,526 | ·9 | 14·3 |
| Grand Total | 125,280 | 94·3 | 13·5 |



The figures taken by themselves show the result :—

| Year. | Number of sales. |
|---|---|
| 1879-80 | 14,319 |
| 1881-82 | 32,633 |
| 1882-83 | 40,144 |
| 1883-84 | 47,030 |
| 1892-93 | 121,140 |

and, after allowing for the effect of the introduction of the Transfer of Property Act in 1882 and increased facilities of registration, they may be said to show a decided increase in the custom of selling occupancy rights. They do not, indeed, show what proportion was sold with the landlord's consent, but as the number increases the presumption that a large proportion was sold without consent also increases. As to the proportion of sales to the total area under occupancy right we are—in the absence of village revenue statistics—quite in the dark.

Paragraph 27, Bengal Government letter No. 1906, dated 15th September 1884.

349. It was contended in 1883—85 that whatever might be the case in Bengal Proper sales of occupancy right were very rare in Bihar, mainly owing to the prevalence there of the Mitakshara law, which recognizes strongly the claims of the joint family. The Bihar Rent Commission of 1879, however, found that besides the exceptional guzasta tenures of Shahabad other tenancies were sometimes sold in Bihar. In 1880 Mr. MacDonnell, Collector of Sarun, stated that kastkari rights were "at the present moment bought and sold more or less frequently in every district in Bihar." The figures collected in 1884 showed the following results :—

Letter of 15th December 1880, page 738, Volume II, Government of Bengal's Report (1881).

| Year. | Average sales per division in all Bengal. | Average sales per division in Bihar.* |
|---|---|---|
| 1881-82 | 4,882 | 3,217 |
| 1882-83 | 5,735 | 3,539 |
| 1883-84 | 6,719 | 3,834 |

* Taking Patna and Bhagalpur as Bihar. The calculation is of course very rough.

The above figures—together with other details which have not been quoted—led to the following conclusion of the Bengal Government in 1884 :—

Paragraph 29, letter No. 1906, dated 15th September 1884.

"That free sale does exist in, and for many years has to some extent existed in, the Bihar districts, is true; and that the custom is increasing is undisputable. But it must not be overlooked that the number of transactions, which even now is small for such a population, has only risen to anything like an important figure within the last two years' when these Rent Bill discussions may conceivably have influenced the movement; while the total area of land transferred by private sale last year (17,255 standard bighas, or 5,752 acres, out of a cultivated area estimated at 13½ million acres) is so small as to afford significant proof that, having regard to the views expressed by the Famine Commission as quoted in the margin, free transfers have not become customary throughout the province of Bihar to such an extent as to justify recognition in the Bill. The preceding considerations as to the narrowness of any general custom of free sale in Bihar, seem also to gain additional support if we have regard to the average area of the holdings transferred. This is a point on which the statistics presented in paragraph 14 of my letter of 27th September last were unavoidably deficient, and on which the Lieutenant-Governor, at the instance of the Select Committee, has now had careful enquiries made. It will be observed that in 1882 the average area of the holding was small in every district except Shahabad (where guzastas and occupancy

"Though on the whole, we regard the general concession of the power of sale of these rights to be expedient and ultimately almost unavoidable, the immediate course to be followed by the Government must no doubt be to a great extent governed by local custom. Where the custom has grown up and the tenants are in the habit of selling or mortgaging their rights in land, it should certainly be recognized by the law; but where it has not, it may be questioned whether the law should move in advance of the feelings and wishes of the people." (Part II, page 120.)

rights are often confounded), and that in 1883 the average continues very low in the North Ganges districts. This fact suggests a doubt whether in the majority of cases the free sale now existing in Bihar is transfers of entire holdings or only of parts of holdings. Possibly many of those transfers may not be transfers of entire holdings which the law proposes to recognize, but transfers of portions of holdings which, by section 97, the Bill prohibits."

The sales of occupancies in Bihar have since 1884 greatly developed, for in 1892-93 the average number of sales for each of the two Bihar Divisions had reached the figure of 12,179, against an average for the province of 17,305.

*Englishman* of 5th July 1884.

Attention is also invited to the following review of the registration figures of the Patna Division, taken from a recent newspaper article:—

"Two periods of four years each have been selected: the one ending in April 1885, or immediately preceding the passing of the Act: the other extending from March 1888 to April 1892, representing a similar term of years soon after the Act had come into force. During the first period 24,990 instruments of sale of immovable property and 32,476 instruments of mortgage of immovable property of less than one hundred rupees in value were registered. During the second period the figures are 68,388 instruments of sale and 129,101 instruments of mortgage. Taken together they represent an increase during the second period of alienations of land by the cultivating classes of nearly three hundred per cent. When the figures for districts are examined the marked stimulus given to alienation comes out in stronger relief. In Mozufferpur and Sarun petty mortgages of immovable property increased fourfold; in Champarun twentyfold. The number of holdings with rights of occupancy transferred by registered deeds of sale increased from 7,538, with an average of 24,000 standard bighas and a rental of ₹48,000 to 44,303 holdings, representing an area of a quarter of a million of bighas with a rental of over 2¼ lakhs of rupees."

### *Character and Result of the Transfers.*

350. Granting then that sales of occupancy rights have largely increased in all parts of the Province, that they are now very common in Bengal Proper and that they are becoming less uncommon in Bihar, what evidence have we as to the class of purchasers who obtains the holdings?

Report, para. 18. See also page 286, Volume II, Rent Commission's Report. Pages 365 *et seq.*, Volume II, Rent Commission's Report. Bengal Government letter No. 1906, dated 15th September 1884. Board's No. 800 A., dated 20th June 1894.

The Rent Committee of 1879 (Babu Harbans Sahai, however, disagreeing) concluded that such sales of occupancies as took place in Bihar had not had the effect of throwing "raiyats' lands into the hands of mahajans." The figures then available showed that of the sales in the Province 17 per cent. went to mahajans,* and of the sales in Bihar 10 per cent. The subsequent figures give the following results:—

| Year. | Percentage of sales to mahajans, money-lenders, and traders | |
|---|---|---|
| | in Province. | in Bihar. |
| 1881-82 . . . . | 16·2 | 20·9 |
| 1882-83 . . . . | 16·1 | 23·1 |
| 1883-84 . . . . | 14·7 | 20·2 |
| 1892-93 . . . . | 12·7 | 16.1 |

See also remarks in paragraph 14, Board's letter No. 800 A., dated 20th June 1894. *See* p. 36.

It is disputed whether the "mahajans" of the return on which the above results are based are in all cases true mahajans, some contending that the term includes "agriculturists who have a little capital which they lend out at usury," others pointing out that they exclude money-lending raiyats and landlords who are practically mahajans. We shall do best perhaps to take the figures as they stand and may conclude from them that the proportion of occupancy land going to mahajans is less than that generally found in pro-

* The word in this instance includes instance in which from the description the purchaser might be purchasing either as a zamindar or a mahajan.



# APPENDIX I.

*Conspectus of the Law of Civil Procedure in respect of the mitigation of sale of land in execution of decrees for money.*

## Act VII of 1859.

Where the property attached consists of debts or immovable property, a manager may be appointed. Court may postpone sale of land, if satisfied that amount of the judgment may be raised by mortgage, etc.

*Section 243.*—When the property attached shall consist of land, if the judgment-debtor can satisfy the Court that there is reasonable ground to believe that the amount of the judgment debt may be raised by the mortgage of the land or by letting it on lease or by disposing by private sale of a portion of the land or of any other property belonging to the judgment-debtor, it shall be competent to the Court on the application of the judgment-debtor to postpone the sale for such period as it may think proper to enable the judgment-debtor to raise the amount.

On security being given.

*Section 244.*—When in any district, where land paying revenue to Government is ordinarily sold by the Collector, as provided in section 248, the property attached shall consist of any such land, or of a share in any such land, if the Collector shall represent to the Court that the public sale of the land or share is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land or share, the Court may authorise the Collector, on security for the amount of the decree or for the value of such land or share being given, to make provision for such satisfaction in the manner recommended by the Collector, instead of proceeding to a public sale of the land or share.

Sales to be by public auction.

*Section 248.*— * * * * If the property to be sold shall be land paying revenue to Government and the Government shall so direct, the sale shall be conducted by the Collector on the requisition of the Court.

## Act X of 1877.

Property liable to attachment and sale in execution of decree.

*Section 266.*—The following particulars shall not be liable to such attachment (namely):—

(*b*) tools of artizans, implements of husbandry, and such cattle as may in the opinion of the Court be necessary to enable the judgment-debtor to earn his livelihood as an agriculturist.

(*c*) the materials of houses and other buildings belonging to and occupied by agriculturists.

Power to adjourn sale.

*Section 291.*—"The officer conducting any sale under this chapter may, in his discretion, adjourn the sale recording his reasons for such adjournment."

Postponement of sale of land to enable defendant to raise amount of decree.

*Section 305.*—When an order for the sale of immovable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the judgment-debtor, the Court may on his application postpone the sale of property comprised in the order for sale, for such period as it thinks proper, to enable him to raise the amount.

## Act XIV of 1882.

Property liable to attachment and sale in execution of decree.

*Section 266.*—The following particulars shall not be liable to such attachment or sale (namely):—

(*b*) the tools of artizans, and when the judgment-debtor is an agriculturist his implements of husbandry and such cattle *and seed grain** as may in the opinion of the Court be necessary to enable him to earn his livelihood as such;

(*c*) the materials of houses and other buildings belonging to and occupied by agriculturists.

Power to adjourn sale.

*Section 291.*—The Court may in its discretion adjourn any sale under this chapter (other than a sale by the Collector) to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment.

Postponement of sale of land to enable defendant to raise amount of decree.

*Section 305.*—When an order for the sale of immovable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the judgment-debtor, the Court may on his application postpone the sale of property comprised in the order for sale, for such period as it thinks proper to enable him to raise the amount.

* These words were added by Act VII of 1888, Section 28.

Power to prescribe rules for transferring to Collector execution of certain decrees.

*Section 320.*—The Local Government may, with the sanction of the Governor-General in Council, declare by notification in the official gazette that in any local area the execution of decrees in cases in which a Court has ordered any immovable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in, immovable property, shall be transferred to the Collector; and rescind or modify any such declaration.

Power to prescribe rules as to transmission, execution and retransmission of decrees.

The Local Government may also from time to time prescribe rules for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for retransmitting the decree from the Collector to the Court.

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*Section 320.*—The Local Government may, with the sanction of the Governor-General in Council, declare by notification in the official gazette, that in any local area the execution of decrees in cases in which a Court has ordered any immovable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in, immovable property, shall be transferred to the Collector, and rescind or modify any such declaration.

Power to prescribe rules for transfer to Collector execution of certain decrees.

The Local Government may also, notwithstanding anything hereinbefore contained, from time to time prescribe rules for the transmission of the decree from the Court to the Collector and for regulating the procedure of the Collector and his subordinates in executing the same and for retransmitting the decree from the Collector to the Court.

Power to prescribe rules as to transmission, execution and retransmission of decrees.

Rules under this section may confer upon the Collector or any gazetted subordinate of the Collector all or any of the powers which the Court might exercise in the execution of the decree if the execution thereof had not been transferred to the Collector, including the powers of the Court under sections 294 and 312, and may provide for orders passed by the Collector or any gazetted subordinate of the Collector, or orders passed on appeal with respect to such orders, being subject to appeal to and revision by superior revenue-authorities as nearly as may be as the orders passed by the Court, or orders passed on appeal with respect to such orders would be subject to appeal to and revision by appellate or revisional Courts under this code or other law for the time being in force if the decree had not been transferred to the Collector.

A power conferred by the rules upon the Collector or any gazetted subordinate of the Collector, or upon any appellate or revisional authority shall not be exercisable by the Court or by any Court in exercise of any appellate or revisional jurisdiction which it has with respect to decrees or orders of the Court.

In executing a decree transferred to the Collector under this section, the Collector and his subordinates shall be deemed to be acting judicially within the meaning of Act XVIII of 1850 (an Act for the protection of judicial officers).*

Power of Collector as to sale of land in execution of decree.

*Section 321.*—Whenever the execution of a decree has been so transferred, the Collector may—

(*a*) sell the property comprised in the decree by public auction, and either in one or more lots as he thinks fit;

*Section 321.*—When the execution of a decree has been so transferred, the Collector may

Power of Collector when execution of decree is so transferred.

(*a*) proceed as the Court would proceed under section 305; or

* The last three paragraphs of this section (320) were added by Act VII of 1888.



(*b*) fix a reasonable reserved price for each lot;

(*c*) adjourn the sale for a reas time, whenever he deems th journment necessary for th pose of obtaining a fair price f property, recording his reason such adjournment;

(*d*) buy in the property for sale and resell the same.

ers of ector as to ution of certain ey decrees so sferred.

*Section 322.*—Whenever the execution of a decree not being a decree directing the sale of immovable property in pursuance of a contract specifically affecting the same, but being a decree for money, in satisfaction of which the Court has ordered the sale of immovable property, has been so transferred, the Collector may either proceed as the Court would proceed under section 305, or if he has reason to believe that the judgment-debtor can be discharged without a sale of the whole of such property, the Collector may (notwithstanding any order under section 304, but subject to such rules as may from time to time be made in this behalf by the Chief Controlling Revenue Authority) raise the amount necessary to discharge such debts with interest thereon according to the decree, or, if the decree makes no provision as to interest, then with interest (if any) at such rate as he thinks fit—

(*a*) by letting in perpetuity, or for a term, on payment of a premium equivalent to such amount, the whole or any part of the judgment-debtor's immovable property; or

(*b*) by mortgaging the whole or any part of such property; or

(*c*) by selling part of such property; or

(*d*) by letting on farm or managing by himself or another the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale; or

(*e*) partly by one of such modes and partly by another or others of them.

For the purpose of managing under this section the whole or any part of such property the Collector may exercise all the powers of its owner.

decree, he
of immovab
contract specifica
being a decree for mo
which the Court has
movable property,
the Collector, if aft
thinks necessary b
that all the liabilitie
can be discharged wi
of his available immo
proceed as hereinafter p

[Then follows a provision fo
of debts.]

*Section 323.*— * * * *

(1) If it appears that the amount cannot be recovered without the sale of the whole of the property available, the Collector may proceed to sell the property; or if it appears that the amount with interest (if any) in accordance with the decree and, when not decreed with interest (if any), at such rate as he thinks reasonable, may be recovered without such sale.

(2) The Collector may raise such amount and interest (notwithstanding any order under section 304)—

(*a*) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property; or

(*b*) by mortgaging the whole or any part of such property; or

(*c*) by selling part of such property; or

(*d*) by letting on farm or managing by himself or another the whole or any part of such property for any term not exceeding twenty years from the date of the orders of sale; or

(*e*) partly by one of such modes, and partly by another or others of such modes.

Sales how to be conducted.

*Section 325.*—When the Collector sells any property under this chapter, he shall put it up to public auction, in one or more lots as he thinks fit, and may—

(*a*) fix a reasonable reserved price for each lot;

(*b*) adjourn the sale for a reasonable time, whenever he deems the adjournment necessary for the purpose of obtaining a fair price for the property, recording his reasons for such adjournment;

(*c*) buy in the property offered for sale, and resell the same by public auction or private contract, as he thinks fit.

When Court may authorise Collector to stay public sale of land.

*Section 326.*—When, in any local area in which no declaration under section 320 is in force, the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is objectionable and that satisfaction of the decree may be made within a reasonable period by a temporary alienation or management of the land or share, the Court may authorise the Collector to provide for such satisfaction in the manner recommended by him instead of proceeding to a sale of the land or share.

When Court may authorize Collector to stay public sale of land.

*Section 326.*—When, in any local area in which no declaration under section 320 is in force, the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of land or share is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation or management of the land or share, the Court may authorise the Collector to provide for such satisfaction in the manner recommended by him, instead of proceeding to a sale of the land or share.



*Section 327.*—The Local Government may f
from time to time, with the sanction of
Governor-General in Council, make spec
for any local area imposing conditions
spect of sale of any class of interests in la
execution of decrees for money, where suc
terests are so uncertain or undetermined a
the opinion of the Local Government to m
impossible to fix their value;

And if, when this code comes into
ation in any local area, any special rules a
sale of land in execution of decrees are in f
therein, the Local Government may cont
rules in force or may from time to ti
with the sanction of the Governor-General in
Council, modify the same.

All rules so made or continued, and all such modifications of the same, shall be published in the local official gazette and shall thereupon have the force of law.

All rules
such modifica
lished in the loc
thereupon have the

## *Statement showing sales and mortgages*

| Year. | Under orders of Court. | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Number of sales. | Revenue of property transferred. | Number of acres* at a revenue of R2 an acre. | Price in lakhs. | Number of sales. | | | | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | | | | | | | | | | |
| | | R (lakhs) | | R | | R (lakhs) | | | | | | | | | |
| 1847-48 | 1,870 | ... | ... | 5,71 | 2,364 | ... | ... | 20,65 | | | | | | | |
| 1848-49 | 2,109 | ... | ... | 3,87 | 2,391 | ... | ... | 16,85 | | | | | | | |
| 1849-50 | 2,490 | ... | ... | 8,70 | 2,754 | ... | ... | 19,62 | | | | | | | |
| 1850-51 | 2,222 | ... | ... | 9,66 | 2,477 | ... | ... | 17,05 | | | | | | | |
| 1851-52 | 2,544 | ... | ... | 9,09 | 2,531 | ... | ... | 18,8[illegible] | | | | | | | |
| *Average* | 2,247 | ... | ... | 7,41 | 2,503 | ... | ... | 18,6[illegible] | | | | | | | |
| 1852-53 | 2,810 | ... | ... | 11,30 | 2,567 | ... | ... | 20,70 | | | | | | | |
| 1853-54 | 3,051 | ... | ... | 11,47 | 2,972 | ... | ... | 18,87 | | | | | | | |
| 1854-55 | 2,871 | ... | ... | 11,37 | 3,142 | ... | ... | 23,51 | | | | | | | |
| 1855-56 | 2,270 | ... | ... | 13,23 | 3,318 | ... | ... | 22,40 | | | | | | | |
| 1856-57 | † | ... | ... | ... | ... | ... | ... | ... | | | | | | | |
| *Average* | *2,750(a)* | ... | ... | *1,184(a)* | *3,000(a)* | ... | ... | *2,137(a)* | *5,[illegible]* | | | | | | |
| 1857-58 | † | ... | ... | ... | ... | ... | ... | ... | [illegible] | | | | | | |
| 1858-59 | 857 | 2,66 | ... | ... | 1,890 | 4,46 | ... | ... | [illegible] | ... | | | | | |
| 1859-60 | 1,320 | 4,79 | ... | ... | 2,960 | 7,01 | ... | ... | 4,280 | ... | | | | | |
| 1860-61 | 2,113 | 3,85 | ... | ... | 5,658 | 10,68 | ... | ... | 7,771 | ... | | | | | 14,781 |
| 1861-62 | † | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... |
| *Average* | *1,430(b)* | *3,77(b)* | ... | ... | *3,502(b)* | *7,38(b)* | ... | ... | *4,932(b)* | ... | *4,685(b)* | ... | *9,617(b)* | | |
| 1862-63 | † | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | | |
| 1863-64 | † | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | .. | | |
| 1864-65 | 1,696 | ... | ... | ... | 4,806 | ... | ... | ... | 6,502 | ... | 6,814 | ... | 13,316 | | |
| 1865-66 | 1,890 | ... | ... | ... | 5,855 | ... | ... | ... | 7,763 | ... | 7,641 | ... | 15,404 | | |
| 1866-67 | 1,935 | 1,69 | ... | ... | 5,395 | 5,66 | ... | ... | 7,330 | ... | 8,080 | ... | 15,410 | | |
| 1867-68 | 2,049 | 1,67 | ... | ... | 6,414 | 7,14 | ... | ... | 8,460 | ... | 9,131 | ... | 17,594 | | |
| *Average* | *1,897(a)* | *1,68* | ... | ... | *5,617(a)* | *6,40(c)* | ... | ... | *7,514(a)* | ... | *7,914(a)* | ... | *15,341(a)* | | |
| 1868-69 | 2,391 | 1,83 | 91 | Not | 8,366 | 7,50 | 3,75 | Not | 10,757 | 4,66 | 11,446 | | 22,203 | | |
| 1869-70 | 2,060 | 2,31 | 1,15 | given. | 7,915 | 5,49 | 2,74 | given. | 9,975 | 3,89 | 9,926 | | 19,901 | | |
| 1870-71 | 2,348 | 2,34 | 1,17 | 11·74 | 6,542 | 3,52 | 1,76 | 25,27 | 8,890 | 2,93 | 6,913 | | 15,803 | | |
| 1871-72 | 2,584 | 1,79 | 89 | 12·44 | 7,155 | 3,04 | 1,52 | 42,81 | 9,739 | 2,41 | 6,035 | | 15,774 | | |
| 1872-73 | 2,651 | 1,88 | 94 | 13·40 | 8,087 | 3,77 | 1,88 | 54,60 | 10,738 | 2,82 | 6,455 | | 17,193 | | |
| *Average* | *2,406* | *2,03* | *1,01* | *12·53* | *7,613* | *4,66* | *2,33* | *40,89* | *10,015* | *3,34* | *8,155* | | *18,174* | | |
| 1873-74 | 2,874 | 2,16 | 1,08 | 15·18 | 9,818 | 4,66 | 2,33 | 60,78 | 12,692 | 3,41 | 7,438 | | 20,130 | | |
| 1874-75 | 2,596 | 1,89 | 94 | 12·97 | 10,087 | 4,47 | 2,23 | 63,98 | 12,683 | 3,17 | 6,609 | | 19,292 | | |
| 1875-76 | 2,803 | 2,03 | 1,01 | 14·80 | 10,704 | 4,72 | 2,36 | 64,74 | 13,507 | 3,37 | 6,753 | | 20,260 | | |
| 1876-77 | 3,492 | 2,54 | 1,27 | 22·86 | 11,808 | 4,46 | 2,23 | 69,40 | 15,300 | 3,50 | 8,053 | | 23,353 | | |
| 1877-78 | 3,383 | 2,43 | 1,21 | 19·23 | 15,665 | 5,18 | 2,59 | 76,81 | 19,048 | 3,80 | 12,849 | | 31,897 | | |
| *Average* | *3,030* | *2,21* | *1,10* | *17·01* | *11,616* | *4,70* | *2·35* | *67,14* | *14·646* | *3,45* | *8,340* | | *22,986* | | |
| 1878-79 | 4,108 | 1,97 | 98 | 19·69 | 16,048 | 5,34 | 2,67 | 88,75 | 20,156 | 3,65 | 11,526 | | 31,682 | | |
| 1879-80 | 3,015 | 1,68 | 89 | 14·32 | 15,165 | 4,63 | 2,31 | 80,01 | 18,180 | 3,20 | 8,561 | | 26,741 | | |
| 1880-81 | 2,920 | 1,66 | 83 | 14·23 | 15,394 | 5,46 | 2,73 | 97,57 | 18,314 | 3,56 | 9,713 | | 28,027 | | |
| 1881-82 | 2,662 | 1,31 | 65 | 14·41 | 14,324 | 4,76 | 2,38 | 84,11 | 16,986 | 3,03 | 8,664 | | 25,650 | | |
| 1882-83 | 2,961 | 1,44 | 72 | 13·92 | 13,621 | 4,30 | 2,15 | 80,18 | 16,582 | 2,87 | 8,431 | | 25,013 | | |
| *Average* | *3,133* | *1,61* | *81* | *15·31* | *14,910* | *4,90* | *2,45* | *86,12* | *18,043* | *3,26* | *9,379* | | *27,423* | | |
| 1883-84 | 2,958 | 1,63 | 81 | 17·61 | 13,356 | 4,09 | 2,04 | 79,81 | 16,314 | 2,85 | 9,224 | | 25,538 | | |
| 1884-85 | 2,860 | 1,45 | 72 | 16·34 | 12,943 | 4,38 | 2,19 | 81,97 | 15,803 | 2,91 | 8,913 | | 24,716 | | |
| 1885-86 | 2,734 | 1,44 | 72 | 16·96 | 11,493 | 3,52 | 1,76 | 72,03 | 14,227 | 2,48 | 6,987 | | 21,214 | | |
| 1886-87 | 2,702 | 2,55 | 1,27 | 18·99 | 12,646 | 3,90 | 1,95 | 81,45 | 15,348 | 3,22 | 6,372 | 2,357 | 21,720 | | |
| 1887-88 | 3,070 | 1,67 | 83 | 20·62 | 16,527 | 3,99 | 1,99 | 90,60 | 19,597 | 2,82 | 7,402 | 3,070 | 26,999 | | |
| *Average* | *2,865* | *1,75* | *87* | *18·10* | *13,393* | *3,98* | *1,99* | *81,17* | *16,258* | *2,86* | *7,779* | *2,713* | *24,037* | | |
| 1888-89 | 2,958 | 1,57 | 78 | 19·41 | 15,766 | 4,12 | 2,06 | 91,93 | 18,724 | 2,84 | 7,257 | 2,736 | 25,981 | | |
| 1889-90 | 3,249 | 1,71 | 85 | 19·48 | 16,073 | 4,57 | 2,28 | 103,29 | 19,322 | 3,13 | 7,796 | 2 948 | 27,118 | | |
| 1890-91 | 3,105 | 1,33 | 66 | 18·63 | 17,606 | 5,15 | 2,57 | 107,90 | 0,711 | 3,23 | 8,299 | 3,266 | 28,920 | | |
| 1891-92 | 3,522 | 1,78 | 89 | 23·99 | 19,427 | 5,19 | 2,59 | 115,00 | 22,949 | 3,48 | 8,010 | 3.631 | 30,959 | | |
| 1892-93 | 4,053 | 2,00 | 1,00 | 33·59 | 20,547 | 5,16 | 2,58 | 119,95 | 24,600 | 3 58 | 8,792 | 4,281 | 33,392 | | |
| *Average* | *3,377* | *1,68* | *83* | *23·02* | *17,884* | *4,84* | *2,42* | *107,61* | *21,261* | *3,25* | *8,013* | *3,372* | *29,274* | | |

Statistics from 1868-69 to 1885-86 not given.

* 000 omitted. † The Revenue Administration Report for this year is not available.

# APPENDIX III.

*Compilation of statistics regarding transfer of land in the Punjab.*

(000 omitting.)

| Year. | Total area of | | | | Cultivated area. | | | | Total proprietary area under usufructuary mortgage. | To money-lenders, total area. | | | | To money-lenders, cultivated area. | | | Revenue represented by | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | | | | | | | Total. | | | To money-lenders. | | |
| | Sales. | Mortgages. | Sales and mortgages. | Net mortgages. | Sales. | Mortgages. | Sales and mortgages. | Net mortgages. | | Sales. | Mortgages. | Sales and mortgages. | Net mortgages. | Sales. | Mortgages. | Sales and mortgages. | Sales. | Mortgages. | Net mortgages. | Sales. | Mortgages. | Net mortgages. |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 |
| 1866-74 Annual average | 88 | 143 | 231 | * | * | * | * | * | * | Not stated | | * | * | * | * | * | 53 | 124 | * | * | * | * |
| 1874-75 | 79 | 180 | 259 | 144 | * | * | * | * | * | 32 | 119 | 151 | 99 | * | * | * | 52 | 158 | 129 | 21 | 101 | 86 |
| 1875-76 | 90 | 204 | 294 | 134 | * | * | * | * | * | 36 | 133 | 169 | 79 | * | * | * | 56 | 182 | 138 | 24 | 119 | 93 |
| 1876-77 | 101 | 208 | 309 | 165 | * | * | * | * | * | 37 | 111 | 148 | 94 | * | * | * | 88 | 163 | 131 | 35 | 87 | 75 |
| 1877-78 | 104 | 256 | 360 | 216 | * | * | * | * | * | 38 | 149 | 187 | 129 | * | * | * | 78 | 236 | 206 | 29 | 143 | 131 |
| Average | 93 | 212 | 305 | 165 | ... | ... | ... | ... | ... | 36 | 128 | 164 | 100 | ... | ... | ... | 68 | 185 | 151 | 27 | 112 | 98 |
| 1878-79 | 137 | 286 | 423 | 225 | * | * | * | * | * | 63 | 172 | 235 | 140 | * | * | * | 90 | 262 | 216 | 37 | 162 | 137 |
| 1879-80 | 172 | 393 | 565 | 302 | * | * | * | * | * | 51 | 129 | 180 | 103 | * | * | * | 105 | 222 | 176 | 34 | 113 | 97 |
| 1880-81 | 144 | 230 | 374 | 164 | * | * | * | * | * | 46 | 105 | 151 | 83 | * | * | * | 83 | 200 | 158 | 32 | 96 | 80 |
| 1881-82 | 177 | 305 | 482 | 227 | * | * | * | * | * | 48 | 120 | 138 | 93 | * | * | * | 82 | 178 | 116 | 30 | 90 | 67 |
| 1882-83 | 169 | 266 | 435 | 189 | * | * | * | * | * | 44 | 110 | 154 | 86 | * | * | * | 91 | 204 | 132 | 33 | 104 | 82 |
| Average | 160 | 296 | 456 | 221 | ... | ... | ... | ... | ... | 51 | 127 | 178 | 101 | ... | ... | ... | 90 | 212 | 160 | 33 | 113 | 93 |
| 1883-84 | 238 | 373 | 611 | 271 | * | * | * | * | * | 61 | 165 | 226 | 132 | * | * | * | 106 | 271 | 199 | 39 | 148 | 122 |
| 1884-85 | 209 | 323 | 532 | 229 | 128 | 220 | 348 | 150 | * | 87 | 223 | 307 | 181 | * | * | 115 | 124 | 291 | 218 | 51 | 153 | 127 |
| 1885-86 | 252 | 496 | 748 | 336 | 125 | 320 | 445 | 218 | 2,993 | 68 | 199 | 267 | * | * | * | 159 | 130 | 371 | 254 | * | * | * |
| 1886-87 | 410 | 823 | 1,233 | 495 | 222 | 537 | 759 | 332 | 2,669 | * | * | 35 | * | * | * | 220 | 180 | 479 | 290 | * | | * |
| 1887-88 | 443 | 933 | 1,396 | 594 | 228 | 595 | 823 | 360 | 3,003 | 134 | 351 | 485 | * | * | 227 | 300 | 201 | 530 | 285 | 61 | 215 | * |
| Average | 310 | 590 | 904 | 385 | 176† | 418† | 594† | 265† | 2,888‡ | 87† | 234† | 327 | 156§ | | 227 | 198† | 148 | 388 | 249 | 50 | 172 | 24 |
| 1888-89 | 438 | 713 | 1,151 | 398 | 198 | 486 | 684 | 253 | 3,314 | 80 | 274 | 354 | * | | 172 | 215 | 186 | 594 | 309 | 52 | 227 | * |
| 1889-90 | 339 | 591 | 930 | 290 | 165 | 404 | 569 | 186 | 3,524 | 81 | 187 | 268 | * | 40 | 134 | 174 | 175 | 464 | 194 | 40 | 166 | * |
| 1890-91 | 241 | 431 | 672 | 211 | 117 | 301 | 418 | 137 | 3,919 | 48 | 130 | 178 | * | 29 | 100 | 129 | 141 | 364 | 137 | 31 | 129 | * |
| 1891-92 | 303 | 487 | 790 | 188 | 172 | 353 | 525 | 136 | 4,149 | 68 | 152 | 220 | * | 41 | | 154 | 180 | 432 | 158 | 30 | 156 | * |
| 1892-93 | 371 | 549 | 920 | 201 | 171 | 364 | 535 | 138 | 4,232 | 70 | 153 | 223 | * | 41 | | 16 | 165 | 396 | 134 | 57 | 151 | * |
| Average | 338 | 554 | 893 | 258 | 165 | 382 | 546 | 170 | 3,834 | 69 | 179 | | | | | | 169 | 450 | 186 | 44 | 166 | * |

This table includes transfers by occupancy tenants; and it ref

* Figures not given.

† Average for four years.

‡ „ „ three „

§ „ „ two „

The figures in this statement have been chiefly extracted from pages 10 and 11 of the abstract statemer

h November 1888, and from section II and

Statements X A and X B of the Land Revenue Reports. Column 10 has been filled in from addendum B to Reven

# APPENDIX IV.

*American Homestead Laws.*

*Extracts from the United States Charters and Constitutions, Part I.*

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## ALABAMA—CONSTITUTION OF 1867.

### Article XIV.

*Section 2.*—Every homestead, not exceeding eighty acres of land, and the dwellin; appurtenances thereon, to be selected by the owner thereof, and not in any towr village, or in lieu thereof, at the option of the owner, any lot in the city, town with the dwelling and appurtenances thereon, owned and occupied by any resic State, and not exceeding the value of two thousand dollars, shall be exempte on execution, or any other final process from a court, from any debt contrac adoption of this constitution. Such exemption, however, shall not e nd t. lawfully obtained.

## ARKANSAS—CONSTITUTION OF 1868.

### Article XII.

*Section 3.*—Every homestead not exceeding one red and sixty acres of la the dwelling and appurtenances thereon, to be selected by the owner thereof, and no town, city or village, or in lieu thereof, at the option of the wner, any lot in an town or village, with the dwelling and appurtenances thereon, owned and occupied by an resident of this State, and not exceeding the value of five thousand dollars, shall be exempted from sale, on execution, or any other final process from any court; but no property shall be exempt from sale for taxes, for the payment of obligations contracted for the purchase of said premises, for the erection of improvements thereon and for labour performed for the owner thereof.

## CALIFORNIA—CONSTITUTION OF 1849.

### Article XI.

*Section 15.*—The Legislature shall protect by law from forced sale a certain portion of the homestead and other property of all heads of families.

## COLORADO—CONSTITUTION OF 1876.

### Article XVIII.

*Section 1.*—The general assembly shall pass liberal homestead and exemption laws.

## FLORIDA—CONSTITUTION OF 1868.

### Article X.

*Section 1.*—A homestead, to the extent of one hundred and sixty acres of land, or the half of one acre within the limits of any incorporated city or town, owned by the head of a family residing in this State, together with one thousand dollars in value of personal property, and the improvements on the real estate, shall be exempted from forced sale under any process of law, and the real estate shall not be alienable without the joint consent of husband and wife, when that relation exists. But no property shall be exempt from sale for taxes, or for the payment of obligations contracted for the purchase of said premises, or for the erection of improvements thereon, or for house, field or other labour performed on the same.

is observed that similar laws are in force in Georgia, Illinois, Michigan, Kansas,
a, N. Carolina, Tennessee, Texas, and Virginia, also in the case of new settlements
prairies and territories.

Also that Indian settlers are entitled to homestead laws and cannot alienate or encumber
ears [43 Congress, 2nd Series, Chapter 131, page 78, Supplement to Revised Statutes,
States of America, 2nd edition, Volume I].

prietary areas in other Provinces, and that it is showing no tendency to increase. The Board and the Government in 1894 came to the conclusion that the transfers to mahajans were not alarming. And pending information as to the proportion so transferred to the total area under occupancy right, this is perhaps all we can say as regards the Province at large.

Bengal Government letter No. 3565, dated 16th July 1894. (A. October 1894, Nos. 1—2.) *See* p. 30.

The later figures, however, bear out the conclusion arrived at by the Government of India in 1882 that the evil was more prevalent in Western than in Eastern and Northern Bengal. It may be noticed too that it was from Bihar that the evils of permitting transfer to mahajans were in 1884 most forcibly pointed out.

Paragraph 97 of Despatch No. 6 of 20th March 1882. L. D. Prog. April 1885 Nos. 8—555. Paragraph 26, Bengal Government letter No. 1906 T., dated 15th September 1884.

351. The evils complained of are of a double nature. Firstly, the landlords object to their having mahajan tenants thrust on them against their will, such tenants forming an intervening non-cultivating class between the landlord and the actual payer of rent. And, secondly, the advocates of the tenants point out that the process places the cultivation in the hands of a tenant at will, with a middleman between him and the landlord.

352. The latter objection, so far as it points to rack-renting such as we have found to prevail in other provinces where the old cultivator is retained on the land, is of course the more serious one. Mr. Ilbert in introducing the Bill acknowledged such a state of things as "within the range of possibility," but added that "if such a state of things should ever arise we may rest assured that the Government of the day will know how to deal with it."

Speech of 2nd March 1883.

The Government of Bengal moreover in 1883 looked on the danger as a remote one and in leaving the disposal of the matter to custom—without prescribing veto or pre-emption—the Government ultimately took no precautions to meet any danger in this direction.

See Mr. MacDonnell's memorandum of 5th January 1884, paragraph 13.

Enquiry was made in 1893-94 as to the degree in which the ex-occupancy-tenants were actually oppressed in this way, but the replies received were incomplete and the Board in reporting wrote: "In reference to the allegation that there are many raiyats who are now under-tenants at a rack-rent on their holdings which have passed into the hands of mahajans, Mr. Stevens desires to say that there is not much evidence in support of this position. Doubtless such cases occur, but it is believed that the usual course when the mahajan retains the land is for the old tenant to remain as an under-tenant sharing the crops. It is not clear that any more hardship is caused in this way than would be if the insolvent cultivator were ejected from his holding without the price of his interest. On the contrary, there appears to be in that case more danger of his sinking to the position of a landless day-labourer." The comparison made by the Board appears to be scarcely applicable, as the alternative with which comparison should be solicited is obviously the cultivator who is unable to transfer his rights: and the Government of Bengal, in forwarding the report, contented themselves with saying that "very little evidence exists as to the position to which the occupancy tenant sinks when he has transferred his tenure," and proposing to collect further information on the point. One thing is obvious, *viz.*, that after the establishment of a middleman the ex-occupancy-tenant's position cannot be as good as it was before; and pending the receipt of fuller information, it may probably be assumed that the money-lending spirit leads to much the same results in the greater part of Bengal as it does elsewhere, though possibly in a smaller degree.

353. There does not appear, however, to be any general discontent such as could have a political significance. In Chota Nagpur the money-lenders are said to be mostly banyas from Bihar or the descendants of such banyas who came into the country not more than fifty years ago. But as a rule the money-lender is not so sharply distinguished by caste and religion from the agriculturist, nor is he so unpopular among agriculturists, as he is in other Provinces: and the argument of political discontent may, to use Mr. Justice Field's expression, "safely be said to have no application to such humble folk as the Bengali raiyats or to such small estates as their holdings." It has been alleged that the gradual alienation of raiyats' lands had something to do with the recent unrest in Bihar, but of this we have no evidence.

Page 20, Mr. Basu's Report on the Agriculture of Lohardagga.

Digest (1879), page 169.

*Englishman*, 5th July 1894.

*Recent consideration of the subject.*

354. The subject of the transfer of occupancy rights has, however, recently engaged the attention of the zamindars in Bihar and a deputation of these zamindars approached the Officiating Lieutenant-Governor, Sir A. P. MacDonnell, on the point in August 1893. There can be little doubt that the greater part of the transfer in Bihar dates from the discussions on the Act of 1885, and that, as pointed out by Mr. Finucane in his note of 6th April 1894, "an erroneous idea has sprung up since the passing of the Tenancy Act that occupancy rights are now transferable by law when they were not transferable before the passing of the Act." Even Sir William Hudson, who as an indigo planter would naturally be in favour of free transfer, has expressed in private his opinion that the right should be restricted by fees, pre-emption and other provisions which would prevent the alienation of the land to money-lenders.

See demi-official from Sir A. Mac-Donnell, dated 8th January 1894, to Lord Lansdowne.

Demi-official dated 7th August 1893, to Sir E. Buck.

355. The general discussions of 1879-1885 were recently revived by an opinion expressed by the Board of Revenue (Mr. D. R. Lyall) in the Land Revenue Report for 1891-92, to the effect that "the power of transfer of their holdings which has undoubtedly been increased by the Tenancy Act, is an unmitigated evil from the raiyat's point of view, and many raiyats are now under-tenants at a rack-rent on their old holdings, which have passed into the hands of mahajans." The Government of India called for an expression of the views of the Local Government on this opinion, and the Local Government, after consulting District Officers and the Board of Revenue, submitted a report on the subject in July 1894. The opinions of the local officers varied considerably, and the Board of Revenue, now represented by Mr. Stevens, took up an attitude opposite to that adopted in the report of 1891-92. After reviewing the history of the discussion and the statistics of transfers procured from registration offices, the Board concluded that the transfers to mahajans were not sufficiently numerous in any part of Bengal to be alarming, and that there was little evidence of the old tenant being rack-rented by the transferee in cases where occupancy rights had been transferred to a money-lender. The only change in the law which the Board was inclined to recommend was in the direction of strengthening the provisions of section 88 for the protection of landlords against transfers of parts of holdings.

Paragraph 188.

Government of India No. 2776, dated 13th December 1892.
Letter No. 3565 L.R., dated 16th July 1894. (A. October 1894 Nos. 1--2.)
*See*. p. 30.

The Local Government summed up the conclusions arrived at as follows:—

The main points which, in the opinion of the Lieutenant-Governor, the Board's report establishes are as follows:—

(1) Since the passing of the Tenancy Act there has been a great increase in the number of sales of occupancy rights registered (and presumably in the number of tenures sold whether registered or not), though the development and popularity of registration may partly account for the increase in the figures, and the real increase may not be as large as the registration returns indicate; and also in the value paid for these rights.



(2) There has been a corresponding increase in the unwillingness of zamindars to admit the existence of a custom legalising such transfers; and as a rule when the landlords have gone into Court they have won their case, and obtained a decree declaring the "custom" not to be proved.

(3) The returns do not indicate any increase in the proportion of occupancy tenures transferred to mahajans as compared with those transferred to other classes; and it is generally agreed that the parties classed as mahajans are not the grasping and foreign money-lenders of other parts, but persons who are agriculturists themselves and who have a little capital which they lend out at usury.

(4) Very little evidence exists as to the position into which the occupancy tenant sinks when he has sold his tenure. The Board write on this subject as follows:—"In reference to the allegation that there are many raiyats who are now under-tenants at a rack-rent on their holdings, which have passed into the hands of mahajans, Mr. Stevens desires me to say that there is not much evidence in support of this position. Doubtless such cases occur, but it is believed that the usual course when the mahajan retains the land is for the old tenant to remain as an under-tenant sharing the crops. It is not clear that any more hardship is caused in this way than would be if the insolvent cultivator were ejected from his holding without the price of his interests. On the contrary, there appears to be in that case more danger of his sinking to the position of a landless day-labourer." Sir Charles Elliott proposes to direct the attention of Settlement Officers to this subject, and to cause them to ascertain, after attestation, how many men in the village have gone through this experience, and have become cultivators of their old fields as sub-tenants either at rack-rents or on metayer rents. It will certainly be useful to compile some statistics of this kind.

(5) As to the proposal made by Mr. Blyth, Collector of Champaran, to declare transfer of portions of a tenure to be illegal, this might be utilised as a basis for negotiations if it were desired to obtain the consent of landlords to the legalisation of transfer of whole tenures, but otherwise there is no particular reason for declaring the practice illegal. It has no economic disadvantages from the raiyat's point of view—rather the reverse, as it is better for him to part with a field and remain the free owner of the rest, than to be encumbered as to the whole tenure. It is inconvenient to the landlord as regards the keeping up of his records, but Government need not contemplate legislation for the purpose of preventing that inconvenience.

(6) On the whole, Sir Charles Elliott adheres to the formula which the Indian Famine Commission accepted, and which is quoted in paragraph 7 of the Board's letter as accepted by Sir Rivers Thompson. It is possible that the technical and narrow views which the Civil Courts may take of the evidence required to prove "custom" may defeat that policy, and may cause an ever-widening breach between the law as administered by the Courts and the general practice, so that it may eventually be necessary to interpose by legislation to set the Courts right. But though certain cases are quoted in which too narrow a view seems to have been taken, it has not been shown that these cases are frequent or flagrant enough to require notice, or to check the growth of the custom of transfer as practised among the people. Moreover, it may be conceived that by degrees the Courts will widen their view and accept the evidence of accomplished facts.

This being so, His Honour does not think that any sufficient ground has been adduced for interfering with the law as it is laid down in the Tenancy Act.

*Proposals made.*

356. It will have been observed from the preceding paragraphs that the opposition raised in 1879-1885 against declaring all occupancies transferable had its origin in two different points of view, *viz.*, (*a*) the view that the zamindar should be allowed to choose his own tenant, and (*b*) the view that the tenant should be protected against the evils of transfer. In leaving the decision to custom the Government meant, no doubt, to retain the protection enjoyed by the tenant in areas where transfer was not customary. Mr. Quinton,

for instance, speaking at the last debate on the Bill, stated on behalf of the Select Committee:—

"We found the risks attendant on suddenly enlarging in this way the credit of a weak and impoverished tenantry like that of Bihar so great and the difficulties in other localities of conceding to the landlords a veto upon the practice without strangling a healthy and rapidly growing custom which is, we believe, of great public benefit so insuperable, that we determined to follow the cautious advice of the Famine Commissioners and to allow the right to be governed as at present by custom."

And Lord Dufferin said that by granting free rights of transfer, "we should at once confer upon vast numbers of indigent men the right and opportunity of mortgaging the land, on the unembarrassed condition of which the salvation of themselves and their families depends." But it appears clear that by leaving matters to custom, the Legislature has in fact created a custom of transfer, where it did not before exist. The evils therefore contemplated by the Select Committee and Lord Dufferin have not been met by the action taken.

See paragraph 12 of Board of Revenue's letter No. 800, dated 20th June 1894. *See* p. 35.

357. We must therefore consider the proposals made from time to time to meet the evils in question. It will be noted that the evil to be met or forestalled is that of transfer to money-lenders and consequent rack-renting, not, as in the Central Provinces, the evil of absorption by landlords; and we may class the chief proposals made under the following groups:—

(i) permission of sales but not of mortgages;
(ii) a right of pre-emption to be enjoyed by the landlord;
(iii) a right of veto to be enjoyed by the landlord;
(iv) prohibition of all sales except to agriculturists;
(v) transformation of non-cultivating occupancy tenants into tenure-holders;
(vi) enforcement of the rule that parts of holdings should not be sold.

Report, paragraph 32.

358. (1) The proposal to permit *sales but not mortgages* and consequently not sales in execution of decrees was put forward in 1880 by the Rent Law Commission, who stated:—

"We think that this will most effectually prevent the raiyat and his holding from falling into the hands of the *mahajan;* and that the danger, which some persons apprehend, of *mahajans* becoming the owners of occupancy holdings, while the *quondam* raiyats will remain on the land in a degraded condition of serfage, will thus, to a considerable extent, be obviated. We believe that a raiyat whom no persuasion will induce to sell his land, can very easily be led to borrow a few rupees upon the security of it for a wedding or a *sradh,* or for some purpose of emergency. A bad season, sickness, or not uncommonly his own improvidence, prevents him from repaying the loan, which is rapidly swelled by interest. He thus gets more and more into the *mahajan's* hands and the hope of extricating himself and recovering his position finally disappears altogether, the result being that the *mahajan* gets a decree, brings the holding to sale, and purchases it himself for much less than its real value. A *mahajan* who will readily lend a little money on a raiyat's holding in the hope of ultimately realizing a very considerable profit by foreclosing his mortgage, will have no desire to purchase the same holding at anything like a reasonable price with the intention of becoming a capitalist farmer. In order to render effectual the prohibition against mortgaging, we have enacted that any such mortgage shall be void to all intents and purposes, and that no court of justice shall take cognizance thereof or give effect thereto in any judicial proceeding whatever (section 20, clause (*d*)): and we have further enacted that a right of occupancy, though saleable in execution of a decree for its own rent, shall not be in execution of any other decree (section 20, clause (*a*)).

Letter No. 849T. dated 27th July 1881, page 22. Letter dated 15th December 1880, Vol II, page 738 Bengal Report (1881).

To this Sir Ashley Eden objected in July 1881, on the ground that mortgages were already freely recognized and that prohibition of mortgage would drive tenants into sales which are worse for them than a mortgage would be. The fact that without some further restriction "the right to sell will be employed to neutralise the prohibition to mortgage" was also pointed out by Mr. Mac-



Donnell, Collector of Sarun, and the Government of India agreed that any general prohibition of mortgages would be inoperative.

Paragraph 94, Despatch No. 6, dated 21st March 1882.

359. (2) The system by which the landlord should have a right of *pre-emption* on sales was practically adopted, though not expressed in so many words, in the first draft Bill prepared in 1881 by the Government of Sir Ashley Eden, and the principle was adopted, but more clearly expressed, in the Bill prepared by the Government of India in 1882. When introducing the Bill in 1883 Mr. Ilbert explained:—

See paragraph 1, Government of India Despatch No. 6, dated 21st March 1882. Page 137, Proceedings, Legislative Department, April 1885, Nos. 8—555.

"We have accordingly provided that in cases of voluntary sale, gift or bequest, the landlord shall have a right to purchase at a price to be fixed by the Civil Court; that in the case of a sale in the execution of a decree, when the landlord and any other person bid the same amount, the landlord shall have the right of pre-emption; and that, when an order is passed for foreclosing a mortgage of an occupancy right, the landlord shall be allowed an opportunity of paying in the amount of the mortgage-debt and taking the place of the mortgagee. The only doubt that has been felt about these provisions is whether, in the case of a voluntary sale, the landlord should not be required, if he exercised his right of pre-emption, to pay the price at which the raiyat has actually agreed to sell the occupancy right instead of a price to be fixed by the court; but on considering the difficulties by which the right of pre-emption would be clogged in cases of collusion between the vendor and purchaser, and in cases in which a spiteful neighbour might be willing to pay an exorbitant sum for an occupancy right with a view to harassing the landlord, we have thought it best to put the case of voluntary sale on the same footing as those of gift and bequest."

In commenting on the proposal in 1884, after consulting Local Officers, the Government of Bengal said: "the pre-emption clauses of the Bill meet, as the Government of India will observe, with no approval" and "there is a consensus of opinion that the difficulties of working the pre-emption clauses are almost insuperable." A reference to the opinions on which this remark was based scarcely bears it out, and it is not clear what the objections in working referred to are. The only one cited by the Local Government is that mentioned by the Collector of Backergunge, who wrote:—

Paragraph 33, letter No. 1906, dated 15th September 1884. Letter No. 1254, dated 6th August 1884, from Commissioner of Patna, paragraph 14. No. 1836 R., dated 12th August 1884, from Commissioner, Bhagalpur, paragraph 8. No. 480, dated 8th August 1884, from Commissioner, Burdwan, paragraph 37. No. 17 R.L., dated 28th July 1884, from Commissioner, Presidency Division, paragraph 19. No. 271 C. G. of 10th July 1884, from Commissioner, Chittagong, paragraph 23. No. 424 R.C. T., dated 16th August 1884, from Commissioner, Rajshahi, paragraph 17. (Pages 1254, 1278, 1311, 1337, 1370 and 1421, Legislative Department Proceedings, April 1885, Nos. 8—555.)

"A raiyat seldom sells his land except under sudden and pressing necessity. To give the landlord a right of pre-emption under such circumstances and to compel the vendor to comply with the dilatory procedure laid down would be virtually to stop the sale when the necessity is pressing."

And apparently the delays and troubles connected with the procedure are the main objection to it.

There was, however, another class of objections raised to the proposal, *viz.,* that it would be of no effect. This view was put forward by Babu Kristo Das Pal on 14th March 1884, in his note of dissent to the Report of the Select Committee:

"As to the right of pre-emption accorded to the zamindar, it will, I am afraid, prove in practice more a shadow than a substance. In the first place, the zamindar will have to pay a consideration for land of which he is the proprietor, and which was never before transferable under the law. He will then have to run a competition with other bidders for the purchase of the land, and, if he cannot come to an agreement with the raiyat about the price, he must go through the expensive process of a reference to court for arbitrement, and must be prepared to pay the price adjudged by the court. If the raiyats of a zamindar in any considerable number become recusant and threaten him with the sale of their holdings, it will be difficult for him to keep out hostile people from the holdings unless he has a long purse to buy them up."

The proposal to allow pre-emption has recently been revived by Sir W. Hudson in his demi-official letter of the 7th August 1893.

360. (3) Under section 19 (*3*) of Sir Ashley Eden's Draft Bill of 1881 the landlord was to have a power of veto in cases when the transferee of an occupancy tenancy was not a raiyat of the village, and a proposal to allow (except in

Bihar) a *veto* in cases when the transferee was *not a person who derived his chief subsistence and income from agriculture* was put forward by Sir Rivers Thompson in 1884 in the following terms:—

Letter No. 1906 of 15th September 1884, paragraph 84.

"There need be no notice to the landlord of intention to sell, and consequently none of that initial delay which would in many cases frustrate the object of free transfer altogether. On registration of the deed-of-sale (to be made in all cases compulsory) the registering officer will recover a fee for service of notice of the sale on the landlord. The Lieutenant-Governor also would not object to the levy of a registration fee payable to the landlord. To the landlord would be given (say) a month to question the sale before the District Registrar or Collector (as execution of deeds is now challenged) on the ground that the transfer is of the kind prohibited by the Act. Should the landlords' objections seem valid to the Registrar, he will refer the parties to the Civil Court having jurisdiction, whose order may well be rendered final as the matter for decision is either a simple matter of fact, or of such inference as Civil Courts are already in the constant habit of dealing with. Should the objections seem to the Registrar untenable, he will overrule them, leaving the landlord, if he pleases, to his civil remedy as in the previous case. Such a plan as this seems to the Lieutenant-Governor calculated to secure most of the advantages of free sale with the minimum of risk. Parties will soon come to understand such a simple law, and if it be proposed to sell to a non-agriculturist, the landlord's previous consent will in all likelihood be applied for to avoid subsequent difficulty. At all events the plan departs no further from existing custom than the circumstances seem to require; it does away with the pre-emption sections, which by common consent are unworkable; and, under it, it will be the landlord's own fault if transfers are not restricted to the agricultural population to which they are not unwilling to concede the right.

"Such, then, is the scheme in regard to transferability which the Lieutenant-Governor commends to the consideration of the Governor General in Council. Broadly speaking, the scheme consists of the recognition of transferability in Bengal Proper (but not in Bihar) subject to the landlord's veto if the purchaser be of the objectionable class of money-lenders whom landlords desire to exclude from possessing land. To enable the landlord to exercise his veto, notice of the sale must be given him, and he may then, within a reasonable period, object to it on the ground of the purchaser being a person not relying on agriculture for his chief subsistence and income. If the objection seem to the Registrar untenable, the sale will be confirmed. If the objection be established, the sale will not be registered; but in this, as in the preceding case, the parties will be left to their civil remedy."

The objections urged against a system of veto were (*a*) that it is not as a rule an indigenous system, and (*b*) that the landlord's assent would have in each case to be bought by fines, an arrangement which has been "generally condemned as hurtful."

Mr. MacDonnell's Note dated 5th January 1894.

A similar proposal was put forward in 1893 by Mr. Forbes, Commissioner of Patna:—

See paragraph 8, letter No. 1089 R., dated 29th January 1894. (A., October 1894, Nos. 1—2.)

"The transfer of occupancy rights in holdings or in portions of holdings should, with certain restrictions in regard to payment up to date of back rents, be made by law to be independent of the landlord's consent, with the proviso, however, that the transferee must be a *bonâ fide* cultivator, or at least a tenant of the same class as the transferor. If it be thought necessary, a *salami* on a scale prescribed by law should be allowed to the landlord; and this in consideration of his power of veto being taken from him, it would, I think, be just and reasonable to allow. If legislation to this effect be carried out, the maintenance of the record-of-rights will be a comparatively easy matter; to the cultivators will be assured the boon of getting the full market value of what they part with; and money-lenders and such like will be prevented, so far as is possible, from land-grabbing and reducing their debtors to serfs."

On which Mr. Stevens, of the Board of Revenue, has commented as follows:—

Paragraph 24, letter No. 800 A., dated 20th June 1894. *Sel.* p. 41

"Against such a law intended to be of general application it is an obvious objection that the cases are very numerous in which the zamindar has no power of veto, and therefore could not be justly entitled to any *salami*. And Mr. Stevens has serious doubts as to the propriety of limiting transfers to cultivators, or (as at present advised) of prohibiting transfers to money-lenders. Such a limitation would diminish the demand for land, and probably lower its value, while impairing to some extent the credit or borrowing power of the raiyats. The difficulty would be especially felt in a time of pressure, when many raiyats would be wanting to sell and very few, if any, wanting to buy. It should never be forgotten in discussing topics in which money-lenders are concerned that those people are not wholly mischievous. There are times when they are the great support and refuge of large number of raiyats; and where these money-lenders are themselves of the raiyat class and residents of the village there is little to be said against them."



361. (4) Those who would work without the landlord's direct intervention have suggested the prohibition of all permanent transfers of occupancy rights *to any but agriculturists*. This formed part of the measure advocated by the Government of India in 1882—

Despatch No. 6, dated 21st March 1882, paragraph 97.

"saving all rights already vested," it was said, "we would enact that no person who is not an agriculturist shall hereafter acquire a right of occupancy in *raiyati* land either by purchase or gift, or devise or foreclosure, or in any other manner whatsoever. The raiyat would then be able to transfer freely to other raiyats, whether by mortgage or sale. But no mere money-lender could acquire the right, though he could advance money on the security of the crop or of the holding, and might bring the latter to sale, subject to the condition that no one but an agriculturist could purchase it. These provisions would be guarded so as not to interfere with the landlord's right of pre-emption. We advocate them with regret, as restrictions needed in an immature state of society, where the poor and ignorant are apt to fall into the hands of people possessing the discretion to accumulate property, but unable to resist temptations to exaction. As education and the consequent power of self-protection spread, such exceptional legislation would grow obsolete. We therefore think that the Lieutenant-Governor should be empowered to withdraw the above-mentioned provisions in any district where it might be established to his satisfaction that absolute freedom of transfer would be unattended by any risks."

It is not clear why these proposals were subsequently withdrawn. They were not subsequently, discussed, and their merits rest on the same grounds as those on which similar proposals in the case of proprietary rights in other provinces are founded.

362. (5) Mention may also be made of the proposal to create a "*convertible tenure-holder*," which was put forward by the Bengal Government in 1883. The proposal was to the effect that a money-lender on purchasing an occupancy was to become thereby a tenure-holder, under whom the sub-tenant would receive protection. The proposal was first made in the following terms:—

Paragraph 15, letter No. 972 T. R., dated 27th September 1883.

"Now from the statistics exhibited in paragraph 14 above, there is reason to anticipate that mahajans will invest their money in the purchase of occupancy rights; and the question, how to prevent the evils contemplated as possible under such circumstances in the Statement of Objects and Reasons, demands consideration. In the Lieutenant-Governor's opinion an effective way to prevent these evils is by converting all purchasers of occupancy rights, who are not *bonâ fide* cultivators, into tenure-holders, under whom the actual cultivator will have the protection afforded by the *status* of a raiyat; and this was one of the reasons which induced Mr. Rivers Thompson to propose the definitions of 'tenure' and 'raiyat' given in paragraph 6 above."

It was, however, objected to and withdrawn in 1884 with the following explanation:—

Paragraph 34, letter No. 1906, dated 15th September 1884.

"If in districts where no survey is to be made immediately, co-operation of landlords and under-raiyats against the subletting occupancy raiyat did not in a self-acting way emerge from the Bill as it stands, it would probably have been secured by allowing the landlord to levy a fee on the conversion. The interest of the landlord in the success of the scheme would thus have been attained, while the under-raiyat would have gained, if not an occupancy right, at all events the non-occupancy *status*, possibly at a beneficial rent.

As, however, there is an agreement among the officers consulted against the retention of the section, and as the point is not of the first importance, the Lieutenant-Governor agrees to the omission of the section from the Bill."

363. (6) There is lastly a proposal that tenants should be allowed to sell the whole, *but not parts*, of their holdings. It is represented that it is by the purchase of a portion of a holding that the mahajan gets his first footing on the tenancy, and that he often gets this unknown to the landlord. Mr. Dunbar Blyth, Collector of Chumparan in Behar, writing in May 1893, says: "It is by this transfer of a portion of the holding that the mahajan most frequently gets possession of the whole holding. A raiyat becomes indebted to his mahajan, and being unable to pay he makes over to him the most fertile part of his holding, retaining only the inferior land. From the outturn of the latter he not only has to support his family, but he has also to pay the whole of the rent which he had formerly to pay for the entire holding. The task becomes an impossible one, he goes from bad to worse, and finally he is sold up." Alienation of portions of holdings are already declared by section 88 of the Tenancy Act not to be binding on the landlord without his consent in writing, but it has been contended, and the contention received the support of the Board of Revenue in 1894, that this provision is practically inoperative as long as the sale remains binding as between the parties themselves. The Bengal Government, on the other hand, have declared that the practice "has no economic disadvantages from the raiyat's point of view, rather the reverse, as it is better for him to part with a field and remain the free owner of the rest than to be encumbered as to the whole tenure. It is inconvenient to the landlord as regards the keeping of his records, but Government need not contemplate legislation for the purpose of preventing that inconvenience."

Baden-Powell's Land Revenue Systems, Vol. I, page 648.

364. There are (excluding Jalpaiguri, Darjeeling, the Chittagong Hill Tracts, and Manbhum) three important areas in Bengal to which the Act of 1885 has not been extended, *viz.*:—

(i) *Orissa.*—Here portions only of Act VIII of 1885 are in force: the classes of tenants are as defined in the Act, and though section 183 is not in force, it is presumed that, as under Act X of 1859, the transfer of occupancy rights is left to custom.

(ii) *Chota Nagpur.*—The law here in force is Bengal Act II of 1879, which recognizes occupancy tenancies on the 12 years' rule, but says nothing regarding the transferability of such tenancies. It is presumed, therefore, that the validity of such transfer is left to custom.

(iii) *The Sonthal Parganas.*—Here occupancy rights can be obtained under Regulation III of 1872, but their transferability rests on local custom. During recent settlement operations complaints were made that the right of transfer was being taken away from the raiyats, which led to the following Resolution on the part of the Local Government:—

Resolution No. 1187, dated 6th March 1894. (Bengal Revenue Proceedings, April 1894.)

> "As to the complaint of the petitioners that in the present settlement the power of alienation even in regard to raiyati holdings is sought to be taken away, it should be made known that, as regards raiyat's holdings, Settlement Officers have neither given nor taken away a right but merely recorded the fact of its existence or non-existence. It has been held that this depends upon local custom, and as a matter of fact in the great majority of cases there is no evidence of any such established custom. The Lieutenant-Governor is not disposed to countenance any provision for mortgages any more than for sales of the rights of Sonthal raiyats."



## North-Western Provinces and Oudh.

*Existing Rights of transfer.*

365. In the early discussions as to the status of tenants in the *North-Western Provinces* the right of transfer does not seem to have been particularly noticed, and the general result was that on this as on other points the existing custom was as far as possible recorded and adhered to. Lord William Bentinck's orders in 1833 were "that in all cases in which the raiyats or their ancestors may have held land from a period antecedent to the cession or conquest of the country, they should be secured in their present holdings by a distinct record of the conditions of their tenures for the term of settlement."

Letter of 24th January 1833, page 483. Selections from Records, North-Western Provinces, 1822-33 (1872).

The subject received consideration from Mr. Thomason, who was Lieutenant-Governor from 1843 to 1853, and that officer left behind him an unfinished draft Code in which he proposed to recognize a class of "occupants by prescription," men "who have an inherent right to occupy certain lands either at a fixed rate or rent or at a rent varying according to the usage of the Pargana." This right was to be declared heritable, but "not transferable without the consent of the malguzar," nor was the land to "be mortgaged or sublet by the occupant without the consent of the malguzar." This no doubt represented roughly what Mr. Thomason understood to be the existing custom.

Thomason's Despatches in Volume II, page 343.

366. The above draft was not, however, acted on, nor did the legislation of 1859 affect the existing custom—whatever it was—on this subject. The Rent Act of 1859 recognised three classes of tenants: (1) the tenant at fixed rates (in permanently settled areas only) who having held at fixed rates since the Permanent Settlement was entitled to hold on at the same rates, and (2) the occupancy tenant, who had held or cultivated the land for twelve years, and (3) the tenant at will. But it made no declaration as to the transferability of any of these classes of tenancies.

Sections 3, 4 and 6 of Act X, 1859.

In framing a new Rent Bill in 1873 it was originally proposed to declare both the first two classes of tenancies transferable between co-sharers only, but in the Bill as ultimately passed this condition was left to apply to occupancy tenancies only, while tenancies at fixed rates were declared transferable absolutely. At the same time the claims of exproprietary tenants to occupancy rights in their home farms were expressly established.

Section 9, Act XVIII, 1873.

When the law was revised in 1881, little change was made in these respects, beyond a small alteration with reference to the persons entitled to be classed as co-sharers.

Act XII of 1881.

In view moreover of a ruling of the High Court which had laid down that in spite of the provisions of the Act of 1873 occupancy rights could be attached or brought to sale in execution of a decree of the Civil Court if the decree-holder were the tenant's landlord, care was taken to lay down that such rights of occupancy were not transferable in execution of any decree.

Indian Law Reports III, page 547, Umrao Begam, *versus* Land Mortgage Bank, Cawnpore. (See Legislative Department Proceedings, April 1881 Nos. 1—54.)

The present law accordingly recognizes three classes of tenants, *viz.*, (*i*) tenants at fixed rates in permanently settled tracts, whose rights are freely transferable, (*ii*) occupancy tenants, including ex-proprietary tenants whose rights are transferable only to co-sharers, and (*iii*) tenants at will have legally no transferable rights. The following are the words of the Act of 1881:—

> "*Section 5.*—When any land in a district or portion of a district which is permanently settled has been held by a tenant and his predecessors in interest, from the time of the Permanent Settlement, at the same rate of rent, such tenant shall have a right of occupancy at that rate.
>
> A tenant having such right is hereinafter called a 'tenant at a fixed rate.'

*Section 6.*—When in any suit to which the provisions of section 4 or section 5 apply, it is proved that the land has for a period of twenty years next before the institution of the suit been held by the present holder and his predecessors in interest at the same rate of rent, it shall be presumed, until the contrary is proved, that it has been held at such rate from the time of the permanent settlement.

*Section 7.*—Every person who may hereafter lose or part with his proprietary rights in any mahal shall have a right of occupancy in the land held by him as sir in such mahal at the date of such loss or parting, at a rent which shall be four annas in the rupee less than the prevailing rate payable by tenants at will for land of similar quality and with similar advantages.

Persons having such rights of occupancy shall be called 'ex-proprietary tenants,' and shall have all the rights of occupancy tenants.

*Section 8.*—Every tenant who has actually occupied or cultivated land continuously for twelve years has a right of occupancy in the land so occupied or cultivated by him.

Such tenants shall be called 'occupancy tenants.'

The occupation or cultivating of the father or other person from whom the tenant inherits shall be deemed to be the occupation or cultivating of the tenant within the meaning of this section:—

Provided that no tenant shall acquire, under this section, a right of occupancy—

(*a*) in land which he holds from an occupancy tenant, or from an ex-proprietary tenant, or from a tenant at fixed rates;

(*b*) in sír land;

(*c*) in land held by him in lieu of wages;

Provided also that, when a tenant actually occupies or cultivates land under a written lease, without having a right of occupancy in such land, the period of twelve years necessary for acquiring a right of occupancy therein by him or any one claiming under him shall begin on the expiration of the term of such lease. If during the currency of such lease he ceases to occupy the land comprised therein, and sublets it to another, no right of occupancy in such land shall be acquired by the sub-lessee during the currency of the lease.

*Section 9.*—The right of tenants at fixed rates may devolve by succession or be transferred.

No other right of occupancy shall be transferable in execution of a decree or otherwise than by voluntary transfer between persons in favour of whom as co-sharers such right originally arose, or who have become by succession co-sharers therein.

367. No exact figures can apparently be given to show the extent of area over which the rights of fixed rate and occupancy tenants can respectively be exercised, but it appears (*a*) that the area held at fixed rates is very small, as that and the sub-proprietary area put together represent only 3·3 per cent. of the cultivation of the Province, and (*b*) that the area held on an occupancy tenure is 33·1 per cent. of the cultivated area. The proportion held on a tenancy-at-will is 39·5 per cent.

See paragraphs 6-9, Despatch No. 103, dated 13th November 1884, from Secretary of State. (Central Division Proceedings, October 1886, Nos. 211—270.)

368. With respect to *Oudh*, the accepted view at annexation and down to 1862 was that tenant cultivators of long standing in Oudh were entitled to occupancy rights, but enquiries made subsequent to that date led to the belief that no occupancy (and hence no transferable) rights existed at annexation among tenants. The talukdars consented to the conferment of occupancy rights on ex-proprietary tenants whose claims dated from the times immediately preceding annexation, and this was the only class of occupancy tenant recognized in the first Rent Act, XIX of 1868.

Section 5.

Section 36, Act XXII, 1886.

Section 5. Page 37, North-Western Provinces and Oudh General Administration Report, 1892-93.

In 1884 the need of further protection of the Oudh tenants was felt and a new Act was passed in 1886 which without conferring occupancy rights enabled ordinary tenants (other than tenants on home-farms or contract tenants) to hold without enhancement for seven years. The ex-proprietary tenants of the previous Act are also recognized by the Act, but their rights though heritable are not transferable.



Of the cultivated area in Oudh 81·1 per cent. is under statutory tenants or tenants at will, 1·3 per cent. is held in occupancy rights, 4·2 per cent. is cultivated by sub-proprietors, etc., and 10·3 per cent. is home-farm or self-cultivated by proprietors.

*Extent of transfer.*

369. There appears accordingly to be only one class of tenants in the North-Western Provinces and Oudh who have a legal right to transfer their rights to outsiders, *viz.*, the fixed-rate tenants of the permanently settled areas. We have apparently no figures for the number of voluntary transfers of these tenancies, but the following statistics show their gradually increasing transfer in satisfaction of Civil and Revenue Court Decrees in recent years:—

| | Year. | Number of sales. | Amount of rent transferred. | Amount of encumbrances known to exist on the property at time of sale. |
|---|---|---|---|---|
| | | | ₹ | ₹ |
| By order of the Civil Courts. | 1887-88 | 128 | 1,760 | 52,300 |
| | 1888-89 | 162 | 2,100 | 26,900 |
| | 1889-90 | 172 | 2,900 | 24,900 |
| | 1890-91 | 204 | 3,250 | 38,300 |
| | 1891-92 | 210 | 3,000 | 81,400 |
| | 1892-93 | 246 | 4,900 | 39,400 |
| By order of the Revenue Courts. | 1890-91 | 43 | 480 | 5,800 |
| | 1891-92 | 34 | 500 | 2,000 |
| | 1892-93 | 32 | 800 | 3,700 |

The Settlement Officer of Ballia, one of the permanently settled districts, also notes that in 1885, out of some 80,000 acres held by fixed-rate tenants in that district, 12,616 acres were under mortgage: but no remarks are made by him or others in regard to these alienations of fixed-rate rights.

Paragraph 93, Settlement Report.

In the neighbouring district of Benares, Mr. F. W. Porter, the Settlement Officer, reported in 1887:—"There is said to be a stong tendency to dispossess or purchase the rights of tenants at fixed rates, who, on account of the heritable and transferable nature of their tenures, are to a great extent independent of the landlords." We have, however, no indication of the class of men to whom fixed-rate rights are transferred, nor of the extent to which landlords have bought out the fixed-rate tenants holding under them.

370. It is to be noticed that in spite of the fact that occupancy tenures are not transferable to outsiders in the eye of the law, they are in practice so transferred. As regards Ballia, Mr. Roberts, the Settlement Officer, remarks on the fact that, until the matter was looked into in 1881, little difference was made in that district between the rights of occupancy and fixed-rate tenants, although the non-transferability of occupancy tenancies was declared by the law of 1873, and in 1885 two-fifths of the tenant area under mortgage in the district was land belonging to occupancy tenants. He calculates the value of

Settlement Report, section 93.

Settlement Report, page 169.

the right of transfer at ₹50 an acre. The practice of transfer by occupancy tenants is also in force in the permanently settled district of Jaunpur, regarding which Mr. Wheeler, the Settlement Officer, wrote in 1886 that occupancy rights "are transferred daily as much as ever and no legal disability will stop their alienation." It seems probable that this transfer of occupancy rights is for historical reasons more common in the permanently than in the temporarily settled districts, but it is apparently a fairly well-known practice throughout the North-Western Provinces, for the Government in 1891 noted generally to the effect that "in the North-Western Provinces mortgages by occupancy tenants are far from uncommon, the mortgagee being recorded as sub-tenant."

See paragraphs 40 -42, Ballia Settlement Report.

Review of Oudh Land Revenue Report, 1890-91, page 4.

Even the seven-years statutory rights in Oudh are the subject of transfer in practice. The matter was noticed in 1891 by the Deputy Commissioner of Bara Banki and under the orders of Government an enquiry was made which resulted in the following report by the Board :—

Revenue Report, 1889-90, page 10.

Page 58, Revenue Report, 1891-92.

"The enquiry that has been made in accordance with the orders of Government has shown that such mortgages (by statutory tenants in Oudh) are, at present, uncommon, and instances of them are reported from four districts only. A few cases were found in Fyzabad, but, in all but one of these the mortgagors considered themselves, not as statutory tenants, but as Shankalapdars possessing a right of transfer. The Deputy Commissioner of Gonda reports that the practice is not as yet common, but that not a few instances have come to his knowledge and that of his subordinates in which statutory holdings have been mortgaged either with or without possession. In Partabgarh these mortgages are said to be not unfrequent in the estates of talukdars, whose agents compel bankrupt tenants to mortgage their holdings with possession to solvent cultivators, occasionally to the landlord himself. That a landlord should take a mortgage of an insolvent tenant's land, instead of ejecting him, seems a singular, and is not likely to be a common, transaction, but the Deputy Commissioner gives two instances of the kind that have come under his own observation. A somewhat similar arrangement appears to prevail in Hardoi, where, however, it is not described as a mortgage, the landlord letting the land of an insolvent cultivator to a new tenant, from whom he takes an agreement to pay up the arrears due from the old one. Besides these arrangements to which the landlord is a party, cases are reported from Hardoi in which tenants in Government villages, who have received leases for the term of settlement, have mortgaged their holdings. The Board have issued the necessary instructions to secure that mortgages of the holdings of statutory tenants are not recognized or recorded in the village papers.

Jaunpur Settlement Report (1886).

In parts of the North-Western Provinces even non-occupancy tenants seem to have transferred "what they were pleased to consider their rights."

*The effect of non-transferability.*

371. The extent to which the illegal transfers of tenant right (other than those of rights in the permanently settled districts) are carried on appears on the whole to be petty. As regards the merits in the permanently settled areas of the non-transferable and transferable tenures respectively, reference may be made to the views recorded by the Settlement Officers of Ballia and Benares. The former, after stating that the legislation of 1873 and 1881 was virtually a confiscation of the rights of occupancy tenants to transfer, writes —

Paragraph 42, Report.

"It is not in time of prosperity that the tenant will feel the difference. It is when he has got somewhat into debt and is in arrears with his rent. He will find that his credit has collapsed. He will have no security to offer, and an arrear which would give him no uneasiness formerly may now lead to his ejectment and ruin. Fixed-rate tenants can seldom be ejected for simple arrears of rent. They can always raise from 10 to 20 times the annual rent on the security of their holdings. I believe it is supposed by some that tenants are more secure in their holdings by being denied the right of transfer, but that is a very curious thing to suppose. The argument runs. If the tenant right is transferable, the tenants will borrow money on



it: the money that is borrowed some tenants will not repay; some tenants will, therefore, lose their holdings. The fallacy is obvious. The tenants who borrow and do not repay will lose their holdings, whatever their status. The difference is that a small improvidence will ruin the occupancy tenant, and only great extravagance the tenant at fixed rates."

The latter expresses the following opinion :—

"It is a debateable question which of these classes of tenants is best off. There is no doubt that the acquisition of a fixed-rate tenure, which is heritable and transferable, engendered habits of extravagance; and the right usually passes very shortly into other hands. The zamindars are very averse to having fixed-rate tenants on their estates. Their reasons are obvious. Such tenants are, to a great extent, independent of the landlord. Moreover, the transfer of the right by sale or otherwise may bring into the estate a worthless or turbulent class of tenancy, to the great annoyance of the zamindar and detriment to the estate. This the zamindar is powerless to prevent. Indeed, so much is this tenure disliked that in many instances the landlords have made a dead set at their fixed-rate tenants, and as often as not succeeded either in ousting them or in buying up their rights. This has been notably the case in the estates held by Raja Shiva Prasad, C.S.I., where all tenants have been given permanent leases at fixed rates, but with the express stipulation that they are to have no right of transfer. To my mind occupancy tenants under a good landlord are as well off as fixed-rate tenants. The absence of the right of transfer means the absence of a temptation to extravagance caused by the feeling that whatever happens the value of the holding remains to fall back upon."

Page 31, Report.

372. It has been remarked in several of the notes recorded by Sir. E. Buck in this Department that the condition of the occupancy tenants is a very prosperous one and an indication of the benefit of restricting the powers of transfer. On February 1891, for instance, he observed :—

See, *e.g.*, marginal note on demi-official letter dated 7th August 1893, from Sir W. Hudson. Marginal note of 8th February 1890 on page 3, K.-W. Proceedings, Revenue, June 1890, Nos. 62—74. Note of 9th February 1891 in K W. Proceedings, A. Revenue, 46—49, September 1893, and note of 26th April 1889 in Proceedings Revenue A, 15—18, May 1891.

"It may not be out of place to note that the results, on the other hand, of the complete prohibition of the right of transfer for the maintenance of which the North-Western Provinces Settlement Officers successfully fought, have been, in the case of the large body of occupancy tenants, amounting to something like 5 to 10 millions, extremely satisfactory. It is difficult to find in India a more prosperous community of substantial yeoman peasantry. A certain, but not large, percentage of them have more debts than they can pay, but even their debts do not interfere either with their occupation of the land or with their payment of a fair rent. No better example, indeed, can be found of the good financial results of checking transfer than that which is afforded in the ability of the North-Western Provinces peasantry to pay a full and legitimate share of the produce to their landlords."

This is supported by the Deccan Commission of 1891, who state in their Report that "much of the prosperity and possibly the continued existence of the occupancy tenants of the North-Western Provinces is owing to the strict limitations on their powers of alienation."

Report, paragraph 70.

373. There has been apparently no special correspondence with the Government of India on the subject of tenancy transfers in the North-Western Provinces and Oudh, nor have any suggestions for the improvement of the law in this respect been brought forward.

## Punjab.

*Existing rights of transfer.*

374. It has already been noticed that transfers by landholders in the Punjab before annexation were rare and the landlord's status somewhat vague. The Province is one where at the present day 53 per cent. of the cultivated land is cultivated by the owners themselves, and in some parts of the Province the relation of landlord and tenant, as we understand it, was scarcely

known before annexation. The question whether the tenant was ever permitted to alienate his rights was not very comprehensively examined during the first rough settlements, and the evidence on the subject is somewhat conflicting. The Civil Code of 1854 recognizes the possibility of a hereditary cultivator transferring his rights. In Cust's Revenue Manual of 1866 it is stated that a tenant on fixed rates for the term of settlement can transfer his rights, while an ordinary occupancy tenant may have transfer as "an incident in his tenure, but as it is not ordinarily so, he must prove it." But when the subject came up for discussion in 1867 in connection with proposed Tenancy Legislation the matter was hotly discussed, and the preponderance of opinion appears to have been in favour of the view that, at annexation at least, no hereditary tenant possessed the free right of transfer.

Section XXI, paragraph 9 "...and an hereditary cultivator. The rights of either of these three parties may be transferred." Pages 39 and 41. Parliamentary Return (East India, Punjab Tenancy); See Mr. Prinsep on page 217; Punjab Committee, on page 270 and Sir Donald Macleod, on page 404.

It was determined, however, to recognize this right under certain restrictions in the case of the more privileged class of tenants. The Act of 1868 described two classes of occupancy tenants, *viz.*, a class which had strong claims to privilege from its previous history and a class which had claims merely on the strength of a settlement record. The former class were expressly permitted to sublet and, subject to the pre-emption of the landlord, to alienate the land over which it had occupancy rights. All other kinds of tenants, including the second class above mentioned, were permitted to alienate the land in their occupation or any part thereof, "with the landlord's previous permission but not otherwise."

Sections 5 and 6.

Section 34.

375. When the Rent Law was revised in 1886-87 it was at first proposed to confer on the second class of occupancy tenants the same rights of transfer as were enjoyed already by the former class, it being urged that the right was exercised and should be legalized.

Colonel Wace's note of 11th August 1886 (Legislative Department Proceedings, Nos. 126—163 October 1887.) Paragraph 60 of Report of Lahore Committee, and paragraph 33, Punjab Government letter No 44, dated 25th February 1887.

In consideration, however, of the strong objections urged by and on behalf of the landlords, it was determined to maintain the old rule in this respect. At the same time the provision which allowed unprivileged tenants to alienate with the consent of the landlord was converted into a section protecting the second class of occupancy tenure from attachment and sale in execution and requiring the written consent of the landlord to private transfers of the rights of such tenancies.

Sections 5 and 6, Act XVI, 1887.

376. The law therefore now stands as follows. It first defines the two classes of occupancy tenant in terms which, while differing in details from the old definitions, preserves in main outline the old distinction*:—

"5 (1) A tenant—

(*a*) who at the commencement of this Act has for more than two generations in the male line of descent through a grandfather or granduncle and for a period of not less than twenty years been occupying land paying no rent therefor beyond the amount of the land revenue thereof and the rates and cesses for the time being chargeable thereon, or

(*b*) who having owned land, and having ceased to be landowner thereof otherwise than by forfeiture to the Government or than by any voluntary act, has, since he ceased to be landowner, continuously occupied the land, or

(*c*) who, in a village or estate in which he settled along with, or was settled by the founder thereof as a cultivator therein, occupied land on the 21st day of October 1868, and has continuously occupied the land since that date, or

* A right of occupancy may also under section 8 be established on other grounds, but such cases are very rare.



(*d*) who, being jagirdar of the estate or any part of the estate in which the land occupied by him is situate, has continuously occupied the land for not less than twenty years, or, having been such jagirdar, occupied the land while he was jagirdar and has continuously occupied it for not less than twenty years, has a right of occupancy in the land so occupied, unless, in the case of a tenant belonging to the class specified in clause (*c*), the landlord proves that the tenant was settled on land previously cleared and brought under cultivation by, or at the expense of, the founder.

(2) If a tenant proves that he has continuously occupied land for thirty years, and paid no rent therefor beyond the amount of the land-revenue thereof and the rates and cesses for the time being chargeable thereon, it may be presumed that he has fulfilled the conditions of clause (*a*) of sub-section (1).

(3) The words in that clause denoting natural relationship denote also relationship by adoption, including therein the customary appointment of an heir and relationship by the usage of a religious community.

6. A tenant recorded in a record-of-rights sanctioned by the Local Government before the twenty-first day of October, 1868, as a tenant having a right-of-occupancy in land which he has continuously occupied from the time of the preparation of that record, shall be deemed to have a right of occupancy in that land unless the contrary has been established by a decree of a competent Court in a suit instituted before the passing of this Act."

Then the Act lays down the law as to transfer as follows :—

Sections 53 (1) — (3) 54, 55, 56, 58 (1) and 60.

"53. (1) A tenant having a right of occupancy under section 5 may transfer that right by sale, gift or mortgage, subject to the conditions mentioned in this section.

(2) If he intends to transfer the right by sale, gift, mortgage by conditional sale or usufructuary mortgage, he shall cause notice of his intention to be served on his landlord through a Revenue-officer, and shall defer proceeding with the transfer for a period of one month from the date on which the notice is served.

(3) Within that period of one month, the landlord may claim to purchase the right at such value as a Revenue-officer may, on application made to him in this behalf, fix.....

54. Where a mortgagee of a right of occupancy under section 5 proposes to foreclose his mortgage, or otherwise enforce his lien on the land subject to the right, the provisions of the last foregoing section shall, so far as they can be made applicable, apply as if the mortgagee were the tenant.

55. (1) A right of occupancy under section 5 may be sold in execution of a decree or order of a Court;

(2) But notice of an intended sale of any such right shall be given by the Court to the landlord, and, if at any time before the close of the day on which the sale takes place the landlord pays to the Court or to the officer conducting the sale a deposit of twenty-five per centum on the highest bid made at the sale, he shall be declared to be the purchaser, instead of the person who made that bid.

56. A right of occupancy under any other section than section 5 shall not be attached or sold in execution of a decree or order of any Court or, without the previous consent in writing of the landlord, be transferred by private contract.

58. (1) A tenant having a right of occupancy in land, may, subject to the provisions of this Act, and to the conditions of any written contract between him and his landlord, sub-let the land, or any part thereof for any term not exceeding seven years.

60. Any transfer made of a right of occupancy in contravention of the foregoing provisions of this chapter shall be voidable at the instance of the landlord."

377. Section 12 of the Punjab Laws Act of 1872 referring to the landord's right of pre-emption now secured by section 53 of Act XIII of 1887 says: IV of 1872.

"If a landlord refuse or neglect to exercise the right conferred on him by that section, such right belongs, first, to the tenants (if any) with rights of occupancy in the property concerned, and secondly, to the tenants (if any) with right of occupancy in the village in which such property is situate."

*Extent and character of transfers.*

378. Of the cultivated area in the Punjab 10 per cent. is held by occupancy

tenants, but it is not known how much of this is held under section 5 and how much under section 6.

Revenue Report, Statement X A.

The occupancy area alienated in recent years is shown in the following table:—

(000 omitted.)

| Year. | Total Area in acres. | | | | Cultivated Area in acres. | | | | Revenue Represented. | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Sales. | Mortgages. | Redemptions. | Net mortgages. | Sales. | Mortgages. | Redemptions. | Net mortgages. | By sales. | By net mortgages. |
| | | | | | | | | | R | R |
| 1887-88 . . | 28 | 59 | 15 | 44 | 18 | 45 | 13 | 32 | 16 | 31 |
| 1888-89 . . | 19 | 38 | 15 | 23 | 13 | 34 | 13 | 21 | 14 | 25 |
| 1889-90 . . | 20 | 37 | 14 | 23 | 12 | 29 | 12 | 17 | 14 | 18 |
| 1890-91 . . | 11 | 27 | 12 | 15 | 7 | 21 | 9 | 12 | 8 | 16 |
| 1891-92 . . . | 17 | 36 | 15 | 21 | 11 | 31 | 13 | 18 | 11 | 23 |
| 1892-93 . . | 14 | 36 | 16 | 20 | 10 | 29 | 12 | 17 | 11 | 10 |

There are no separate figures to show the alienations of occupancy right to non-agriculturists, and the above return must be taken subject to the caution recorded above regarding the returns of proprietary transfers.

379. It is believed that the transfers among occupancy tenants have followed much the same lines as those among proprietors at large, and we have little separate information as to the particular effects of the alienations among the occupancy tenants. From a statement of Sir James Lyall's in connection with the Oudh Rent Bill of 1886 it may be assumed that the same economic evils attend the transfer to non-agriculturists as have been already described in the case of proprietors. Talking of the Punjab he writes: "In some of the most populous and highly cultivated districts of that province where occupancy tenants hold at rates fixed for term of settlement, and much lower than market value, great number of these tenants have already mortgaged their interest to the village money-lenders, and hold under them as tenants at will."

Paragraph 9, Memorandum dated 7th May 1883 (Legislative Department Proceedings Nos. 211-270, October 1886).

The occupancy tenants of the Punjab belong to the same class in almost every respect as the proprietors, often being proprietors themselves of other holdings and their feelings towards the money-lender are the same as those held by the proprietors.

There has been no special correspondence on the subject of alienations by occupancy tenants.

*Government Tenants in colonization schemes.*

380. Before, however, leaving the question of transfers by Punjab tenants, attention may be drawn to a new class of tenants recently recognized, *viz.*, those holding from Government on the waste areas brought under colonization by the help of Government canals. This class originated as follows.

The Punjab Waste Land Rules of 1868 and those sanctioned by the Government of India in 1885, allowed the lessee in Government waste under certain conditions to purchase the proprietary right in the land.



In 1887, however, the inadequacy of the terms on which such purchase was allowed attracted the attention of the Government of India, and the Punjab Government in preparing to revise the rules invited opinions as to the desirability of providing for leases only, to the exclusion of out and out sales. Major Hutchinson who had supervised the Sidhnai Canal Colonization Scheme was of opinion that Government "should never alienate the lands," and Mr. Rivaz, Commissioner of Lahore, suggested that the proprietary right might be sold under the condition that transfer should be subject to the permission of the Revenue authorities. Colonel Wace, then Financial Commissioner, doubted the expediency of refusing to allow the colonists to acquire full ownership, and thought any restrictions on transfer would be evaded; and Sir James Lyall, the Lieutenant-Governor, concurring in Colonel Wace's view, thought it better to raise the price, and so discourage purchase of proprietary right: to take away altogether the hope of purchase would, he thought, endanger the colonization. To this proposal the Financial Commissioner agreed, as did also the Commissioners of Rawal Pindi and Jullunder (Colonel Nisbet and Mr. Young); but others—including Mr. Rivaz, Commissioner of Lahore, Mr. Ogilvie, Commissioner of the Derajat, and Mr. Wilson, Deputy Commissioner of Shahpur—still held that colonists would be forthcoming even without the promise of transferable rights. Following the former set of opinions, the Local Government submitted revised rules in March 1889, under which the price payable was raised, but purchase of proprietary right was in all cases allowed.

Government of India letter No. 432R., dated 12th August 1887 (Proceedings Nos. 41-46, Revenue, November 1887).

Punjab Government letter No. 682, dated 12th October 1887.

Paragraph 22, Memorandum, dated 19th January 1888.

Letter No. 332, dated 21st May 1888, to Financial Commissioner, paragraph 7.

Letter No. 129, dated 12th March 1889. (A. May 1891, Nos. 15—18.)

In view of the general discussions attending the appointment of the Deccan Commission of 1891 no immediate answer was sent to the Punjab Government, and meantime the proposals of the Local Government regarding the colonization of the Chenab Canal lands came before the Government of India. The Punjab Government advocated the grant of a small area on the canal to capitalists and 'yeomen' on terms permitting of an ultimate purchase of proprietary right, but reserved the greater part of the area for peasant colonists on whom an untransferable occupancy status would be conferred. To this the Government of India agreed, and in December 1891, when replying on the subject of the waste land rules generally, they stated that, as regards waste lands irrigated from canals, they would prefer not to allow transferability or a full proprietary status except (i) in areas where it had been already so fully and generally granted that it would cause confusion to deny it in exceptional cases, and (ii) in newly settled areas in the case of a limited number of capitalists or yeomen.

Letter No. 307 S., dated 22nd July 1891. (A. November 1891, Nos. 35—37.)

Letter No. 2385—201, dated 24th October 1891.

Letter No. 2770, dated 30th December 1891. (A. January 1892, No. 1.)

A suggestion made by Colonel Wace in 1888, that the conditions of colonization in canal lands should be laid down in an Act, was revived, and after some further correspondence, the Government Tenants (Punjab) Act, was passed under which the constitution of a new class of tenants on special terms was legalized for Government lands irrigable from Government canals. In section 8 it is laid down:—

III of 1893.

"The rights or interests vested in a tenant by or under this Act shall not be capable of being attached or sold in execution of a decree or order of any Court or in any insolvency proceedings, nor shall they or any of them, without the previous consent in writing of the Financial Commissioner, be transferred or charged by any sale, gift, mortgage or other private contract."

Of the area already given out on the Chenab Canal Scheme by far the larger portion has been given out on this tenure, and the absence of transferability has not in practice been found to restrict the competition for land.

Punjab Government's letter No. 81, dated 8th January 1895, to Foreign Dept.

It may also be noticed here that, in the settlement of the recently acquired Kurram valley, the tenants on the Government lands have been given a kind of occupancy right, subject to the condition that no transfers shall be made without the consent of the Political officer in charge of the valley.

## Ajmere.

Settlement Report, paragraph 96.

Settlement Report, paragraph 80.

381. As regards the khalsa or Government area, Mr. LaTouche, the Settlement Officer, was able as lately as 1875 to say "a non-proprietary cultivating class hardly exists": and in 1887 Mr. Whiteaway reported figures which seem to show that the number of non-proprietary cultivators was then scarcely one-tenth of the number of proprietors and that the proportion was decreasing.

See paragraph 80 of Government of India letter No. 158 J., dated 25th October 1875, and Report of Committee. (Foreign Department Proceedings, January 1878, Nos. 2—52.)

The Regulation of 1877, however, provides for the protection of tenants. No definition of an occupancy tenant is given, the determination of a tenant's status being left to the settlement record, but ex-proprietory tenants must under the Regulations have occupancy rights. No restrictions are placed on voluntary alienations, but the ex-proprietary tenant cannot be ejected under a decree for ejectment or arrears, without the sanction of the Chief Commissioner.

Section 41.

Section 52.

382. In the istimrari or permanently assessed Chiefs' estates, it was at the settlement considered inexpedient to attempt internal interference, and all tenants in such estates must under section 21 of the Regulation "be presumed, until the contrary is proved, to be tenants-at-will." Occupancy rights of a kind seem to have existed in such estates in the earlier part of the century, but "it was generally admitted that such land could not be mortgaged or sold."

II of 1877.

Page 23, Gazetteer.

D. O., dated 15th January 1895.

In a recent demi-official communication Mr. Martindale, the Commissioner, writes: "On the estates, any alienation of the land by cultivators is absolutely prohibited by the Thakurs: the people cannot even mortgage it, much less sell it. Yet they obtain advances freely from the bunniahs and bohras in time of need, or when they want money for marriages and the like. They are at least as well off generally as their confrères on Government land," *i.e.*, the khalsa proprietors, "and much better off in this respect that in no circumstances can their land pass to their creditor."

383. There is no statistical or other information regarding the alienation of tenant's rights in Ajmere-Merwara, and the matter seems to have attracted no special attention.

## Central Provinces.

### *Existing rights of transfer.*

384. As in Bengal and the North-Western Provinces, so in the Central Provinces the first comprehensive Rent Law was Act X of 1859. Various rules had, previous to the introduction of that Law in 1864, been promulgated for determining the classes of tenants entitled to occupancy rights, but in the absence of any great competition they do not appear to have affected seriously the status of existing cultivators.

See Part I of note by Mr. Grant, Commissioner, Jabalpur, dated 1st September 1873.

Paragraph 14, letter No. 798, dated 8th March 1894, forwarded with Chief Commissioner's letter No. 4423, dated 10th October 18[illegible]

The following question, from a recent report by Mr. Fuller, shows, however, that the right to transfer was held, before our rule, by ryots who had improved the land:—

"The information which I have been able to collect on this subject leads me to believe [illegible]at the right of mortgaging or transferring *improvements* made in their holdings has been [illegible]d by ryots from very early times. Cases are of common occurrences where wells and



trees are held by persons other than the tenant of the land on which they are situated, having been sold by a former tenant before he vacated his holding. And it is well known that a native ruler, who formerly held the Bijeraghogarh pargana of the Jubbulpur District, greatly extended the practice of embanking land by a declaration that ryots who embanked their fields should have the right of mortgaging or selling them. In this case the right to sell improvements was allowed to extend to the land on which the improvements lay, and I think that the illustration gives a pretty accurate clue to what has been the real progress of ideas on this question. The right to sell or mortgage improvements has gradually extended to the land improved, and has further developed till it applies to unimproved lands also.

"Be this as it may, I believe, that the mortgage and transfer of ryoti tenures have their origin in ideas which arose long before the British supremacy in India, and that in dealing with the question, we are laying hands not on a recent custom of our own creation, but on a custom which has its roots in the circumstances of long past years."

Under Act X of 1859 an occupancy status was secured to any tenant who had continuously held or cultivated the land for 12 years, but nothing was laid down to interfere in any way with existing customs—whatever they were—as regards the transfer of such rights, and it has been stated that the right so constituted was "heritable but not transferable." The 12-year rule was at once discovered to be unsuitable and steps were taken during the early settlements, in accordance with instructions communicated in the Chief Commissioner's circular G., dated 20th April 1865, to record separately the tenants whose claims were based merely on the 12-year rule and those whose claims had other and stronger grounds for recognition: and to secure the status of the latter by means of an entry in the village administration paper (wajib-ul-arz) by which the proprietor agreed to be bound.

Chief Commissioner's letter No. 4423, dated 10th October 1894. *See* p. 111.

See pages 430 *et seq.* Nicholls' Digest.

385. The question whether this second class of tenants, now known as "absolute occupancy tenants," should be granted rights of transfer was taken up by the Chief Commissioner in 1868. Mr. Bernard, as Commissioner, described the existing position of the question in respect of occupancy-tenants generally as follows:—

Letter No. 446, dated 13th April 1868, to Government of India, Foreign Department.

"Hitherto no clause has been introduced into the wajib-ul-arz, save in very special cases, regarding the transfer of fields by occupancy raiyats. It was known that the question whether an occupancy raiyat had the power of transfer had been tried on different occasions and with varying issues, by the High Courts of Justice. There had clearly not been, as a general rule, any established custom or right of transfer on the part of occupiers."

See page 33 of Mr. Jones' note. (Appendix A, Legislative Department Proceedings, August 1883, Nos. 8 to 555.)

The Chief Commissioner, Sir George Campbell, thought it desirable to recognize the right in the case of the superior class of raiyats, but did not wish to alarm the malguzars and was in favour of leaving the matter open. The Government of India, however, having just prepared to legislate in favour of the transfer of superior occupancy rights in the Punjab, preferred to act at once in the same direction in the Central Provinces, and in those provinces to proceed, not by legislation, but by further stipulations in the village administration paper. Entries were accordingly made in the administration papers under which the landlords agreed (among other things):—

Letter No. 130, dated 24th April 1868. (Ditto.)

"That all raiyats recorded in the settlement as possessed of an absolute right of occupancy shall continue for the term of the present settlement to pay rent at the rates fixed in the settlement record....

See Nicholl's Digest, page 439.

That the said raiyats shall have power to sub-let or otherwise temporarily provide by mortgage, or any other like manner, for the occupation and management of their land, and that our consent shall not be necessary to any such arrangement...

That the said raiyats shall have the power to transfer by sale, gift or will, their occupancy right with all its privileges, on payment to us of a sum equal to one year's rent for such land, provided that in every such case the tenure shall be offered for sale in the first instance to us at a sum amounting to 5 years' rent of such land."

Letter No. 1786, dated 14th January 1876. (Legislative Department Proceedings, August 1883.)
Paragraph 51 of Note.

In 1876 the Chief Commissioner submitted a draft Tenancy Bill prepared by Mr. Jones, Commissioner of Nagpur, together with a note by the same officer. In that note Mr. Jones wrote: "Absolute occupancy tenants have used the power of alienation chiefly to get into debt: the Civil Courts have laid hands on tenures possessing a saleable quality; and above all, landlords have shown a disposition to get this class of tenants into their power, in order to purchase out their rights. The prevailing feeling now is that the absolute occupancy tenant holds a less secure position than the occupancy tenant." The Bill, as first drafted, accordingly proposed the abrogation of the power of transfer by occupancy tenants to others than their heirs. The proposal was, however, opposed by Mr. (now Sir Charles) Crosthwaite, both as Judicial Commissioner and as member of the Legislative Council, mainly on three grounds, *viz.*, (*a*) that the entry in the administration paper was meant expressly to exclude legislative interference; (*b*) that there was no proof of absolute occupancy tenants being more indebted than the ordinary occupancy tenant under the 12-year rule; and (*c*) that the right of pre-emption which the malguzar possessed limited the tenants' power of borrowing to five years' rent, and, unless the malguzar was himself involved, prevented the land from falling into the lands of the money-lenders. It was therefore determined while making changes on details to maintain the principle that absolute occupancy tenants should retain powers of transfer.

Memorandum dated 1st October 1880. Enclosed in Chief Commissioner's letter No. 3769—208, dated 19th October 1881. (Appendix N, Legislative Department Proceedings, August 1883.)
Note dated 10th April 1882. (Appendix Q, ditto.)

Section 62.

386. As regards the class of tenants, whose claims to occupancy rested on the 12-year rule of Act X of 1859—now known simply as "occupancy tenants"—a clear definition of their rights existed only in Chanda, Nimar and Sambalpur, where under a Resolution of the Government of India dated 21st June 1865 they enjoyed the power of transfer to a co-sharer by inheritance or to an heir-expectant. In the rest of the Province, as it has already been noticed, no general custom or right of transfer on their part had in 1867 been recognized. The right to sub-let was, it seems, generally acknowledged, and the draft Bill prepared in 1876 proposed to permit sub-letting, while restricting the power of transfer without the consent of the landlord to cases where the transferee was a co-sharer. The Bill as ultimately passed in 1883 (*a*) allowed, with the landlord's consent, all transfers and (*b*) without such consent prohibited all kinds of transfers (including sub-letting) except to co-sharers by inheritance or heirs-expectant and rendered other transfers absolutely void. The amending Act of 1889 rendered illegal transfers void "as against the landlord" only.*

Paragraphs 40—44 of Mr. Grant's Memorandum of 1876.

Act XVII, 1889.

The Act of 1883 moreover abrogated the 12-year rule as regards future rights, and substituted a rule by which a tenant could purchase occupancy rights for $2\frac{1}{2}$ times the rent. It conferred also a right of occupancy on ex-proprietary tenants.

Section 42.

Section 61.

387. The tenant-at-will was abolished by the Act of 1883, and in his place was substituted the 'ordinary tenant,' who was protected from enhancement except at intervals of 7 years. In his case the landlord's consent was necessary for all transfers,† and under the amending Act of 1889 transfers made without such consent were rendered void "as against the landlord" only.

The Act of 1883 also recognized sub-tenants, but left their status to depend on contract.

* It has subsequently been ruled that this does not entitle the landlord to sue for possession in the case of a transfer by lease or mortgage. (See p. 93 of correspondence forwarded with Chief Commissioner's letter No. 4423, dated 10th October 1894.)

† The wording of paragraphs 44 and 47 of the Chief Commissioner's letter No. 4423, dated 10th October 1894, appears to imply that ordinary tenants have the same rights of transfer as the occupancy tenants. If so, this is misleading.



Section 50 B.

The amending Act of 1889 introduced the mention of a further class of tenancies—that of the village-service tenants—and prohibited the transfer of such tenancies except by yearly sub-lease.

Act IX 1883 as amended by Act XVII, 1889.

388. The law, as it stands, therefore recognizes five classes of tenants, *viz.*, (i) the absolute occupancy tenant, (ii) the occupancy tenant, (iii) the ordinary tenant, (iv) the sub-tenant, and (v) the village-service tenant. Their respective status and rights of transfer are defined as follows:—

(i)—*Absolute occupancy tenants.*

"*Section 36.*—Every person who, on the day when this Act comes into force is the tenant of any holding in respect of which he, or a person whose rights he has acquired, has been recorded in any record-of-rights made before that day as an "absolute occupancy raiyat," or in terms equivalent thereto, shall, unless he has parted with his rights, be deemed to be an absolute occupancy tenant of that holding.

*Section 38.* (1).—The rights of an absolute occupancy tenant in his holding shall on his death devolve as if it were land, and shall be transferable subject to the conditions contained in this section.

(2) If an absolute occupancy tenant intends to transfer any right in his holding by sale or gift, or by mortgaging the same for a sum which, together with the interest payable thereon during the five years immediately succeeding the mortgage and the previous sums (if any) secured by mortgage of it, would exceed eight times the annual rent of the holding, or by sub-letting the same in consideration of a fine or premium exceeding five times that rent, he shall give to his landlord a written notice of his intention, and shall defer proceeding with the transfer for a period of one month from the date on which the notice is given.

(3) If the intended transfer is by sale or gift, the landlord may, within the said period of one month,—

(*a*) claim to purchase the absolute occupancy right at such value as a Revenue-officer may, on application made to him in this behalf, fix; or

(*b*) permit the sale or gift, in which case he shall be entitled to a sum equal to the rent for one year, and that sum shall be a first charge on the holding.

(4) If the intended transfer is by mortgage or sub-lease, the landlord may, within the said period of one month, claim to purchase the absolute occupancy right at such value, as a Revenue-officer may, on application made to him in this behalf, fix.

(5) When the right of an absolute occupancy tenant in his holding is sold or is foreclosed by order of a Civil Court in execution of a decree other than a decree obtained by his landlord, the landlord shall have the same right of pre-emption as is given in the case of a sale by sub-section (3), clause (*a*),

(6) When an application is made to a Revenue-officer under this section to fix the value of an absolute occupancy right which is already mortgaged he shall fix the value of the right as if it were not mortgaged; and if the landlord purchases the right, the mortgage debt shall be a charge on the purchase-money in exoneration of the land.

(7) Any transfer made in contravention of this section shall be void as against the landlord.

(ii)—*Occupancy Tenants.*

*Section 41.*—Every tenant who, when this Act comes into force has held the same land continuously for twelve years, otherwise than as an absolute occupancy tenant or a sub-tenant, and every person who is, when this Act comes into force or thereafter becomes a tenant (not being an absolute occupancy tenant or sub-tenant) of land in the districts of Chanda, Nimar, and Sambalpur, shall be deemed to be an occupancy-tenant of that land:

Provided that the land is not—

(*a*) Sír-land, or,

(*b*) held in lieu of wages, or

(*c*) held in any district other than Sambalpur, under a written lease in which it is expressly agreed that a right of occupancy in the land shall not be acquired, or that the tenant shall quit the land at the termination of the lease.

*Explanation I.*—The occupation of any person from whom the tenant inherited his holding is, for the purposes of this section, deemed to be the occupation of the tenant.

*Explanation II.*—Where by the custom of any village, the holdings of tenants are or have been liable to periodical re-distribution, land which a tenant or any person under whom he claims has, in accordance with that custom, from time to time, received in exchange for land previously held by him is, for the purpose of calculating, under this section, the period of twelve years, deemed to be the same land as the land which he held before the exchange.

*Section 62.* (1)—Notwithstanding any contract to the contrary, the landlord of any holding held by an ordinary tenant shall, at the request of the tenant, and on the tender by the tenant to him of a sum equal to twice and one-half the annual rent payable in respect to the holding, together with the cost of preparing any instrument required for this purpose, confer upon the tenant the right of an occupancy tenant in respect of the holding.

*Section 43.* (2)—A transaction by which an occupancy tenant attempts to effect a transfer of property in respect of his holding by sale, gift, mortgage, sub-lease or otherwise shall be void as against his landlord, unless—

(*a*) it is entered into with the landlord's consent, or

(*b*) the transfer is one to a person who, if he survived the tenant, would inherit the right of occupancy, or between persons in favour of whom, as co-sharers, the right of occupancy originally arose, or who have become, by succession, co-sharers therein.

(3) The right of an occupancy tenant shall not be sold in execution of a decree.

(*iii*)—*Ordinary Tenants.*

*Section 53.* (1)—Every tenant who is not an absolute occupancy tenant, or an occupancy tenant, or a village-service tenant or a sub-tenant, is an ordinary tenant.

*Section 61.* (2)—A transaction by which an ordinary tenant attempts to effect a transfer of property in respect of his holding by sale, gift, mortgage, sub-lease or otherwise shall be void as aganist his landlord unless it is entered into with the landlord's consent.

(3) The right of an ordinary tenant shall not be sold in execution of a decree.

(*iv*)—*Sub-Tenants.*

*Section 51.* (1)—A tenant who is not an absolute occupancy tenant or an occupancy tenant, and who holds land from another tenant, or from a malik-makbuza or from the holder of a survey-number, is a sub-tenant of that land.

*Section 52.*—A sub-tenant shall, subject to the provisions of sections 7, 14 and 15, hold on such terms as may be agreed upon between him and his landlord."

(*v*)—*Village-Service Tenants.*

*Section 50. A*—A tenant of a holding who has been recorded at the last preceding settlement of the area in which the holding is comprised as holding his land rent-free, or on favourable terms on condition of rendering village service is a village-service tenant.

*Section 50* (2) *B.*—A transaction by which a village-service tenant attempts to effect a transfer of property in respect of his village-service holding by sale, gift, mortgage, sub-lease, or otherwise except by a sub-lease from year to year shall be void, and the village-service tenant shall be liable to be ejected for such attempt.

(3) The right of a village-service tenant shall not be sold in execution of a decree.

Besides the above there are the tenants of Government in ryotwari tracts, recently colonized, to whom reference has already been made in paragraph 44 above.

Under section 39 of the Act an absolute occupancy tenant is not liable to ejectment under any circumstances, while under section 72 all other classes of tenants may be ejected for arrears of rent.

*Extent and character of transfers.*

389. We have no general statistics regarding the alienation of tenant-right in the Central Provinces. There are, however, (*a*) some figures in the Revenue Reports, (*b*) the figures supplied by the Registration Department, and (*c*) the results of certain enquiries made in 1892-93 by local officers.



The figures in the Revenue Reports show the variations of the areas held by the different classes of landholders as follows :—

| Year. | Total area included in holdings. | Area held by malguzars. | Area held by absolute occupancy tenants. | Area held by occupancy tenants. | Percentage on Column 2 of | | |
|---|---|---|---|---|---|---|---|
| | | | | | Col. 3. | Col. 4. | Col. 5. |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| | Acres. | Acres. | Acres. | Acres. | | | |
| 1884-85 . | 14,681,098 | 3,125,117 | 2,415,198 | 3,192,120 | 21·3 | 16·4 | 21·7 |
| 1885-86 . | 15,852,543 | 2,732,917 | 2,270,626 | 3,774,366 | 17·2 | 14·3 | 23·8 |
| 1886-87 . | 13,001,056 | 2,495,836 | 2,123,400 | 3,591,777 | 19·2 | 16·3 | 27·6 |
| 1887-88 . | 13,582,207 | 2,576,790 | 2,155,927 | 3,810,963 | 19·0 | 15·9 | 28·1 |
| *Average* . | *14,279,226* | *2,732,665* | *2,241,288* | *3,592,306* | *19·1* | *15·7* | *25·2* |
| 1888-89 . | 15,985,172 | 2,555,114 | 2,154,103 | 3,821,525 | 16·0 | 13·5 | 23·9 |
| 1889-90 . | 16,848,084 | 2,701,697 | 2,152,663 | 4,404,529 | 16·3 | 12·8 | 26·1 |
| 1890-91 . | 18,602,393 | 3,320,685 | 2,571,835 | 6,131,263 | 17·8 | 13·8 | 33·0 |
| 1891-92 . | 19,417,512 | 3,470,261 | 2,609,184 | 6,403,356 | 17·9 | 13·4 | 33·0 |
| 1892-93 . | 19,791,777 | 3,579,399 | 2,572,773 | 6,579,792 | 18·1 | 13·0 | 33·2 |
| *Average* . | *18,128,988* | *3,125,431* | *2,412,112* | *5,468,093* | *17·2* | *13 3* | *30·2* |

The following is an abstract of the recent returns of registered deeds of sale and mortgage :—

| | | Area. | | | Rent. | | |
|---|---|---|---|---|---|---|---|
| | | To Agriculturists. | To Others. | Total. | To Agriculturists. | To Others. | Total. |
| | | | | (*i*) *Absolute Occupancy Tenants.* | | | |
| Sales . | 1889-90 . . | 10,843 | 8,301 | 19,144 | 9,581 | 7,135 | 16,716 |
| | 1890-91 . . | 11,321 | 8,955 | 20,276 | 9,308 | 8,284 | 17,592 |
| | 1891-92 . . | 10,896 | 10,838 | 21,734 | 8,819 | 10,143 | 18,962 |
| | 1892-93 . . | 11,859 | 8,969 | 20,828 | 9,802 | 9,127 | 18,929 |
| | 1893-94 . . | 11,965 | 10,594 | 22,559 | 10,291 | 9,691 | 19,882 |
| Mortgages . | 1889-90 . . | 29,209 | 51,402 | 80,611 | 27,736 | 50,881 | 78,617 |
| | 1890-91 . . | 24,595 | 50,434 | 75,029 | 24,157 | 50,641 | 74,798 |
| | 1891-92 . . | 25,624 | 50,638 | 76,262 | 25,046 | 52,937 | 77,983 |
| | 1892-93 . . | 28,564 | 50,964 | 79,528 | 28,632 | 51,452 | 80,084 |
| | 1893-94 . . | 24,970 | 50,193 | 75,163 | 24,260 | 50,848 | 75,108 |
| | | | | (*ii*) *Occupancy Tenants.* | | | |
| Sales . | 1889-90 . . | 8,552 | 5,536 | 14,088 | 7,221 | 5,129 | 12,350 |
| | 1890-91 . . | 7,781 | 5,646 | 13,427 | 6,353 | 5,116 | 11,469 |
| | 1891-92 . . | 10,202 | 5,740 | 15,942 | 8,076 | 5,207 | 13,283 |
| | 1892-93 . . | 9,086 | 6,654 | 15,740 | 7,315 | 5,435 | 12,750 |
| | 1893-94 . . | 12,879 | 9,001 | 21,880 | 9,956 | 7,913 | 17,869 |
| Mortgages . | 1889-90 . . | 20,445 | 36,100 | 56,545 | 20,354 | 32,655 | 53,009 |
| | 1890-91 . . | 18,945 | 33,675 | 52,620 | 18,400 | 31,764 | 50,164 |
| | 1891-92 . . | 19,955 | 33,220 | 53,175 | 18,432 | 31,801 | 50,233 |
| | 1892-93 . . | 26,077 | 35,820 | 61,897 | 24,225 | 34,764 | 58,989 |
| | 1893-94 . . | 27,189 | 45,733 | 72,922 | 25,994 | 43,722 | 69,716 |
| | | | | (*iii*) *Ordinary Tenants.* | | | |
| Sales . | 1889-90 . . | 2,615 | 1,666 | 4,281 | 2,260 | 1,526 | 3,786 |
| | 1890-91 . . | 3,499 | 1,962 | 5,461 | 3,192 | 1,610 | 4,802 |
| | 1891-92 . . | 3,650 | 1,895 | 5,545 | 3,403 | 1,733 | 5,136 |
| | 1892-93 . . | 5,410 | 2,193 | 7,603 | 2,952 | 1,914 | 4,866 |
| | 1893-94 . . | 4,541 | 3,399 | 7,940 | 6 | 2,658 | 6,514 |
| Mortgages . | 1889-90 . . | 8,854 | 10,889 | 19,743 | 7,541 | 10,189 | 17,730 |
| | 1890-91 . . | 5,420 | 10,587 | 16,007 | 5,328 | 9,560 | 14,888 |
| | 1891-92 . . | 5,572 | 9,023 | 14,595 | 4,833 | 9,373 | 14,206 |
| | 1892-93 . . | 7,855 | 10,475 | 18,330 | 6,690 | 9,224 | 15,914 |
| | 1893-94 . . | 8,474 | 14,226 | 22,700 | 8,282 | 13,592 | 21,874 |

Paragraph 2 of Mr. Fuller's No. 803—142, dated 14th March 1893, (A. Proceedings, July 1893, Nos. 25 and 26.)
Paragraph 3, ditto. *See* also paragraph 3 of letter No. 480, dated 28th November 1892, from Mr. De Brett, Settlement Officer, Narsinghpur.

390. The area under *absolute occupancy* right (which at present represents 13 per cent. of the cultivation of the Province) cannot increase, but it may decrease either (i) through abandonment, (ii) through lapse, or (iii) through purchase by proprietors. The special enquiries showed that the area had largely decreased since settlement (*i.e.*, in some 30 years): the decrease per cent. in four districts recently assessed, for instance, varying from 19 to 39 per cent. Decrease through abandonment was common in the early years of the settlement: decrease through lapse may be considered rare: and there seems reason to suppose that a good deal of the decrease is accounted for by absorption by landlords. And of the area thus absorbed a large proportion is transferred in consequence of the indebtedness of the tenant. This latter point is illustrated by the following figures from the Hoshangabad districts:—

See also paragraph 6 of Mr. De Brett's letter and paragraph 2 of letter No. 890, dated 31st December 1890, from Rai Bahadur Purshottam Das, Settlement Officer, Wardah.

| Cause of transfer to Malguzars. | Hoshangabad tahsil. | Seoni tahsil. |
|---|---|---|
| | Acres. | Acres. |
| Sold or otherwise taken by malguzars on account of debt . . | 14,107 | 7,274 |
| Surrendered otherwise than on account of debt . . . | 6,991 | 543 |
| Lapsed to malguzars through failure of heirs . . . | 2,144 | 595 |

Paragraph 4, letter No. 29, dated 7th February 1893. (A Proceedings, July 1893, Nos. 25 and 26.)

The Settlement Officer, Mr. Sly, writes:—

"This shows that all causes of the transfer of absolute occupancy rights to malguzars other than sales or transfers on account of debt are insignificant in their action. Many malguzars, in particular Banias, who have purchased villages, have a dislike to the status of absolute occupancy tenants, and do their best to obtain possession of their land. One of the principal causes of their ousting absolute occupancy tenants is the light rent which has hitherto been paid in this* district by this class of tenant. They know that if absolute occupancy rights are extinguished they can obtain much higher rents from other tenants. Another reason is that malguzars are afraid that if they do not buy out the absolute occupancy tenants themselves, other money-lenders will do so. Malguzars object to non-resident money-lenders thus getting a hold on their villages."

* Hoshangabad.

Paragraph 47, letter No. 4423, dated 10th October 1894. *See* p. 113.

The evidence of the Registration figures is thus quoted by the present Chief Commissioner:—

"In 1893, by the returns of the Inspector General of Registration 97,772 acres of absolute occupancy holdings were sold or mortgaged, 36,935 acres of this having been sold or mortgaged to agriculturists. This total amounts to 3·8 per cent. of the gross area in tenures of this class. If it be assumed, as it safely may, that none of this area was sold without being previously mortgaged, the ratio in which tenures of this class came under encumbrance was 2·9 per cent.; the ratio finally transferred was 1 per cent."

Letter No. 669, dated 19th November 1892.
Letter No. 29, dated 7th February 1893.
Letter No. 138, dated 11th January 1893.

391. As regards the extent of alienations to persons other than malguzars, our evidence, other than that just noticed, is small. On the one hand the Settlement Officer of Saugor reports that while sales to malguzars are few, "cases in which outsiders have acquired occupancy rights are still fewer." The Settlement Officer of Hoshangabad, on the other hand, after showing that in two tahsils some 31,000 acres have gone to the malguzars, gives figures to prove that at least 7,000 acres have gone to other purchasers, of whom "by far the larger part" are, in his opinion, money-lenders. Mr. Craddock, again, the Settlement Officer of Nagpur, calculated that in nine assessment "groups" of villages, only about 5 per cent. at the most of the absolute occupancy area had been transferred to money-lenders, but "this will continue," he adds "as there is a



sprinkling of mortgaged absolute occupancy holdings though not nearly so many as is generally supposed."

392. Though we have no statistical evidence on the subject, there can be little doubt of the fact that the custom of "squeezing" an absolute occupancy tenant without buying him out is prevalent on the part both of malguzars and of other creditors. Take for instance the evidence of the Settlement Officer of Saugor, who writes:— Letter No. 669 of 19th November 1892.

"However deeply an absolute occupancy tenant falls in debt to his malguzar, it is scarcely worth the latter's while to eject the tenant altogether from his holding. It pays him much better to allow the tenant to retain the abstract right in the land and to have the land cultivated by sub-tenants who pay competition rents, the difference between which and the original rent is credited to the tenant's account, and probably hardly amounts to the yearly interest due according to the customary usurious rates. Sometimes the tenant himself is put in as a sub-tenant of his own land. If the malguzar ejected the tenant entirely, he would either have to cultivate the land himself or lease it to a cultivator who would at once acquire ordinary rights in it, and whom he could not afterwards eject at his own will and pleasure."

As regards creditors other than malguzars the same officer writes:—

"Here again the creditor of an absolute occupancy tenant can screw large profits out of his debtor's land by putting in sub-tenants, while leaving the tenant the abstract right in his holding, and most malguzars look jealously on any attempt of an outsider to acquire absolute occupancy holdings in their villages."

The transfer of absolute occupancy rights seems, however, to have slackened somewhat of recent years. Paragraph 8 of Mr. Sly's letter No. 29 of 7th February 1893. Ditto, paragraph 2.

393. The transfers of *occupancy* rights can be estimated in two ways. Firstly by observing the increase or decrease of the area held under such rights we can guess at the extent to which landlords are or are not absorbing them. And secondly, by reference to the registration returns we can ascertain the actual extent of transfers in a given year and the proportion of those made in favour of money-lenders. The occupancy area (now representing 33 per cent. of the cultivation) has increased very rapidly since settlement: in none of the four districts, recently assessed in 1893, was the rate of increase less than 155 per cent., and in one it was as great as 1280 per cent. Since 1884, however, the only means (other than gift) of obtaining a right of occupancy has been by purchase under section 62 of the Tenancy Act, and there is in the correspondence of 1893 plenty of evidence to show that the purchase of occupancy right has been exceedingly rarely resorted to*: so that the great increase in occupancy area is to be ascribed almost exclusively to the period 1864—1884, when the right could be acquired by twelve years' occupation, and the apparent recent increases indicated in the Revenue Report figures quoted in paragraph 389 above are due mainly to the discovery during settlement of rights previously unrecorded. Whether the occupancy area has in fact decreased since 1884 is unfortunately a matter on which we have no statistical information,† but opinions were given on the point in 1892-93. Act VIII, 1883. Paragraph 28, Chief Commissioner's letter No. 4423, dated 10th October 1894.

* The enquiries of 1892-93 show that in Saugor, section 62 is "rarely used"; in Jubbulpore, two tenants have applied under it in 200 villages; in Narsingpur, only 247 acres have been protected under it; in Hoshangabad, there have been even cases of purchase since 1887; in Chhindwara, purchase has been "exceptional"; in Wardha, there have been only two cases since 1887; in Jubbulpore, Seoni, and Mandla there have been no cases of purchase; in Bilaspur, one case; in Narsingpur, there were only eighteen cases in four years; in Chhindwara 7; in Betul 5; and so forth. Latterly the purchase of occupancy rights seems to have been somewhat more freely resorted to (Chief Commissioner's letter No. 4423, dated 10th October 1894, paragraph 29).

† In two cases only is such information available, *vide* the following quotation from a note, dated 15th December 1894, by the Officiating Secretary in the Revenue and Agricultural Department, on the Chief Commissioner's letter of 10th October 1894: "In Narsinghpur the occupancy area of the previous settlement was 38,406 acres. In 1893 it had risen to 69,645 acres, but the rights in 48,066 acres of this latter area were newly recorded; so that right in 6,827 acres of the former area, or in nearly one-tenth of the whole occupancy area, had become extinguished since settlement. So again, in Damoh, the bringing to record at settlement of rights acquired before 1883, under the 12-year rule, raised the occupancy area from 140,000 to 169,000 acres. But during *the next two years* this latter area decreased by 6,000 acres owing to natural causes."

On the one hand the Settlement Officer of Saugor held that no serious decrease is occuring :—

Letter No. 669 of 9th November 1892.

"The general impression," he says, "is that occupancy rights are not being extinguished to any serious extent at the present day. The value of land has increased, and the value of the occupancy right is now understood and voluntary relinquishments are rare. An occupancy tenant cannot be ejected against his will by a creditor who is not his landlord. If a tenant becomes utterly poverty-stricken and loses his bullocks and his credit, a comparatively rare contingency, then the landlord gives him a final push and ousts him from his land. But so long as the tenant can cultivate the land, however heavy his debts may be, he generally manages to retain his occupancy rights."

On the other hand the Deputy Commissioner of Betul believed that the occupancy area is decreasing :—

See paragraph 3 of letter No. 3224 of 25th April 1893, from Commissioner, Nerbudda.

"As regards the occupancy holdings it may be said that in several instances the land has reverted to the malguzars, in some cases because the tenants had been so impoverished and sucked dry of all their resources, that they had not the means or the capital to cultivate their lands properly and migrated from place to place, whereby they forfeited their rights, and in others, because of their ejectment under section 72 of the Tenancy Act in default of payment of the arrears of rent decreed, but to what extent this has been done, cannot be stated with accuracy."

Letter No. 27 of 19th January 1893, para. 4.

So did Khan Bahadur Aulad Hossain, the Settlement Officer of Jubbulpore :—

"Regarding the extinction of occupancy right it may be observed that although this right is not liable to transfer, tenants, with the consent of the malguzars, assign their lands to their mahajans in lieu of interest and sometimes in lieu of principal and interest. Sometimes the mahajans purchase the land and pay up the arrears of rent due to malguzar. But where the malguzars are clever and rich, they themselves purchase the land in lieu of the arrears of rents or of the debts due to them."

Paragraph 9, letter No. 13-8, dated 11th January 1893.

And Mr. Craddock, the Settlement Officer, Nagpore, pointed out the obvious interest of the landlords in extinguishing occupancy rights :—

"A large number of proprietors will do their utmost to reduce the number of occupancy tenants. Many of these tenants are now recognized for the first time as occupancy, and the proprietors will find what is to them a serious decrease in the ordinary or unprotected area.

They will at once step in when a collateral relative tries to succeed to an occupancy holding,—as is their right. They will eject such tenants as alienate their holdings, for they will eject the purchaser and the tenant has no right of re-entry, and they will purchase as many holdings as they can from occupancy tenants involved in their debt. And without resorting to any patently illegal means, they will be able to cause the decrease of the occupancy area to a considerable extent, while a number of such holdings must lapse in failure of heirs. I do not wish to bring any sweeping charge against the proprietors of this district, but merely to dwell upon the facilities for a landlord anxious to rid himself of his occupancy tenants. The great money-lending landlords can generally compass this if they set their minds to it. Very few of the poorer tenants will venture on a suit against proprietors like Ganpat Rao Ghatate, the Chitnavis, or the Butis except in villages near big towns."

Letter No. 2401 of 19th May 1893, paragraph 2. (A. July 1893, Nos. 25-26.) *See* p. 113.

This afforded sufficient evidence for the Chief Commissioner, Sir A. MacDonnell, in 1893 to write : "There is not the slightest doubt that occupancy rights are now being rapidly lost in every district in the Province, as indeed was antecedently only too probable."

Turning now to the Registration returns, it may be noticed that in 1894, Mr. Woodburn, then Chief Commissioner, quoted the evidence of the returns of 1893 to the following effect :—

"For occupancy tenants," he wrote, "the figures are : sold 21,880 acres ; mortgaged 72,922 acres : total sold and mortgaged 94,802 acres, of which 40,068 acres were conveyed to agriculturists—rather more than half the transactions were in favour of non-agriculturists. The total of these transactions comes to 1·4 per cent. on the area in occupancy holdings."

394. As regards *ordinary* tenants Mr. Woodburn notes :—

"The transactions are much fewer and half of the whole number occurred in two districts



The area sold or mortgaged was 30,640 acres, only ·5 per cent. of the area in ordinary tenure, but again more than two-thirds of those transfers gone to non-agriculturists."

395. On the transfers of tenant right generally Mr. Woodburn writes :— Paragraph 48.

"The number of transfers is perhaps not as yet alarming, even in the class of absolute occupancy tenants, in which it is largest. In the class of ordinary tenants it is inconsiderable. Nevertheless, the number of these transfers is increasing ; in all classes, the high proportion of transfers of agricultural holdings to non-agriculturists is very significant, and as the people and the money-lenders come more and more to learn the extent of the tenant right, the process of increase may be expected very rapidly to develope. The Chief Commissioner would draw attention to the striking and important figures which the Settlement Officer of Nagpur has given. Among upwards of 18,000 tenants whose circumstances were examined, 18 per cent. were in chronic poverty with their holdings mortgaged, and 60 per cent. were in debt. It is ture, as Mr. Sly has remarked, that agriculture in most countries is supported on borrowed capital, and it is probable that most of the second class are quite solvent, but out of it the first class may be indefinitely recruited, and the tenantry of Nagpur are a prosperous sample of the tenantry of the province."

As regards the political danger Sir A. MacDonnell wrote :— Paragraph 3, letter, No. 17C., dated 30th September 1892. (A. May 1893, Nos. 18-19.) *See* p. 105.

"While it is quite true that agrarian difficulties here have not yet reached and are not except perhaps, in a few isolated places, likely soon to reach the degree of acuteness which is dangerous to the public peace : still all the elements of trouble are present and they point to the necessity for applying timely remedies."

*Correspondence.*

396. In 1892, before receiving the information above summarized, the Government of India had forwarded to the Chief Commissioner a copy of the report of the Deccan Commission of 1891 and had asked for his "general opinion as to the advisability of introducing into the Central Provinces (1) an Act framed on the lines proposed on pages 76 and 77 of the Report ; and (2) the alterations in the ordinary law recommended on page 78." In replying, the Chief Commissioner, Mr. MacDonnell, confined himself to the question so far as regarded the tenant class only. He forwarded a memorandum by the Commissioner of Settlements and Agriculture, Mr. Fuller, in which that officer pointed out that the root of the matter lay in the power of transfer possessed by the raiyats, and recommended the enforcement of a limit on the term of usufructuary mortgages and on possession after foreclosure. The Chief Commissioner himself, expressing general concurrence in these views, pointed unhesitatingly to "a limitation of the power of transfer now possessed by the privileged classes of cultivators," as the true remedy for indebtedness and professed himself "prepared to make recommendations as to the limits to be imposed" if the Government of India so wished. The Government of India were at the time awaiting a further report from the Punjab Government on the subject of indebtedness and decided to defer orders on the Chief Commissioner's proposals.

Letter No. 2089 of 16th September 1892.

Letter No. 17C., of 30th September 1892. *See* p. 105.

Meantime the enquiries above alluded to had been made in the Central Provinces, and in May 1893, Sir A. MacDonnell came forward with proposals for facilitating the acquirement of occupancy rights by re-introducing the 12 years' rule modified so that, as in Bengal, 12 years' cultivation in the village should entitle occupancy rights on all lands in the possession of the tenant. In replying the Government of India (i) accepted this proposal ; (ii) suggested the possibility of extending occupancy rights to all tenants ; and (iii) raised again the question of the possibility of restricting powers of transfer. Their remarks on the last head ran as follows :—

Letter No. 2101 of 19th May 1893. (A. July 1893, Nos. 25-26.)

Letter No. 1631—191 of 7th July 1893.

"I am also to point out that in paragraph 3 of letter No. 17 C. of 30th September 1892,

Sir A. MacDonnell recommended, as one of the remedies for agricultural indebtedness, the limitation of the right of transfer now possessed by the privileged classes of cultivators,—a term which, read with Mr. Fuller's note, apparently included all occupancy cultivators,—and stated his opinion that it would be easier to retrace our steps in this matter at the present time than it would be later on. The Chief Commissioner was then prepared to make specific suggestions on these lines, and the Government of India would be glad to receive any proposals you have to make in connection with the scheme now under consideration for the alteration of the Tenancy Act. As at present advised, the Government of India think that it might be desirable to include in the Act limitations of the nature indicated in Sir A. MacDonnell's letter of September last; and are of opinion that there would at all events be no injustice in a proviso coupling any fresh grant of occupancy rights with a condition which would restrict the power of transfer by sale or mortgage. If therefore the creation of two distinct classes of tenants would not cause confusion or grave administrative inconvenience, there would seem no reasonable objection to the introduction of some provision either for prohibiting transfers by all tenants not specially registered at the last settlement as having already received the right of alienation, or for securing the same object in a similar way."

Letter No. 4423, dated 10th October 1894. *Sel.* p. 114.

To these suggestions the Chief Commissioner, Mr. Woodburn, replied in October 1894. He expressed himself unwilling to re-introduce the twelve years' rule or to confer occupancy rights on all tenants, but was anxious to restrict the ryot's power of transfer. As regards the absolute-occupancy tenants he admitted that the case was not strong, but was of opinion that "the powers of transfer they enjoy could even now be recalled without practical inconvenience." As regards occupancy and ordinary tenants he advocated a complete withdrawal of the power of transfer including that of sub-letting except in the case of sub-leases by a man who 'may be disabled by old age or disease and have no son to help him' or by 'a widow or a child.' Along with his own opinion Mr. Woodburn forwarded a mass of correspondence containing the views of thirty-one persons, mostly officers of Government, and the matter is still under the consideration of the Government of India.

*Proposals made.*

397. The evidence above described leads to the conclusion that a considerable area of land under absolute occupancy and occupancy tenants is being gradually transferred both to the landlords and to the money-lenders. We have therefore in the Central Provinces a double evil to face and various proposals have been made with a view to combating it. None of these, it will be observed, attempt to restrict the evil, by prohibiting in any direct manner the transfer to the two (for this purpose) obnoxious classes, but a number of devices with the same end in view has been suggested from time to time.

398. (*i*) First among these is the proposal already alluded to in paragraph 217 that special legislation should be introduced on the pattern of the Deccan Riots Act. From Mr. Fuller's memorandum, there quoted, it appears that he would confine any special legislation to dealings affecting the tenants and malik-makbuzas, and apparently the acceptance by the Chief Commissioner of the Deccan Commission's proposals for legislation is subject to the same limitation. The principles involved being the same whether the special legislation is confined to tenants or extended to all agriculturists, it is sufficient to refer to the history of the case as described in paragraphs 213 to 222 above.

Dated 29th September 1892. *Sel.* p 109.

See beginning of paragraph 3, letter No 17 C., dated 30th September 1892.

399. (*ii*) In the last paragraph of his memorandum of September 1892, Mr. Fuller suggested (apparently for all ryots) a limit to the term of transfer:—

*Sel.* p. 110.

"Experience," he wrote, "has shown that ryots cannot be trusted to make contingent contracts, and I would disallow all transfers which are based on such contracts, and are not voluntarily consented to by the ryot at the time of transfer, and registered under proper formalities as such. This would still render it possible for money-lenders to gain possession of land by usufructuary mortgage, or by such sales as are referred to in paragraph 88 of the report, and nothing short of the withdrawal of rights of transfer can obviate transactions of this sort. But a limit might be placed on the term of usufructuary mortgages, at the close of which the ryot or his heirs would have the right of re-entry with a clear balance sheet, and it might be provided that the foreclosure of a mortgage would only have the effect of placing the mortgagee in possession of the land for a definite number of years, or till the expiry of the current period of settlement, the ryot being disabled from incurring fresh debts to the mortgagee during the period of the mortgagee's possession."



From his subsequent advocacy of the same proposal, in March 1894, it seems clear that Mr. Fuller meant by the above to forbid all permanent transfers, and that he leant in favour of a limit for the term of settlement.

Letter No. 798—142, dated 8th March 1894, page 170, enclosures to Chief Commissioner's letter No. 4423, dated 10th October 1894.

"In all cases," he wrote, "of transfer of *cultivating* rights since the last preceding settlement to a person of the non-cultivating classes by order of the Court, whether in execution of decree or by foreclosure, I would permit a Settlement Officer to order the summary ejectment of the transferee, if the original tenant appeared to claim the land, and was in his opinion deserving of consideration, and I would provide that in such a case the original tenant would take the land free of the whole claim in satisfaction of which the transfer was decreed."

So far as the proposal puts a limit on the term of transfers, it corresponds with Sir W. Muir's suggestion described in paragraph 300 above, and special objection has been taken to it on the ground that the original tenant, at the end of the term, not having the means to work the land, would at once fall into debt again.

So far as the term is limited to the period of settlement, Mr. Fuller urges in favour of his proposal the feeling of the people in favour of the idea that the settlement is a year of jubilee, and the fact that only a Settlement Officer can be trusted to decide such cases. Against this is to be noticed the grave objection of the absolute uncertainty attending the whole transaction: and if a term is to be fixed, a prescribed term of years and a prescribed system of decision would probably be found preferable.

Pages 94 and 107 *ib.*

400. (*iii*) Sir A. MacDonnell, in forwarding Mr. Fuller's suggestion of 1892, declared himself ready to submit proposals if desired to do so. "The matter," he added, "was very fully discussed in communication with the Bengal Tenancy Act. The recommendation made by the Bengal Rent Commission was that sale by private contract, or in execution of a decree for arrears of rent, should be recognised, but that sales in execution of other decrees should be prohibited." With regard to the suggestion thus thrown out, reference may be made to the quotation from the Bengal Rent Commission's Report given in paragraph 358 above, and to the short remarks appended.

Paragraph 3, letter No. 17 C., dated 30th September 1892. *Sel.* p. 105.

401. There remain the suggestions made by the Chief Commissioner, Mr. Woodburn and his officers in 1893-94. The only point on which there is practical unanimity among all these is that any restrictions applied should affect existing rights, not merely (as suggested by the Government of India) such rights of occupancy as may in future be acquired: and it will be unnecessary to consider further this latter alternative.

The suggestions made are, in other respects, extremely varied. As stated by the Chief Commissioner:—

Paragraph 40, letter No. 4423, dated 10th October 1894. *Sel.* p. 111.

"Some are in favour of leaving matters as they stand: some of removing from all classes of tenants all powers of transfer whatsoever: some would leave these powers with absolute occupancy tenants, but withdraw them partly or wholly from the two other classes of tenants; some would refuse the insiduous right of mortgage, but leave the power of an out-an-out sale: others would refuse to let the tenant be finally ousted from his land by sale in any

form, but leave him restricted powers of mortgage: some say that sub-lease is as deadly as a mortgage: others that it is a necessary right and must be recognized: some say that the condition of the landlord's consent, attached to most of the transactions of occupancy and ordinary tenants, is the root of all evil: others that the landlord's right of choice in the case of new tenants ought to be wider than it is."

It will be impossible to consider each of these in turn, and as regards the opinion of the several officers a reference is invited to the précis accompanying the Chief Commissioner's letter. It will perhaps suffice to consider, in addition to the Chief Commissioner's own proposals, the suggestions of those officers who have the most definite and important proposals to make, *viz.*, Mr. Neill, Mr. Sly, Mr. Laurie, and Mr. Craddock. Mr. Fuller's views have been noticed already.

402. (iv) Turning first then to *Mr. J. W. Neill*, Judicial Commissioner, we find him saying :—

Page 176, correspondence.

"I am decidedly of opinion that it is not desirable in the interest of any one to make any change in the present law. Ordinary tenants have no right of transfer unless they obtain the consent of the landlord. I do not see how this right can be still further limited. Occupancy tenants have scarcely larger powers of transfer. It is only the limited class of absolute occupancy tenants who can dispose of their holdings after giving the landlord notice, and the option of purchasing at a price, to be fixed by a Revenue Officer, I really cannot see why the law should be changed. Nor do I approve of Mr. Fuller's proposal to place a limit to the term of usufructuary mortgages, at the close of which the ryot would be entitled to recover possession, and to treat foreclosed mortgages as transfers for a season only. I am firmly persuaded that these measures would do as much harm as good, but I have not at present time to go into the matter. My own view is that when a mere cultivator leaves his land for years he has no claim to be reinstated. My sympathies are with the actual cultivator."

This attitude minimises the extent and the evil results of the transfers actually effected; and decision in respect of it will depend on the view taken of the figures and opinions quoted in paragraphs 389—393 above. Nine out of the thirty-one gentlemen consulted are apparently of the same way of thinking as Mr. Neill.

403. (*v*) The suggestion made by *Mr. Sly*, Settlement Officer of Hoshangabad, is set forth as follows :—

Page 196.

"The occupancy tenant has no right of transfer, except with the consent of his landlord, otherwise than to persons who would succeed to the land. This rule has, however, failed in its action owing to the construction of the law as to the penalty involved in its breach. It is generally ruled that a transaction whereby an occupancy tenant does not part with his whole right in perpetuity (*e.g.*, mortgage, lease, etc.), although void, does not entitle the landlord to eject the transferer or transferee. Consequently, although void, the transfer can continue so long as the tenant pays the rent to his landlord. I believe that if it was clearly enacted that all transfers, except with the consent of the landlord, are not only void, but that they render both the transferer and transferee liable to ejectment, that this would put an effectual stop upon all transfers, except to persons whom the malguzar considers desirable to have as tenants. This amendment would have a very great effect in restricting transfers, and I believe that it would not raise any opposition. The limitation should certainly be imposed in the case of existing occupancy tenures. It would be a half-treated measure only to restrict it to occupancy rights which may be acquired hereafter, and if any advantage is to accrue to the tenants from restricting their powers of transfer, surely the whole existing body of tenants should not be excluded from it.

I would also recommend that the special privileges of transfer accorded to absolute occupancy tenants should also be withdrawn, and that they should be placed upon the same footing as occupancy tenants. Their present privileges have proved nothing but a curse. Vested interests must, however, receive protection, and I would allow the validity of all transfers by sale, mortgage, or otherwise executed, prior to the amendment, whether possession has been delivered or not. I would not, however extend these advantages to the holders of simple money bonds.



It is not, I think, advisable to carry out the proposal that occupancy tenures should be rendered liable to sale in execution of a decree for arrears of rents. The present provisions regarding the ejectment of occupancy tenants for arrears of rent should, I think, remain as they stand, and should be extended to absolute occupancy tenants also. Malguzars often complain of the difficulty in realising arrears of rents from recalcitrant absolute occupancy tenants, and my experience tends to show that few holdings are transferred on account of arrears of rent only. I would, therefore, not only deprecate the extension of this privilege to occupancy tenants, but I would recommend that it should be withdrawn from absolute occupancy tenants. The malguzar should be given a fairly easy method for the recovery of his rents, and this privilege would, I believe, reconcile him to other changes in the law.

"My proposals in respect of limiting the powers of transfer are then— Page 107.

*Firstly.*—To take away special privileges now enjoyed by absolute occupancy tenants, allowing as valid only such transfers of the holding as have been executed prior to the amendment; *secondly*, to restrict the powers of transfer of absolute occupancy and occupancy tenants by enacting that all transfers shall be void unless entered into with the landlord's consent and that the breach thereof entails ejectment from the holding"

Under this scheme occupancy and absolute occupancy tenants would be placed on the same footing. Instead of being able to transfer, subject only to the landlord's pre-emption, the absolute occupancy tenant would, like the occupancy tenant, be required to obtain the landlord's consent for all transfers other than those to co-sharers and heirs-expectant, and transfers made without such consent would be void absolutely. At the same time the landlord would be granted powers in regard to ejectment for arrears due by absolute occupancy tenants, which he did not possess before. Ordinary tenants would apparently retain their present status.

Section 39, Act IX of 1883.

Briefly, it may be objected that the scheme ignores the historical distinction between the absolute occupancy and the occupancy tenants—a distinction which many think should be preserved in order to content the former class. Moreover, the law as regards occupancy tenants would be very slightly altered and it is anticipated by some that the landlord's consent, even if exercised in the more extended manner proposed, will have little effect in diminishing the number of transfers, either to money-lenders or to landlords. Whether increased powers for ejectment of absolute occupancy tenants are required is a matter which can be considered separately from the main question now under consideration.

404. (vi) *Mr. Lawrie's* opinion is summarized as follows :—

'He would limit the right of transfer of absolute occupancy tenants to—

(1) sale;
(2) usufructuary mortgage of not more than five years' duration;
(3) sub-lease for not more than five years.

Gift not to be allowed lest this introduce mortgages under another name. Sale and usufructuary mortgages are definite, not contingent, contract, and the consequence comes plainly before the tenant's mind.

For *occupancy tenants* he would limit their powers of transfer to—

(1) Usufructuary mortgage for five years;
(2) Sub-lease for five years;

both with landlord's consent.

All contracts against those conditions to be void *ab initio*, and not only against the landlord.

*In both cases* sale in execution of decree to be only for arrears of rent.

The result would be to lessen the power of raising money, but some limitation of the right of transfer would be welcomed by the majority of the people.

The right of sale on the part of the absolute occupancy tenant would be subject to the landlord's right of pre-emption. Page 20, enclosures.

The proposals do away with sale in execution for debt, with simple mortgages and with conditional sales, and (in the case of occupancy tenants) outright sales. They leave sale in the case of absolute occupancy tenants subject to the landlord's pre-emption, and the other permissible transfers in the case of occupancy tenants subject to the landlord's consent. They also allow sale for arrears of rent.

It is not explained why the right of transfer to co-sharers and heirs-expectant should be restricted, nor why gifts to these should be prohibited; but possibly this is not meant. The limitation of the term of usufructuary mortgage and sub-lease is open to the objections noticed in paragraphs 301 and 399 above: and the retention of the landlord's powers of pre-emption and consent is thought by some to be of little benefit, being generally a matter merely of price (see, *e.g.*, Mr. Anderson's opinion). In other respects the proposals seem to fit in together fairly well and have the merit of simplicity. No change is apparently contemplated in the status of ordinary tenants.

Page 11, correspondence.

405. (*vii*) *Mr. Craddock*, the Settlement Officer of Nagpur, is opposed to an absolute prohibition of transfers, and recommends an intermediate scheme :—

Page 479.

"First as regards absolute occupancy tenants. There is probably no section of the Act which gives rise to so much litigation and to so many conflicting divisions as section 38. I would propose the following powers of transfers :—

(*a*) I would give absolute occupancy tenants the same privilege as is enjoyed by occupancy tenants, *i.e.*, to transfer their holdings by sale or gift to a person or persons who would, if they survived the tenant, inherit the right, or to a person or persons who were at the time co-sharers in the holding, by virtue of succession. Such a transfer would not require the consent of the proprietor.

(*b*) I would allow an absolute occupancy tenant to sell his holding outright, the proprietor having a right to purchase the holding if his consent in writing had not been previously obtained, the terms of purchase being as they are now, or if he had previously consented, or had by subsequent consent waived his right to pre-emption, he should be entitled to recover from the purchaser one year's rent.

(*c*) I would allow an absolute occupancy tenant to sub-let his holding from year to year, or for a term not exceeding five years, provided in the latter case that a period of the lease should elapse before the holding was sub-let for a further term. I would provide that any transaction by which an absolute occupancy tenant attempted to transfer his holding by gift or sub-lease in contravention of the section or by mortgage or conditional sale should be void, and that the original absolute occupancy tenant should, if he had parted with the possession, have an immediate right of re-entry, subject to the payment of one year's rent to the landlord.

I would also provide a section like this : "When through the acquiescence or negligence of both the landlord and tenant, the transferee in the case of a transfer void under this section has remained in possession for a period exceeding 12 years, the right of the former tenant to re-entry shall cease, and the transferee shall thereupon become an ordinary tenant of the holding."

Whatever be enacted there will always be some unauthorized transfers which are not interfered with, and it is necessary to provide for such cases.

The proposed provisions will ensure that no tenant can make a transfer without knowing the precise consequences which are entailed.

He will be able to sell outright, which he understands; he will be able to lease for fixed eriods, which he understands. But there will be no losing holdings by means which he uld not foresee.

Next, as regards occupany tenants, their powers of voluntary transfer should be only—

(*a*) As at present and the same as (*a*) of the absolute occupancy tenants, *i. e.*, transfers by sale or gift to heirs and co-sharers;

(*b*) sub-letting from year to year.

...ot exceeding
...year... would be deem...d to extinguish the
...due on the decree.

(*c*) Leasing for five years by a Revenue Officer to recover a Government advance which will be explained later on."

The scheme is put by Mr. Craddock himself in tabular form as follows :—

*Powers of Transfers.*

| By parties themselves. | | | By order of a Court. |
|---|---|---|---|
| Absolute occupancy. | Occupancy. | Ordinary. | |
| | (*i*) *Without consent of landlord.* | | (*i*) *All tenanst.* |
| (*a*) Sale or gift to heirs and co-sharers. | Sale or gift to heirs and co-sharers. | ..... | Sale for arrears of rent. |
| (*b*) Sub-lease for five years. | | | |
| | | | (*ii*) *Absolute occupancy tenants.* |
| (*c*) Sub-lease from year to year. | Sub-letting from year to year. | Sub-letting from year to year up to three years. | Lease for period of seven or twelve years, according as whole or portion of holding was leased. |
| | (*ii*) *With consent of landlord.* | | (*iii*) *All tenants.* |
| Sale . . . . . | ..... | Sale or gift to heirs or co-sharers. | Lease for five years for recovery of Government advance. |

The scheme does away with permanent transfers for debt and with mortgages of all kinds. It retains the important distinction between family transfers and transfers to outsiders: it continues the historical distinction between absolute occupancy and occupancy tenants: and it supports the power of the landlord in the case of sales by absolute occupancy and ordinary tenants, and in the matter of sales for arrears. Under the scheme no occupancy or ordinary tenant would, under any circumstances, be able to sell his rights to a landlord or a money-lender.

It may be objected that the landlord's right of preemption or veto in the case of sales by absolute occupancy tenants will be of little use in checking this, one of the most formidable class of transfers. The chief objection to these proposals is raised in regard to the conditions for sub-letting, which are criticized thus by Mr. Anderson, the Commissioner of Nagpur :—

"From our point of view, I doubt if the proposal to allow sub-letting from year to year indefinitely in the case of the absolute occupancy and occupancy tenant is a good one. The

Page 14, correspondence.

nearest feasible p[illegible]
and sub-leases to [illegible]hers. It is admitted that there are objections to [illegible] sub-leases to agriculturists, and that the continuance of annual sub-leases is obnoxious chiefly in the case of money-lender lessees, but no proposal has been made to distinguish sub-leases according to the class of sub-tenant. In the absence of such a scheme, it is possible that Mr. Craddock's plan might be useful if tried, but it is difficult to predict its effect with certainty beforehand.

406. (*viii*) Finally, we come to the proposals *of the Chief Commissioner*, which are the most stringent of all. The Chief Commissioner, after pointing out that the severest restrictions will not stop credit, declares that any scheme, short of absolute prohibition, will be evaded. The landlord's consent, he says, affords no check whatever. There are three difficulties in absolute prohibition of land transfers which the Chief Commissioner discusses, *viz.*, (*i*) "the wholesale mortgaging of crops for long period of the sale of crops in anticipation of harvest at rates very disadvantageous to the tenant." These devices, however, have not proved injurious on the North-Western Provinces; (*ii*) the introduction of creditors as partners. But this is *ex-hypothesi* forbidden; (*iii*) restrictions on sub-letting by tenants. Respecting these the Chief Commissioner writes—

Paragraph 59, letter No. 4423, dated 10th October 1894. *Sel.* p. 111.

"If their tenures are hereditary, there are occasions, as in all hereditary tenures, when the occupant is unable to carry on the affairs of his tenure. He may be disabled by old age or disease and have no son to help him, or the tenure may have devolved on a widow or a child. These are circumstances in which to refuse the power to sub-lease would be practically to terminate the tenure, and it seems necessary, in justice, to make some provision for the maintenance of the privilege. Nevertheless, it has been truly said that the right of sub-lease can be turned for all practical purposes into the power of usufructuary mortgage. So real is this danger and so generally understood, that all manner of suggestions have been made for restrictions that are believed to meet the difficulty. The usual proposal is to limit the term of sub-lease, but while some would restrict it to one year, others would allow three, five, or seven years, or even the whole period of the current settlement. Some would simply make void sub-leases in contravention of their restrictions, without any very clear statement of the manner in which these treacherous transactions are to be discovered, or of the arrangements for the cultivation of the holding, when the sub-renter is turned out. Others would make the punishment of misbehaviour the confiscation of the holding. Some would allow the tenant a perfectly free hand in sub-renting within the limits they fix; others insist that the sub-lease should never be made without consent of the landlord. In the report of the Select Committee of 6th September 1882, presenting No. III Tenancy Bill for the Central Provinces, they said (paragraph X) they had allowed sub-letting to occupancy and ordinary tenants only when no fine is paid. 'We do not wish tenants of these classes to have the power of raising [illegible]many com-

The proposal, therefore, of the Chief Commissioner is apparently that no tenant of any class shall have any power of transfer, except in the case of old or diseased men, and widows and children who may be allowed to sub-let.

The Chief Commissioner apparently does not contemplate free transfer even to co-sharers and heirs, and his proposal is accordingly open to the objections set forth by Messrs. Fuller, Craddock and others regarding the evils attending the restriction of transfer to agriculturists. It is true that the scheme would effectually stop transfers to money-lenders and to landlords, but it will do this at the cost of an unnecessary restriction of credit and an unnecessary bondage of the tenant to the soil.

The Chief Commissioner has not explained the reasons which led him to believe that modifications of the absolute proposal are unworkable, and contents himself with saying (what may be admitted) that the landlord's power of veto is of little effect in preventing the undesirable class of transfers. A proposal so stringent as this has not been seriously put forward with regard to the peasant proprietors of Bombay or the Punjab, and would not perhaps be seriously considered in regard to the tenants of the Central Provinces.

407. It is possible, from the Chief Commissioner's references to the North-Western Provinces, that he may contemplate a power of transfer to co-sharers and heirs, as allowed by section 9 of the North-Western Provinces Rent Act, which runs— Act XII, 1881.

"No right of occupancy shall be transferable in execution of a decree or otherwise than by voluntary transfer between persons in favour of whom as co-sharers such right originally arose, or who have become by succession co-sharers therein."

If this be so, the chief objections to the proposal are removed: and it remains to consider how far the restrictions placed on absolute occupancy and occupancy tenants are likely to give rise to discontent either on their part or on the part of their landlords, and whether the restriction could not be further confined by permitting transfers to all but landlords and money-lenders.

407 A. The above proposals have been recently under the consideration of the Government of India in connection with certain contemplated changes in the Tenancy Act, and in the Bill which has been drafted for this propose, the Government of India have inserted provisions of which the effect is briefly (*a*) to maintain for the present the existing law as regards absolute occupancy

co-sharers therein.

(4) No contract to sub-lease a holding, or any portion thereof, shall be entered into or made during the currency of a sub-lease of such holding or such portion thereof, or within two years after the expiry of such sub-lease; and any such contract shall be void, and no Court or Revenue Officer shall take cognizance thereof in any proceedings whatsoever.

17. After section 43 the following shall be inserted:—

43A. If an occupancy tenant transfer any portion of his rights in any land contrary to the provisions of section 43, such tenant, or any person falling under the proviso to sub-section (3) of that section, may, at any time after the date of such transfer, recover from the transferee or his representative in interest, by summary suit under the Specific Relief Act, possession of the subject of the transfer.

Provided that the suit shall be instituted before the expiry of a period of six years counted as follows:—

(1) if the suit is by the tenant, from the date of the transfer;

(2) in any other case, from the date of the tenant's death;

or before the announcement of the assessment of the settlement following next after the date of the transfer or of the tenant's death (as the case may be), whichever event is later.

31. For section 61 (2) and (3), the following shall be substituted:—

(2) The right of an ordinary tenant in his holding shall not be sold in execution of a decree.

(3) No ordinary tenant shall be entitled to sell, make a gift of, mortgage, sub-let for a term exceeding five years, or otherwise transfer his right or holding or any portion thereof; and any such sale, gift, mortgage, sub-lease, or transfer shall be void, and no Court or Revenue Officer shall take any cognizance thereof in any proceedings whatsoever.

(4) No contract to sub-lease a holding, or any portion thereof, shall be entered into or made during the currency of a sub-lease of such holding or such portion thereof, or within two years after the expiry of such sub-lease; and any such contract shall be void, and no Court or Revenue Officer shall take cognizance thereof in any proceedings whatsoever.

The draft Bill in which the above sections, occur was sent demi-officially o the Chief Commissioner in February 1895, and in his letter No. 1014, dated 27th February 1895, Mr. Woodburn once more pressed for the extension of the restrictive clauses to the class of absolute occupancy tenants.

"In paragraph 51," he writes, "of the letter of 10th October the Chief Commissioner expressed a personal opinion in favour of withdrawing this power from absolute occupancy tenants. That opinion has been strengthened by the enquiries he has made during the current winter. The decision in this case hinges a good deal on the information before the Government of India, as to the circumstances of the many similar classes in other parts of India. But in the interests of this important but slowly diminishing class of the agricultural population, the Chief Commissioner is more and more strongly of the opinion that their powers of transfer should abate.

The Bill is still under the consideration of the Government of India.